

**COUNCIL ON DAIRY CATTLE BREEDING
RESEARCH RECIPIENT AGREEMENT FOR SOFTWARE AND SERVICES**

This Research Recipient Agreement for Software and Services (this “**Agreement**”), dated [DATE], is between the Council on Dairy Cattle Breeding, an Ohio non-profit corporation (“**CDCB**”), and [RESEARCH RECIPIENT], a [STATE AND TYPE OF ORGANIZATION] (“**Research Recipient**”).

This Agreement permits Research Recipient to access and use, subject to the terms of this Agreement: (a) CDCB’s proprietary software for deriving genetic and genomic evaluations and predictions and summary statistics and accompanying documentation (“**Software**”) via CDCB’s website or as otherwise authorized by CDCB in its sole discretion and (b) services relating to Research Recipient’s access and use of the Software, including the provision of a website, content therein and software relating thereto (“**Services**”). This Agreement does not limit Research Recipient’s right to use software provided by the United States Department of Agriculture Animal Genomics and Improvement Laboratory.

1. **LICENSE GRANT.** Subject to the terms of this Agreement, CDCB grants Research Recipient a nonexclusive, nontransferable license to access and use the Software and Services without the right to sublicense such rights, provided Research Recipient unconditionally agrees to access and use the Software and Services in accordance with this Agreement (“**License**”). Under the License, Research Recipient may print out, or otherwise make, printed or electronic copies of the reports, numeric results, genetic and genomic evaluations and predictions, summary statistics, data, scores, results, and other information or materials generated or derived from Research Recipient’s access or use of the Software and Services (“**Results**”). Any updates, modifications, enhancements or new versions of the Software and Services provided or made available to Research Recipient by CDCB, in accordance with Section 14 of this Agreement, shall be considered Software and Services subject to this Agreement. CDCB may at any time and for any reason elect to modify, discontinue, delete or restrict any aspect or feature of the Software and Services without notice to Research Recipient or any liability to CDCB or any CDCB Party (as defined in Section 2).

2. **DISCLAIMERS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT:** (A) THE SOFTWARE, SERVICES, AND RESULTS ARE PROVIDED “AS-IS” AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CDCB AND ITS MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, SUBCONTRACTORS AND AGENTS (“**CDCB PARTIES**”) DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, SERVICES, AND RESULTS OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND ACCURACY; (B) NEITHER CDCB NOR ANY CDCB PARTY WARRANTS THAT THE SOFTWARE, SERVICES, OR RESULTS ARE OR WILL BE ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS; (C)

RESEARCH RECIPIENT ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF CDCB'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (D) EACH OF CDCB AND THE CDCB PARTIES DISCLAIM AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE RESULTS OR OTHER INFORMATION OBTAINED, GENERATED OR OTHERWISE RECEIVED BY RESEARCH RECIPIENT FROM ACCESSING AND/OR USING THE SOFTWARE AND/OR SERVICES OR OTHERWISE RESULTING FROM THIS AGREEMENT, AND (E) USE OF THE SOFTWARE, SERVICES AND RESULTS IS ENTIRELY AT RESEARCH RECIPIENT'S OWN RISK AND CDCB AND EACH OF THE CDCB PARTIES SHALL HAVE NO LIABILITY OR RESPONSIBILITY THEREFOR.

3. LIMITATIONS ON LIABILITY. THE TOTAL LIABILITY OF CDCB AND THE CDCB PARTIES IN THE AGGREGATE TO RESEARCH RECIPIENT OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, SERVICES, AND RESULTS WILL BE LIMITED TO THE PAYMENTS RECEIVED FROM RESEARCH RECIPIENT WITH RESPECT TO THE SPECIFIC USE OF THE SOFTWARE, SERVICES, OR RESULTS THAT IS ALLEGED TO HAVE RESULTED IN LIABILITY TO RESEARCH RECIPIENT. CDCB AND THE CDCB PARTIES SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY TYPE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, SERVICES, OR RESULTS, WHETHER OR NOT CDCB AND ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER BASED UPON BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE). CDCB AND THE CDCB PARTIES SHALL HAVE NO LIABILITY FOR ANY DAMAGES RESULTING FROM ALTERATION, DESTRUCTION OR LOSS OF ANY DATA OR INFORMATION INPUT, GENERATED OR OBTAINED FROM ACCESS OR USE OF THE SOFTWARE AND SERVICES, INCLUDING ANY RESULTS, WHETHER OR NOT CDCB AND THE CDCB PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF DAMAGES AND LIABILITIES SET FORTH IN THIS AGREEMENT ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN CDCB AND RESEARCH RECIPIENT, AND THE PRICING FOR THE LICENSE REFLECTS SUCH LIMITATIONS. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR DAMAGES (SUCH AS CONSEQUENTIAL OR INCIDENTAL DAMAGES), OR THE EXCLUSION OF IMPLIED WARRANTIES AND LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, THE ABOVE LIMITATIONS MAY NOT APPLY TO RESEARCH RECIPIENT.
4. REGISTERED AND LICENSED RESEARCH RECIPIENTS. In order for Research Recipient to access and use the Software and Services, Research Recipient must register

with CDCB, provide CDCB with at least one email address, pay all applicable fees associated with use of the Software, Services, and Results (“**Fee**”) set forth on **Exhibit A**, and obtain a unique password for accessing the Software, Services, and Results (“**Password**”). Except as set forth on **Exhibit A**, the Fee shall be determined by CDCB in accordance with its then current Fee Schedule for Genomic Evaluation. CDCB and Research Recipient acknowledge and agree that CDCB may obtain email addresses from licensed representatives of Research Recipient authorized by Research Recipient upon their accessing and using the Software, Services, and Results (each a “Licensed Representative”). Research Recipient is responsible and wholly liable for all acts or omissions committed under Research Recipient’s Password and any and all passwords issued by Research Recipient (or by CDCB on Research Recipient’s behalf) to Licensed Representatives. Research Recipients may also access and use the Software, Services, and Results by accessing the CDCB website, which access and use is also governed by this Agreement. Any and all personal information obtained from Research Recipient or a Licensed Representative by CDCB relating to this Agreement and the Software, Services, and Results is subject to CDCB’s privacy policy, and Research Recipient agrees to the terms and conditions of such privacy policy.

5. **RESEARCH RECIPIENT REPRESENTATIONS AND WARRANTIES.** Research Recipient represents and warrants to CDCB that this Agreement shall be binding on Research Recipient, and, unless Research Recipient is an individual, Research Recipient represents and warrants that this Agreement was executed by an authorized signatory of Research Recipient with the authority to enter into binding agreements on behalf of Research Recipient.
6. **PROPRIETARY RIGHTS.** The Software, Services, and Results are protected by applicable United States and foreign laws and treaties, including copyright laws and treaty provisions. CDCB or its licensors own all rights, title and interests in the Software Services, and Results, including trade secrets, patents, copyrights and database rights, and the Software, Services, and Results shall remain the sole and exclusive property of CDCB or its licensors. Except as provided in Section 1 of this Agreement, or by other agreement with CDCB, Research Recipient has no, and is not granted, any right, title, interest or license in the Software, Services, or Results. All patents, patent disclosures and inventions (whether patentable or not) resulting from Research Recipient’s access or use of the Software, Services, or Results shall be jointly owned by CDCB and Research Recipient.
7. **RESTRICTIONS ON USE.**
 - a. **Software, Services, and Results.** Except as otherwise expressly provided in this Agreement, Research Recipient agrees to: (a) only use the Software, Services, and Results in the manner, and for the purposes, expressly specified in this Agreement; (b) not decompile, disassemble, analyze or otherwise examine the Software, Services, or Results for the purpose of reverse engineering (except to the extent this restriction is expressly prohibited by applicable law); (c) not delete or in any manner alter any notices, disclaimers or other legends contained in the

Software or Services or appearing on any Results (“**Notices**”); (d) reproduce and display all Notices on copies of Results Research Recipient makes, in accordance with this Agreement; (e) not provide service bureau facilities or commercial time-sharing services to any third party or supporting operations for any third party through the access or use of the Software, Services, or Results; (f) not attempt to access any systems, programs or data of CDCB or any CDCB Party that are not licensed under this Agreement, or otherwise made available by CDCB or a CDCB Party for public use; (g) not copy, reproduce, republish, upload, post, transmit, or distribute the Software, Services, Results, or any portion thereof, or facilitate or permit a third party to do so; (h) not use any device or software to interfere or attempt to interfere with the proper operation of the Software, Services, or Results; (i) not ship, transmit, transfer, or export the Software, Services, or Results into any country or use the Software, Services, or Results in any manner prohibited by United States export laws, restrictions or regulations; and (j) abide by all applicable local, state, national and international laws and regulations.

