

# Data Transfer Agreement



## Agreement Details

<b>University</b>	<b>The University of Newcastle</b> ABN 15 736 576 735 of University Drive, Callaghan New South Wales 2308, Australia
<b>Recipient Organisation</b>	ABN (as applicable) of
<b>Key Researcher</b>	
<b>Commencement Date</b>	
<b>Completion Date</b>	
<b>Data</b>	<p>The dataset includes sensor data and annotations for 202 instances of an individual consuming a meal ("recordings") across two scenarios. In the first scenario ("OREBA-DIS"), there are 100 unique participants. In the second scenario ("OREBA-SHA"), there are 102 unique participants, 22 of which also participated in the first scenario. In detail, for each recording, the dataset includes the following files which are synchronized in time:</p> <ul style="list-style-type: none"><li>• Video depicting the participant in a frontal view (no audio). Videos are encoded using the H.264 standard and saved in mp4 container. Two resolutions are available: 140x140px and 250x250px.</li><li>• Sensor data from wrist-worn IMU with accelerometer and gyroscope at 64 Hz for each hand. Two versions of the sensor data are included as csv: (i) Raw sensor data without pre-processing, and (ii) pre-processed sensor data (i.e. gravity-effect removed and standardized).</li><li>• Annotations with start timestamp, end timestamp, and intake-related labels for every relevant wrist movement.</li></ul> <p>In addition, for the sessions of up to four participants in the OREBA-SHA scenario, the dataset includes:</p> <ul style="list-style-type: none"><li>• Scale data for the shared dishes (two rices dishes, one wet dish, one vegetable dish) measured in grams at 1Hz.</li></ul>
<b>Purpose</b>	<p>The Data is to be used only for the study of eating behaviours. Please indicate from the options below how you intend to use the Data:</p> <p>Training and evaluation of new machine learning models for the detection of eating behaviours</p> <p>Benchmarking existing machine learning models for the detection of eating behaviours</p> <p>Creating and/or analyzing metrics of eating behaviors (e.g. eating pace and duration)</p> <p>Other. Please specify: _____</p>
<b>Location</b>	

<b>Fee</b>	Nil
<b>University address for notices</b>	The OREBA Team University Drive, Callaghan New South Wales 2308 Email: OREBA@newcastle.edu.au
<b>Recipient Organisation address for notices</b>	Telephone: Facsimile: Email:

# Execution

Executed as an Agreement

Executed by an authorised person of the **University of Newcastle** ABN 15 736 576 735 in the presence of:

.....  
Signature of authorised person

.....  
Signature of witness

.....  
Name of authorised person

.....  
Name of witness

Date: .....

Executed by an authorised person of the \_\_\_\_\_ ABN (as applicable) \_\_\_\_\_ in the presence of:

.....  
Signature of authorised person

.....  
Signature of witness

.....  
Name of authorised person

.....  
Name of witness

Date: .....

Read and acknowledged by \_\_\_\_\_ :

.....  
Signature of Key Researcher

.....  
Name of Key Researcher

Date: .....

## Background

- A. The Recipient Organisation has requested the supply of the Data for the Purpose.
- B. The University has agreed to supply the Recipient Organisation with Data on the terms set out in this Agreement.

## Operative Part

### 1. Provision of Data

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#### 1.1 Ownership of Data

The Recipient Organisation acknowledges and agrees that the Data:

- (a) have been developed or acquired by the University; and
- (b) are of considerable value to research and potential commercial applications.

#### 1.2 Use of Data

The Recipient Organisation agrees that it will not, without the prior written consent of the University:

- (a) sell, loan or otherwise provide or transfer any Data to any third party;
- (b) use the Data or Derivatives for any purpose other than the Purpose; or
- (c) use or store the Data or Derivatives in any place other than at the Location and under the Key Researcher's direct supervision,

and the Recipient Organisation agrees to promptly refer to the University any request for access to Data from a third party.

#### 1.3 Title

All rights, title and interest in the Data and Derivatives (including all Intellectual Property rights subsisting in them) remain with the University at all times.

#### 1.4 Compliance

- (a) The Recipient Organisation must ensure Data and Derivatives are stored, transported, used and disposed of in accordance with all relevant Laws, codes of practice, ethical principles and any reasonable direction of the University.
- (b) The Recipient Organisation must not use the Data or Derivatives in any research trials, or for diagnostic purposes, involving human subjects without the prior written consent of the University.

#### 1.5 Not exclusive

- (a) Any rights granted to the Recipient Organisation to use the Data under this Agreement are non-exclusive.
- (b) The University may make the Data available to third parties without consultation with, or consent from, the Recipient Organisation.

### 2. No warranty

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- (a) To the extent permitted by Law, all express and implied warranties and conditions relating to the Data are excluded or, where such an exclusion is prohibited by Law, liability under any such implied

conditions and warranties is limited to the extent permitted by Law.

- (b) The University gives no express warranty that:
  - (i) the use of the Data or Derivatives will not infringe the Intellectual Property or other rights of any third party;
  - (ii) the Data are fit for purpose; or
  - (iii) the Data are of a particular quality or possess particular characteristics.

### 3. Acknowledgement

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The Recipient Organisation acknowledges that:

- (a) the Data is experimental in nature and that the speculative nature of scientific research is such that it is unreasonable to expect the University to give any assurances as to the performance of the Data; and
- (b) the University's awareness of the Purpose of the project and the role of the Data does not constitute an endorsement of the project or advice on the project.

### 4. Provision of Information

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#### 4.1 Reports

- (a) The Recipient Organisation must keep and maintain accurate and reasonably detailed records in connection with use, storage, transport and disposal of the Data.
- (b) The Recipient Organisation agrees to provide the University with a report setting out such things as the Results of the research, Derivatives and Data IP produced, upon request from the University.

### 5. Intellectual Property

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#### 5.1 Ownership

- (a) All Data and IP subsisting in or in relation to them are the property of the University.
- (b) The University grants the Recipient Organisation a non-exclusive, non-transferable, fee-free licence to use the Data for the Purpose only.
- (c) All intellectual Property created by or on behalf of the Recipient Organisation as a result of using the Data other than in accordance with this Agreement will vest in and, by this Agreement, is assigned to, the University upon its creation.
- (d) The Recipient Organisation must:
  - (i) sign all documents and do all things necessary to perfect and record the University's ownership rights under this clause 5; and
  - (ii) not directly or indirectly engage in any conduct that might impair or prevent the protection of Data IP or challenge the University's ownership of it.

#### 5.2 Commercialisation

- (a) If the Recipient Organisation wishes to commercialise or have commercialised any Results or Data IP, or otherwise deal in the Data or Derivatives for any commercial purpose, it must

first enter into an appropriate licence agreement with the University.

- (b) The University agrees to negotiate in good faith a licence agreement on terms acceptable to all parties.
- (c) Neither party is under any obligation to enter into a licence agreement on any specific terms, or at all.

## **6. Confidential Information and Privacy**

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### **6.1 General obligations**

The Recipient Organisation must:

- (a) hold any Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of, the Confidential Information, except as permitted under this Agreement or with the prior written consent of the University;
- (b) limit access to the Key Researcher;
- (c) keep any Confidential Information secure and protected from any use, disclosure or access which is inconsistent with this Agreement;
- (d) ensure all Key Researcher with access to any Confidential Information agree and be bound to keep the Confidential Information confidential and not to use the Confidential Information other than for the Purpose; and
- (e) promptly notify the University if the Recipient Organisation suspects, or becomes aware of, any unauthorised use, storage, copying or disclosure of any Confidential Information.

### **6.2 Use of Confidential Information**

The Recipient Organisation must:

- (a) only use Confidential Information for the Purpose;
- (b) not perform any analysis, synthesis, reformation, decomposition, disassembly or reverse engineering of any Confidential Information without the written consent of the University; and
- (c) not make use of any Confidential Information to the commercial, financial or competitive disadvantage of the University.

### **6.3 Return of Confidential Information**

- (a) If requested by the University at any time, and upon the expiry or termination of this Agreement, the Recipient Organisation must immediately return to the University, or destroy, delete and erase as the University directs, all original documents and copies that are or contain Confidential Information or that reproduce, are based on, utilise or relate to Confidential Information.
- (b) The return, destruction, deletion or erasure of Confidential Information does not relieve the Recipient Organisation from its other obligations under this Agreement.

### **6.4 Privacy**

- (a) Each Party must comply with its obligations under all applicable laws in relation to the collection, storage, use and disclosure of any Personal Information or Health Information (as defined in any Applicable Privacy Laws) which it obtains during the conduct of the Project or to which it becomes privy as a result of this Agreement.

## **7. Publication**

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### **7.1 Consent to publication**

The Recipient Organisation will not use the name or logo of the University in any publication without the University's consent, which will not be unreasonably withheld.

### **7.2 Procedure for publication**

- (a) Any restriction on a publication (including a student thesis) will be limited to the restrictions reasonably necessary to protect the University's Confidential Information, Data IP and Derivatives.
- (b) The Recipient Organisation must acknowledge the contribution of the University in any publication.

## **8. Insurance**

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The Recipient Organisation warrants that it has, and will maintain at its cost, appropriate insurance coverage in respect of the loss of, or damage to, the Data, on terms consistent with prudent risk management.

## **9. Indemnities**

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### **9.1 General indemnity**

The Recipient Organisation indemnifies, and agrees to keep indemnified, the University against any Loss suffered or incurred by the University arising out of the Recipient Organisation's use, handling and disposal of the Data and Derivatives or a breach of this Agreement by the Recipient Organisation.

### **9.2 Injury or damage**

The Recipient Organisation indemnifies, and agrees to keep indemnified, the University against any Claim which may be made against the University by any person, in respect of:

- (a) injury or damage to any property; and
- (b) personal injury to, or death of, any person,

that is caused by or contributed to by an act or omission of the Recipient Organisation.

### **9.3 Contributory negligence**

The Recipient Organisation's liability to indemnify the University under clause **Error! Reference source not found.** will be reduced proportionately to the extent that any negligent act or omission of the University contributed to the Loss.

### **9.4 Release**

The Recipient Organisation releases the University, and the officers and employees of the University, from any liability, Loss or damage incurred or suffered by:

- (a) the Recipient Organisation; or
- (b) an employee, sub-contractor, officer, customer, supplier or agent of the Recipient Organisation,

arising out of any act or omission of the Recipient Organisation in connection with this Agreement.

### **9.5 Benefit of indemnity**

The University holds the benefit of this clause 9 on its own behalf and on behalf of University Personnel.

## 10. Termination

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### 10.1 Termination on notice

Either party may terminate this Agreement at any time by giving the other party 30 days' written notice of termination.

### 10.2 Immediate termination by the University

The University may immediately terminate this Agreement by giving written notice to the Recipient Organisation if:

- (a) the Recipient Organisation breaches a material term of this Agreement, which is not capable of remedy;
- (b) the Recipient Organisation commits a breach of any of the provisions of this Agreement which is capable of being remedied to the University's satisfaction, but which is not remedied within 14 days after written notice of that breach has been given to the Recipient Organisation; or
- (c) the Recipient Organisation suffers an Insolvency Event.

### 10.3 Immediate termination by the Recipient Organisation

The Recipient Organisation may terminate this Agreement immediately by giving written notice to the University if:

- (a) the University suffers an Insolvency Event; or
- (b) the University commits a breach of any of the provisions of this Agreement, and such breach is not remedied within 14 days after written notice of that breach has been given to the University.

### 10.4 Reservation of rights and remedies

Termination of this Agreement for any reason will not prejudice any rights or remedies already accrued to the University under, or in respect of, any breach of this Agreement.

### 10.5 Survival

Clauses 5, 6, 7, 8 and 9 survive expiry or termination of this Agreement, survive expiry or termination of this Agreement and are enforceable at any time at law or in equity.

## 11. General

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### 11.1 Notices

Any notice under this Agreement must be in writing, and may be delivered to a party at the addresses and numbers set out in the Details of this Agreement.

### 11.2 Further assurances

Each party must promptly do all further acts required by Law or reasonably requested by the other party to give effect to this Agreement or any obligation under it.

### 11.3 Assignment

- (a) The Recipient Organisation must not, without the prior written consent of the University and in accordance with this Agreement, assign, novate, subcontract or delegate its responsibility to provide the Services.
- (b) Neither party may, without the other party's consent, assign or novate this Agreement.

### 11.4 Waiver

- (a) Waiver of any right arising from a breach of this Agreement must be in writing and executed by the party granting the waiver.
- (b) A failure to exercise, a delay in exercising or a partial exercise of a right created under or arising from a breach of this Agreement does not result in a waiver of that right.

### 11.5 Relationship between the parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

### 11.6 Severability

- (a) A provision of, or the application of a provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction, or the remaining provisions in that or any other jurisdiction.
- (b) Where a clause in this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

### 11.7 Variations

Any variation to this Agreement must be in writing signed by, or on behalf of, both parties.

### 11.8 Entire agreement

This Agreement replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

### 11.9 Governing law and jurisdiction

This Agreement is governed by and construed in accordance with the law of New South Wales, and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

### 11.10 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this, and all together constitute one agreement.

### 11.11 Government Information (Public Access) Act 2009 (NSW)

The Recipient Organisation acknowledges and agrees that the University, if required to do so under the *Government Information (Public Access) Act 2009* or otherwise, will publish details of this Agreement.

## 12. Definitions and Interpretation

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### 12.1 Definitions

**Claim** means a claim, demand, action, or proceeding.

**Confidential Information** means information of the University, including:

- (a) trade secrets;
- (b) Intellectual Property;
- (c) business and financial information, including systems of work, procedures, manuals and training material, reports generated in performance of the Services, products, service costs, prices, profits

and sales, new business ideas, business strategies, product and service plans, marketing plans and studies, forecasts, computer programs, databases, computer codes and software ideas, technologies, concepts and designs, research projects and all information connected with research and development, reporting methods and formats, format and content of agreements, business requirements and financial information; and

- (d) any information that is marked, or the Recipient Organisation is told is, confidential.

**Data IP** means all Intellectual Property created, conceived, developed or reduced to practice by or on behalf of the Recipient Organisation using or relating to the Data, including all Intellectual Property in or relating to Derivatives.

**Derivatives** means anything derived by Recipient Organisation from or using the Data, including:

- (a) structural or functional analogues and homologues and purified or fractionated subsets of the Data; and  
(b) any improvements or modifications to the Data

**Intellectual Property** means all present and future rights to intellectual property including any inventions and improvements, trademarks (whether registered or common law trade marks), designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data, or formula.

**Insolvency Event** means any of the following:

- (a) if a party comes under a form of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth) or equivalent provisions in any Law, or has an order made against it for the purpose of placing the party under external administration;
- (b) if a party is unable to pay all its debts as and when they become payable or the party fails to comply with a statutory demand within the meaning of sections 459E and 459F of the *Corporations Act 2001* (Cth);
- (c) proceedings are initiated to obtain an order for winding a party up, or any shareholder, member or director convenes a meeting for the purpose of considering or passing any resolution for winding the party up;
- (d) if a party is a local government organisation, the relevant government takes action to cease the party's operations, or to amalgamate them with the operations of another local government organisation;
- (e) a party becomes bankrupt or enters into a scheme of arrangement with creditors;
- (f) a receiver, liquidator or administrator is appointed for a party;
- (g) an application is made, or proceedings are commenced, with a view to obtaining cancellation of any registration of a party or appointment of an inspector or other officer to investigate any of a party's affairs pursuant to any law; or

- (h) anything analogous to, or of a similar effect to, anything described above occurs in respect of a party.

**Law** means all applicable statutes, regulations, by-laws, ordinances or subordinate legislation in force from time to time anywhere in Australia, whether made by the Commonwealth, a State, a Territory or a local government and, where the context permits, includes the common law and equity.

**Loss** means claims, actions, expenses, losses, liabilities, damages and costs (including legal costs) and indirect losses and damages including those arising from third party claims.

**Personnel** means any employee, officer, agent, contractor, sub-contractor, student or volunteer of the University.

**Privacy Laws** mean Commonwealth and/or State and/or Territory legislation, principles, codes and guidelines in relation to the collection, use, storage and security or disclosure of any Personal Information and/or Health Information (as defined in any applicable Privacy Laws)

**Publication** means any proposed manuscript, abstract, paper, journal article, student thesis, or content of any oral, poster or other presentation.

**Recipient Organisation** means, jointly and severally, the Key Researcher and Recipient Organisation.

**Results** means all outcomes of Recipient Organisation's use of the Data, including all information, data, Derivatives and tangible objects arising from Recipient Organisation's use of the Data.

## 16.1 Interpretation

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) The word 'includes' in any form is not a word of limitation.
- (d) Words of any gender include all genders.
- (e) Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.
- (f) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- (g) A reference to a clause, party, schedule or annexure is a reference to a clause, party, schedule or annexure of, or to, this Agreement.
- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's employees, subcontractors, successors and permitted assignees.

- (k) A promise on the part of 2 or more persons binds them jointly and severally.
- (l) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision.
- (m) A reference to a body, other than a party to this Agreement, whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.