

COLLABORATIVE RESEARCH AGREEMENT

Includes the transfer of de-identified data

This Collaborative Research Agreement (“**Agreement**”) is made by and between The Trustees of the University of Pennsylvania (“**Penn**”), a Pennsylvania nonprofit corporation with offices located at Office of Research Services, Franklin Building, 5th Floor, 3451 Walnut Street, Philadelphia, PA 19104-6205, and the University of Hawaii – West Oahu (“**Collaborator**”), a public university having a place of business at 91-1001 Farrington Hwy, Kapolei, HI 96707. Penn and Collaborator each shall be referred to herein as a “**Party**” or, collectively, as “**Parties**”. This Agreement is effective as of the date of last signature below (“**Effective Date**”).

RECITALS

WHEREAS, the Parties each desire to conduct the research described in Exhibit A hereto; and

WHEREAS, the Parties believe that collaborating with each other in the performance of such research will be of mutual benefit, further the educational and research objectives of each and foster the development of scientific knowledge;

NOW, THEREFORE, in consideration of the promises and undertakings set forth herein, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 “**Collaborative Research**” means the research program described in Exhibit A to this Agreement.
- 1.2 “**Collaborator Intellectual Property**” means all inventions other than Joint Intellectual Property, whether patentable or not, conceived and reduced to practice by Collaborator in the conduct of the Collaborative Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or re-examinations thereof.
- 1.3 “**Collaborator Investigator**” means Eli Tsukayama who has agreed to serve as lead investigator for the Collaborative Research, shall be responsible for conducting, supervising, and administering the Collaborative Research on Collaborator’s behalf, and shall be Collaborator’s liaison with Penn Investigator. Together with Penn Investigator, “**Investigators**”.
- 1.4 “**Data**” means data generated prior to the Effective Date of this Agreement, as described in Exhibit B, and specifically excluding Research Results.
- 1.5 “**Intellectual Property**” means all inventions or discoveries, whether or not patentable, conceived and reduced to practice in the conduct of the Collaborative Research during the term of this Agreement by Collaborator and/or Penn, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof.

- 1.6 **“Joint Intellectual Property”** means all inventions, whether patentable or not, conceived and reduced to practice jointly by Penn (i.e., the Penn Investigator or other inventors owing a duty to assign to Penn) and by Collaborator (i.e., the Collaborator Investigator or other inventors owing a duty to assign to Collaborator) in the conduct of the Collaborative Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof.
- 1.7 **“Penn Intellectual Property”** means all inventions other than Joint Intellectual Property, whether patentable or not, conceived and reduced to practice by Penn in the conduct of the Collaborative Research during the term of this Agreement, including all United States and foreign patent applications claiming said patentable inventions, including any divisional, continuation, continuation-in-part (to the extent that the claims are directed to said patentable inventions), and foreign equivalents thereof, as well as any patents issued thereon or reissues or reexaminations thereof.
- 1.8 **“Penn Investigator”** means BYROM MASSEY who has agreed to serve as faculty investigator for the Collaborative Research and shall be responsible for the conduct, supervision and administration of the Collaborative Research on Penn’s behalf, and will be Penn’s liaison with the Collaborator Investigator at Collaborator. Together with Collaborator Investigator, **“Investigators”**.
- 1.9 **“Research Results”** means all data and information generated in performance of the Collaborative Research during the term of this Agreement. Research Results expressly excludes Intellectual Property.

ARTICLE 2 COLLABORATIVE RESEARCH

- 2.1 **Conduct.** The Parties shall commence the Collaborative Research after the Effective Date of this Agreement and shall use good faith efforts to conduct such Collaborative Research substantially in accordance with the terms and conditions of this Agreement.
- 2.2 **Investigators.** If the services of Penn Investigator or Collaborator Investigator become unavailable for any reason, the respective Party will be entitled to designate another member of its faculty who is acceptable to the other Party to serve as its Investigator of the Collaborative Research. If a substitute Investigator has not been designated within sixty (60) days after the original Investigator ceases their services under this Agreement, either Party may terminate this Agreement upon written notice thereof to the other Party, subject to the provisions of Article 8.
- 2.3 **Term.** The initial term of this Agreement shall begin on the Effective Date of this Agreement and shall end on the one (1) year anniversary of the Effective Date, unless terminated sooner pursuant to Articles 2.2 or 8.1 hereof. This Agreement may be extended or renewed only by mutual written agreement executed by duly authorized representatives of the Parties.

- 2.4 **Costs.** Collaborator and Penn each shall be responsible for their own costs and expenses incurred in performing the Collaborative Research.

ARTICLE 3 DATA

- 3.1 **Data.** During the course of the Collaborative Research, either Party may transfer Data to the other Party, as described in Exhibit B. Data are considered proprietary to the providing Party, who will be free to distribute Data to others and use Data for its own use.
- (i) The Data will not include personally identifiable information as defined in NIST Special Publication 800-122. If Provider is a Covered Entity, the Data will be de-identified data, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").
 - (ii) If Data being provided is coded, the providing Party will not release, and the receiving Party will not request, the key to the code.
 - (iii) The receiving Party will not use Data, either alone or in concert with any other information, to make any effort to identify or contact individuals who are or may be the sources of Data without specific written approval from the providing Party and appropriate Institutional Review Board (IRB) approval, if required pursuant to 45 CFR 46. Should the receiving Party inadvertently receive identifiable information or otherwise identify a subject, they shall promptly notify the Providing party and follow reasonable written instructions, which may include return or destruction of the identifiable information.
 - (iv) By signing this Agreement, the Parties provide assurance that relevant institutional policies and applicable federal, state, or local laws and regulations (if any) have been followed, including the completion of any IRB or ethics review or approval that may be required.
 - (v) The Parties agree to take such action as is necessary to amend this Agreement, from time to time, in order to remain in compliance with the requirements of HIPAA.
- 3.2 **Ownership.** The providing Party will retain all right, title and interest, including, but not limited to, Intellectual Property rights, in and to its Data. If the receiving Party files a patent application or wishes to commercialize a product that contains any portion of the providing Party's Data, which is derived from the providing Party's Data, or which could not have been produced but for the use of the providing Party's Data, the receiving Party agrees to contact the providing Party to determine what ownership interests, if any, the providing Party may have in such patent application or commercial product. Inventorship for such patent application or commercial product shall be determined according to U.S. Patent Law. The providing Party's Data shall not be used by the receiving Party in research that is subject to obligations to any third party, other than obligations to the U.S. government resulting from research that is funded by the U.S. government.

- 3.3 **Use and Transfer.** The receiving Party shall use the providing Party's Data solely for the purpose of performing the Collaborative Research and solely by the Investigator or other designated faculty, employee, fellow, student or agent of the Receiving Party that has a need to use the Data in connection with the Collaborative Research and whose obligations are consistent with the terms of this Agreement. The providing Party's Data shall not be used by the receiving Party for commercial purposes. The receiving Party shall not transfer the providing Party's Data to any other person or entity without the providing Party's prior written consent. The Parties agree to use Data in compliance with all laws and regulations, including but not limited to, current EPA, FDA, USDA and NIH guidelines. The Parties agree to establish appropriate administrative, technical and physical safeguards to prevent unauthorized use of or access to Data and comply with any other special requirements relating to safeguarding as may be set forth in Exhibit B.
- 3.4 **Liability.** The receiving Party assumes all liability that may arise from the use, storage or disposal of the Data and in no event shall the providing Party be liable.
- 3.5 **Disposition.** The receiving Party shall follow the disposition instructions of the Data as provided in Exhibit B, provided, however, that the receiving Party may retain one (1) copy to the extent necessary to determine the scope of its obligations under this Agreement and to the extent required by law or regulation.

ARTICLE 4 RESEARH RESULTS, RECORDS AND REPORTS

- 4.1 **Research Results.** Each Party will have the right to use the Research Results for any reasonable purpose. Each Party shall need to obtain a license to use Research Results from the other Party if such use would infringe any copyright or any claim of a patent application or issued patent owned by the other Party.
- 4.2 **Records.** Each Party shall maintain records of the Research Results and shall provide each other with reports of the progress of the Collaborative Research and the Research Results as agreed upon by Investigators.
- 4.3 **Research Reports.** Each Party hereby grants the other Party a royalty-free, nontransferable, non-exclusive right to copy reproduce and distribute any research reports furnished to the other Party under this Agreement ("**Research Results**"). Neither Party may charge fees for Research Reports, use Research Reports for advertising or promotional activities or alter or modify Research Reports without the prior written permission of the other Party.

