

OPEN COMMONS CONSORTIUM DATA CONTRIBUTOR AGREEMENT

This Open Commons Consortium Data Contributor Agreement (DCA) (this “**Agreement**”) is made as of _____, 2016 (the “**Effective Date**”), by and between the Open Commons Consortium (the “**OCC**”), and [] (“**Partner**”, and, together with the OCC, the “**Parties**”).

RECITALS

WHEREAS, various parties have developed an open source technology platform license under the Apache License, Version 2.0, (the “**Platform**”), including software, and other technologies, for managing, analyzing and sharing genomic and associated clinical data;

WHEREAS as the biomedical data managed by the Platform is organized into one or more projects (“**Projects**”), and that project data (“**Project Data**”) may consist of both open access and controlled access data;

WHEREAS, Partner desires to: (i) contribute its biomedical data (the “**Contributed Data**”) to a Project, as further described on Exhibit B, and (ii) permit the OCC to provide researchers and others with access to the Contributed Data, subject to the restrictions set forth in this Agreement;

WHEREAS, the OCC is willing to accept such Contributed Data;

WHEREAS, the Platform allows Users to remove data from the Platform and to transfer the data to other systems, including cloud computing based systems, and to other geographic locations in compliance with applicable laws and regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement have the meaning set forth on Exhibit A.

2. **Partner Responsibilities.**

2.1. **Contribution of Data.** Subject to the terms and conditions of this Agreement, Partner will provide the OCC with the Contributed Data for the sole purpose of providing Authorized Users with access thereto.

2.2. **Licenses.** Partner hereby grants to the OCC a non-exclusive world-wide license during the Term to: (i) store the Contributed Data on the Platform; (ii) provide Authorized Users with access to the Contributed Data.

2.3. **Contributed Data.**

2.3.1. Without the prior written consent of the OCC, Partner will not provide to the OCC any Restricted Data.

2.3.2. Partner shall be solely responsible for obtaining all necessary consents and otherwise complying with all Applicable Laws and other restrictions: (i) to transmit any Contributed Data to the OCC; (ii) to permit the OCC to store such Contributed Data as part of the Platform; (iii) to provide Authorized Users access to such Contributed Data; and (iv) to permit the OCC to perform its obligations pursuant to this Agreement.

3. **OCC Responsibilities.**

3.1. **Authorized User Terms.** The OCC will enter into an agreement with each Authorized User that requires such Authorized User to agree to comply with the terms and conditions set forth on Exhibit C (the “**Authorized User Terms**”). If at any time the OCC becomes aware that any Authorized User has violated any of the Authorized User Terms, the OCC

will: (i) promptly notify Partner of such violation; and (ii) promptly suspend such Authorized Users access to all Contributed Data.

4. **Contributed Data Specific Terms**

4.1. **Compliance.** The Parties will comply with the terms and conditions of Exhibit D (the “**Contributed Data Specific Terms**”).

5. **Proprietary Rights.**

5.1. **Platform Intellectual Property Rights.** The Bionimbus Platform is licensed under the Apache License, Version 2.0. In the event Partner or any of its Representatives provides any software, source code, or Intellectual Property Rights to the Platform in the course of this Agreement (other than any Contributed Data) (“**Partner IP**”) unless otherwise agreed in writing between the Parties, Partner hereby agrees to license the Partner IP using an Apache License, Version 2.0 or to grant to the OCC a perpetual, irrevocable, worldwide, non-exclusive, fully transferable, fully sublicenseable, fully paid-up and royalty free license to use such Partner IP.

5.2. **Savings Clauses.**

5.2.1. **Applicable Laws.** Notwithstanding anything to the contrary in this Agreement, neither Party shall have any obligation to do any act, or refrain from doing any act, in violation of any Applicable Law or obligation to any Governmental Authority.

6. **Warranties and Remedies**

6.1. **Warranties.** Partner represents and warrants to the OCC that:

6.1.1. **Authority.** Each Party has the right and necessary corporate authority to enter into this Agreement.

6.1.2. **Contributed Data.** Partner has obtained all necessary consents and waivers, and that no consent, waiver, permission, or rights of any other person or entity are necessary to transmit to the OCC, or for the OCC to receive, store, use and provide Authorized Users with access to, any Contributed Data.

