

Data Pack Terms of Use
Effective: February 28, 2020

These Data Pack Terms of Use (the “Terms”) describe your rights and responsibilities when using our Data Packs. “Data Packs” means the proprietary highly realistic, clinically relevant, synthetic patient data provided by Interoperability Institute LLC and its affiliates (“we,” “us,” or “our”).

Please read these Terms carefully as they apply to your use of the Data Packs and form a binding agreement between you and us. If you are entering into these Terms as part of an entity or organization, please make sure you have the necessary authority to enter into these Terms before proceeding. Any actions or omissions by your employees, contractors, agents, volunteers, or customers who are authorized by you to use the Data Packs (“Authorized Users”) will be deemed actions by you. You represent and warrant that each Authorized User has read and will comply with these Terms and any instruction issued by us with respect to the use of the Data Packs.

1. THE DATA PACKS

1.1. Your Right to Use the Data Packs. We grant you a personal, revocable, non-exclusive, non-transferable, non-assignable, non-sublicensable, and limited right to use the Data Packs during the Term in accordance with these Terms. You understand and acknowledge that we have proprietary and other *sui generis* rights and interests in the Data Packs (including the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Data Packs) and that the Data Packs are not in the public domain. You acknowledge and agree that we own and will continue to own our Data Packs, including all related intellectual property rights, and that you obtain no right, title, or interest in the Data Packs other than as expressly set forth in these Terms. All of our rights not expressly granted by this license are retained by us. You agree not to claim rights in the Data Packs. To the extent that you create a derivative work of the Data Packs, you hereby irrevocably assign, and agree to assign, and shall cause your Authorized Users to assign, and agree to assign, to us, without further consideration, all of its and their right, title and interest in and to such derivative work.

1.2. Restrictions of Use. You shall not (and shall not permit any third party over which you exercise control to):

- duplicate, modify, adapt, translate, reverse engineer, decompile, publish, disassemble, or create a derivative work based on the Data Packs;
- use the Data Packs to act as a consultant, service bureau, or application service provider;
- sell, sublicense, loan, trade, resell, lease, or the functional equivalent, the Data Packs to a third party;
- attempt to create a substitute or similar service as ours through the use of the Data Packs;
- use the Data Packs in any way that is illegal, fraudulent, or harmful or in connection with any illegal, fraudulent, or harmful purpose or activity;
- provide access to or give any part of the Data Packs to any third party who is not an Authorized User; or

- make the Data Packs available on any file-sharing or application hosting service.

1.3. **Patient Care.** The Data Packs are for educational and exploratory learning purposes and do not provide medical advice. The Data Packs are synthetic and for informational purposes only. The Data Packs do not provide medical diagnoses or recommendations regarding medical treatment and are not a substitute for professional medical advice, diagnosis, or treatment. Always seek the advice of a physician or other qualified health care provider with any questions you may have regarding a medical condition. Never disregard medical advice or delay in seeking it because of information you have read in connection with the Data Packs. In an emergency, call 911 or your local emergency assistance number. You are solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for your respective patients and clients resulting from, or in any way related to, the use of the Data Packs. We do not assume any role in the care of any patient. In no event will we be liable for any decision made or action taken in reliance upon the information provided through the Data Packs.

2. COMMERCIAL TERMS

2.1. **Fees.** You agree to pay the applicable fees listed in our Data Packs invoice, which are non-refundable. All fees are exclusive of taxes, duties, levies, tariffs, and other governmental charges. You are responsible for payment of all taxes and any related interest and/or penalties resulting from any payments made applicable to you.

2.2. **Term.** These Terms will commence on the date which you begin use of the Data Packs and will remain in effect for as long as you use the Data Pack unless otherwise terminated under Section 2.3 (the “Term”).

2.3. **Termination.** We have the right to terminate these Terms with thirty (30) days’ prior notice in the event you are in actual or alleged breach of Section 1.1 or Section 1.2 and such breach has not been cured by you within the thirty (30) day notice period.

2.4. **Survival.** The rights and obligations of the parties under Sections 2.1, 2.4, 4, and 5 will survive any expiration or termination of these Terms.

3. WARRANTY DISCLAIMER.

The Data Packs may contain inaccuracies or typographical errors. The Data Packs are provided on an “as is” and “as available” basis. We cannot guarantee and do not promise any specific results from use of the Data Packs. No advice or information, whether oral or written, obtained by you from us or the Data Packs will create any warranty not expressly stated in these Terms.

