



DATA SHARING AGREEMENT

This DATA SHARING AGREEMENT (this “Agreement”) is effective as of _____, 20__ (the “Effective Date”) between Celgene Corporation, with offices located at 86 Morris Avenue, Summit, NJ 07901 (“Celgene”) and

(“Researcher Name”) _____

(“Institution Name and address”)

Research Proposal (Proposal ID and Title of Proposal):

BACKGROUND

Celgene and its subsidiaries and affiliates develop, manufacture, distribute, and sell pharmaceutical products. Researcher desires access to certain, anonymized, patient-level, clinical trial data and/or records collected and owned by Celgene as further described herein (hereinafter the “Data”), in order to conduct specific Analyses as further described below. Celgene and Researcher intend to establish this Agreement with respect to Researcher’s access to Data.

DEFINITIONS

“Celgene Portal” is a restricted access environment that supports Researchers accessing the anonymized, patient-level clinical study Data made available under this Agreement.

“Analytical Tools” includes but is not limited to any methodology, statistical methods, formulae or other methods or tools used by Researcher in conducting the Analysis.

“Analysis/Analyses” refers to any and all analysis of the Data as specifically described in the Research Proposal.



“Celgene Confidential Information” means any information (including, without limitation, Data, patient level data, clinical outcomes data, research specifications or clinical protocols, reports, specifications, computer programs or models and related documentation, know-how, trade secrets, or business or research plans) of Celgene or Celgene subsidiaries and affiliates that are provided to Researcher in connection with this Agreement.

“Celgene Uses” means any and all uses of a compound which Celgene is developing, developed, manufactured or commercialized on or after the Effective Date, including the compound(s) which was used to generate the Data as a single agent or in combination, or any biomarker, genetic tests or other diagnostic tests or assays related to the aforementioned compounds including but not limited to tests, assays or biomarkers that may predict the course of a relevant disease (as defined below), responsiveness or lack of response of such a disease to such compounds.

“New Intellectual Property” means all discoveries, developments, inventions (whether patentable or not), improvements, methods of use or delivery, know-how or trade secrets which are made, conceived or reduced to practice by Researcher in connection with the use of Celgene Confidential Information under this Agreement.

“Research Proposal” means the proposal submitted by Researcher which describes the Analysis to be conducted on the Data.

1. RESEARCH PROPOSAL AND CELGENE PORTAL

- (a) The Research Proposal will be reviewed by Celgene or a third party working on behalf of Celgene. A Research Proposal shall be approved or rejected at the sole and exclusive discretion of Celgene. The approval or rejection will be communicated to the Researcher through the Celgene Portal.
- (b) Celgene may view the Researcher’s workspace within the Celgene Portal while Researcher is conducting the Analysis as described in the Research Proposal. By signing this Agreement, Researcher agrees and consents to this viewing.
- (c) With respect to the Celgene Portal, Researcher shall not:



1. share any username, password or other account details with a third party or otherwise provide a third party with access to the Researcher's access to the Celgene Portal; or
2. remove, bypass, circumvent, neutralize or modify any technological protection measures of the Celgene Portal.

2. **DATA SHARING**

Celgene and Researcher agree that Celgene will provide the Researcher with access to Data from the Celgene-sponsored clinical studies referenced in the Research Proposal. Researcher is only authorized to use Data according to the following terms:

- (a) Celgene hereby grants to Researcher a one-time non-exclusive, nontransferable, limited in time (for the term of this Agreement), license to use the Data for the sole purpose of conducting the Analysis according to the Research Proposal and for no other purpose.
- (b) Researcher agrees that Data provided by or on behalf of Celgene is Celgene Confidential Information.
- (c) All Data provided by or on behalf of Celgene is provided "as is" and without warranty and Celgene makes no representations or warranties regarding the suitability of the Data provided to Researcher for the Analysis to be conducted pursuant to the Research Proposal. Celgene reserves the right to withhold, remove, and/or discard Data from the Research Portal without notice to Researcher.
- (d) Researcher agrees that he/she will use Celgene Confidential Information solely for the approved use set forth in the Research Proposal and associated obligations set forth in this Agreement. Researchers shall not and will not download, print, transfer, or copy (including for example, take screen shots, screen capture, etc.) the Celgene Confidential Information from the Celgene Portal.
- (e) Researcher agrees to provide access and reasonable assistance to Celgene to utilize and implement any Analytical Tools for the sole purpose of reproducing the results of the Research Proposal.



(f) Researcher agrees to protect the privacy and confidentiality of any clinical trial participants whose information is contained in the Data and Researcher agrees not to attempt to establish the individual identities of the clinical trial participants or the individuals whose information is contained in the Data.

3. CONFIDENTIALITY

(a) Celgene Confidential Information and all tangible expressions, in any media, of Celgene Confidential Information are the sole property of Celgene. Researcher agrees not to use Celgene Confidential Information for any purposes other than the purpose(s) described in this Agreement. Researcher agrees not to disclose Celgene Confidential Information to third parties (with the exception of regulatory authorities notified of Analysis results).

(b) Researcher shall ensure that any Researcher employees, agents or subcontractors to whom Celgene Confidential Information is disclosed for the conduct of the Analysis set out in the Research Proposal shall agree in writing to or be bound by the obligations of this Agreement, including without limitation, obligations regarding confidentiality and use of such Confidential Information as set forth in this Agreement.

(c) Researcher shall safeguard Celgene Confidential Information with the same standard of care that is used with Researcher's confidential information, but in no event less than reasonable care. At any time upon the request of Celgene, all tangible expressions, in any media, of Celgene Confidential Information in Researcher's possession shall be delivered to Celgene, or at Celgene's option, destroyed.

(d) The obligations of confidentiality and limited use under this Section shall not extend to any information:

(i) which is or becomes publicly available, except through breach of this Agreement;

(ii) which Researcher can demonstrate with written documentation that it possessed prior to, or developed independently from, disclosure under this Agreement;

(iii) which Researcher receives from a third party which is not legally prohibited from disclosing such information; or



(iv) which Researcher is required by law to disclose, provided that Celgene is notified of any such requirement with sufficient time to seek a protective order or other modifications to the requirement.

(e) The obligations of this Section shall survive this Agreement for a period of fifteen (15) years after the Effective Date.

(f) Celgene shall disclose on a Celgene controlled website the name of Researcher as well as all documents related to the Analysis. Researcher agrees and acknowledges that Researcher has no right to confidentiality of this information. In addition, Celgene will disclose other information as required under applicable law or government regulation.

4. INTELLECTUAL PROPERTY

(a) Researcher will notify Celgene, promptly and in writing, of any New Intellectual Property. Researcher shall assign and hereby does assign all rights, title, and ownership in and to any New Intellectual Property to Celgene. Researcher represents and warrants that Researcher has no previous obligations that would prevent such assignment, and if such a previous obligations exists, Researcher agrees that this subsequent assignment takes priority over any previous assignment. Upon assignment, Researcher shall have no further obligations regarding the exploitation or prosecution of any New Intellectual Property.

(b) Researcher agrees to obtain written agreements with Researcher employees, agents, and subcontractors which assign, without additional consideration, all rights, title and interests in New Intellectual Property to Researcher for subsequent assignment to Celgene. The obligations of this Section shall survive termination of this Agreement.

(c) Celgene grants an exclusive option to Researcher, to be exercised within one hundred eighty (180) days from notice by Researcher to Celgene of New Intellectual Property, to negotiate in good faith an exclusive, fee-bearing, license with the right to sublicense to any New Intellectual Property.

(d) This Agreement is not a sale of the Data and does not convey to Researcher any rights of ownership in or related to the Data.



5. PUBLICATION

Researcher agrees to submit the results of the Analysis for presentation or publication in peer-reviewed literature (a "Publication") within six (6) months of completing the Analysis, with such Publication appropriately disclosing the strengths and weaknesses of the Analysis methodology. Researcher shall submit to Celgene a copy of the results of the Analysis as well as a copy of any proposed Publication within thirty (30) days prior to submission to a scientific congress or journal in order to allow Celgene to review said Publication to ensure consistency with the proposed hypothesis and statistical analysis plan as well as to review for Celgene Confidential Information and intellectual property concerns. If Celgene determines that Celgene Confidential Information is being disclosed, it may require the Researcher to redact such information. Researcher agrees to consider all other comments of Celgene in good faith, but Researcher retains editorial control. Upon request by Celgene, Researcher will withhold such presentation, submission for publication or other disclosure for an additional ninety (90) days to allow Celgene to seek patent protection. After such six (6) month time frame Celgene may post the Analysis results on a Celgene website. If Researcher requires additional time in which to submit the Analysis to a Publication, Researcher shall submit the request for additional time to Celgene in writing. Researcher agrees, following Publication, to provide other researchers with additional details of the Analysis on request and to provide access and reasonable assistance to those other researchers to utilize and implement any Analytical Tools for the sole purpose of reproducing the Analysis. The obligations of this Section shall survive termination of this Agreement.

6. TERM AND TERMINATION

This Agreement shall terminate two (2) years after the Effective Date. Celgene may terminate this Agreement at any time upon thirty (30) days prior written notice to the Researcher. At the termination of the Agreement, Researcher shall no longer have access to the Celgene Portal, and consequently, Celgene Confidential Information and Data. If Researcher requires access to the Data for a longer time period, Researcher shall request a longer term in writing to Celgene which request shall not be unreasonably denied.



7. INDEPENDENT CONTRACTOR

The relationship of the parties is that of independent contractors. Neither party is the partner, joint venturer, or agent of the other and neither party has authority to make any statement, representation, commitment, or action of any kind which purports to bind the other without the other's prior written authorization.

8. ASSIGNMENT

Celgene may assign its rights and duties under this Agreement without Researcher's consent. Any assignment by Researcher is valid only upon the prior written consent of Celgene. To the extent permitted above, this Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

9. REPRESENTATIONS AND WARRANTIES

- (a) Researcher represents and warrants that it does not have, and will not enter into, any contractual obligations that would prevent it from complying with its obligations under this Agreement, including any potential conflicts of interest.
- (b) Researcher represents and warrants that it has the authority to bind to the terms of this Agreement, any individual proposed by Researcher to have access to Celgene Data or other Celgene Confidential Information, and that the term "Researcher" as used herein shall apply to all such individuals.
- (c) Researcher shall obtain any regulatory or ethics approvals necessary to conduct the Analysis.
- (d) Researcher acknowledges the importance of data privacy of individuals to whom accessed Data may relate, and, accordingly, commits to comply with all applicable data privacy protection legislation, not to attempt to identify subjects, and not to combine accessed Data with other sources of data that would lead to the identification of any individual.

10. GOVERNING LAW; VENUE

This Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey in the United States of America.



Any dispute arising from or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of the State of New Jersey in the United States of America.

11. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral, regarding its subject matter.

CELGENE CORPORATION:

RESEARCHER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____