6.2. **Disclaimer of Warranties.** **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE OCC HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

6.3. **Indemnification.**

6.3.1. Partner shall pay, defend, indemnify and hold harmless the OCC and its Affiliates and

Representatives from and against any and all claims, liabilities, losses, causes of action, or other damages (collectively, “**Claims**”) based on any allegations made by: (i) any third party (including any Governmental Authority) based on the disclosure of any Contributed Data to the OCC by Partner or the OCC’s possession of such Contributed Data; or (ii) any third party (including any Governmental Authority) alleging that any Authorized User’s access to any Contributed Data was unauthorized or violated any Applicable Law or other obligation; or (iii) any claim by any third party (including any Governmental Authority) that the Contributed Data or the OCC’s possession thereof or provision of access to Authorized Users violates any Applicable Law or any right of any other person.

6.3.2. Notwithstanding the foregoing, Partner’s obligations pursuant to Section 6.3.1, will not apply to the extent the applicable Claims arise: (i) from the OCC’s gross negligence or willful misconduct; or (ii) the OCC’s breach of this Agreement.

6.4. **Limitation of Liability.** Except with respect to: (i) Partner’s indemnification obligations pursuant to this Agreement, (ii) Partner’s breach of Sections 2.3, 6.1.2, (iii) either Party’s gross negligence or willful misconduct; and (iv) any Contributed Data Specific Terms to the extent expressly excepted from the limitations set forth in this Section 6.4 as stated on Exhibit D, (A) neither Party shall be liable hereunder for consequential, exemplary, or punitive damages (including lost profits or savings), even if it has been advised of their possible existence, and (B) neither Party’s total and cumulative liability for any claim or claims hereunder will exceed the greater of \$10,000 and the aggregate amounts paid or payable by Partner under this Agreement.

7. **Term and Termination**

7.1. **Term.** The initial term of this Agreement shall commence on the Effective Date and continue until for three years, unless terminated earlier pursuant to the terms hereof (the “**Term**”). The Parties may extend the term of this Agreement upon mutual agreement.

7.2. **Termination by Either Party.** Either Party may terminate this Agreement by written notice to the other Party, upon the occurrence of any of the following events:

7.2.1. The other Party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors; or

7.2.2. The other Party materially breaches any term, provision, representation or warranty of this Agreement and such breach or default is not cured within ten (10) business days of the breaching Party's receipt of written notice thereof.

7.3. **Survival.** The terms and conditions of the following Sections will survive any termination or expiration of this Agreement: Sections [] and any Contributed Data Specific Terms to the extent expressly stated on Exhibit D.

8. Miscellaneous

8.1. **Amendments.** Except as otherwise expressly provided herein, this Agreement may not be modified, amended or altered in any way except by a written agreement signed by the Parties.

8.2. **Assignment.** Neither Party may assign this Agreement or delegate any of its duties, in whole or in part, without the prior written consent of the other party; provided, however, that: (i) the OCC may assign this Agreement and delegate its duties to an Affiliate; and (ii) either Party may assign this Agreement to an entity that acquires all or substantially all of the assets or business of such Party. If any assignee refuses to be bound by all of the terms and obligations of this Agreement or if any assignment is made in breach of the terms of this Agreement, then such assignment shall be null and void and of no force or effect.

8.3. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed the same agreement.

8.4. **Entire Agreement; Order of Precedence.** This Agreement constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the Parties with respect to the subject matter hereof. In case of conflict the order of precedence of the documents constituting this Agreement is as follows, each listed document superseding in the event of any conflicting provision in a later listed document: (1) the Contributed Data Specific Terms, but solely to the extent Exhibit D expressly states that such Contributed Data Specific Terms supersede the text of this Agreement; (2) Agreement text; (3) the Exhibits to this Agreement; and (4) any other agreement between the Parties.

8.5. **Force Majeure.** Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement, or for any loss or damage resulting therefrom, due to acts of God, the public enemy, terrorist activities, riots, fires, and similar causes beyond such Party's control.

8.6. **Governing Law; Currency; Language.** This Agreement shall be governed by and interpreted in accordance with the internal substantive laws of the State of Illinois. The Parties agree that all actions and proceedings arising out of or related to this Agreement shall be brought only in a state or federal court located in Cook County, Illinois, and the Parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves. **EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.**

8.7. **Independent Contractor.** The Parties are independent contractors; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Each Party is solely responsible for payment of all compensation owed to its Representatives, as well as employment related taxes.

8.8. **Notice.** Any notice or other document or communication required or permitted hereunder to the parties hereto will be deemed to have been duly given only if in writing and delivered by any of the following methods: (i) certified U.S. mail, return receipt requested, postage prepaid, to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof (for notice being transmitted entirely within the United States); (ii) overnight courier service by Federal Express or other international courier of similar standing and reputation to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof; (iii) hand delivery to the person specified below or any other person so designated according to the notice provisions hereof; or (iv) facsimile directed to the person specified below at the facsimile number listed below, or such other person or facsimile number so designated according to the notice provisions hereof; with a copy of all such notices delivered to counsel specified below or as such party may dictate in accordance with the notice provisions hereof. Notices shall be deemed delivered when received by the Party being notified.

If to the OCC, all notices shall be addressed and delivered to:

[Name]
[Address]
Attn: _____

With a copy to:

[Name]
[Address]
Attn: _____

If to Partner, all notices shall be addressed and delivered to:

[Name]
[Address]
Attn: _____

With a copy to:

[Name]

[Address]
Attn: _____

8.9. **Publicity.** Partner shall not use any trademark, service mark, logo or other designation of origin of the OCC or any of its Affiliates without the prior written consent of the OCC or the applicable Affiliate.

8.10. **Waivers.** No purported waiver by any Party of any default by any other Party of any term or provision contained herein (whether by omission, delay or otherwise) shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving Party. No such waiver in any event shall be deemed a waiver of any subsequent default under the same or any other term or provision contained herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed and delivered by their respective, duly authorized representatives.

Open Commons Consortium 

By: _____

By: _____

Its: _____

Its: _____

Exhibit A
Definitions

“**Affiliate**” of an entity means any entity which, directly or indirectly, controls, is controlled by or is under common control with such entity, where control means the ability to direct the affairs of an entity through ownership of voting interest, contract rights or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Applicable Laws**” means all applicable laws, regulations, court orders, and other rules of any Governmental Authority.

“**Authorized User**” means a user of the Platform that Partner has been authorized to access the Contributed Data.

“**Claims**” has the meaning set forth in Section 6.3.

“**Clinical Data**” has the meaning set forth in the preamble.

“**Contributed Data**” has the meaning set forth in the preamble.

“**Partner**” has the meaning set forth in the preamble.

“**Effective Date**” has the meaning set forth in the preamble.

“**Governmental Authority**” means any transnational, domestic or foreign federal, state or local, governmental authority or any court, administrative agency or regulatory authority constituted or administered thereby, including any political subdivision thereof.

“**Intellectual Property Rights**” means all forms of intellectual property rights and protections including all: (i) patents and patent applications; (ii) copyrights, whether or not registered, mask works, and any other similar rights; (iii) trade secrets and other similar rights; (iv) trademarks, service marks, domain names, and other indications of origin and any and all goodwill associated therewith; (v) data and database rights; and (vi) any rights that are equivalent or similar to the foregoing.

“**Project Data**” has the meaning set forth in the preamble.

“**Parties**” has the meaning set forth in the preamble.

“**Platform**” has the meaning set forth in the recitals.

“**Restricted Data**” means:

(i) any information that is regulated by: (A) any applicable national, federal, state or local law, rule, directive or regulation relating to the privacy of personal information, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 the Directive 95/46/EC of the European Parliament and of the Council dated 24th October 1995, any subordinate legislation passed under that Directive and any other similar law or regulation; (B) any privacy policy or practice applicable to any personal information that Partner accesses, uses, collects, or maintains hereunder, including, without limitation any practice required in connection with the processing of credit card data; or (C) any law or regulation concerning the notification to data subjects, law enforcement or other third parties of the occurrence of any actual or suspected disclosure of restricted data or personally identifiable information, including, without limitation, Section 1798.82 of the California Civil Code; or

(ii) any information or data that is owned by or exclusively licensed to any person or entity, or in respect of which the use, retention, duplication, or disclosure thereof, is restricted by any person or entity (including any Governmental Authority).

“**Term**” has the meaning set forth in Section 7.1.

“**OCC**” has the meaning set forth in the preamble.

Exhibit B
Contributed Data

Project Data:

[Describe contributed Genomic Data]

Clinical Data:

[Describe contributed Clinical Data]

Image Data:

[Describe contributed Image Data]

Other Data:

[Describe contributed Other Data]

Exhibit C
Authorized User Terms

1. [Authorized User Terms]

Exhibit D
Contributed Data Specific Terms

[Contributed Data Specific Terms]

1. **Authorization of Authorized Users**

a. [Include terms and conditions relating to the authorization of Authorized Users]

2. **Data Security**

a. [Include terms and conditions relating to data security and data incident reporting.]

3.