

DATA USE AGREEMENT

This Data Use Agreement, hereinafter “AGREEMENT,” effective as of the latest date appearing on either of the Parties’ signatures below, is made between The Board of Regents of the University of Oklahoma (“UNIVERSITY”), a constitutional state entity of the State of Oklahoma, by and through the Oklahoma Natural Heritage Inventory (“ONHI”) maintaining its office at 111 East Chesapeake Street, Norman, Oklahoma, 73019, and [insert name of recipient] (“RECIPIENT”), having a principle place of business at [insert recipient address]. RECIPIENT and UNIVERSITY may be referred to herein in the singular as a “Party” or collectively as the “Parties.”

WHEREAS, ONHI is uniquely situated to provide certain data, and ONHI possesses such data and know-how; and

WHEREAS, RECIPIENT desires to obtain permission for use of elements from the ONHI database, as described and incorporated by reference in Appendix A, which may be composed of data from museum specimens, published and unpublished scientific literature, field surveys, and knowledgeable individuals, and related information associated therewith, hereafter identified as “DATA”; and

WHEREAS, ONHI actively solicits and encourages additions, corrections, updates, new observations or collections, as well as comments on any DATA provided; and

WHEREAS, ONHI considers such DATA to be sensitive and/or proprietary; and

WHEREAS, RECIPIENT desires to receive DATA for the sole purpose of educational endeavors and as identified and incorporated by reference in Appendix A (“RESEARCH”); and

NOW THEREFORE, in consideration of the mutual promises and obligations contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The term of this AGREEMENT shall commence as of the effective date of this AGREEMENT and expire on [Date] (“Term”). ONHI agrees to provide DATA to RECIPIENT within [] days of the effective date of this AGREEMENT and to continue to provide DATA continuously during the Term of this AGREEMENT.
2. RECIPIENT agrees to receive DATA in good faith and shall not decompile, reverse engineer, copy, or in any way duplicate DATA, except as necessary to achieve the purpose of this AGREEMENT.
3. RECIPIENT shall not distribute, release, or in any way disclose DATA to any person or entity, except as necessary to achieve the purpose of this AGREEMENT.
4. RECIPIENT agrees that nothing herein shall be deemed to grant to RECIPIENT any rights under any ONHI patents or any rights to use the DATA for any products or processes for profit-making or commercial purposes.

5. The ONHI database does not represent an exhaustive or comprehensive inventory for rare species or federally listed Threatened or Endangered species. ONHI cannot guarantee the continued presence nor is the absence of a species that the ONHI database indicates in or near a given area. Therefore, ONHI strongly urges data users to verify, through field surveys by knowledgeable biologists, the presence or absence of sensitive species in an area. ONHI makes no warranties as to the completeness and accuracy of the data presented. DATA are regularly added and/or edited in the ONHI database. DATA users are advised to procure DATA updates at regular intervals, between six months to one year, depending upon the project. It is ONHI policy that ONHI staff and contractors do not cross or survey privately owned lands without the express permission from landowners. However, ONHI cannot guarantee that information provided to ONHI by third parties has been obtained following the same policy.
6. This AGREEMENT is granted by ONHI to RECIPIENT on a non-exclusive basis. This AGREEMENT does not obligate ONHI to provide any services whatsoever to RECIPIENT other than stated in provisions of this AGREEMENT. ONHI staff may make itself available to the RECIPIENT on a limited basis, and at ONHI's sole discretion, for advisement on the technical aspects of DATA.
7. RECIPIENT agrees that DATA shall not be commercialized or in any manner provided in any commercial products. RECIPIENT further agrees RECIPIENT shall not redistribute, transfer or sublicense DATA. Such actions are prohibited without written consent by the ONHI. Individuals or entities outside of the RECIPIENT organization that desire DATA shall be directed to the ONHI.
8. RECIPIENT acknowledges and agrees that RECIPIENT will obtain the prior written consent of UNIVERSITY for any use of the UNIVERSITY and/or ONHI's name in any publicity, advertising or news release. Should UNIVERSITY reject the use of UNIVERSITY and/or ONHI's name in any publicity, advertising or news release, UNIVERSITY agrees to discuss the reasons for its rejection, and every effort shall be made to develop an appropriate disclosure or announcement within the bounds of accepted academic practices and UNIVERSITY's policies.
9. The following citation format is suggested for the ONHI database:

Oklahoma Natural Heritage Inventory. (YEAR ACCESSED). Oklahoma Biodiversity Information System. Norman, OK. USA. Available URL HERE. (Accessed: DATE HERE).
10. Because of the sensitive nature of ONHI DATA, data indicating precise location(s) of "sensitive species" (defined herein below) will not be released, in any digital or hardcopy format, to the public or to other third parties, without express permission, in written form, of ONHI. "Sensitive species" shall mean any species recognized by Federal and/or State of Oklahoma government, or any agency or subdivision thereof, as being threatened, endangered, and/or a species of greatest conservation need pursuant to the Endangered Species Act of 1973 codified in 16 U.S.C. ch. 35 § 1531 et seq., and/or the current Oklahoma's Comprehensive Wildlife Conservation Strategy approved by the U.S. Fish and Wildlife Service June 10, 2016, and incorporating all legislative and/or administrative amendments thereto. "Population" shall mean a group of organisms capable

of interbreeding and/or asexual reproduction that live in the same geographical place at the same time.

11. ONHI acknowledges and agrees RECIPIENT may use and disclose De-identified Data Sets (defined herein below) and certain aggregated DATA as set forth herein this AGREEMENT as necessary to achieve Research and educational purposes. DATA may be generally aggregated and summarized in reports, papers, and publications prepared by the RECIPIENT in accordance with the directives in this AGREEMENT. If such materials are prepared, ONHI must be acknowledged for contribution of DATA. Likewise, if ONHI GIS/graphical elements are used in the preparation of maps and other graphical portrayals, ONHI must be acknowledged as the source of those data/elements. Under no circumstances should site-specific location information be provided to third parties, published, or otherwise distributed in any way without written permission from ONHI.

12. The Parties acknowledge and agree that the DATA submitted by ONHI to RECIPIENT may contain individually identifiable sensitive species population information. RECIPIENT agrees to remove individually identifiable sensitive species population information from DATA to create “De-identified Data Sets” that meet the de-identification standards as set forth in Section 12 of this AGREEMENT prior to transmitting or otherwise making such DATA available to any third party. The Parties acknowledge and agree that DATA provided or otherwise made available to any third party shall not include individually identifiable sensitive species population information. Individually identifiable sensitive species population information submitted by ONHI to RECIPIENT may be used and disclosed by RECIPIENT solely to conduct DATA submission, auditing, validation and other activities required for participation in RESEARCH and educational endeavors as described in this AGREEMENT; and in connection with the collection and maintenance of the DATA and to create De-identified Data Sets.
 - a. For the purposes of DATA de-identification, Species information that does not identify an individual sensitive species population and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual sensitive species population is not individually identifiable sensitive species information.
 - b. RECIPIENT may determine that species information is not individually identifiable sensitive species population information only if:
 - i. The RECIPIENT does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual sensitive species population is a subject of the information; and
 1. A person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable; and
 2. Applying such principles and methods, determines that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to

identify an individual sensitive species population that is a subject of the information; and

- a. Documents the methods and results of the analysis that justify such determination; or
- b. The following identifiers of the individual sensitive species population are removed:
 - i. Site names; and
 - ii. All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes; and
 - iii. Geologic and/or landscape information, including but not limited to, reasonably identifiable topography, relative location to reasonably identifiable landmarks, and reasonably identifiable landscape traits that could be used to identify the individual sensitive species population(s); and
 - iv. Site photographic images and any comparable images that could be used to identify the individual sensitive species population.
- c. A RECIPIENT may assign a code or other means of record identification to allow information de-identified under this section to be re-identified by the RECIPIENT, provided that:
 - i. The code or other means of record identification is not derived from or related to information about the individual sensitive species population and is not otherwise capable of being translated so as to identify the individual sensitive species population; and
 - ii. The RECIPIENT does not use or disclose the code or other means of record identification for any other purpose and does not disclose the mechanism for re-identification.
- d. In the event that it is determined that DATA has not been de-identified in accordance with the standards set forth in this AGREEMENT, RECIPIENT shall immediately notify ONHI and, if feasible, either return or destroy DATA, at ONHI's option. RECIPIENT will not keep any copies of such DATA.

