

Standard Data Access Deed

BreastScreen Victoria Inc

[Data User]

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Parties

1. **BreastScreen Victoria Inc** ABN 54 505 206 361 of Level 1/31 Pelham Street, Carlton South, Victoria 3053 (**BSV**)
2. [Insert other party's name] ACN [Insert] of [Insert Address] (**Data User**)

Background

- A. BSV possesses certain Data as a result of its business operations which Data User requires for the Purpose.
- B. BSV has agreed to provide that Data to Data User subject to the terms of this Agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Affiliates means, in relation to a party, any other person or entity anywhere in the world, that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, the specified person or entity.

Agreement means this deed of agreement entered into by the parties consisting of Operative Provisions, the Schedules and any attachments to any of them.

Business Day means any day other than Saturday, Sunday or any public holiday in Melbourne, Victoria.

Commencement Date means the date of execution of this Agreement by both parties.

Confidential Information means, in relation to a party (for the purposes of this definition, the **Discloser**):

- (a) the provisions of this Agreement;
- (b) all information relating to or used by the Discloser or any of its Affiliates, including know-how, trade secrets, ideas, marketing strategies and operational, technical, pricing and commercial information;
- (c) all information concerning the business affairs (including products, services, customers and Data Users) or property of the Discloser or any of its Affiliates, including any business, property or transaction in which the Discloser or any of its Affiliates may be or may have been concerned or interested;
- (d) in BSV's case, the Data;

- (e) in Data User's case, the Summary Data;
- (f) any other information disclosed by or on behalf of the Discloser or any of its Affiliates to the recipient of that information,

including information disclosed pursuant to this Agreement and any such information made available to the Discloser or any of its Affiliates by any third party under obligations of confidentiality, but excluding any information:

- (g) which is publicly known or becomes publicly known other than by breach of this Agreement or any other obligation of confidentiality;
- (h) which is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or
- (i) is developed independently by the other party without reliance on any of the Discloser's Confidential Information.

Control has the meaning given in the *Corporations Act 2001* (Cth) and **Controlled** has a corresponding meaning.

Data means the data described in Schedule 1 which may include Personal Information (subject to the Privacy Legislation and obtaining all necessary consents) and/or De-identified Data, provided that if any De-identified Data is re-constituted or re-identified to constitute Personal Information (notwithstanding that to do so would be a breach of this Agreement) this Agreement continues to apply to such Data.

De-identified Data means Personal Information which has undergone De-identification so that the information is no longer about an identifiable individual or an individual who is reasonably identifiable, or otherwise Data which is not about an identifiable individual or an individual who is reasonably identifiable.

De-identification is a process which involves the removal or alteration of personal identifiers, followed by the application of any additional techniques or controls required to remove, obscure, aggregate, alter and/or protect data in some way so that it is no longer about an identifiable or reasonably identifiable individual.

Discloser means:

- (a) BSV, where Confidential Information of BSV is disclosed to Data User; and
- (b) Data User, where Confidential Information of Data User is disclosed to BSV.

Ethics Approval means approval that is obtained for research involving human participants. This approval must be obtained before data use can begin. The process of ethical review is to ensure research participants can be confident that possible risks have been considered, minimised and deemed acceptable.

Force Majeure Event means any flood, storm or other natural disaster, fire, labour dispute, war, riot or terrorism, act of God, act of government or state, pandemic, epidemic, communications or equipment failure or any other circumstance beyond a party's reasonable control.

GST has the meaning given to that term in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Health Information has the meaning given to that term in the *Privacy Act 1988* (Cth). Health Information is a type of Personal Information.

Information Technology Security Policies means BSV's policies with respect to data and information security as published from time to time.

Insolvent means, in relation to a party:

- (a) being insolvent or under administration;
- (b) having a controller appointed;
- (c) being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject (except to reconstruct or amalgamate while solvent) to any arrangement, assignment or composition;
- (d) being otherwise unable to pay its debts when they fall due; or
- (e) having something with the same or similar effect to any of the events specified in paragraphs (a) to (d) of this definition happen under the laws of any jurisdiction.

Intellectual Property Rights means any rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registered or not or registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

Notifiable Data Breach means an eligible breach of the Privacy Act which is required to be reported under the Notifiable Data Breach scheme.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not. Personal Information includes Health Information (which includes Health Information of deceased individuals who have been deceased for less than 30 years).

Personnel means, in relation to a party, that party's officers, employees, agents, contractors and sub-contractors and where relevant those of its Affiliates.

Privacy Legislation means:

- (a) the *Privacy Act 1988* (Cth) including the Australian Privacy Principles contained in that Act; and
- (b) *Privacy and Data Protection Act 2014* (Vic) and *Health Records Act 2001* (Vic);

Publication means any article, report, media release, web page, audio and/or visual material or any other communication.

Purpose means the purpose that the Data is provided for and use that is to be made of that Data as described in Schedule 1.

Representatives has the meaning given in clause 5.1.

Research Assessment Committee means the committee established by BSV for the purposes of administering research activities including the disclosure of Data pursuant to this Agreement.

Summary Data means information containing or referring to the Data or the Data in any processed, manipulated, aggregated, categorised or summarised in any form (including digital) as the output or result of the use by Data User of the Data.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words denoting individuals or persons include corporations and vice versa;
- (c) headings are for convenience only and do not affect interpretation;
- (d) references to an agreement or document are to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (e) reference to a party (other than a third party) are to a party to this Agreement and include that party's executors, administrators, substitutes, successors and permitted assigns;
- (f) a reference to '\$', unless otherwise specified, is a reference to Australian dollars;
- (g) a reference to a clause is a reference to a clause in this Agreement;
- (h) a reference to a Section, Schedule, attachment or annexure is to a Section, Schedule, attachment or annexure of or to this Agreement;
- (i) a reference to a law:
 - (i) includes a reference to any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange;
 - (ii) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (iii) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation made under that law; and
- (j) the word '**including**' means 'including without limitation' and '**include**', '**includes**' and '**in particular**' must be construed similarly.

2. Term

This Agreement will commence on the date on which it has been executed by both parties and continue until the Expiry Date specified in Schedule 1 unless terminated earlier by either party.

3. Data Disclosure and Licence

3.1 Data Form and Provision

- (a) Provision of the Data is on an 'as is' basis and BSV makes no warranty with respect to the accuracy or completeness of the Data, or whether the Data is fit for the Purpose.
- (b) Data User accepts and uses the Data pursuant to this Agreement entirely at its own risk.
- (c) Data User will not be allowed direct access to the Data at its source and BSV will aggregate the Data into an agreed industry standard format for delivery to Data User.
- (d) The Data prepared by BSV will be delivered to Data User in electronic form by provision of access to a secure electronic database, or a physical disk drive or similar storage device which will be password protected and may have other access requirements. BSV will provide the password and other relevant access details to Data User separately.

3.2 Ownership and licence of Data

- (a) The Data is and will at all times remain the property of BSV.
- (b) During the term of this Agreement, BSV grants Data User and Data User's Personnel a licence to use and reproduce, in whole or in part, the Data for the Purpose subject to the terms of this Agreement.
- (c) Except as otherwise provided for in this Agreement, unless granted by BSV, or as otherwise required by law, no persons will have any rights to use the Data for any purposes other than the Purpose, without the prior written permission of BSV which may be given withheld at the sole discretion of BSV's Research Assessment Committee.

3.3 Summary Data

- (a) The Summary Data is and will at all times remain the property of Data User.
- (b) Data User grants to BSV and BSV's Personnel, a perpetual, irrevocable, royalty-free, non-exclusive license to use and reproduce, in whole or in part, the Summary Data.

3.4 Restrictions on Use of Data

Data User must comply with the following conditions (in addition to the provisions relating to Confidential Information and compliance with Privacy Legislation):

- (a) Data and Summary Data may only be used solely for the Purpose and must not be used or disclosed in any manner or to any person where such use or disclosure would fall outside of the Purpose;
- (b) Data and Summary Data must not be transferred outside of the jurisdiction of Australia or access provided or allowed to any person situated outside the jurisdiction of Australia; and

- (c) De-identified Data must remain de-identified and must not be, by any means, be reverse-engineered or sought to be combined with other data, so that an individual's Personal Information can be derived or identified from the Data.

3.5 Requirement for Ethics Approval

- (a) Unless otherwise approved by BSV, if the research requires the use of BSV client data, Data User must obtain and provide the necessary approval from a Human Research Ethics Committee (HREC) that is registered with the National Health and Medical Research Council or otherwise provide evidence of compliance with applicable ethical guidelines for the conduct of such research.
- (b) It is the responsibility of Data User to ensure compliance with applicable ethical guidelines at all times when handling BSV Data.

4. Payment & GST

4.1 Payment

- (a) Data User must pay BSV the fee (if any) specified in Schedule 1 for preparation and provision of the Data pursuant to this Agreement, which will be calculated on a cost recovery basis W(the **Service Fee**).
- (b) Invoices for the Service Fee may be issued by BSV in the manner and frequency specified in Schedule 1, or if not so specified BSV may issue the invoices at any time following provision of the Data.

4.2 Terms

Unless otherwise specified or agreed between the parties, payment of each invoice rendered by BSV will be paid by Data User by the date 30 days after its receipt.

4.3 GST

Terms defined in the GST Act have the same meaning when used in this clause 4 unless expressly stated otherwise.

4.4 GST Exclusive

- (a) Unless expressly stated otherwise, any sum or amount payable or amount under this Agreement is exclusive of GST.
- (b) If GST is payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable on the supply, subject to the recipient receiving a valid tax invoice in respect of the supply. The tax invoice must be issued at the same time as the consideration for the supply is due from the recipient.

5. Reporting and management structure

5.1 Appointment

- (a) Each of BSV and Data User will appoint a representative as its relationship manager who will be responsible for managing the performance of all its obligations under this Agreement.
- (b) Data User's initial Representative and BSV's initial Representative are identified in Schedule 1.

5.2 Authority

Each Representative is vested with the authority of their appointing party to make decisions for and bind the appointing party for the purposes of this Agreement. Data User may not change its Representative unless that person is unable to work as a result of death, injury or illness, or ceases to be a member of the Personnel of Data User (or any Data User Affiliate).

6. Indemnity

6.1 Indemnity

- (a) Data User indemnifies BSV against any claim, liability, loss, damage or expense that BSV incurs or suffers directly or indirectly as a result of:
 - (i) a breach of this Agreement by Data User; or
 - (ii) any unauthorised use or disclosure of Data, or loss of Data, by a person who received the Data from Data User.

7. Confidentiality

7.1 Use

Except as permitted or required by this Agreement, each party must not use any of the other party's Confidential Information (for clarification, this includes the Data and Summary Data) for any purpose except for the Purpose or as otherwise specifically permitted under this clause 7.

7.2 Disclosure

Except as permitted or required by this Agreement, each party must not disclose to any other person any of the other party's Confidential Information provided that each party may disclose the Confidential Information of the other party:

- (a) when required to do so by law or any regulatory authority, including any stock exchange on which it or any of its Affiliates is listed; and
- (b) to its Personnel and advisors whose duties reasonably require such disclosure, on condition that the party making such disclosure ensures that each such person to whom such disclosure is made is informed of the obligations of confidentiality and remains responsible for the compliance of each such person with this clause 7.

7.3 Notice of breach or disclosure required by law

If either party becomes aware of a breach of this clause 7, including a breach of duty by its Personnel with respect to the other party's Confidential Information, it must give a notice to the other party as soon as it becomes aware of the breach.

7.4 Return of Confidential Information

- (a) From time to time, either party may, in writing, request the other party to comply with the provisions of clause 7.4(b) in respect of any of its Confidential Information no longer required by the other party for its performance of obligations or exercise of rights under this Agreement. If a party receives such a request, it must comply with that request within 14 days.
- (b) If a party makes a request pursuant to clause 7.4(a), the other party must (in respect of the Confidential Information specified in the request):
 - (i) immediately cease all use and disclosure of such Confidential Information;
 - (ii) return to the other party all materials provided to it by the other party in connection with such Confidential Information;
 - (iii) if there are any other materials in its possession or control (or in the possession or control of its Personnel) which contain any of such Confidential Information or any information derived from that information, either:
 - (A) deliver up those materials to the other party; or
 - (B) delete or destroy entirely and permanently those materials or the Confidential Information or any information derived from that information contained in those materials; and
 - (iv) on request by the other party, deliver to the other party evidence satisfactory to the other party that it has complied with the provisions of this clause 7.4(b).
- (c) Notwithstanding the requirements of this clause, a party may retain a copy of the minimum amount of Confidential Information that is necessary to satisfy good corporate governance practice and regulatory and audit requirements subject to that Confidential Information continuing to be dealt with in accordance with this Agreement.

8. Privacy

8.1 Privacy obligations

Data User must:

- (a) comply with the Privacy Legislation in relation to any Personal Information that is provided with pursuant to this Agreement, whether or not it is bound to comply with the Privacy Legislation;
- (b) only process, use or disclose Personal Information which is provided to Data User for the Purpose;

- (c) not disclose any Personal Information to any other person except to the extent reasonably necessary for the Purpose or as required by law;
- (d) ensure that any person employed or engaged by Data User who has access to Personal Information is made aware of, and is bound by terms consistent with, the provisions of this clause including ensuring that any permitted subcontractor is under contractual obligations no less stringent than those in this clause with regard to Personal Information;
- (e) take reasonable steps (including, without limitation, complying with any reasonable direction given by BSV):
 - (i) to protect the Personal Information from misuse, interference and loss and from unauthorised access, modification or disclosure (this includes maintaining security systems and procedures in accordance with the Privacy Legislation and this Agreement); and
 - (ii) establish internal protocols to ensure its staff and contractor are aware of, are trained in and handle Personal Information in accordance with the requirements of this clause 8; and
- (f) comply with any reasonable direction issued by BSV with respect to the collection, use, disclosure, storage and disposal of Personal Information.

8.2 BSV's obligations

- (a) BSV agrees and must ensure that its Personnel are aware that Data User may:
 - (i) collect Personal Information (such as individual contact details) from BSV and BSV's Personnel; and
 - (ii) use, disclose, store and transfer such Personal Information,
 in accordance with Data User's Privacy Policy for the purposes of administering this Agreement.

8.3 Destruction or de-identification

Any Personal Information held by Data User at any time which is no longer required for the purposes of fulfilling its obligations under this Agreement must, as soon as possible, be either:

- (a) permanently destroyed and Data User must provide evidence satisfactory to the BSV that it has done so; or
- (b) (if so directed by BSV) returned to BSV (without retaining copies of such Personal Information).

8.4 Notification obligations

Each party must:

- (a) immediately notify the other party if:
 - (i) it knows of or suspects unauthorised use, copying or disclosure of Personal Information, or loss of Personal Information;

- (ii) it becomes aware that a disclosure of that Personal Information may be required by law; or
 - (iii) any law prevents or may prevent it from performing its obligations under this clause 8; and
- (b) cooperate with the other party in relation to any privacy breach which is or may be a notifiable 'eligible data breach' within the meaning of the *Privacy Act 1988* (Cth) (**Notifiable Data Breach**), to assess and determine whether the breach is a Notifiable Data Breach and, if that is the case, ensure that the provisions of the *Privacy Act 1988* (Cth) are complied with in reporting the breach to the Office of the Australian Privacy Commissioner, preparing a data breach response plan and implementing that plan to notify affected individuals whose Personal Information has been the subject of the breach. If the parties disagree about whether a breach is a Notifiable Data Breach, it is agreed that the breach will be deemed to be a Notifiable Data Breach.

8.5 Co-operation in relation to investigations

Each party will provide all reasonable assistance to the other party in connection with any request for information, investigation or enquiry by any authorities (including any Notifiable Data Breach notification issued by BSV) in order to comply with, observe or implement any recommendation or direction of any authorities relating to any acts or practices of BSV or Data User that the authority considers do not comply with the Privacy Legislation.

8.6 No Offshore Transfer

The receiving party must not transfer outside of Australia any Personal Information obtained from the other party or its Personnel as a result of, or in connection with, the performance of this Agreement, or to allow access to such Personal Information from a location outside of Australia without the express prior written consent of the other party. If the other party provides its consent, the receiving party is responsible for ensuring that Personal Information transferred to, or accessed from, a jurisdiction outside of Australia, continues to be handled in compliance with the Privacy Legislation and the terms of this clause 8.

9. Publication

9.1 Publication notice

The publishing party must give notice of any proposed Publication which is in connection with the Data to the non-publishing party at least 30 days before the proposed submission date for the Publication.

9.2 Response to notice of publication

- (a) The non-publishing party may, acting reasonably, within that 30 day period do any one or more of the following:
 - (i) provide comments on the proposed Publication to the publishing party which that party must consider but is not obliged to follow;
 - (ii) require the publishing party to delay the Publication for no more than 30 days to allow the non-publishing party to take any measures to preserve its proprietary rights; or

- (iii) require the publishing part to remove specified Confidential Information from the Publication.
- (b) If the publishing party has not received any comments from the non-publishing party on the proposed Publication within 30 days of giving notice under clause 9.1, the publishing party may make the Publication.