ARTICLE 5 INTELLECTUAL PROPERTY

- 5.1 **Background Intellectual Property.** It is recognized that any inventions, discoveries and technologies of the Parties that were conceived of and/or reduced to practice prior to the Effective Date or independent of the Agreement ("**Background IP**") are and remain their separate property and are not affected by this Agreement, except as provided in Article 5.4.

- 5.2 **Inventorship/Ownership.** The Parties agree that inventorship of any Intellectual Property created as a consequence of this Agreement will be determined in accordance with United States patent, trademark and copyright law, and that ownership of said Intellectual Property will be determined in accordance with inventorship. Both Parties will own an equal, undivided right, title and interest in and to Joint Intellectual Property and any patent, copyrights, software and tangible research materials and other intellectual property related thereto.
- 5.3 **License.** Except as otherwise expressly provided herein, neither Party shall by reason of this Agreement or its performance obtain any right, title, license or other interest, either express or implied, to the other Party's rights in any Background Intellectual Property or Intellectual Property. Any license granted by one Party to the other Party pursuant to this Agreement shall be subject to the grantor Party's right to use and permit other non-profit organizations to use Intellectual Property or Joint Intellectual Property for educational and research purposes and, if applicable, to the rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder.

ARTICLE 6 CONFIDENTIALITY

- 6.1 **Confidential Information.** Neither Party shall disclose confidential information to the other Party unless it is necessary to the performance of the Collaborative Research. Any confidential information disclosed under this Agreement will be in writing and clearly marked by the disclosing Party as confidential or, if disclosed orally, written notice will be provided by the disclosing Party within thirty (30) days of disclosure ("**Confidential Information**"). The receiving Party shall protect the disclosing Party's Confidential Information with the same degree of care as its own Confidential Information. The receiving Party's obligations of confidentiality will exist during the performance of this Agreement and for three (3) years following termination or expiration of this Agreement, unless disclosure is required by law or regulation.
- 6.2 **Exceptions.** The confidentiality obligations contained herein will not apply to Confidential Information that is:
- (i) Previously known by the receiving Party without a restriction prior to disclosure under this Agreement;
 - (ii) Disclosed to the receiving Party by a third party without a known obligation of confidentiality;
 - (iii) Available to the public not through a breach of this Agreement by the receiving Party;
 - (iv) Independently developed by the receiving Party without knowledge or use of Confidential Information disclosed by the other Party under this Agreement;
 - (v) Published or disclosed in accordance with the terms of this Agreement; or
 - (vi) Required to be disclosed by operation of law. To the extent feasible and permitted by law, the receiving Party will give reasonable notice to the disclosing Party to allow the disclosing Party to offer its objections to the production of Confidential Information.
- 6.3 **Intellectual Property.** In order to preserve the patentability of Intellectual Property or Joint Intellectual Property, the Parties shall maintain Intellectual Property or Joint Intellectual Property (whether oral or written) as confidential and shall not disclose such information to any third party until the publication of such information by the other Party or until that Party provides written verification that all desirable patentable inventions have been protected, whichever occurs sooner.

ARTICLE 7 PUBLICATION, USE OF NAMES

- 7.1 **Publication.** It is expected that the Parties will publish Research Results jointly. Nonetheless, the Parties will be free to publish, present or otherwise disclose Research Results separately. The Party desiring to publish shall furnish the other Party with a copy of any proposed publication or presentation at least thirty (30) days in advance of the submission of said proposed publication in order for the other Party to review and comment. The non-publishing Party may request in writing that the proposed publication be delayed for up to thirty (30) days as necessary to protect proprietary information. Notwithstanding anything to the contrary herein, the Parties agree to abide by the policies of journals in which publications will appear as to such matters as authorship and the public release or availability of data or materials relating to the publication. The Parties agree to recognize the contribution of the provider of Data as the source of Data in all publications, presentations or other disclosures concerning the Collaborative Research, as appropriate and in accordance with scholarly standards and any specific format that may be indicated in Exhibit B.
- 7.2 **Use of Names.** Neither Party shall use the other Party's name, mark, logo or symbol, or the name of any trustee, officer, faculty member, student or employee thereof, for publicity, advertising or endorsement purposes, without such Party's prior written consent. Either Party may acknowledge the other Party's participation in this Collaborative Research and any scientific contributions in academic publications. Each Party's use of the name, symbols and/or marks of the other Party, or the names of the other Party's employees, shall be limited to identification of the other Party as a research collaborator, and each Party may include factual information about the other Party in listings of sponsored research projects without such Party's prior written consent.

