

Databrary Terms and Conditions of Use

Effective Date: June 1, 2020

1. Introduction

Databrary (“we”, “our”) is a web-based data library operated by New York University (“NYU”). Databrary is designed for the storage, sharing, and re-use of Research Data, especially video and audio recordings and associated Contents, some of which may contain personally identifying or sensitive information about human or non-human animal research participants. Some Content on Databrary is available to any User, but most Content is accessible to a restricted community of Authorized Users who must have approval from an Institution to browse, stream, and download Content and to upload, store, and share the Content with other Authorized Users exclusively for educational or scientific research purposes. All Research Data is made available in a manner consistent with the permission of the research subjects and must only be used in accordance with their permission.

As used in these Terms and Conditions of Use, “you”, “your” includes all individuals accepting these Terms and Conditions of Use, as described below.

2. Definitions

We use the following defined terms throughout this document:

Access Agreement: The Databrary Access Agreement between an Authorized Investigator and his or her Institution and NYU on behalf of Databrary.

Affiliate: A person, affiliated with an Authorized Investigator who operates under that Authorized Investigator’s sponsorship and supervision and who has been authorized to access Restricted Data on our Websites by that Authorized Investigator.

Authorized Investigator: A person who has permission from an Institution to conduct independent research and who has received authorization through their Institution and from Databrary to view, download, and contribute Content to Databrary.

Authorized Users: An Authorized Investigator or Affiliate who makes use of our Websites.

Content: Data files, procedural videos, videos of research participation, consent forms, participant demographics, coding sheets, analysis scripts and output, comments, tags, URLs, documents, and descriptive text.

Data: Collections of information that include Identifiable Data, Sensitive Data, Restricted Data, and metadata.

Identifiable Data: Collections of information that might be used singly or in combination to determine the identity of research participants or other individuals depicted in recordings or data.

Institution: An academic, not-for-profit, research, government, or health entity whose employees or students conduct research.

Research Data: Content collected by scientific researchers about the behavior or functioning of human or non-human animal participants for the purpose of discovery and the advancement of human knowledge.

Restricted Data: Research Data that is sensitive or contains Identifiable Data and which requires that access be restricted to specific individuals, namely Authorized Users or Affiliates they select and take responsibility for.

Users: All persons, aged 18 years-of-age or older, who use our Websites.

Websites: The websites maintained by Databrary, including databrary.org, www.databrary.org, nyu.databrary.org, datavyu.org, and www.datavyu.org.

3. Terms and Conditions of Use

In order to use our Websites, whether by accessing our Websites directly or by using a public application programming interface (“Public API”) to access our Websites, you must first agree to these Terms and Conditions of Use. You may

not use the Websites if you do not accept these terms.

You accept these terms by (i) registering for access to Databrary and by requesting approval from your Institution to become an Authorized User, or (ii) by actually using the Websites. If you are using the Websites on behalf of an Institution, your assent to these terms constitutes a binding legal agreement that the Institution for which you are acting as a representative accepts these terms. You understand and agree that we will treat your use of the Websites as acceptance of these terms.

Our Content is made available only to individuals who are at least 18 years of age or possess legal parental or guardian consent to use it. If you do not so qualify, do not attempt to use our Websites. We may refuse use to any person or entity at any time and may change our eligibility criteria at any time, at our sole discretion.

Our Privacy Policy ([LINK TO PRIVACY POLICY](#)), which is incorporated by reference into these Terms and Conditions of Use, explains how we treat your personal data and your privacy when you use our Websites. By using our Websites, you agree that Databrary can use your personal data in accordance with our Privacy Policy.

4. Modifications to these Terms and Conditions of Use

We may modify these Terms and Conditions of Use from time to time and give notice by posting a revised version on our Websites. Your continued use of the Websites after the posting of such new Terms and Conditions of Use means that you agree to the posted changes. If you do not agree to the changes, you should discontinue use of the Websites and Services. If there is a conflict between these Terms and Conditions of Use and the updated and/or additional Terms and Conditions of Use, the updated and/or additional terms and conditions will control. If you have questions about our Websites, please contact us by email at contact@databrary.org¹.

5. Rules and Conduct

You agree not to use our Websites for any purpose or in any way that is prohibited by these Terms and Conditions of Use.