10. Security

10.1 Security obligations

Data User must comply with and must ensure its policies and procedures and all physical and technical controls relating to its information risk management processes, at all times comply with:

- (a) BSV's Information Technology Security Policies with respect to the Data and Summary Data as notified in writing by BSV to Data User from time to time;
- (b) ISO 27001; and
- (c) otherwise generally accepted industry practice in relation to security of premises, facilities and systems.

10.2 Cloud-based services and SaaS

Data User must have in place and must ensure that its permitted subcontractors have in place, security standards for cloud-based services and software as a service that comply with the requirements of this Agreement.

10.3 Notification of security breaches

Data User will notify BSV immediately if there is a security breach at Data User premises or to Data User information systems or those of its permitted subcontractors and such breach may affect the security of the Data or other BSV Confidential Information or Personal Information.

10.4 Investigations

- (a) When requested by BSV, Data User will co-operate with any investigation relating to a material breach of security carried out by or on behalf of BSV or by any investigating body. This includes providing information or material in Data User's possession or control. .
- (b) The costs associated with investigations under this clause 10.4 will be borne by BSV, unless the investigation reveals that Data User is materially not complying with its obligations under clause 7, 8 or this clause 10, in which case the costs of the investigation relating to that non-compliance will be paid by Data User.

10.5 Security audits

- (a) Not more than once every 6 months, BSV may conduct, or request Data User to conduct, an audit of the security standards and procedures used by Data User, to ensure Data User's compliance with:
 - (i) its obligations under this clause 10;
 - (ii) its obligations under clauses 7 and 8; and

- (iii) evolving best practice in respect of security.
- (b) BSV will provide Data User with at least 15 Business Days' notice of any audit. Data User may not charge BSV for complying with any audit carried out in accordance with this clause. The external costs of such audit will be paid by BSV. If a security audit reveals that Data User is materially not complying with its obligations under this clause 10, the costs of such audit incurred by BSV will be paid by Data User. Data User and BSV will discuss the implications of non-compliance and agree a process to remedy the non-compliance, and Data User must take immediate steps to ensure compliance in accordance with the agreed process at its own cost.

11. Intellectual Property

11.1 No Assignment or Transfer of Rights

Except as expressly provided in this Agreement, nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party including any such rights in the Data or Summary Data.

12. Warranties and Undertakings

12.1 Warranties – Data User

Data User warrants to BSV that:

- (a) Data User's entry into, and performance of obligations under, this Agreement will not result in a claim that Data User has breached any obligation owed to a third party (including exclusivity obligations and obligations to avoid conflicts of interest); and

12.2 General warranties

Each party makes the following representations and warranties:

- (a) it is an incorporated association validly existing under the laws of the place of its incorporation specified in this Agreement;
- (b) it has the power to enter into and perform its obligations under this Agreement, to carry out the transactions contemplated by this Agreement and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of this Agreement, and to carry out the transactions contemplated by this Agreement; and
- (d) the execution and performance by it of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a governmental agency binding on it;
 - (ii) its constitution or other constituent documents; or

- (iii) any other document or agreement which is binding on it or its assets.

13. Termination

13.1 Events of default – termination by BSV

BSV may terminate this Agreement in its entirety immediately by notice in writing to Data User, without prejudice to any right of action or remedy that may have arisen in favour of either party, if:

- (a) Data User breaches a material provision of this Agreement and that breach is incapable of remedy;
- (b) Data User fails to comply with a notice issued by BSV under clause 13.2(a), within the time period provided for in that notice;
- (c) Data User is in breach of any of the following clauses 3.4, 7, 8 or 10;
- (d) Data User or any of its Personnel have committed any act of fraud;
- (e) BSV is entitled to terminate this Agreement under the terms of this Agreement; or
- (f) Data User becomes, or is likely to become, Insolvent.

13.2 Termination on notice

- (a) If Data User is in breach of any provision of this Agreement, BSV may (without prejudice to any other right it has under this Agreement):
 - (i) provide Data User with written notice specifying the nature of the breach and a period in which Data User must remedy that breach to the satisfaction of BSV (which must not be less than 14 days); and
 - (ii) request that Data User remedy the breach in accordance with the notice.
- (b) If Data User fails to remedy the breach in accordance with the notice, BSV may terminate this Agreement in accordance with clause 13.1.

13.3 Consequences of termination

On termination or expiry of this Agreement for any reason:

- (a) Data User must:
 - (i) immediately cease all use and disclosure of BSV's Confidential Information and the Data;
 - (ii) return to BSV all materials provided to it by BSV;
 - (iii) if there are any other materials in its possession or control (or in the possession or control of its Personnel) which contain any Confidential Information of BSV or any information derived from that information, either:
 - (A) deliver up those materials to BSV; or

- (B) delete or destroy entirely and permanently those materials or the Confidential Information or any information derived from that information contained in those materials;
 - (iv) deliver to BSV all Data and any documentation and materials in its possession or control containing the Data; and
- (b) each party retains the rights and claims it has against any other party for any past breach of Agreement.

14. Insurance

14.1 Insurance Requirements

Data User must for the duration of this Agreement and for 7 years following its termination or expiry, take out and maintain valid and enforceable insurance policies of the types and for the coverage specified in Schedule 1.

14.2 Content

Unless specified otherwise in Schedule 1, Data User must ensure that the insurance policies are primary and without any right of contribution by BSV or any insurance effected by BSV.

14.3 Certificates

Data User must:

- (a) prior to the Commencement Date and each year by the anniversary of the Commencement Date, provide BSV with confirmation from Data User's insurers that Data User has insurance as required by this clause 14; and
- (b) for the term of this Agreement, on the request of BSV, demonstrate to BSV's satisfaction compliance with these insurance requirements.

15. Reporting and auditing

15.1 Reporting

Data User must provide BSV with the reports specified in Schedule 1.

15.2 Auditing

BSV may require Data User to provide copies of relevant records to BSV (or its nominated Representatives) on reasonable notice for the purposes of auditing Data User's compliance with this Agreement, provided that audits will not be conducted more than once per year and Data User is not required to provide:

- (a) any Confidential Information of competitors of Data User;
- (b) the following information to BSV or any third party:
 - (i) cost models and any information relating to Data User's profit margin, or from which its profit margin can be determined;

- (ii) information relating to other customers of Data User's or Data User's network; or
- (c) Personal Information relating to Data User's Personnel.

16. Subcontracting

- (a) Data User must:
 - (i) not allow a subcontractor access to any Data without BSV's prior written consent; and
 - (ii) not enter into a written agreement with a subcontractor without incorporating substantially all the terms of this Agreement (including clause 13).
- (b) Notwithstanding the engagement of any subcontractor, Data User will remain liable for the compliance with and performance of all of its obligations under this Agreement and any breach of this Agreement caused or contributed to by any subcontractor engaged by Data User will be a breach of this Agreement by Data User.

17. Force majeure

- 17.1 Neither party will be liable for any failure or delay in the performance of its obligations under this Agreement to the extent that such failure or delay is due to a Force Majeure Event, and those obligations will be suspended to the extent that they are affected by the relevant event for as long as it continues, provided that the party whose obligations are affected must take all reasonable steps to minimise and work around such an event. If the Force Majeure Event continues for more than 90 days, BSV may terminate this Agreement by written notice to Data User without further liability to Data User.

18. Notices

18.1 Delivery

A notice given or made to a party under this Agreement must be in writing and delivered prior to 5.00pm on a Business Day, sent by certified prepaid mail or email to the address or email address of the party as set out in Schedule 1 or to such other address or email address as that party may from time to time notify the other party for the purposes of this clause.

18.2 Receipt

A notice will be treated as having been received:

- (a) if delivered by hand - if it is delivered before 5.00 pm on a Business Day, at the time of delivery otherwise at 9.00 am on the next following Business Day;
- (b) if sent by post - on the fifth Business Day (or tenth Business Day if sent overseas) after posting; and
- (c) if sent by email - at the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated

message that the email has not been delivered. (but if the email is not sent by 5.00pm on a Business Day, at 9.00 am on the next following Business Day).

18.3 Electronic communication

The parties acknowledge and agree that they will conduct business electronically and that communications made in accordance with this clause 18 or otherwise that are intended to commit or bind the party making that commitment will be legally binding on that party.

19. Dispute resolution

19.1 Dispute

- (a) In the event of any dispute, question or difference of opinion between parties arising out of or under this Agreement (**Dispute**), either party may give to the other party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this clause 19.
- (b) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other party, each party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (c) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, the Dispute must be referred by the parties to the managers of the respective Dispute Representatives or to other more senior officers of the parties.
- (d) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective managers or senior officers in accordance with clause 19.1(c), then either party may commence legal proceedings in an appropriate court to resolve the matter.

19.2 Performance of obligations during Dispute

During the existence of any Dispute, the parties must continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute, unless the parties otherwise agree.

19.3 Urgent interlocutory relief

Nothing in this clause 19 prevents a party from seeking any urgent interlocutory relief which may be required in relation to this Agreement.

20. General

20.1 Assignment

Except as expressly provided by this Agreement, a party may not assign or novate or attempt to assign or novate this Agreement without the prior written consent of the other party, which consent is not to be unreasonably withheld or delayed.

20.2 Survival

The provisions of this Agreement contained in clauses 1, 6, 7, 8, 10, 13.3, 14, 18, 19, 20 and any other term which in order to be effective must survive termination, will survive the termination or expiration of this Agreement.

20.3 Waiver

The failure by either party at any time to enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of such powers, remedies or rights or affect the party's rights to enforce those powers, remedies or rights at any time. Nor does any single or partial exercise of any power, remedy or right preclude any other or further exercise of it or the exercise of any other power, remedy or right under this Agreement.

20.4 Applicable Laws

This Agreement will be construed according to the laws in force in Victoria, Australia and the parties submit to the jurisdiction of the Courts of Victoria, Australia.

20.5 Severance

If any provision of this Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision may be severed to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement.

20.6 Further Assurances

Each party must do, sign, execute and deliver and must procure that each of its Personnel does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another party effectively to carry out and give full effect to this Agreement and the rights and obligations of the parties under them.

20.7 Entire agreement

This Agreement constitutes the entire agreement between the parties in relation to its subject matter. No understanding, arrangement or provision not expressly set out in this Agreement will bind the parties.

20.8 Costs

Each party must pay its own costs in respect of the Agreement and the documents and transactions contemplated by it.

20.9 No merger

The warranties, other representations and promises by the parties in this Agreement are continuing and will not merge or be extinguished on completion of this Agreement (as applicable).

20.10 Execution by attorneys

Any attorney executing this Agreement warrants that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this Agreement.

20.11 Counterparts

The Agreement may be signed in counterparts and all counterparts taken together constitute one document.

20.12 Rights cumulative

The rights, remedies and powers of the parties under this Agreement are cumulative and do not exclude any other rights, remedies or powers.

20.13 Consents and approvals

A party may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.

20.14 Successors and assigns

This Agreement is binding on and will have effect for the benefit of, the parties and their respective successors and permitted assigns.

Signing page

Executed as a deed.

By the Data User:

**If Data User is an individual*

Signed, sealed and delivered by
[insert Data User name] in the presence of:

Signature of Data User

Signature of witness

Name of witness (print)

Date

Date

**If Data User is a company (select appropriate Act)*

Executed as a deed by [insert company name]
in accordance with
section 127 of the *Corporations Act 2001* (Cth) **[or]**
the *Associations Incorporation Reform Act 2012* (Vic):

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Date

Date

By BreastScreen Victoria:

Executed as a deed by BreastScreen Victoria
Inc ABN 54 505 206 361
in accordance with the *Associations
Incorporation Reform Act 2012* (Vic):

Signature of Director

Signature of Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Date

Date

Schedule 1

Topic and Clause ref	Required Information
Data (clause 1.1):	[insert description of Data]
Purpose (clause 1.1):	[insert description of the purpose for which the Data is to be used e.g. Development of a software program which will [explain function]]
Commencement Date (clause 2):	[insert commencement date here]
Expiry Date (clause 2):	[insert expiry date here]
BSV Representative (clause 5.1):	[insert name and phone number here]
Data User Representative (clause 5.1):	[insert name and phone number here]
Reports (clause 15.1)	[insert name of reports Data User must provide BSV]
Insurance Requirements (clause 14)	
Professional Indemnity:	[insert, e.g., \$10,000,000 per claim and in the aggregate per annum]
Public Liability:	[insert, e.g., \$20,000,000 per claim and in the aggregate per annum]
Cyber security? Other?	
Address for notices (Clause 18) – BSV:	[insert address and email address]
Address for notices (Clause 18) – Data User:	[insert address and email address]
Service Fee (Data User to pay BSV) (clause 4)	[insert any cost recovery amount or state 'Not applicable' here]

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