ARTICLE 8 TERMINATION

- 8.1 **Termination.** In addition to the termination right set forth in Articles 2.2 and 2.3 hereof, either Party may terminate this Agreement effective upon written notice to the other Party if the other Party breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof. In the event of an incurable breach, the non-breaching Party may terminate this Agreement effective immediately upon written notice to the breaching Party.
- 8.2 **Effects of Termination.** Termination of this Agreement will not affect the rights and obligations of the Parties accrued prior to termination hereof.

ARTICLE 9 DISCLAIMER OF WARRANTIES, LIABILITY

- 9.1 **Disclaimer.** THE PARTIES ACKNOWLEDGE THAT DATA ARE EXPERIMENTAL IN NATURE. THE PARTIES MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WARRANTIES WITH RESPECT TO THE CONDUCT, COMPLETION, SUCCESS OR PARTICULAR RESULTS OF THE COLLABORATIVE RESEARCH; OR THE CONDITION, OWNERSHIP, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE COLLABORATIVE RESEARCH OR ANY INTELLECTUAL PROPERTY OR JOINT

INTELLECTUAL PROPERTY OR RESEARCH RESULTS OR DATA; OR THAT USE OF INTELLECTUAL PROPERTY OR JOINT INTELLECTUAL PROPERTY OR RESEARCH RESULTS OR DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY. NEITHER PARTY SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES SUFFERED BY THE OTHER PARTY OR ANY OTHER PERSON RESULTING FROM THE COLLABORATIVE RESEARCH OR THE USE OF ANY INTELLECTUAL PROPERTY OR JOINT INTELLECTUAL PROPERTY, RESEARCH RESULTS, DATA OR PRODUCTS RESULTING THEREFROM.

- 9.2 **Liability.** Each Party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, or directors, to the extent allowed by law.

ARTICLE 10 ADDITIONAL PROVISIONS

- 10.1 **Successors and Assignment.** No rights hereunder may be assigned by either Party, directly or by merger or other operation of law, without the expressed written consent of the other Party. Any prohibited assignment of this Agreement or the rights hereunder shall be null and void. No assignment shall relieve either Party of responsibility for the performance of any accrued obligations that it has prior to such assignment. The terms and provisions hereof shall inure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.
- 10.2 **Waiver.** A waiver by either Party of any of the terms and conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any other term or condition hereof. All rights, remedies, undertakings, obligations and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of either Party.
- 10.3 **Relationship to the Parties.** Nothing in this Agreement is intended or shall be deemed to establish a relationship of principal and agent between the Parties, nor any of their agents or employees, nor shall this Agreement be construed as creating any form of legal association or arrangement which would impose liability upon one Party for the act or failure to act of the other Party. Nothing in this Agreement, express or implied, is intended to confer on any person other than the Parties hereto or their permitted assigns, any benefits, rights or remedies.
- 10.4 **Third Party Beneficiary.** No party, other than Penn or Collaborator, shall be entitled to any rights whatsoever by virtue of the relationships created by or arising under this Agreement, including, without limitation, rights as a third-party beneficiary.
- 10.5 **Notices.** Notices, statements, reports and other communications under this Agreement shall be in writing and shall be directed to a Party at its address shown below or such other address as a Party shall have last given by notice to the other Party. A notice will be deemed received: if mailed, five (5) days after deposit in the United States mail; if sent by courier overnight, one (1) business day after deposit with the courier service.