You shall not (and shall not permit others) to either (a) take any action or (b) deposit, download, post, submit or otherwise distribute or facilitate distribution of any Content using any communications service or other service available on or through Databrary, that:

- Infringes any patent, trademark, trade secret, copyright, right of publicity, right of privacy or other right of any other person or entity;
- Is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane;
- Constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming"); or
- Contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data or other information of Databrary.

Additionally, you shall not:

- Take any action that imposes or may impose (as determined by Databrary at its sole discretion) an unreasonable or disproportionately large load on Databrary (or its third party providers') infrastructure; for instance, users are expected to download reasonable amounts of data; excessive downloading that may compromise the functionality or integrity of Databrary will be investigated and may result in termination of access.
- Interfere or attempt to interfere with the proper working of Databrary or any of its activities; or
- Bypass any measures Databrary may use to prevent or restrict access to Databrary (or other accounts, computer systems or networks connected to Databrary).

You shall abide by all applicable local, state, national and international laws and regulations.

¹<mailto:contact@databrary.org>

6. Registration

As a condition to accessing non-public, Restricted Data on our Websites, you will be required to register for an account using your name, institutional email, and Institution, and then select a password. You shall provide accurate, complete, and current registration information (name, email, and institutional affiliation) and inform us in a timely way when there is any change in your name or Institution. Failure to provide accurate, complete, and current registration information or inform us in a timely way about any changes in this information shall constitute a breach of these Terms and Conditions of Use, which may result in immediate termination of your account. You shall not use for your registration the name of another person with the intent to impersonate that person. You should only access Databrary using your login information and should never use another user's account. You are solely responsible for activity that occurs on your account; you shall not allow anyone else to use your account, and you are responsible for maintaining the confidentiality of your password. You will immediately notify Databrary by email to contact@databrary.org² of any unauthorized use of your account, or other account-related security breach of which you become aware.

7. Institutional Authorization

Users who seek access to Databrary's Restricted Data must gain authorization from an Institution or from an existing Authorized Investigator (as an Affiliate). Seeking authorization is the final step in the account creation and registration process. Databrary will work with Users and their Institutions to secure a signed Databrary Access Agreement with NYU. Authorization is granted when (i) an Institution and a User affiliated with that Institution sign and return to us the Databrary Access Agreement along with any required licensing fee, or

(ii) An Authorized Investigator grants a User access to our Websites as an Affiliate. In signing the Databrary Access Agreement, the Institution joins the Authorized Users in accepting these Terms and Conditions of Use.

8. Your Representations and Warranties

As a User of our Websites, you represent and warrant to us that you will:

- Treat Databrary Content with the same high standards of care used with Research Data that you yourself collect.
- Ensure that the permission granted by research participants for use of their Research Data, as expressed on Databrary as a Sharing Release Level, are respected.
- Take care in authorizing other Users as Affiliates, and take responsibility for the conduct of the Affiliates you authorize and their use of Databrary Contents.

In addition, you agree to:

- Comply with your Institution's policies on the conduct of research, and be familiar with Databrary's guidance on the type of ethics oversight typically required for various Research Data uses.
- Complete research ethics training that meets your Institution's standards concerning policies and protections for human research subjects, as applicable.
- Complete research ethics training that meets your Institution's standards concerning policies and protections for non-human animals, as applicable.
- Seek, secure, and maintain permission to conduct research from the entity that governs research at your Institution, and faithfully represent to Databrary information about any research approval status, if requested.
- Receive approval from the entity that governs research at your Institution to ask depicted individuals or their legal parent or guardian for permission to store Research Data concerning them on our Websites, and for permission to make that Research Data available to other Authorized Users via our Websites.
- Ensure that depicted individuals document their wishes about data sharing using language consistent with the Databrary Release Template (<https://www.databrary.org/resources/templates/release-template.html>), which can be mapped to Databrary's Sharing Release Levels (<https://www.databrary.org/resources/guide/investigators/release/release-levels.html> and 10. Sharing Release Levels).
- Obtain necessary approvals required by your Institution prior to uploading Content to our Websites.
- Ensure all Content stored on Databrary are accompanied by information about the Sharing Release Level associated with that Content.

²<mailto:contact@databrary.org>

- Grant access to identifiable information only in accord with the terms of each participant’s Sharing Release Level, or less widely.
- Exercise professional judgment in determining what Content to share.
- Store and grant access to Content consistent with your rights to do so and in ways that do not conflict with the ownership rights or copyright of any other entity or individual. This includes abiding by any licensing terms associated with Content on Databrary.
- Ensure that all Research Data you deposit is true and correct at the time of deposit. If you later discover that any Research Data was not true and correct at the time of deposit, you must correct it.

When selecting and granting Affiliates access to Databrary Content, Authorized Investigators agree to:

- Assume responsibility for ensuring that Affiliates follow these Terms and Conditions of Use.
- Provide Affiliates with training in the ethical use of Research Data, including the protection of confidentiality.
- Assume responsibility for the conduct of the Affiliates that they select.

Additionally, Authorized Investigators agree to:

- Keep their contact information current on Databrary.
- Notify Databrary, contact@databrary.org³, in the event of a change in their Institutional affiliation in order to obtain and execute a new Databrary Access Agreement with their new Institution.
- Keep login information private and secure and avoid sharing or disclosing it with anyone.
- Cite Databrary and all Databrary resources used in their scholarly work using Databrary’s suggested format or an equivalent.

Regarding the uploading, storage, and sharing of Content on our Websites, you:

- Assert that you have rights to share with us any Content you
contribute and that no other entity or individual has rights that prevent you from contributing
Content to Databrary.
- Agree to allow us to use the Content exclusively for the purpose of
scientific research or education.
- Agree to provide licensing information if you are uploading Content
subject to copyright and seek to restrict access to shared Content via a license.
- Take responsibility for deciding when and with which other
Authorized Users Content you store on Databrary are shared, consistent with the Sharing Release
Level granted by Research Participants.

Furthermore, you agree to:

- Follow all relevant international, national, state, and local laws
and regulations that pertain to the access, storage, security and use of Research Data.
- Inform Databrary of any suspected violation of confidentiality or
ethics and cooperate with Databrary in any investigation about suspected violations

9. Responsible Use of Data and Data Confidentiality

Databrary, its services, and Data in any form, text, software, scripts, graphics, and interactive features generated, provided or otherwise made accessible by Databrary, shall only be used for education and research, and may not be used for commercial purposes or monetary gain. This prohibition includes but is not limited to the sale, rental, licensing or any arrangement purporting to grant ownership in or access to our Content to a third party for monetary gain.

You agree to secure data downloaded from Databrary with the most stringent of safeguards, including any (a) safeguards specified by your home institution’s data policy for data of the type downloaded; and/or

³<mailto:contact@databrary.org>

(b) safeguards required to meet a reasonable standard of care in your discipline or research community for data of the type downloaded.

Where revelation of identifying information could breach any guarantees of confidentiality which were extended to study participants (notwithstanding the Sharing Permission Level granted), you must minimize the risk that such information is included in Content stored on our Websites.

Notwithstanding these efforts of the depositors, if you browse, search, download or otherwise access Databrary data you are obligated to maintain confidentiality represented or contained in data projects and any of their components. You are expressly prohibited from analyzing data to identify individuals or organizations beyond what is clearly represented in the Data. Likewise, you shall not seek to produce links among Databrary Content or among data housed elsewhere that could identify individuals. If you discover the identity of an individual that was supposed to be anonymous, you must not make use of this information.

10. Sharing Release Levels

Access to Content on our Websites is based on the following Sharing Release Levels (<https://www.databrary.org/resources/guide/investigators/release/release-levels.html>):

Unknown: Consent missing or not obtained. Access to this Content is restricted to Authorized Users chosen by the Authorized Investigator who uploaded the Content.

Private: Access to this content is restricted to Authorized Users chosen by the Authorized Investigator who uploaded the Content.

Authorized Users: Access to this Content is restricted to all Authorized Users and may not be redistributed in any form.

Learning Audiences: Access to this Content is restricted to all Authorized Users, who may use clips or images from the Content in presentations for informational or educational purposes. Such presentations may be videotaped or recorded and those videos or recordings may then be made available to the public via the internet (e.g., YouTube).

Public: Access to this content is available to any User (subject to these Terms and Conditions of Use).

All Content on our Websites must be labeled with one of these Sharing Release Levels. The default setting is Private.

11. Derived Data and Re-dissemination of Data

Ownership of and copyright to Content stored in Databrary are vested in the Authorized User who deposited the Content or in third parties who own the material that was deposited. Downloading material does not transfer copyright. If you create any new data products on the basis of Content you downloaded from Databrary, or a product combining of our Content and other data, you agree to share the product via Databrary or a similarly appropriate institutional repository. Data downloaded from Databrary may not be further copied or redistributed.

No part of Databrary or its Content may be reproduced or transmitted to or stored in any other web site, nor may any of its pages or part thereof be disseminated in any electronic retrieval system or services without prior written permission.

12. Rights Reserved to Databrary

We reserve the right to:

- Redistribute Content in Databrary in accordance with the Authorized Investigators' wishes and the Sharing Release Levels provided by participants, staff, or others who are recorded during research.
- Promote the availability of shared data (via the Databrary newsletter, website, email or social media)

- Describe, catalog, validate, and document data.
- Store, translate, copy, or re-format Data in any way to ensure its future preservation and accessibility.
- Incorporate metadata or documentation.
- Limit the amount or kind of Data stored free of charge or the level of service provided.
- Give shared Data priority over privately stored data for storage and processing resources.

13. Termination

These Terms and Conditions of Use apply to your use of the Websites and are effective until terminated or modified by Databrary. If you no longer agree to be bound by these Terms, you must cease use of the Websites. If you're dissatisfied with the Websites or their content, or any of these terms, conditions, and policies, your sole legal remedy is to discontinue using the Websites. We reserve the right to terminate or suspend your access to and use of the Websites, or parts of the Websites, without notice, if we believe, in our sole discretion, that such use is (i) in violation of any applicable law; (ii) is harmful to our interests or the interests, including intellectual property or other rights, of another person or entity; or (iii) where Databrary has reason to believe that you are in violation of these Terms and Conditions of Use. Termination for any reason shall not terminate any of your warranties or any of your indemnification and other obligations under these Terms of Use, or any licenses that you have license, use or other rights that you may have granted in connection with any of your contributions.

14. Warranty Disclaimer

THE WEBSITES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, DATABRARY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY. DATABRARY MAKES NO REPRESENTATIONS OR WARRANTY THAT THE WEBSITES WILL MEET YOUR REQUIREMENTS, OR THAT YOUR USE OF THE WEBSITES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES DATABRARY MAKE ANY REPRESENTATION OR WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE WEBSITES. DATABRARY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE WEBSITES OR THE INFORMATION, CONTENT, DATA, MATERIALS, OR PRODUCTS DISPLAYED ON THE WEBSITES OR THE SERVICES.

IN NO EVENT SHALL DATABRARY OR ANY OF ITS AFFILIATED UNIVERSITIES, COMPANIES, EMPLOYEES, TRUSTEES, DIRECTORS, OFFICERS, AGENTS, VENDORS, OR SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION) ARISING OUT OF THE USE, MISUSE OF OR INABILITY TO USE THE WEBSITES, EVEN IF DATABRARY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. BECAUSE SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. YOU UNDERSTAND AND AGREE THAT ANY DATA, CONTENT, OR SOFTWARE DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE WEBSITES, SERVICES, OR APPLICATION PROGRAMMING INTERFACES OR ANY THIRD-PARTY PRODUCT ACCESSING THE WEBSITES AND SERVICES IS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM(S) OR LOSS OF DATA OR BUSINESS INTERRUPTION THAT RESULTS FROM THE DOWNLOAD OF DATA, CONTENT, OR SERVICES. DATABRARY SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE CAUSED, OR ALLEGED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE INFORMATION OR IDEAS OR RESEARCH CONTAINED, SUGGESTED OR REFERENCED IN OR

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15. Liability Limitation

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL OR EQUITABLE THEORY, WHETHER IN TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, SHALL DATABRARY OR ANY OF ITS AFFILIATED COMPANIES, EMPLOYEES, DIRECTORS, OFFICERS, AGENTS, VENDORS, OR SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE WEBSITES OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE WEBSITES OR FOR ANY INFORMATION OBTAINED THROUGH THE WEBSITES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OR CORRUPTION OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF AN AUTHORIZED REPRESENTATIVE OF DATABRARY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

DATABRARY'S TOTAL CUMULATIVE LIABILITY FOR ANY AND ALL CLAIMS IN CONNECTION WITH THE WEBSITE WILL NOT EXCEED ONE THOUSAND U.S. DOLLARS (\$1,000.00). YOU AGREE AND ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ON LIABILITY ARE AN ESSENTIAL BASIS OF THE BARGAIN AND THAT DATABRARY WOULD NOT PROVIDE THE WEBSITES ABSENT SUCH LIMITATION.

16. Indemnification

The Users agree that Databrary bears no responsibility for their use of Databrary or the information contained within it. Users indemnify and render harmless Databrary from all claims, losses, liability, and other damages that arise from the Users' violations of these Terms and Conditions of Use, except where an Authorized User's Institution is expressly prohibited by law from indemnifying third parties. In cases where an Authorized User's Institution is prohibited by law from indemnifying third parties, the Institution agrees that it will be responsible for the payment of claims, including for loss, personal injury, death, property damage, or otherwise, arising out of any act or omission of its employees or agents in connection with the performance of this agreement for which it is held liable under applicable local laws. You and your Institution agree to notify Databrary promptly in the event of a third party claim where Databrary is not indemnified and fully cooperate with Databrary in addressing such claims.

17. Dispute Resolution

You and Databrary agree that any cause of action against arising out of or related to Databrary or the Terms and Conditions of Use must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

These Terms and Conditions of Use shall be governed by and interpreted in accordance with the laws of the State of New York (excluding the conflict of laws rules thereof). All disputes under these Terms and Conditions of Use will be resolved in the applicable state or federal courts of competent jurisdiction located within the geographic boundaries of the federal Southern District of New York. You consent to the jurisdiction of such courts and waive any jurisdictional or venue defenses otherwise available.

You expressly agree and understand that the remedy at law for any breach by you of these Terms and Conditions of Use will be inadequate and that damages flowing from such breach are not usually susceptible to being measured in monetary terms. Accordingly, it is acknowledged that upon your actual or threatened violation of any provision of

these Terms and Conditions of Use, Databrary shall be entitled to obtain from any court of competent jurisdiction immediate preliminary and/or permanent injunctive relief restraining any threatened or further violation.

18. Integration and Severability

These Terms and Conditions of Use, together with the Privacy Policy and Databrary Access Agreement executed by you and your Institution, are the entire agreement between us and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between us. If any provision of these Terms and Conditions of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms and Conditions of Use will otherwise remain in full force and effect and enforceable.

19. Miscellaneous

These Terms and Conditions of Use are personal to you, and are not assignable, transferable or sublicensable by you except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations hereunder without consent. No agency, partnership, joint venture, or employment relationship is created as a result of the Terms and Conditions of Use and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under the Terms and Conditions of Use, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under the Terms and Conditions of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Databrary is an operating unit of NYU; as such, all rights and obligations attributable to "Databrary" under these Terms and Conditions of Use constitute rights and obligations of NYU.

20. Copyright and Trademark Notices

Unless otherwise indicated, all content and services provided by us are protected by copyright, and all rights are reserved. You acknowledge that, as between you and Databrary, the copyright in any content created by Databrary and any search software, user guides, documentation and any other intellectual property that is prepared by Databrary to assist users belongs to Databrary as creator of the content.

You may not use the name "New York University," or "Databrary" (alone or as part of another name), or any other trademark of NYU or Databrary, in advertising or promotional materials without NYU's prior written approval.

Databrary respects the intellectual property rights of others and expects its users to do the same. Databrary operates in accordance with the safe harbor provisions of 17 U.S.C. 512 (the Digital Millennium Copyright Act of 1998, the text of which may be found on the U.S. Copyright Office website at <http://www.copyright.gov/legislation/dmca.pdf>). Databrary will respond expeditiously to claims of copyright infringement committed using our Sites if such claims are reported to us. Upon receipt of such notice, Databrary will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged content from the Site.