- b. Results. Research Recipient agrees and understands that any Results may only be used by Research Recipient for the noncommercial research purposes set forth on **Exhibit A**, and may not be used by, disclosed to, represented to, or otherwise communicated to any third party for any other purpose except as contemplated by CDCB’s then current Fee Schedule for Genomic Evaluation and then only if all applicable fees are paid by Research Recipient. Research Recipient may not represent itself as accredited, certified or recognized, as applicable by CDCB or any CDCB Party, based on any Results.
 - c. Research. Notwithstanding the foregoing, Research Recipient shall not publish any Results or other findings derived from access and use of the Software, Services, or Results without CDCB’s prior, written approval of any applicable research or scholarship, which approval may be withheld for any reason. Any such publication must acknowledge the contribution of CDCB to such research or scholarship.
8. **RESEARCH RECIPIENT ACCESS DATA**. Research Recipient agrees that CDCB and the CDCB Parties are permitted to access any information or data Research Recipient inputs or provides while accessing or using the Software, Services, or Results (collectively, “**Research Recipient Access Data**”), for the sole purpose of ensuring proper access and use of the Software, Services, and Results by Research Recipient in accordance with this Agreement and to maintain and troubleshoot Software, Services, and Results. Following Research Recipient’s submission of Research Recipient Access Data to CDCB, CDCB has access to such Research Recipient Access Data in accordance with this Agreement. Subject to the terms and conditions of this Agreement, CDCB may store and otherwise maintain Research Recipient Access Data in its discretion, and CDCB shall follow the same archival procedures for Research Recipient Access Data as CDCB employs for its own data, as modified from time to time in CDCB’s discretion. In the event of any loss or damage to Research Recipient Access Data, Research Recipient’s sole and exclusive remedy shall be for CDCB to use commercially reasonable efforts to

replace or restore the lost or damaged Research Recipient Access Data from the latest backup, if any, of such Research Recipient Access Data which CDCB has maintained in accordance with its standard archival procedures.

9. **CONFIDENTIALITY.** Research Recipient acknowledges that the Software, Services, and Results constitute and contain confidential, proprietary and copyrighted information and subject matter of CDCB and the CDCB Parties (“**Confidential Information**”). Except as expressly permitted under this Agreement, Research Recipient agrees to not, directly or indirectly, without CDCB’s prior written consent: (a) use the Confidential Information for any purpose; (b) divulge, discuss, provide, transmit, copy, make available or otherwise communicate the Confidential Information to a third party; or (c) permit any third party to use such Confidential Information. “Confidential Information” shall not include information that, as shown by competent evidence: (w) is in or enters the public domain without breach of this Agreement; (x) was possessed by Research Recipient prior to first receiving it from CDCB or a CDCB Party; (y) was developed by Research Recipient independently and without use of or reference to the Confidential Information; or (z) was received by Research Recipient from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Notwithstanding the foregoing, Research Recipient shall be permitted to disclose Confidential Information if such disclosure is required by law, provided Research Recipient shall give prompt notice of such requirement to CDCB so CDCB will have the opportunity to seek a protective order or other appropriate remedy and cooperate in CDCB’s attempts to obtain confidential treatment of such Confidential Information.
10. **TRADENAMES AND TRADEMARKS.** This Agreement does not grant to any party a license to use any trademark, trade name, or logo of the other party, and each party recognizes that the trademarks, trade names, and logos of the other party represent valuable assets of that party and that substantial recognition and goodwill are associated with such trademarks, trade names, and logos. Each party hereby agrees that it shall not use or permit any third party to use, at any time, the other party’s trademarks, trade names, or logos.
11. **INJUNCTIVE RELIEF.** Each party acknowledges that a violation of Sections 7, 9 or 10 of this Agreement would cause irreparable harm to the other party for which no adequate remedy at law exists and each party therefore agrees that, in addition to any other remedies available, the aggrieved party shall be entitled to seek injunctive relief to enforce the terms of Sections 7, 9 or 10. The prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys’ fees incurred because of any such legal action.
12. **HARDWARE AND SERVICE REQUIREMENTS.** Research Recipient is solely responsible for acquiring, servicing, maintaining, and updating all equipment, computers, software and communications services (such as long distance phone charges) not owned or operated by or on behalf of CDCB, that allow Research Recipient to access and use the Software, Services, and Results and for all expenses relating thereto (plus any applicable taxes). Research Recipient agrees to access and use the Software, Services, and Results in

accordance with any and all operating instructions or procedures that may be issued by CDCB, and amended by CDCB from time to time. CDCB and the CDCB Parties do not make any commitments with respect to use or performance of the Software, Services, or Results with any browsers.

13. **PERFORMANCE.** Research Recipient understands and agrees that the operation and availability of the systems used for accessing and interacting with the Software, Services, and Results, including, the public telephone, computer networks and the Internet or to transmit information, whether or not supplied by Research Recipient or CDCB, can be unpredictable and may, from time to time, interfere with or prevent the access to, or the use or operation of, the Software, Services, and Results. CDCB and the CDCB Parties are not in any way responsible for any such interference with or prevention of Research Recipient's access or use of the Software, Services, or Results.
14. **TRAINING AND SUPPORT.** Unless Research Recipient and CDCB enter into a separate agreement, CDCB will not provide any training or on-site support to Research Recipient relating to the Software, Services, or Results. CDCB will provide Research Recipient with updates and enhancements for the Software, Services, and Results to the extent that CDCB generally makes such updates and enhancements available to Research Recipients without a separate charge.
15. **INDEMNIFICATION.** Research Recipient agrees to defend, indemnify and hold CDCB and each CDCB Party, as well as the members, directors, officers, agents, and employees of CDCB and each CDCB Party, harmless from any losses, liabilities, damages, actions, claims or expenses (including reasonable attorneys' fees and court costs) arising or resulting from Research Recipient's breach of any term of this Agreement or caused by acts or omissions performed by Research Recipient or under Research Recipient's Password or any password issued to a Licensed Representative.
16. **U.S. GOVERNMENT RESEARCH RECIPIENTS.** If Research Recipient uses the Software, Services, or Results on behalf of a U.S. Government agency, this Agreement constitutes the entire agreement between the Government agency and CDCB with respect to the subject matter of this Agreement and is binding on government Research Recipients in accordance with the policy stated at Federal Acquisition Regulation (FAR) 48 CFR §§ 12.211 and 12.212 (for non-defense agencies) or Defense FAR Supplement (DFARS) 48 CFR §§ 227.7201 and 227.7202 (for defense agencies). Pursuant to Federal Acquisition Regulation (FAR) 48 C.F.R. § 12.212 (for non-defense agencies) and Defense FAR Supplement (DFARS) 48 C.F.R. § 227.7202-1 (for defense agencies), the Government's rights in the Software, Services, and Results with respect to the subject matter of this Agreement are limited to those rights granted in this Agreement.
17. **TERMINATION.** Research Recipient's right to use the Software, Services, and Results shall be effective from the date of this Agreement, and shall terminate when Research Recipient ceases all access and use of the Software, Services, and Results and provides CDCB with notice of such termination or as otherwise provided in this Agreement. CDCB may terminate this Agreement upon 20 days' written notice for any reason or

immediately if Research Recipient breaches a material term of this Agreement and fails to remedy that breach within two business days after notice from CDCB. Upon termination of this Agreement, all rights, including the License granted to Research Recipient, under this Agreement will cease and Research Recipient's access to the Software, Services, and Results may be disabled. Upon termination of this Agreement, Sections 2, 3, 5, 6, 7, 9, 10, 11, 15, 16, 17, 18, and 19 of the Agreement, along with all payment obligations under this Agreement, CDCB's then current Fee Schedule for Genomic Evaluation, or otherwise, shall survive such termination. Upon termination of this Agreement for any reason, Research Recipient shall: (a) return to CDCB all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on Results; (b) permanently erase all Results from Research Recipient's computer systems; and (c) certify in writing to CDCB that Research Recipient has complied with the requirements of this Section.

18. NOTICES. All questions, comments or notices concerning this Agreement shall be submitted to the parties via email or mail to:

Council on Dairy Cattle Breeding
 Attention: Chief Executive Officer
 4201 Northview Dr., Suite 302
 Bowie, MD 20716
 Email: _____

Research Recipient: _____
 Attention: _____

 Email: _____

19. MISCELLANEOUS.

- a. Modifications. This Agreement, CDCB's then current Fee Schedule for Genomic Evaluation, and Research Recipient's payment of the Fee is the complete and exclusive statement of the agreement between Research Recipient and CDCB regarding the subject matter of this Agreement, and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this Agreement. This Agreement may not be modified by Research Recipient except upon mutual agreement by the parties in writing signed by an authorized officer of CDCB. CDCB reserves the right, at any time, to change the terms of this Agreement, including its privacy policy, by providing Research Recipient with notice of such changes. Any use of the Software and Services by Research Recipient after CDCB's publication or email of any such changes shall constitute Research Recipient's acceptance of the Agreement as modified.
- b. Force Majeure. CDCB shall not be responsible for any failure to perform due to causes beyond its reasonable control, including, acts of God, acts of terrorism, war, riot, embargoes, acts of civil or military authorities, national disasters, strikes and the like.
- c. Governing Law and General Provisions. This Agreement will be governed by the laws of the State of Ohio, excluding the application of its conflicts of law rules.

This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the remainder of the Agreement, which shall remain valid and enforceable according to its terms. The words “and” as well as “or” shall be interchangeable to provide the broadest interpretation, and the word “including” shall mean “including without limitation” and “including but not limited to” to provide the broadest interpretation. The headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement. CDCB’s failure to exercise or enforce any right or power under this Agreement shall not constitute a waiver of such right or power.

- d. No Third-Party Beneficiaries. Except as set forth in Section 15, nothing contained in this Agreement is intended to confer upon any person other than the parties hereto and their respective successors and permitted assigns, any benefit, right or remedy under or by reason of this Agreement.

[Signature Page Follows.]

The parties have executed this Research Recipient Agreement for Software and Services as of the date first set forth above.

[RESEARCH RECIPIENT]

Council on Dairy Cattle Breeding:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A

Fee:

Research Recipient is not required to pay any Fee to access and use the Software, Services, and Results.

Noncommercial Research Purposes:

[DESCRIBE]