

25 September 2018

DATA SHARING AGREEMENT

This **Data Sharing Agreement** is made on 25 September 2018

Between:

- (1) Goldsmiths' College, (also known as "Goldsmiths, University of London"), a body incorporated by royal charter with registered number RC000715, whose administrative offices are at New Cross, London, SE14 6NW ("**University**"); and
- (2) Massachusetts Institute of Technology, whose registered address is 77 Massachusetts Avenue, Cambridge, MA 02139, USA ("**MIT**")

each a "**party**" and together the "**parties**".

Background:

- A. The University will use MIT's web platform as a means of collecting video, audio and questionnaire response data from parents of young children. This permits the University to conduct infant behaviour studies with participants in their own homes and using their own computers.
- B. In the ordinary course of facilitating the collaboration MIT and the University will share Data (as defined below) between them.
- C. This Agreement details the parties' obligations in relation to their sharing of Data in accordance with applicable laws relating to the processing of Data.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement, unless the context otherwise requires, the following words and phrases have the following meanings:

Agreement	Means this data sharing agreement
Contract	A separate contract that governs the relationship of the parties in relation to the study abroad programme.
Controller	shall be interpreted in accordance with Data Protection Legislation
Data Protection Legislation	means, as applicable, (a) European Union Directives 95/46/EC and 2002/58/EC (as amended by Directive 2009/139/EC) and any legislation and/or regulation implementing or made pursuant to them including but not limited to the UK's Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (b) from and including 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679); and (c) any applicable associated or supplementary data protection laws and regulations, as updated, amended or replaced from time to time.
Data Subject	shall be interpreted in accordance with Data Protection Legislation;

Effective Date	meant the date of this Agreement
Data	Means both personal and sensitive data, both shall be interpreted in accordance with Data Protection Legislation;
Data Breach	any act or omission that; (A) compromises the security, confidentiality or integrity of Data that either party Processes for or on behalf of the other. This includes the unauthorised loss or disclosure of any Data by the Processor; (B)compromises the physical, technical, administrative or organisational safeguards put in place by the Processor that relate to the protection of the security, confidentiality or integrity of such Data, including any breach of IT or data security requirements; or (C)causes the Processor to be in breach of Data Protection Legislation.
Personnel	means the officers, employees, agents, consultants, representatives and other personnel of each party that Process Data on their behalf;
Processing	Shall be interpreted in accordance with Data Protection Legislation;
Processor	Shall be interpreted in accordance with Data Protection Legislation;
Purposes	The University will collect behavioural data for psychological studies with parents and young children. Data sharing will be to enable both parties to perform their obligations in accordance with a separate Contract that governs the relationship of the parties;
Regulator	means any person or regulatory body with responsibility for monitoring and/or enforcing compliance with the Data Protection Legislation;
Security Breach	means any actual loss, unauthorised or unlawful Processing, destruction, damage, alteration, or unauthorised disclosure of, or access to the Data (accidental or otherwise) and/or any other irregularity in Processing that compromises the availability, authenticity, integrity and/or confidentiality of the Data;
Sensitive Data or Special Categories of Data	Shall be interpreted in accordance with Data Protection Legislation.

1.2. In this Agreement, unless the context otherwise requires:

1.2.1. References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to the date of this Agreement.

1.2.2. References to a person include a reference to any individual, company, corporation or other body corporate, unincorporated association, joint venture or partnership (whether or not having a separate legal personality).

1.2.3. References to the masculine, feminine or neuter gender respectively include the other genders and references to the singular include the plural (and vice versa).

1.2.4. References to clauses and Schedules are to clauses of and Schedules to this Agreement, and references to paragraphs are to paragraphs in the Schedule in which such references appear.

1.2.5. The headings in this Agreement will not affect its interpretation.

1.2.6. Any phrase introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. TERM

2.1. This Agreement shall be deemed to have commenced on the Effective Date and shall continue in force until the deletion and/or return of the Data to the respective party, or the expiry of the Contract.

3. USE OF DATA

3.1. The parties will share Data with each other for the Purposes, and agree that they shall share such Data in accordance with the terms of this Agreement (including the Information Sharing Protocol).

3.2. The parties acknowledge that both the University and MIT are the Data Controller in some instances and to the extent that the either party acts as the Processor, they shall only carry out Processing of Data as set out in this Agreement or in accordance with any reasonable instructions provided by the other party from time to time.

3.3. Each party shall only Process Data to the extent, and in such a manner as is necessary for the purposes set out in the Agreement. If a party is required by law to Process any such Data otherwise than in accordance with this Agreement, they shall immediately notify the other party of the requirement before Processing such data.

3.4. Each party shall, at all times:

3.4.1. Comply with their obligations under Data Protection Legislation and the data protection principles set out therein when Processing Data;

3.4.2. Not do, cause or permit anything to be done which may result in a breach by any of the other Data Protection Legislation in connection with the Processing of Data.

3.5. Each party shall ensure that it has all necessary consents (where consents are required for the purpose of Processing any applicable Data) and has given appropriate privacy notices to Data Subjects (as required by Data Protection

Legislation) in order to share Data with the other parties and in compliance with Data Protection Legislation.

- 3.6. To the extent that a party requires the Data Subjects' consent to share Data with the other party in compliance with Data Protection Legislation:

3.6.1. the disclosing party shall inform the receiving party of the terms of that consent (including any restrictions on the receiving party's use of the Data); and

3.6.2. the receiving party shall comply with the terms of the Data Subject's consent (including any such restrictions on their use of the Data).

- 3.7. Each party shall:

3.7.1. take reasonable steps to ensure that Data is accurate and up-to-date; and

3.7.2. only retain Data for as long as necessary in relation to the Purposes.

4. DATA SUBJECT RIGHTS

- 4.1. Where acting as a Processor hereunder, the Processor shall provide the Data Controller with any such assistance as reasonably requested in order to comply with its obligations and fulfil Data Subjects' rights under Data Protection Legislation, including without limitation:

4.1.1. Responding to requests or queries from Data Subjects in respect of their Data; or

4.1.2. Co-operating with an investigation in connection with the Data by a regulatory body; and

4.1.3. Within any timescales specified by the Data Controller. If no timescales are specified, the Processor must respond to and comply with the Data Controller's request within a reasonable period of time after receiving the request for assistance.

- 4.2. The Data Processor shall:

4.2.1. Without delay comply with any request made by the Data Controller in relation to one or more identified Data Subjects to:

4.2.1.1. provide information about the categories of Data Processed by the Processor in respect of such Data Subject along with any other reasonable information requested by the Data Controller in respect of such Processing;

4.2.1.1.1. deliver up a copy of all Data Processed by the Processor in respect of one or more identified Data Subjects;

4.2.1.1.2. rectify or permanently erase the identified Data;

4.2.1.1.3. cease all Processing of the identified Data (except for retaining a copy of the Data in electronic storage);

- 4.2.1.1.4. transfer the identified Data to a specific third party or to the Data Subject to whom the Data relates; and/or
 - 4.2.1.1.5. cease certain types of Processing in respect of the identified Data;
 - 4.3. implement and maintain appropriate technical and organisational measures which enable the Processor to comply with any request by the Data Controller under clause 4.2.1; and
 - 4.4. maintain reasonably appropriate processes, systems and controls to guard against any act or omission that would put the Data Controller in breach of Data Protection Legislation.

5. INTERNATIONAL DATA TANSFERS

- 5.1. Neither party shall transfer, or allow the onward transfer of, any Data to any country outside the United Kingdom (UK), or the European Economic Area (EEA) or any international organisation unless such transfer:
 - 5.1.1. Pursuant to a binding written contract;
 - 5.1.2. Is effected by way of appropriate safeguards (which must be agreed by both parties);
 - 5.1.3. Is for the purpose only of the Purpose; and
 - 5.1.4. Otherwise complies with the Data Protection Legislation.
- 5.2. For the purpose of this clause, and without prejudice to the requirements of Data Protection Legislation, the concept of a transfer of Data includes (but is not limited to):
 - 5.2.1. The storage of Relevant Data on servers outside the UK or the EEA; and
 - 5.2.2. Allowing or facilitating access or other processing rights whatsoever related to the Data outside the UK or EEA.

6. CO-OPERATION

- 6.1. Each party and Personnel shall provide reasonable assistance, information and cooperation in connection with the Data to the other to ensure compliance with the other's obligations under the Data Protection Legislation.
- 6.2. Each party shall assist the other party in complying with its obligations as Data Controller including by providing information as required by Data Protection Legislation (in particular Articles 13 and 14 of the GDPR) to the other party and, if appropriate, to Data Subjects.
- 6.3. Each party will provide the other party with such information as the other party reasonably requires for maintaining the records it is required to maintain under the Data Protection Legislation.

- 6.4. If the Processor receives any complaint, notice or communication from a Data Subject or a Regulator which relates directly or indirectly to their sharing of Data pursuant to this Agreement, or to any other party's compliance with the Data Protection Legislation, it shall notify the Data Controller without delay of the complaint, notice or communication.
- 6.5. Each party warrants that it has appointed and shall maintain in place throughout the term of this Agreement a data protection officer to the extent that it is required to do so in accordance with the Data Protection Legislation.

7. FREEDOM OF INFORMATION

- 7.1. MIT acknowledges that the University is or may be subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”) and the MIT shall use reasonable endeavours to assist and co-operate and provide (at its own expense) all necessary assistance as may reasonably be requested by the University to enable the University to comply with its obligations under the FOIA. The University shall not be in breach of this Agreement for any disclosure made pursuant to the FOIA when in its reasonable opinion none of the statutory exceptions apply to disclosure under that Act.

8. SECURITY

- 8.1. Each party warrants to the other party that it has implemented and shall maintain appropriate technical and organisational security measures to safeguard all shared Data and any other Data Processed pursuant to this Agreement against unauthorised or unlawful Processing and against accidental loss, disclosure or destruction of, or damage to, shared Data or any other Data in such a way as to comply with Data Protection Legislation, including (as appropriate):

8.1.1. encryption of the Data;

8.1.2. pseudonymisation of the Data;

8.1.3. measures which ensure the confidentiality, integrity, availability and resilience of the systems Processing that Data;

8.1.4. measures which enable each party to restore the availability of and access to the Data in a timely manner in the event of an incident which affects such availability and/or access; and

8.1.5. a process for regularly testing, assessing and evaluating the effectiveness of such technical and organisational measures for ensuring the security of the Processing;

8.1.6. limiting disclosure of Data only to those necessary to provide the Services.

8.1.7. measures to be taken pursuant to paragraph 8.1;

8.1.8. the nature of the Data and the scope, context and purposes of the Processing and the likelihood and severity of the risks to Data Subjects that are presented by the Processing of such Data, in particular from

accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Data transmitted, stored or otherwise Processed; and

8.1.9. the state of technological development and the cost of implementing such measures.

8.2. Each party shall;

8.2.1. not disclose any Data to any person except under this Agreement, unless the other party has provided written consent to the contrary; and

8.2.2. ensure that access to Data is limited to those within its organisation who need to access such Data in order to meet any obligations under this Agreement

9. DATA BREACHES

9.1. In the event of Data Breach, the Processor shall:

9.1.1. notify the Data Controller within 24 hours of the Data Breach;

9.1.2. ensure that the original notification to the Data Controller includes a description of the Data Breach; an explanation of how the Data Breach occurred; the date and time of the Data Breach; the categories of Data affected by the Data Breach; and the categories and approximate number of Data Subjects concerned;

9.1.3. provide: (i) a description of the likely consequences of the Data Breach; (ii) an outline of the Processor proposed measures that it intends to take to address the Data Breach including, where appropriate, to mitigate its possible adverse effects; and (iii) the steps it intends to take to mitigate the risk of any similar Data Breach occurring in the future; and

9.1.4. take all reasonable steps to mitigate the risk of any similar Data Breach occurring in the future.

10. DELETION OR RETURN OF DATA

10.1. Neither Party shall retain or process shared Data or any other Data for longer than necessary in connection with carrying out the Purpose or, if longer, to adhere to its binding requirements under the Applicable Laws.

10.2. The Processor shall without undue delay, and at the Data Controller request, either permanently and securely delete or securely provide all of the Data to the Data Controller once processing by the Processor of the Data is no longer required for the Purpose. This requirement shall not apply to the extent retention and storage of any data is required by either party for their own record keeping purposes or by applicable law.

11. AUDIT RIGHTS

11.1. The Processor shall make available to the Data Controller on request of all information necessary to demonstrate compliance with this Agreement, and shall allow for and contribute to audits in relation to the processing of the Data from time to time.

- 11.2. Each party shall therefore maintain adequate records of any Processing of Data carried out in accordance with this Agreement.

12. BREACH, TERMINATION AND CONTINUANCE

- 12.1. Each party shall indemnify and keep indemnified the other party for any breach of the requirements of this Agreement which renders the other party liable for any costs, fines, claims or expenses under the Data Protection Legislation howsoever arising.
- 12.2. Failure on the part of a party to comply with the provisions of this Agreement shall amount to a breach of contract and shall give the non-defaulting party the right to exercise any and all of the remedies in this Agreement and recover all costs incurred as a consequence of the defaulting party's breach.
- 12.3. On termination of this Agreement howsoever arising the Processor shall when directed to do so by the Data Controller, and instruct all its agent and subcontractors to:
- 12.3.1. Transfer to the Data Controller the whole or any part of shared Data and any other Data received or acquired by the Processor for the Purposes of this Agreement; and
 - 12.3.2. Ensure that such a transfer is made securely in a manner specified by the Data Controller; and
 - 12.3.3. Securely destroy or erase the whole or any part of shared Data and any other received or acquired Data retained by the Processor and provide the Data Controller such proof of destruction, as requested from time to time. This requirement shall not apply to the extent retention and storage of any data is required by either party for their own record keeping purposes or by applicable law.
- 12.4. The provisions of this clause shall continue in effect notwithstanding termination of this Agreement.

13. NOTICES

- 13.1. Any notice to be given under this Agreement shall be given in accordance with the notices provisions of the Contract.

14. COUNTERPARTS

- 14.1. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all counterparts shall together constitute the one agreement.

15. ASSIGNMENT

- 15.1. Neither Party shall assign, or otherwise dispose of, any or all of its rights and obligations under this Agreement without the prior written notice of the other party.

16. VARIATION

- 16.1. No variation of any of the terms of this Agreement will be binding unless set out in writing, expressed to amend this Agreement and signed by the Parties or their duly authorised representatives.

17. THIRD PARTY RIGHTS

- 17.1. No one except a Party to this Agreement has any right to prevent the amendment of this Agreement or its termination, and no one except a Party to this Agreement may enforce any benefit conferred by this Agreement.

18. GOVERNING LAW

- 18.1. This Agreement is governed by, and is to be construed in accordance with, English law. The English Courts shall have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of or in connection with this Agreement, except that any Party may bring proceedings for an injunction in any jurisdiction.

GOLDSMITHS' COLLEGE

By: Jan de Fockert
Name: Jan de Fockert
Title: Co-Head of Department
Date: 18 March 19

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

By: _____
Name: Laureen Horton
Title: Assistant Director
Date: March 1, 2019