13. Neither Party is authorized or empowered to act as agent for the other for any purpose and shall not enter or purport to enter into any contract, warranty, or representation as to any matter on behalf of the other Party. Neither Party shall be bound by the acts or conduct of the other Party.
14. The Parties do not anticipate the need to disclose to each other technical data that are subject to control under the Commerce Control List of the Export Administration Regulations, 15 CFR 730-774, or the U.S. Munitions List of the International Traffic in Arms Regulations, 22 CFR 120-130, (collectively, "export controls"). In the event a Party believes it is necessary to disclose technical data that are regulated under export controls, the Disclosing Party will clearly mark such data as "Export Controlled" and provide sufficient notice and information to allow Receiving Party to comply with any applicable export controls. The Parties shall not export, disclose, or transfer any such data directly or indirectly without complying with these and any other applicable laws and regulations.
15. As applicable, the provisions of Executive Order (EO) 11246, as amended by EO 11375 and EO 11141 and as supplemented in Department of Labor regulations (41 C.F.R. Part 60 *et seq.*), are incorporated into this AGREEMENT and must be included in any subcontracts awarded involving this AGREEMENT. The parties represent that all services are provided without discrimination on the basis of race, color, religion, national origin, sex, disability, political beliefs, or veteran's status; they do not maintain nor provide for their employees any segregated facilities, nor will the parties permit their employees to perform their services at any location where segregated facilities are maintained. In addition, the parties agree to comply with the applicable provisions of Section 504 of the Rehabilitation Act and the Vietnam Era Veteran's Assistance Act of 1974, 38 U.S.C. §4212.
16. UNIVERSITY and ONHI will not be held liable for any harm that may come to a sensitive species based on misuse, intentional or otherwise, of ONHI DATA by the RECIPIENT. Each party agrees to be responsible for the negligent or intentional acts or omissions of its respective employees, agents, representatives, divisions, and affiliates that arise out of or are related to the performance of the obligations under this AGREEMENT, with UNIVERSITY's liability governed by the terms of the Oklahoma Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*
17. This AGREEMENT may be terminated at any time with thirty (30) days written notice by either Party. Alternatively, if either Party commits any material breach of or default in any of the terms or conditions of this AGREEMENT and fails to remedy such breach or default within thirty (30) days after receipt of written notice thereof from the other Party hereto, the Party giving notice may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this AGREEMENT by sending written notice of termination to the other Party, and such termination shall be effective as of the date of the receipt of such notice. The rights and duties of Sections 2, 3, 7, 8, 10, 11, and 12 of this AGREEMENT shall survive termination or expiration of this AGREEMENT.
18. This AGREEMENT shall be binding on the heirs, successors, and assigns of the Parties hereto. This AGREEMENT contains the entire AGREEMENT of the Parties with respect to the subject matter hereof, all prior understandings relating thereto being merged herein. This AGREEMENT cannot be changed or terminated orally, but only in writing signed by both Parties.

19. If any court of competent jurisdiction holds any part of this Agreement to be invalid or unenforceable, such holding shall in no way affect the validity of the remainder of this AGREEMENT.

20. All legal notices, including notices of service of process, must be sent to the following address:

**The Executive Secretary of the Board of the Regents of the University of Oklahoma
600 Parrington Oval, Room 119
Norman, Oklahoma 73019**

A copy of all legal notices and all other notices may be directed to the following address:

**Office of Technology Development
301 David L. Boren Blvd., Suite 3120
Norman, Oklahoma 73019-5719**

21. The validity and effect of this AGREEMENT shall be governed, construed, and enforced in accordance with the laws of the State of Oklahoma, without regard or giving force and effect to the principles of conflicts of laws of Oklahoma. Any action to interpret or enforce this agreement shall be brought in a court of competent jurisdiction in the State of Oklahoma. RECIPIENT agrees that disclosure of the individually identifiable sensitive species population information will cause UNIVERSITY irreparable damage and injury and shall entitle the UNIVERSITY to obtain immediate injunctive relief and damages without the need to post bond.

AGREED to on the dates set forth below.

The Board of Regents of the
University of Oklahoma on behalf of the
OKLAHOMA NATURAL
HERITAGE INVENTORY

RECIPIENT REPRESENTATIVE

Name:

Title:

Date: _____

Name:

Title:

Department:

Date: _____

READ AND UNDERSTOOD:

RECIPIENT Scientist

Date: _____

APPENDIX A

DATA:

RESEARCH: