

DATA USE AGREEMENT

THIS DATA USE AGREEMENT ("Agreement") is entered into as of the date of last signature by and between East China Normal University located at 3663 Zhongshan North Road, Shanghai ("ECNU") and [OTHER ORGANIZATION] located at [ADDRESS] ("Recipient") (each a "Party," and collectively, the "Parties").

WITNESSETH

WHEREAS, the Parties wish to enter into this Agreement so that ECNU may share with Recipient a De-Identified Data Set for the purpose of research, public health, or healthcare operations and in a manner that complies with federal, state and local laws, including the "HIPAA Regulations" codified at Title 45 parts 160 through 164 of the United States Code of Federal Regulations, as amended from time to time ("HIPAA").

WHEREAS, ECNU and Recipient are collaborating on a research study known as Annotated Emotional Image Datasets of Chinese University Students in Real Classrooms for Deep Learning, and the Parties wish to set forth Recipient's obligations with respect to the De-Identified Data Set.

NOW THEREFORE, for mutual consideration, the sufficiency of which is acknowledged by both Parties, the Parties incorporate the foregoing recitals and agree as follows:

1. Definitions. For purposes of this Agreement, the following terms will have the indicated meanings:

(a) De-Identified Data Set. "De-Identified Data Set" means the data provided to Recipient for purposes of this Agreement. The De-Identified Data Set does not include the following direct identifiers of an Individual or of relatives, employers, or household member(s) of an Individual:

1. Names;
2. Postal address information;
3. Telephone numbers;
4. Fax numbers;
5. Electronic mail addresses;
6. Social security numbers;
7. Student identification numbers;
8. Financial account numbers;
9. Certificate/license numbers;
10. Vehicle identifiers and serial numbers, including license plate numbers;
11. Device identifiers and serial numbers;
12. Web universal resource locators (URLs);
13. Internet protocol (IP) address numbers;
14. Other biometric identifiers, such as fingerprints;
15. Full names or any identifying numbers directly associated with an individual.

(b) Individual. "Individual" refers to the subject of the De-Identified Data Set.

2. Uses and Disclosures. Recipient will use the De-Identified Data Set only for the purposes of the Study and will not use the De-Identified Data Set for any other purpose not stated in this Agreement.

3. Permissible Use. Recipient warrants that the use and receipt of the De-Identified Data Set will be limited to individuals authorized to conduct current or future studies associated with the Study, and Recipient will maintain the De-Identified Data Set in a manner reasonably calculated to preserve its security and confidentiality.

4. Data Ownership. ECNU retains ownership of the De-Identified Data Set, which includes any related technology provided to Recipient along with the De-Identified Data Set.

5. Data Set. Recipient represents and warrants that it will:

(a) Not use or further disclose the De-Identified Data Set other than as permitted or required by this Agreement or as required by law;

(b) Use appropriate safeguards to prevent use or disclosure of the De-Identified Data Set other than as provided for by this Agreement;

(c) Report to the ECNU any use or disclosure of the De-Identified Data Set not provided for by this Agreement;

(d) Not use the De-Identified Data Set, alone or in combination with other information, to identify or contact the individuals;

(e) Make reasonable efforts to limit the use or disclosure of the De-Identified Data Set to the minimum necessary to accomplish the intended purpose;

(f) Ensure that any agent or subcontractor to whom the Recipient provides the De-Identified Data Set agrees to the same restrictions.

6. Term and Termination.

(a) Term. This Agreement will remain in effect as long as Recipient has access to the De-Identified Data Set.

(b) Termination by Either Party. Either Party may terminate this Agreement with ten (10) days written notice.

(c) Termination for Cause. Upon either Party's knowledge of a material breach, the non-breaching Party will take reasonable steps to cure the breach. If unsuccessful, the non-breaching Party may terminate the Agreement and report the breach to appropriate authorities.

(d) Effect of Termination.

(1) Except as provided in paragraph (d) (2) of this Section 6, upon termination of this Agreement for any reason, Recipient shall return or destroy the De-Identified Data Set created or received from ECNU, or created or received by Recipient on behalf of ECNU. This provision shall apply to the De-Identified Data Set that is in the possession of subcontractors or agents of Recipient.

Recipient shall retain no copies of the De-Identified Data Set. Recipient is responsible for the cost of the return.

(2) In the event that Recipient determines that returning or destroying the De-Identified Data Set is not feasible, Recipient shall extend the protections of this Agreement to the De-Identified Data Set and limit further uses and disclosure of the De-Identified Data Set to only those purposes that make the return or destruction not feasible, for so long as Recipient maintains such De-Identified Data Set.

(e) Survival. Sections 2, 4, 5, 6(d), 6(e), 7, 10, 11 and 12 of this Agreement will survive any termination of this Agreement under subsections 6(b) and 6(c) .

7. Publication. The Parties acknowledge that the Study is a collaborative effort. The Parties agree to coordinate their respective activities regarding publication prior to submission of a paper or abstract for publication. The purpose of this coordination is to ensure the proper collation and presentation of the De-Identified Data Set and to reflect the collaborative nature of the Study. In the event of publication or disclosure of results that is not a joint publication or disclosure, the publishing Party shall grant the other party the opportunity to review and/or comment on such proposed publication, abstract, or oral presentation. The publishing Party shall grant the non-publishing party no less than thirty (30) days to review such proposed disclosure. The non-publishing Party may reasonably request in writing that the proposed publication or disclosure be delayed for up to an additional thirty (30) days as necessary for the filing of a patent application. The non-publishing Party may further request that its confidential information be deleted, but at no time will the publishing Party be required to remove any information relating to the results of the Study, or any other information that is reasonably required by the publishing source to be included in the publication or presentation. The publishing Party agrees that the source of the De-Identified Data Set shall be acknowledged in accordance with scientific custom in all published or oral communications concerning the Study.

8. Audit Rights. To allow ECNU to certify its compliance with HIPAA Regulations, Recipient will permit ECNU, at ECNU's expense and on five (5) days prior notice, to audit Recipient's systems and services, with specific emphasis on Recipient's compliance with the provisions of this Agreement. Such audit, which may be conducted by ECNU's personnel under obligations of confidentiality or by an independent auditing firm, will not unreasonably interfere with Recipient's legitimate activities, and will be conducted no more than once per calendar year, unless ECNU has received a request from the Secretary, or unless ECNU has reason to believe that this Agreement has been breached. ECNU will use the information received during an audit solely for the purposes of the Agreement and will otherwise maintain the confidentiality of such information.

9. Authority. Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

10. Assumption of Liability. Except to the extent prohibited by law, Recipient assumes all liability for damages which may arise from Recipient's use, storage or disclosure of the De-Identified Data Set.

11. Indemnification. ECNU will not be liable to the Recipient for any loss, claim, or demand made by the Recipient, or made against the Recipient by any other party, due to or arising from the use of the De-Identified Data Set by the Recipient, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the ECNU. No indemnification for any loss, claim, damage or liability is intended or provided by either party under this Agreement. Notwithstanding the foregoing, nothing in this Section 11 shall limit any rights that ECNU may have to additional remedies under the Agreement or under applicable law for any acts or omissions of Recipient or its agents or subcontractors.

12. Miscellaneous.

(a) Warranty. Recipient agrees that the De-Identified Data Set provided is experimental in nature, and ECNU makes no warranties, expressed or implied, regarding the quality of any product produced under this Agreement.

(b) Governing Law. This Agreement shall remain silent with regard to governing law.

(c) Change in Law. The Parties agree to negotiate in good faith to amend this Agreement to comport with changes in federal law that materially alter either or both Parties' obligations under this Agreement; provided however, that if the Parties are unable to agree to mutually acceptable amendment by the compliance date of the change in applicable law or regulations, either Party may terminate this Agreement as provided in section 6.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved to permit ECNU to comply with HIPAA.

(e) No Third Party Beneficiaries. Nothing in this Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(g) Headings. The headings and other captions in this Agreement are for convenience and reference only and will not be used in interpreting, construing or enforcing any of the provisions of this Agreement.

(h) Amendments. This document states the entire agreement between the parties regarding the De-Identified Data Set provided by ECNU to Recipient. Any amendment to this Agreement must be in writing and executed by the party against whom enforcement is sought.

(i) Waiver. No delay or omission on the part of either party in exercising any right hereunder will operate as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion will not be construed as a bar to or waiver of any right or remedy on any further occasion. The election of either party of a particular remedy on default will not be exclusive of any other remedy, and all rights and remedies of the parties hereto will be cumulative.

(j) Notices. Any notices required or permitted under this Agreement will be in writing and delivered in person or sent by registered or certified mail, return receipt requested,

proper postage prepaid, properly addressed to the address of the addressee set forth above or to such other more recent address of the addressee of which the sending party has received written notice.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates written below.

[RECIPIENT INSTITUTION]

East China Normal University

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

Recipient Scientist:

Represented Scientist:
