

DATA USE AGREEMENT

By entering your identifying information and clicking “I ACCEPT” at the end of this document, you, on behalf of yourself and your affiliated company, organization, agency or institution (“**Recipient**”), accept the terms and conditions of this Data Use (this “**Agreement**”). This Agreement is entered into with The Align Foundation., a 501(c)(3) non-profit organization having offices at 440 N Barranca Ave #5885 Covina, CA 91723-1722 (“**Provider**”) and made effective as of the date you review and indicate your acceptance of its terms (“**Effective Date**”). Each of Recipient and Provider may be referred to herein as a “**Party**” and together they may be referred to herein as the “**Parties.**” YOUR USE OF THE DATASETS COVERED BY THIS AGREEMENT REQUIRES THAT YOU SCROLL TO REVIEW THE TERMS AND CONDITIONS BELOW AND INDICATE YOUR ACCEPTANCE AND THE END OF THE DOCUMENT. If you do not agree to these terms and conditions, do not access or use the Datasets.

RECITALS

- Provider is the organizer of a Cloud Platform for creating open access Datasets based on Biological Samples, Compounds, Know-How and/or related data received from research institutions and for-profit enterprises (such received items, alone, together, or in any combination, “**Materials**”).
- Provider conducts laboratory research on Materials and makes the resulting Datasets and related Know-How available for public use (“**Mission**”).
- Recipient desires to receive one or more Datasets and related Know-How and Provider desires to provide such Dataset(s) and related Know-How for the purpose of permitting Recipient to (1) conduct scientific research and development that references or incorporates the Dataset(s) and, as applicable, related Know-How, and/or (2) publish research findings or other works based on or incorporating the Dataset(s) and, as applicable, related Know-How (the “**Purpose**”).

1. DEFINITIONS

- 1.1. “**Affiliate**” shall mean, with respect to a Party, a parent or subsidiary entity under common control with such Party, and any of such Party’s principals, directors, officers, agents, advisors, contractors, services providers or employees.
- 1.2. “**Biological Samples**” shall mean viable specimens of microbial colonies, fungal colonies, viruses, DNA or genetic parts (including, e.g., plasmids, oligonucleotides, primers, genomic DNA, amplified DNA), or plant, animal, or human cells on, or with which, Provider has conducted research and from which Provider has created Datasets.
- 1.3. “**Cloud Platform**” shall mean physical research facilities and online data storage, analysis and management systems operated by or for Provider.

- 1.4. “**Commercial Redistribution**” shall mean the transfer, license, or sale of Datasets or derivatives thereof by Recipient or its Affiliates for use by one or more third parties, whether or not for monetary or other consideration.
- 1.5. “**Compounds**” shall mean small or large molecule chemical agents and any formulations thereof on or with which Provider has conducted research and from which Provider has created Datasets.
- 1.6. “**Dataset**” or “**Datasets**” shall mean experimental data in raw, processed, or synthesized form resulting from laboratory research on one or more sets of Materials as may be specified in documentation accompanying the particular Dataset(s) that you access pursuant to this Agreement.
- 1.7. “**Invention**” shall mean any and all discoveries, developments, improvements, know-how, modifications, combinations, formulations, analogs or homologs, materials, compositions of matter, cell lines, strains, datasets, processes, and other inventions (whether or not patentable) conceived, reduced to practice, or otherwise made, either solely or jointly with others, that incorporate, include, use or claim, are based on, identified, generated or made through, refined or improved by the use of any of the Materials, or arise from the research or studies conducted pursuant to this Agreement, and all Intellectual Property Rights and protections arising from any of the foregoing.
- 1.8. “**Know-How**” shall mean technical information, including techniques, methods, processes, technology, recipes, designs, equipment configurations and uses, and biological, chemical, pharmacological, toxicological, clinical, and assay-related designs and uses as may be specified in documentation accompanying the particular Dataset(s) that you access pursuant to this Agreement.
- 1.9. “**Publication**” shall mean any written, visual, or oral public disclosure concerning research, development, or analysis undertakings using or referencing the Dataset(s).

2. GENERAL RIGHTS & OBLIGATIONS

- 2.1. **Use only for the Purpose.** The Dataset(s) and any transferred Know-How will be used by Recipient (i) solely in connection with the Purpose, and (ii) solely by Recipient's Principal Investigator and, as applicable, Recipient's Affiliates that have a need to access or use, or provide a service to Recipient in respect of, the Dataset(s) and any Know-How in connection with the Purpose and whose obligations of use are consistent with the terms of this Agreement (collectively, “**Authorized Persons**”).
- 2.2. **Compliance with Applicable Law.** Recipient hereby agrees to use the Dataset(s) and any transferred Know-How only in compliance with all applicable laws, rules, and regulations.

- 2.3. **Data Contribution Recognition; Derivative Dataset(s).** In consideration of receiving the Dataset(s) and any Know-How for the Purpose, Recipient hereby agrees to Recognize the Provider as the source of the Dataset(s) and any Know-How in all Publications pursued by or on behalf of Recipient, as applicable, in accordance with scholarly or professional standards, and any specific format that has been indicated in documentation accompanying the particular Dataset(s) that you access pursuant to this Agreement. Additionally, Recipient is strongly encouraged to provide to Provider a copy of any dataset derivatives of the Dataset(s) prepared by or for Recipient for Provider's ongoing use in connection with its Mission.
- 2.4. **Publication Review.** Before Recipient submits a paper or abstract for Publication or otherwise intends to publicly disclose information about or involving the Dataset(s), the Provider will have thirty (30) days from receipt to review proposed manuscripts and ten (10) days from receipt to review proposed abstracts to ensure that the Dataset(s) and any Know-How are appropriately referenced and credited.
- 2.5. **Cost Reimbursement.** If applicable, reimbursement of any reasonable costs associated with the preparation, compilation, and transfer of the Dataset(s) and any Know-How to Recipient will be addressed in documentation accompanying the particular Dataset(s) that you access pursuant to this Agreement.
- 2.6. **No Commercial Redistribution; DUA Required for all Collaborators.** Other than in connection with a Recipient Publication, Recipient may not share, make available or otherwise engage in Commercial Redistribution of the Dataset(s) and any Know-How without the prior written authorization of Provider. For clarity, other than Commercial Redistribution, Recipient may use the Dataset(s) and any Know-How for any commercial purpose (e.g., product development). For any research collaborations with third parties involving the Dataset(s) that Recipient may wish to pursue, each third party entity with which such collaborator(s) is/are affiliated must execute a separate copy of this DUA.

3. CONFIDENTIALITY

- 3.1. **Dataset(s) & Know-How Treatment.** While Provider does not regard the Dataset(s), as such, or any Know-How as "confidential information," the Dataset(s) and any Know-How are also not public domain information and are subject to Provider's reasonable terms, conditions and requirements set forth herein.
- 3.2. **Restrictions.** Except as authorized under this Agreement or otherwise required by law, Recipient agrees to retain control over the Dataset(s) and shall not disclose, release or otherwise engage in Commercial Redistribution of the Dataset(s) (other than sharing the Dataset(s) with Authorized Persons or collaborators who have also executed a form of this Agreement in connection with the Purpose), without the prior written consent of Provider. Recipient agrees to establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use of or access to the Dataset(s), and to

comply with any other special requirements relating to safeguarding of the Dataset(s) as may be set forth in documentation accompanying the particular Dataset(s) that you access pursuant to this Agreement. Recipient will (a) cause all Authorized Persons to operate in a manner consistent with the terms of this Agreement, and (b) remain responsible for the conduct of all such activities in accordance with the terms and conditions of this Agreement.

4. INTELLECTUAL PROPERTY

- 4.1. **Ownership.** Provider (and/or its licensors) own the Dataset(s) and any Know-How and make them available to Recipient solely for the Purpose and on the terms set forth herein.
- 4.2. **Non-Exclusive License.** Subject to the terms and conditions of this Agreement, Provider grants to Recipient a royalty-free, worldwide, non-exclusive license to the Dataset(s) and any Know-How for the sole and limited purpose of conducting research and pursuing publications consistent with the Purpose. Recipient shall not use the Dataset(s) or any Know-How except as authorized under this Agreement.
- 4.3. **Patent Filings.** Should Recipient pursue any patent filings in connection with any research or development activities that makes reference to or incorporates the Dataset(s) or Know-How, Recipient hereby grants to Provider under all such patent filings anywhere in the world (and any filings claiming priority to such patent filings) a royalty-free, worldwide, non-exclusive license, with right of sublicense (only to other recipients of Dataset(s)), to produce, provide, handle, dispose of or otherwise practice the Dataset(s) and any Know-How for the sole and limited purpose of furthering Provider's Mission.