For Penn:
Office of Research Services

with a copy to:

University of Pennsylvania
5th Floor Franklin Building
3451 Walnut Street
Philadelphia, PA 19104-6205
Attention: 49142 / MASSEY

For Collaborator:

Jeffrey A.S. Moniz
University of Hawai‘i – West O‘ahu
91-1001 Farrington Highway
Room D202
Kapolei, HI 96707

with a copy to:

Eli Tsukayama
University of Hawai‘i – West O‘ahu
91-1001 Farrington Highway
Room D210
Kapolei, HI 96707

- 10.6 **Governing Law.** The Parties agree to be silent on governing law.
- 10.7 **Dispute Resolution.** If a dispute arises between the Parties concerning this Agreement, then the Parties will confer, as soon as practicable, in an attempt to resolve the dispute. If the Parties are unable to resolve such dispute amicably, each Party is free to exercise any and all legal or equitable rights.
- 10.8 **No Discrimination.** Penn and Collaborator shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual or affectional preference, age, religion, national or ethnic origin, handicap, or veteran status.
- 10.9 **Force Majeure.** Neither Party shall be liable for any failure to perform as required by this Agreement to the extent such failure to perform is due to circumstances reasonably beyond such Party’s control, including, without limitation, labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, terrorism, acts of aggression, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.
- 10.10 **Applicable Law.** Each Party shall comply with all laws, regulations and other legal requirements applicable to that Party in connection with this Agreement, including but not limited to any legal requirements applicable to that Party’s use of Research Results or any Intellectual Property or Joint Intellectual Property, and any laws controlling the export of technical data, computer software, laboratory prototypes, and all other export controlled commodities.
- 10.11 **Entire Agreement of the Parties and Amendments.** This Agreement and Exhibits hereto embody the entire understanding between the Parties relating to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral. This Agreement may not be varied except by a written amendment signed by duly authorized representatives of each Party.
- 10.12 **Severability.** When possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under law, but if any provision of this Agreement is held to be prohibited by or invalid under law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement. The Parties shall make a good

faith effort to replace the invalid or unenforceable provision with a valid one which in its economic effect is most consistent with the invalid or unenforceable provision.

- 10.13 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will be deemed to be one and the same instrument. A facsimile or a portable document format (PDF) or electronic copy of this Agreement, including the signature pages, will be deemed an original.

<Signature page follows.>

IN WITNESS WHEREOF, the duly authorized representatives of the Parties hereby execute this Agreement as of the date last written below.

**THE TRUSTEES OF THE
UNIVERSITY OF PENNSYLVANIA**

By: _____
(Signature)

Name: Christopher Denman

Title: Senior Associate Director, Contracts

Date: _____

ADD COLLABORATOR NAME

By: 
(Signature)

Name: Maenette Benham

Title: Chancellor

Date: OCT 22 2020

Read & Understood:

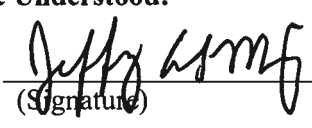
By: _____
(Signature)

Name: _____

Title: _____

Date: _____

Read & Understood:

By: 
(Signature)

Name: Jeffrey A.S. Moniz

Title: Vice Chancellor for Academic Affairs

Date: OCT 23 2020

Read & Understood:

By: 
(Signature)

Name: BYROM MASSEY

Title: Scientist

Date: 12/3/20

Read & Understood:

By: 
(Signature)

Name: Eli Tsukayama

Title: Scientist

Date: 10/22/20

EXHIBIT A
DESCRIPTION OF COLLABORATIVE RESEARCH

Collaborative Research:

The objective of this collaborative research is to contribute to ongoing validation of the grit scale. People Lab at Wharton People Analytics collects data each fall from MBA students (as well as informants) on their character strengths — including grit, generosity, and coachability. In collaboration with Character Lab, Wharton People Analytics would like to share People Lab data for the purpose of Character Lab's ongoing validation of the grit scale. Data is collected via the People Lab platform and will then be de-identified and shared with Character Lab. Both Wharton People Analytics and Character Lab will contribute to grit scale validation efforts.

EXHIBIT B DESCRIPTION OF DATA

Data Provided by Penn:

The data provided by Wharton People Analytics will be collected via an online survey accessed through the People Lab platform (which is run by Wharton People Analytics). MBA students will complete self-report measures of their character strengths, and they will nominate informants to rate them on these same character strengths. Participants will be asked to give their consent for their data to be used for research purposes, and only data from those who give consent will be shared. This research is associated with IRB protocol #833707 (titled “MBA People Lab Study”).

Data Provided by Collaborator:

No data will be provided by Character Lab.