YOU AGREE THAT YOUR USE OF THE DATA PACKS WILL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, US AND OUR SERVICE PROVIDERS, SUPPLIERS, VENDORS, AND OTHER AGENTS MAKE NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA PACKS AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY OF ANY KIND AND ASSUMES NO LIABILITY

OR RESPONSIBILITY THAT:

- THE DATA PACKS WILL MEET YOUR SPECIFIC REQUIREMENTS OR EXPECTATIONS;
- THE DATA PACKS WILL BE UPDATED, ACCURATE, COMPLETE, TIMELY, SECURE, FREE FROM HARMFUL CODE, OR ERROR-FREE;
- THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE DATA PACKS WILL BE ACCURATE OR RELIABLE; AND
- ANY ERRORS IN THE DATA PACKS WILL BE CORRECTED.

WE WILL HAVE NO LIABILITY FOR ANY UNAUTHORIZED ACCESS TO THE DATA PACKS. Some jurisdictions do not allow the disclaimer of implied warranties and, to that extent, these disclaimers may not apply to you.

4. RISK ALLOCATION PROVISIONS

4.1. **Indemnification.** You will defend, indemnify, and hold harmless us (and each of our respective directors, officers, shareholders, employees, agents, successors, and assigns) from and against any liability, claim, action, loss, damage, or expense (including court costs and reasonable attorneys' fees) based on any claims arising out of or relating to (a) your use of the Data Packs (including, but not limited to, actual or alleged infringement, misappropriation, or violation of any proprietary rights or right of privacy or your negligent, willful, or illegal conduct); or (b) your actual or alleged breach of these Terms. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim. You will not settle any claim without our prior written consent.

4.2. **Limitation of Liability.** YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, USE, GOODWILL, OR DATA, OR FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, HOWEVER ARISING, IN CONNECTION WITH THESE TERMS OF THE USE OF THE DATA PACKS. OUR TOTAL CUMULATIVE LIABILITY TO YOU OR TO ANY THIRD PARTY FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO, AND WILL NOT EXCEED, THE TOTAL AMOUNT PAID TO US. This limitation applies whether or not (a) we have been informed of the possibility of such damages; (b) a remedy set forth in these Terms is found to have failed of its essential purpose; or (c) such claim is based upon contract, warranty, tort (including negligence), product liability, or otherwise.

5. GENERAL PROVISIONS

5.1. **Assignment.** Neither you or us may assign or transfer any or all of its rights or obligations under these Terms or any part of it, nor any benefit or interest in or under it, to any third party without the written consent of the other which shall not be unreasonably withheld; provided, however, that this provision shall not apply where the assignment or transfer is effected by the sale or transfer of assets or of a controlling ownership interest in us.

5.2. **Dispute Resolution.** In the event of a dispute, you and we should work together in good faith to resolve the dispute. These Terms will be governed by and construed in accordance with the laws of the State of Michigan without reference to or application of conflict of laws rules or principles. The courts located within the jurisdiction of the county of Ingham, Michigan will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to these Terms.

5.3. **Export Laws.** Both you and us will comply with all applicable customs and export control laws and regulations of the United States and any other country, with respect to its activities under these Terms. Neither you or us will export, re-export, ship, or otherwise transfer the Data Packs, to any country subject to an embargo or other sanction by the United States.

5.4. **Severability.** If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision of the Terms will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

5.5. **Waiver.** No failure or delay by either you or us in exercising your or our rights under these Terms shall operate as a waiver of such rights, and no waiver of any right shall constitute a waiver of any prior, concurrent, or subsequent right.

5.6. **Notices & Electronic Communications.** You authorize us to communicate electronically with you and agree that all terms, agreements, notices, disclosures, and other communications we provide to you electronically satisfy any legal requirement that those communications would satisfy if they were on paper. Any notice, request, demand, or other communication, if sent to us, must be sent to help@interoperabilityinstitute.org.

5.7. **Force Majeure.** We will not be liable for any failure or delay due to matters beyond our reasonable control, including denial-of-service attacks, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, acts of God, or governmental action.

5.8. **Relationship of Parties.** You and we are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between you and us. Neither you nor us will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

5.9. **Entire Agreement.** These Terms, including all referenced documents, constitute the complete understanding and agreement of you and us regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, oral or written, relating to its subject matter.

I agree and accept these Terms to govern my organization's use of the Data Packs.