5. REPRESENTATIONS & WARRANTIES

- 5.1. Provider represents and warrants that, to the best of its knowledge and belief, it is authorized to provide the Dataset(s) and any transferred Know-How to Recipient for use in connection with the Purpose.
- 5.2. Provider makes no representation that the Dataset(s) and any Know-How will yield meaningful insights or prove useful to Recipient's research, development, or publication goals.
- 5.3. Recipient hereby represents and warrants that it has all necessary rights, consents, and permits, including from regulatory authorities, to receive and handle the Datasets for the Purpose.
- 5.4. Recipient understands and agrees that, BECAUSE THE DATASET(S) AND ANY KNOW-HOW ARE EXPERIMENTAL IN NATURE, THEY ARE PROVIDED TO RECIPIENT AS IS WITHOUT ANY WARRANTIES OR REPRESENTATIONS OF ANY

KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, PROVIDER MAKES NO REPRESENTATION THAT THE USE OF THE DATASET(S) FOR ANY PURPOSE WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY.

- 5.5. Provider hereby agrees to defend, indemnify, and hold Recipient and its Affiliates harmless from any loss, claim, damage, or liability which may arise from the breach of any of Provider's representations and warranties herein, except to the extent such loss, claim, damage, or liability is the direct result of Recipient's negligence or legal wrongdoing.
- 5.6. Recipient hereby agrees to defend, indemnify and hold Provider harmless from any loss, claim, damage, or liability which may arise from Recipient's use, storage, practice or disposal of the Dataset(s) and any Know-How, except to the extent such loss, claim, damage, or liability is the direct result of Provider's negligence or legal wrongdoing, including any breach of the terms of this Agreement and excluding any specifically disclaimed liabilities herein.

6. MISCELLANEOUS

6.1. Term & Termination.

- 6.1.1. Unless terminated earlier in accordance with this section or extended via a modification in accordance with **Attachment 1**, this Agreement shall expire three (3) years following the Effective Date.
- 6.1.2. Provider may terminate this Agreement upon thirty (30) days written notice (A) after unauthorized Commercial Redistribution of the Dataset(s) or any Know-How, in violation of the provisions of Section 2.6, (B) upon any other material breach by Recipient of the terms or conditions of this Agreement, which breach cannot be, or is not, cured within fifteen (15) days after the breaching Party receives written notice from the non-breaching Party regarding such breach, or (C) with immediate effect upon Recipient becoming insolvent, declaring bankruptcy, or making an assignment for the benefit of its creditors. If a termination hereunder is pursuant to subsection 6.1.2(A) or 6.1.2(B), then Recipient must promptly (and, in any event, no later than the effective date of termination) return or destroy all copies of any Dataset(s) and any Know-How already in its possession and/or distributed to third parties, cease activity on and pursuit of any pending Publications, and cease activity on and pursuit of any pending patent filings.
- 6.1.3. The foregoing notwithstanding, the following provisions of this Agreement will survive termination:

6.1.3.1. If termination is pursuant to Section 6.1.1 or 6.1.2(C): Articles 2, 3, 4, 5, and 6

6.1.3.2. If termination is pursuant to Section 6.1.2(A) or (B): Sections 4.3, 5.3, 5.6, 6.1, 6.2 and 6.4

6.2. **Notice.** Any notice, report, update, approval or consent under this Agreement will be in writing, and will be deemed given (a) when delivered personally, (b) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid, (c) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification or receipt, or (d) one (1) business days after transmission by e-mail. All such communications will be sent to the address set forth below or such other address as either party may designate from time to time in accordance with this Section 6.2:

If to Provider:
The Align Foundation
440 N Barranca Ave #5885
Covina, CA 91723-1722
Attn: Kayla Young
Email: notices@alignbio.org

If to Recipient:

Per the registration information provided

6.3. **Publicity.** Generally, neither Party shall use the other Party's name, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that Party. The foregoing notwithstanding, the Parties agree that (a) each Party may disclose factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for other purposes without written permission from the other Party provided that any such statement shall accurately and appropriately describe the relationship of the Parties and shall not in any manner imply endorsement by the other Party whose name is being used, and (b) Recipient may attribute Provider's contribution of the Dataset(s) in a relevant publication, in accordance with Section 2.3.

6.4. **Choice of Law; Jurisdiction.** This Agreement will be governed by and construed according to the internal laws of the State of California, without regard to conflicts of law. Each Party hereby expressly consents to the personal jurisdiction of the state and federal courts located in Santa Clara County, California for any lawsuit filed in such court by one Party against the other arising from or relating to this Agreement.

6.5. **Assignment.** Provider may assign this Agreement or any rights hereunder at its sole discretion. Recipient may not assign this Agreement or any rights hereunder without the

prior written consent of Provider, unless such assignment is to one of Recipient's commonly controlled corporate Affiliates. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

By clicking/tapping the accept button, Recipients hereby endorses and agrees to be legally bound by the foregoing terms and conditions concerning the Dataset(s).

Name

Affiliation

Address

Email

Dataset(s) for access

Attachment 1

1. Description of Dataset(s):

Instructions to the drafter; delete after completion of this section:

This section of this attachment should provide sufficient information such that each party understands the information that will be transmitted under this Agreement.

Examples of information that should be provided include:

- *The Materials on which research was conducted to obtain the Dataset(s) and the research methods employed to generate the Dataset(s)*
- *Whether the Dataset(s) were obtained from Materials drawn from human subjects and, if so, a description of the population represented in the Dataset(s), de-identification procedures used to anonymize the Dataset(s), and human subject consents clearance for use of any Materials in the generation of the Dataset(s).*
- *If the data is from animal subjects, microbial colonies, or viruses, the particular species on which research was conducted to obtain the Dataset(s).*
- *If not from human or animal subjects, a description of the focus of the data.*
- *The number of subjects and/or experiments included.*
- *Name of the study that the data was obtained under.*

If there is a particular study or other publicly available resources that need to be acknowledged/cited as supporting generation of the data, this information should be included here.

2. Description of Know-How:

Instructions to the drafter; delete after completion of this section:

This section of this attachment should provide sufficient information such that each party understands the information that will be transmitted under this Agreement.

Examples of information that should be provided include:

- *Research methods by which the Dataset(s) identified in the prior section were generated.*
- *Protocols or suggested approaches for storing, staging and analyzing the Dataset(s).*
- *Instructions and disclaimers for use of the Dataset(s) as training data.*

If there is a particular study that needs to be acknowledged/cited as guiding the research by which the Dataset(s) was/were generated or assembled, this information should be included here.

3. Description of Project:

Instructions to the drafter; delete after completion of this section:

This section of this attachment should provide sufficient information such that each party understands the project that the Recipient will perform using the Dataset(s). Content of this section will be very similar to the Statement of Work used in other types of Agreements.

Examples of information that should be provided include:

- *Objective or purpose of the Recipient's work.*
- *A general description of the actions to be performed by the Recipient using the Data and possibly the anticipated results.*
- *Include whether or not the Recipient is permitted to link the Data with other data sets (If yes, be sure to include any special disposition requirements related to the linked data sets in Section 5 of this attachment).*

4. Provider Support and Data Transmission:

Provider shall transmit the Data to Recipient: (select one):

- electronically, or
- by mail

| | |
|----------|--|
| Name: | |
| Title: | |
| Address: | |
| Email: | |
| Phone: | |

Upon execution of this Agreement, Provider shall send any specific instructions necessary to complete the transfer of the Data to the contact person listed above, if not already included below in this section of **Attachment 1**.

Instructions to the drafter; delete after completion of this section.

This section of this attachment should also provide sufficient information such that each party understands the level of support the Provider will supply to the Recipient.

Examples of information that may be appropriate to include in this section are:

- *Format of Data.*
- *Provision of Data dictionary.*

- *Availability of Provider to assist Recipient in understanding the Data structure (e.g., variables, code lists, etc.).*
- *If/how Data will be revised and resent if errors are found by the Recipient.*
- *Specific instructions necessary to complete the transfer of the Data, if available/appropriate, and any support supplied by the Provider for the transfer.*

Describe (if applicable) any special Dataset(s) handling protocols or precautions that Recipients should follow:

5. Reimbursement of Costs:

None

As governed by a separate written agreement between the parties
Reimbursement Agreement Reference # (if required):

As set forth herein:

6. Disposition Requirements upon the termination or expiration of the Agreement:

Instructions to the drafter; delete after completion of this section:

This section of this attachment should provide sufficient information such that each party understands the Recipient's obligations with regards to the Dataset(s) upon the expiration or early termination of this Agreement. If the Recipient is permitted to link the Dataset(s) with other datasets, be sure to include any special disposition requirements related to the linked data sets in this attachment.

[signature block on following page]

The undersigned Authorized Officials of Provider and Recipient expressly represent and affirm that the contents of any statements made herein are truthful and accurate and that they are duly authorized to sign this Agreement on behalf of their institution.

Provider

The Align Foundation

By An Authorized Signatory

Name: _____

Title: _____

Signature: _____

Date: _____

Recipient

By An Authorized Signatory

Name: _____

Title: _____

Signature: _____

Date: _____

By Principal Investigator

Name: _____

Title: _____

Signature: _____

Date: _____