**DATA SHARING AGREEMENT**

This Data Sharing Agreement (this “Agreement”) is made and entered into effective as of [ENTER DATE] (the “Effective Date”) by and between Bristol-Myers Squibb Company, having an office at Route 206 & Province Line Road, Princeton, NJ, 08540, USA (Bristol-Myers Squibb Company along with its corporate affiliates, collectively “BMS”) and [INSERT FULL LEGAL NAME OF INSTITUTION], having an address at [INSERT ADDRESS OF RECIPIENT INSTITUTION] (“Institution”). Institution and BMS may be individually referred to in this Agreement as a “Party” and collectively as the “Parties.”

PRELIMINARY STATEMENTS

1. BMS conducted the clinical trial(s) identified on Attachment A – BMS Clinical Trials (collectively, “BMS Clinical Trials”), which related to one or more proprietary BMS medicine(s) (each and collectively, the “BMS Study Drug”).
2. Institution intends to conduct the research (the “Research”) described in the protocol (the “Research Protocol”) that is attached to this Agreement as Attachment B – Research Protocol and desires access to patient-level data generated from the BMS Clinical Trials (“BMS Data”) and other Confidential Information (defined below) for the sole purpose of conducting the Research.
3. [ENTER NAME OF PRINCIPAL RESEARCHER] (“Principal Researcher”) will, on behalf of Institution, be primarily responsible for day-to-day oversight, conduct and management of the Research.
4. BMS is willing to share the BMS Confidential Information with Institution for use in conducting the Research in accordance with the terms of this Agreement.

The Parties agree as follows:

1. **Definitions**.

“Independent Review Committee” or “IRC” means the independent review committee that will review and assess the scientific merit and value of the Research Protocol.

“Publication Plan” means the publication plan attached to this Agreement as Attachment D – Publication Plan.

“Research Personnel” means all persons conducting or assisting with the Research or otherwise having access to BMS Confidential Information in connection with this Agreement, which includes without limitation, the Principal Researcher.

“Research Tools” means any methodology, statistical methods, formulae or any other methods or tools used by Institution in conducting the Research, all of which must be specifically identified in the Research Protocol.

“Research Results” means the results generated by Institution through use of BMS Confidential Information and otherwise in the course of performing the Research.

1. **Data Sharing; Rights to Use Research Tools and Research Results**.
	1. Subject to Institution’s compliance with the terms of this Agreement, BMS agrees to provide Institution with access in the form and manner BMS designates to BMS Confidential Information to conduct the Research. BMS Confidential Information shall be used solely and exclusively to (i) conduct the Research strictly in accordance with the Research Protocol and (ii) publish Research Results in accordance with this Agreement. The Research Protocol may be amended only upon formal written amendment to this Agreement duly executed by both parties. For avoidance of doubt, Institution has no rights to transfer BMS Confidential Information to any third party.
	2. Disclaimer of Warranties by BMS. ALL BMS CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." BMS MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY BMS CONFIDENTIAL INFORMATION. BMS DISCLAIMS ALL WARRANTIES OF NON‑INFRINGEMENT WITH RESPECT TO ANY THIRD PARTY RIGHTS AND TITLE, INCLUDING PATENT RIGHTS, AND USE THEREOF.
	3. Institution agrees to grant and hereby grants BMS a) access and the right to use all Research Tools for the purpose of reproducing the Research and b) the right to use and disclose Research Results for any lawful purpose whatsoever. Institution shall provide reasonable assistance to BMS in interpreting the Research Results.
2. **Term and Termination**. This Agreement will expire on the completion of the Research and completion of the publications included in the Publication Plan but in no event later than three (3) years from the Effective Date. BMS may terminate this Agreement for Institution’s material breach of its terms, where the breach is not cured within thirty (30) days following receipt of written notice of same. Upon termination or expiration of this Agreement the rights and obligations of the Parties which have accrued hereunder shall survive in accordance with their terms, and Institution’s right to use BMS Confidential Information shall immediately cease. The terms of Sections 3 (Term and Termination), 4 (Institution Representations, Warranties and Covenants), 5 (Confidentiality), 6 (Publication), 7 (Inventions), 8 (Miscellaneous) shall survive the expiration or termination of this Agreement.
3. **Institution Representations, Warranties and Covenants**. Institution, on behalf of itself, Principal Researcher and any and all other Research Personnel, represents, warrants and covenants to each of the following:
	1. Institution shall comply with all applicable laws, including those affecting personal data and ethical reviews of the Research, in connection with the performance of the Research and its obligations under this Agreement, including but not limited to, obtaining and maintaining all licenses, permits, authorizations, consents and waivers from relevant regulatory authorities and/or independent ethics committee(s) required to conduct the Research. Institution acknowledges that, to the extent Institution processes any personal data (as defined under applicable data protection laws) contained in BMS Confidential Information pursuant to this Agreement, it shall do so as a data controller or its equivalent under such laws and shall process such data only in accordance with such laws.
	2. Institution shall not attempt to identify the patients from whom the BMS Data was generated and shall not combine the BMS Data with data from other sources that could lead to identification of any individual.
	3. Institution has the authority to and shall bind and ensure compliance by all Research Personnel to the terms of this Agreement.
	4. The Research is not intended to and shall not be used for commercial purposes, including for the benefit of any commercial third party; provided that this restriction shall not apply to the subsequent use of any published Research Results by third parties.
	5. Institution and all Research Personnel shall comply with all other requirements, if any, of the IRC, as set forth in Attachment C – IRC Additional Requirements.
	6. Neither Institution nor any Research Personnel is debarred under the U.S. Generic Drug Enforcement Act of 1992, 21 U.S.C. §§335(a) and as it may be amended from time to time, in any capacity. Institution shall notify BMS promptly in the event any person so used ever becomes so debarred.
	7. The performance of this Agreement does not conflict with any obligations or duties, express or implied, that Institution or any Research Personnel may have to any third parties.
4. **Confidentiality**.
	1. Definitions. "Confidential Information" means Disclosing Party’s confidential and non-public information provided by one party to another under this Agreement; provided that relative to BMS as Receiving Party, such information must be reduced to writing and marked as confidential. For avoidance of doubt, BMS Confidential Information includes, but is not limited to, BMS Data. Confidential Information does not include information to the extent that: (i) it is or becomes in the public domain through no breach of this Agreement; (ii) the Receiving Party lawfully can demonstrate it received from any third party without restriction as to use or confidentiality or was known to the Receiving Party prior to the time of disclosure by the Disclosing Party; or (iii) it is independently developed by or for the Receiving Party by persons without access to the Confidential Information. “Disclosing Party” means a Party that discloses Confidential Information to the Receiving Party under this Agreement. “Receiving Party” means a Party that receives Confidential Information from the Disclosing Party under this Agreement.
	2. Permitted Use and Disclosure of Confidential Information. In the case of Institution as Receiving Party, Institution shall use BMS Confidential Information solely as required to conduct the Research and publish the Research Results in accordance with the terms of this Agreement. In the case of BMS as Receiving Party, BMS shall use Confidential Information received by or on behalf of Institution solely for the performance of its obligations and to exercise its rights under this Agreement, which includes the disclosure of such Confidential Information to third parties performing services for BMS.
	3. Return of Confidential Information. Upon the termination or expiration of this Agreement, or at any other time upon the written request of Disclosing Party, Receiving Party will promptly return or destroy, at Disclosing Party’s request, all Confidential Information in Receiving Party’s possession or control, together with all copies, summaries and analyses. However, Receiving Party is entitled to retain one copy of Confidential Information for the sole purpose of determining its obligations under law or this Agreement.
	4. Duration of Confidentiality. The obligations under this Section 5 survive expiration or earlier termination of this Agreement for 15 year(s); provided that (subject to the limitations in Section 5a) such obligations survive indefinitely relative to BMS Data.
5. **Publication**.
	1. Institution shall fully comply with the publication plan (“Publication Plan”) approved by the IRC, which is attached to this Agreement as Attachment D – Publication Plan.
	2. All Publications shall first be provided to BMS for review and comment at least thirty (30) days prior to submission for publication or other disclosure (including any abstract submission or patent application). At BMS’ request, Institution shall delete from the proposed Publication all specified BMS Confidential Information (except for relevant BMS Data). If BMS determines that such proposed Publication contains or may contain patentable subject matter, Institution shall delay such presentation, publication or other disclosure to allow sufficient time for the drafting and filing of a patent application directed to such subject matter. “Publication” shall mean any presentation, publication or other disclosure of the Research Results or otherwise, concerning, relating to or derived from the Research and/or Institution’s receipt, access and/or use hereunder of BMS Confidential Information. Publications include, but are not limited to, manuscripts, abstracts and summaries of the Research Results.
	3. Subject to any third party publisher’s rights, Institution hereby grants to BMS an irrevocable, royalty-free license to make, distribute or otherwise use copies and translations of any Publication, in whole or in part. Such right shall include, but not be limited to, the right to post any lay summary of the Research Results on a website designated by BMS. Unless otherwise directed by BMS in a prior writing, Institution shall acknowledge BMS as the source of the BMS Data in all Publications.
6. **Inventions**.
	1. Inventorship. Inventorship of Inventions shall be determined by application of United States patent laws pertaining to inventorship. “Invention” shall mean any useful discovery or invention, (whether patentable or not), and all intellectual property rights therein (including all related patents and patent applications), solely or jointly invented or otherwise made by Institution (including any Research Personnel) with use of or reference to BMS Confidential Information, including in the conduct of the Research. For avoidance of doubt, for purposes of this Agreement the term “Invention” does not include any discoveries or inventions made solely by BMS.
	2. Ownership. All rights, title and interests in and to Inventions invented or otherwise made solely by Institution (including any Research Personnel) (“Sole Institution Inventions”) shall be assigned to Institution. All rights, title and interests in and to Inventions invented or otherwise made jointly by Institution (including any one or more Research Personnel) and BMS (“Joint Inventions”) shall be assigned jointly to Institution and BMS. Subject to any exclusive license or option granted in this Section 7, each joint owner shall be free to practice, license and exploit any Joint Invention, without the consent of or accounting or consideration to any other joint owner, or sharing any proceeds with any other joint owner; provided that the foregoing shall not be construed as a license under, or to practice, any other intellectual property of a Party that may be necessary to practice the Joint Invention. This Agreement shall be understood to be a joint research agreement in accordance with 35 U.S.C. § 102(c) for activities contemplated hereunder.
	3. License to BMS. In recognition of the substantial investment made by BMS in the BMS Confidential Information, and the proprietary nature of such, to the full extent permissible under applicable law, Institution hereby grants to BMS a non-exclusive, worldwide, royalty free, fully paid-up, irrevocable, transferable and sublicensable (solely to affiliates, collaborators and service providers performing work on behalf of BMS) license for any purposes under all rights, title and interests in and to each Sole Institution Invention.
	4. Option. Institution further grants to BMS an exclusive option to obtain an exclusive (at BMS’ sole discretion) license for any purpose under all remaining rights, title and interests owned by Institution in and to each Invention. Such option shall expire one (1) year from the date the Invention is disclosed to BMS in reasonably sufficient detail. Within a reasonable time after BMS exercises its option, the Parties shall negotiate in good faith the commercially reasonable terms of a definitive license agreement consistent with this Agreement.
7. **Miscellaneous**.
	1. Entire Agreement. This Agreement and any attachments hereto set out the entire agreement of the Parties and supersede all prior agreements and understandings relating to its subject matter. This Agreement and any attachments hereto may not be altered, modified, or waived in whole or in part, except in writing signed by both Parties.
	2. Use of Name. Institution shall not make, place or disseminate any advertising, public relations, press release, promotional material or any material of any kind using the name of BMS or use its trademark(s), without the prior written approval of BMS.
	3. Governing Law. This Agreement and any claim, controversy or dispute related to this Agreement or the relationship of the Parties will be governed by the laws of the State of New York, USA and shall be construed and governed by the laws of that State without regard to the provisions governing conflict of laws.
	4. Notice. All notices must be in writing and will be deemed effective when (a) delivered personally or (b) mailed by certified or registered mail, postage prepaid, or (c) delivered by reputable overnight courier with proof of delivery to the Party and address set forth herein or such other address(es) of which such Party shall have given written notice.

For BMS:

 Vice President and Associate General Counsel, Transactions

 Law Department

 Bristol-Myers Squibb Company

 Route 206 & Province Line Road

 Princeton, New Jersey 08543-4000

 For INSTITUTION:

 [Individual Name]

 [Title]

[Company Name

[Address]

* 1. Independent Contractor. Nothing herein creates or is intended to create an employment relationship, partnership, joint venture, agency relationship or any other fiduciary relationship between the Parties. Neither Party shall have the power to bind or obligate the other Party nor shall either Party hold itself out as having such authority.
	2. Assignment. Institution shall not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of BMS. Any unauthorized attempted assignment by Institution shall be null and void and of no force or effect. This Agreement shall be binding on all successors and assignees.
	3. Counterpart Signatures. This Agreement may be executed in counterparts or via electronic signature, each of which shall be deemed to be an original, and all of such counterparts or electronically signed documents shall together constitute one and the same Agreement.
	4. List of Attachments.

Attachment A – BMS- Clinical Trials

Attachment B – Research Protocol

Attachment C – IRC Additional Requirements

Attachment D – Publication Plan

**\* \* \* \* SIGNATURE PAGE FOLLOWS \* \* \* \***

In order to demonstrate their agreement, the Parties have executed this Agreement as of the Effective Date.

**Bristol-Myers Squibb Company (BMS) INSTITUTION**

By: By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:

Title: Title:

 **AGREED AND ACCEPTED:**

 **PRINCIPAL RESEARCHER**

By:

Name:

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attachment A – BMS Clinical Trials

BMS Clinical Trials (that generated the BMS Data): The data provided by BMS will be anonymized.

1. [BMS Study Protocol Name and Number]
2. [BMS Study Protocol Name and Number]

Attachment B – Research Protocol

[Attach Approved Research Protocol]

Attachment C – IRC Additional Requirements

[Describe all other requirements, if any, of the IRC with which Institution / Researcher must comply when conducting the Research.]

Attachment D – Publication Plan

**Posting Research Protocol**

Prior to conducting the Research, Institution shall publish the Research Protocol on a publicly-available website. Institution agrees that BMS is free to use a cross-reference to the published Research Protocol and/or webpage on which it is posted (e.g., BMS is free to publish on its website a hyperlink to same).

**Submitting Research Results for Peer-Reviewed Publication**

Institution shall submit the Research Results for publication to a peer-reviewed journal in a timely manner and as further described in this Publication Plan.

**Posting Lay Summary of the Research Results**

Within 12 months after completing the Research, Institution shall publish a summary of the Research Results on a publicly-available website.

[Insert approved Publication Plan below. The items above may not be revised or their meaning otherwise modified by the Publication Plan without BMS’s review and approval.]