



**DATA USE AGREEMENT
ORSO # 139452-001**

I. PARTIES

- 1.1 THIS AGREEMENT is made and entered into by and between Washington State University (WSU), an institution of higher education and an agency of the state of Washington, and Meridian Police Department (MPD), a municipal police department located in the state of Idaho. In this Agreement, the above entities are jointly referred to as PARTIES.

II. PURPOSE

- 2.1 This agreement provides the terms and conditions for a project which is of mutual interest and benefit to WSU and MPD.
- 2.2 The performance of such project is consistent, compatible and beneficial to the academic role and mission of WSU as an institution of higher education.

III. DEFINITIONS

- 3.1 "Project Director(s)" shall be David A. Makin.
- 3.2 "MPD Liaison" shall be Lieutenant Brian Caldwell, an MPD employee designated by MPD to be the primary contact with the Project Director.
- 3.3 "SCOPE OF WORK" shall mean the project, under the direction of the Project Director, described in *Attachment A–Scope of Work*, and any other attachments which may provide additional information on the sponsored project to be performed.
- 3.4 "Confidential Information" shall mean information in written, graphic, oral or other tangible form protected by trade secret or other right of non-disclosure, including without limitation algorithms, formulae, techniques, improvements, technical drawings and data, and computer software.
- 3.4.1 Confidential Information shall not include information which:
- 3.4.1.1 was in the receiving party's possession prior to receipt of the disclosed information;
 - 3.4.1.2 is or becomes a matter of public knowledge through no fault of the receiving party;
 - 3.4.1.3 is received from a third party without a duty of confidentiality;
 - 3.4.1.4 is independently developed by the receiving party;
 - 3.4.1.5 is required to be disclosed under operation of law;
 - 3.4.1.6 is reasonably ascertained by WSU or MPD to create a risk to a trial subject or to public health and safety.

- 3.5 “Copyright” shall mean any work developed under the Scope of Work that is subject to copyright under copyright law.
- 3.6 “Key Personnel” shall mean those employees and staff members of WSU selected and supervised by the Project Director that are needed to perform the Scope of Work.
- 3.7 “Proprietary Information” means all data, sequences, and any other information obtained or developed during the course of the Scope of Work.
- 3.8 “Trademark” shall mean any trade or service marks developed under the Scope of Work whether or not registered under either state or federal trademark law.
- 3.9 “MPD Body Camera Footage” means video and/or audio recordings created and maintained by MPD on Evidence.com and any recordings, copies, still photographs, or images created therefrom.

IV. SCOPE OF WORK

- 4.1 MPD acknowledges that this Agreement is for the use of MPD Body Camera Footage in the performance of the SCOPE OF WORK as defined in Section 3.3 of this Agreement. WSU shall not use MPD Body Camera Footage for any purpose or in any manner not specifically set forth in this Agreement.
- 4.2 In order to facilitate WSU’s performance of the SCOPE OF WORK, MPD shall provide approved Key Personnel with access to MPD Body Camera Footage for the limited and restricted purposes set forth in this Agreement.

V. GENERAL TERMS AND CONDITIONS

In consideration of the mutual premises and covenants contained herein, the PARTIES agree to the following terms and conditions.

- 5.1 Period of Performance. The specific period of performance for the SCOPE OF WORK shall be 1/1/2021 to 9/30/2023 unless a time extension is mutually agreed upon in accordance with Article 5.14 – Amendments.
- 5.2 Key Personnel and Communications. The Project Director may select and supervise Key Personnel as needed to perform the SCOPE OF WORK. No other person will be substituted for the Project Director except with MPD’s written consent. Project Director and MPD Liaison shall mutually define the frequency and nature of any necessary communications.
- 5.3 Confidential Information.
 - 5.3.1 To the extent allowed by law, WSU and MPD agree to use reasonable care to avoid unauthorized disclosure of MPD Body Camera Footage and Confidential Information, including, without limitation, taking measures to prevent creating a premature bar to a United States or foreign patent application. Each party will limit access to Confidential Information received from another party hereto to those persons having a need to know. Each party shall employ the same reasonable safeguards in receiving, storing, transmitting, and using MPD Body Camera Footage and Confidential Information that prudent organizations normally exercise with respect to

their own confidential information of significant value. Neither party is obligated to accept Confidential Information from the other.

5.3.2 Except for MPD Body Camera Footage, as set forth in section 5.3.4, Confidential Information must be designated as confidential at the time of disclosure. Written materials must be clearly marked, and oral disclosures must be identified as confidential at the time of disclosure and confirmed in writing within ten (10) days of disclosure. Confidential Information shall not be disclosed by the receiving party to a third party for a period of five (5) years from receipt of such information or until a patent is published or the Confidential Information is published by the disclosing party or unless the disclosing and receiving parties agree otherwise and in writing at the time of disclosure. Third parties shall include all governmental offices.

5.3.3 MPD Body Camera Footage, and any component, transcript, copy, or replication thereof, in any form or media, shall be considered and presumed to be Confidential Information. At any time during the term of this Agreement, or while WSU is in possession of MPD Body Camera Footage, upon the receipt by WSU of any public record or other legal request to view or obtain copies of MPD Body Camera Footage, WSU shall promptly notify MPD of such request and shall consult with MPD in determining what MPD Body Camera Footage, if any, may be disclosed under applicable law to the requestor. MPD shall provide direction and assistance to WSU in responding to such a request and shall assist in the redaction of MPD Body Camera Footage and/or the preparation of an exemption log in accordance with applicable Idaho and Washington law.

5.3.4 It is understood that as an educational institution of the state of Washington, WSU is subject to Washington State laws and regulations including the Washington Public Disclosure Act, RCW 42.56 et seq. (<http://apps.leg.wa.gov/RCW/default.aspx?cite=42.56>). If a Public Disclosure Act request is made to view MPD's Body Camera Footage or other Confidential Information, WSU will promptly notify MPD of the request, such that MPD has the opportunity to seek a court order enjoining disclosure. WSU will work collaboratively with MPD to identify any applicable exemption(s) to disclosure and appropriately redact the information to be released. The release of MPD Body Camera Footage and/or data will be limited to only those records that must be released to comply with the request. It is a specific term of MPD's conveyance of the Body Camera Footage to WSU for the purposes set forth in this Agreement that public access to such records shall be restricted as set forth in both the Idaho Public Records Act regarding investigatory records of a law enforcement agency, including, without limitation, Idaho Code section 74-105(1), and the Washington Public Records Act regarding investigative, law enforcement, and crime victims under RCW section 42.56.240(14).

5.4 Procedure to Protect Privacy.

5.4.1 MPD will provide to WSU a list of all MPD Body Camera Footage meeting the following criteria: incidents involving use of force, criminal code violations, and traffic stops. WSU will randomly select MPD Body Camera Footage for sharing to the Evidence.com portal used by WSU.

- 5.4.2 Access to the MPD Body Camera Footage by the Project Director and Key Personnel will occur through the cloud storage system of Evidence.com. This video cloud system provides access to the archival MPD Body Camera Footage. The video portion of the MPD Body Camera Footage is then coded through this platform. Using this system allows WSU to stream the footage from the cloud system. WSU shall neither store nor download any MPD Body Camera Footage on the WSU system, or on any other system. While WSU has narrowed the categories of interactions for analysis, they additionally require that if coders are viewing a video that meets any of the following criteria, they will stop coding: recordings taking place within a hospital, and those recorded in a personal residence. With these narrowed categories and specific exemptions, data coded will reflect those interactions taking place in the public space. Additionally, the Project Director and Key Personnel who encounter a person they know, are required to stop coding, report the video, and WSU will assign another person to code the video. Information collected through this analysis contains no personal identifiable information. WSU has provided the codebook to the WSU Institutional Review Board (IRB) for their review.
- 5.4.3 Results from the coded videos are then used to inform the analysis. Protocol for this is included in the Provisional Patent and if deemed necessary WSU will provide the Provisional Patent and explanation of this process to the WSU IRB. Video of the recorded interaction will be stored only on Evidence.com and WSU will not download or store such video on any WSU or other system. No audio of the recorded interaction will be required, used, downloaded, or stored on any WSU or other system.
- 5.5 Publication. WSU reserves the right to publish or permit to be published by WSU employees the results of the SCOPE OF WORK undertaken by WSU employees. To prevent untimely disclosure or exploitation of MPD Confidential Information, WSU shall provide MPD Liaison with a copy of any proposed publication resulting from the SCOPE OF WORK at least thirty (30) days prior to submission for publication. MPD shall have thirty (30) days (the "Pre-publication Review Period") from receipt of the draft to review the proposed publication. If MPD objects to information included in the proposed publication, WSU will at MPD's request remove such MPD information prior to submission for publication. MPD may request that WSU's submission of the draft for publication be delayed for up to sixty (60) days beyond the end of the Pre-publication Review Period. If MPD seeks to delay publication, MPD shall make such request in writing prior to the expiration of the Pre-publication Review Period together with identification of the information or materials of concern and reasons why delay is warranted. WSU may delay publication by ninety (90) days to allow WSU or MPD, as the case may be, to seek patent protection.
- 5.6 Publicity. MPD shall not include the name of Washington State University, WSU, Washington State University Research Foundation, WSURF, or any of either entity's Trademarks in any advertising, sales promotion, or other publicity matter without prior written approval of the President of the WSU or his or her designee. WSU shall not include the name of Meridian Police Department, City of Meridian, or either entity's trademarks in any advertising, sales promotion, or other publicity without prior written approval of the MPD Liaison or his designee.

- 5.7 Termination for Convenience. This Agreement may be terminated by either party hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred prior to the date of termination. In the event of Termination for Convenience of this Agreement by MPD, MPD shall pay all reasonable costs and non-cancelable obligations incurred by WSU as of the date of termination.
- 5.8 Termination for Cause. In the event either party shall commit any material breach of or default in any terms or conditions of this Agreement, and also shall fail to remedy such default or breach within seven (7) days after receipt of written notice thereof, the non-breaching party 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 notice of termination in writing to the other party to that effect. Termination shall be effective as of the day of receipt of such notice.
- 5.9 Termination Obligations. Termination of this Agreement shall not relieve either party of any obligations incurred prior to the date of termination including the duty to protect MPD Body Camera Footage or other Confidential Information from disclosure or other use not specifically authorized by this Agreement.
- 5.10 Data Rights. Copyright in all material created by WSU as part of this agreement shall be the property of the WSU. Both MPD and WSU may use these materials for any internal purpose. This material includes, but is not limited to: books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes, training materials, and/or tools WSU develops for automated analysis of body camera footage and/or audio recordings. Material which WSU provides and uses to perform this agreement but which is not created for or paid for by MPD shall be owned by WSU or such other party as determined by Copyright Law and/or WSU's internal policies; however, for any such materials, WSU hereby grants (or, if necessary and to the extent reasonably possible, shall obtain and grant) a perpetual, royalty free, non-exclusive license to MPD to use the material for MPD internal purposes.
- 5.11 Dispute Resolution. Except as otherwise provided in this Agreement, when a dispute arises between the PARTIES and it cannot be resolved by direct negotiation, any party may request a dispute resolution panel (DRP). A request for a DRP must be in writing, state the disputed issues(s), state the relative positions of the PARTIES and be sent to all PARTIES. PARTIES must provide a response within thirty (30) days unless the PARTIES mutually agree to an extension of time. Each party shall designate a representative. The representatives shall mutually select an additional member. The DRP shall evaluate the facts, Agreement terms, and applicable statutes and rules and make a determination by majority vote. All costs of convening and/or hiring the DRP shall be borne by WSU. The decision is binding on the PARTIES.

Nothing in this Agreement shall be construed to limit the PARTIES' choice of a mutually acceptable dispute resolution method in addition to the dispute resolution procedure outlined above.

- 5.12 Disclaimer. WSU MAKES NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE SCOPE OF WORK, SPONSORED PROJECT OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT

MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE SPONSORED PROJECT, SCOPE OF WORK, OR RESULTING PRODUCT.

- 5.13 Indemnity. Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents.
- 5.14 Amendments. This Agreement may be amended by mutual agreement of the PARTIES. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the PARTIES.
- 5.15 Assignment.
The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
- 5.16 Notices. Any notice or communication required or permitted under this Agreement shall be delivered by overnight courier, or by registered or certified mail, postage prepaid and addressed to the party to receive such notice at the address given below or such other address as may hereafter be designated by notice in writing. Notice given hereunder shall be effective as of the date of receipt of such notice:

WSU:

Name/Title: Dan Nordquist
Address: Lighty 280 / PO Box 641060
City/State/Zip: Pullman, WA 99164-1060

Phone: (509) 335-9661
E-mail: orso@wsu.edu

MPD:

Name/Title: Lt. Brian Caldwell
Address: 1401 E. Watertower Ave
E-mail: bcaldwell@meridiancity.org
City/State/Zip: Meridian ID 83642

Phone: (208) 846-7339
Fax: (208) 846-7366

- 5.17 Governing Law. This Agreement shall be governed by the laws of the state of Washington.
- 5.18 Compliance with Laws. MPD understands that WSU and MPD are subject to United States laws and federal regulations, including the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979), and that MPD's and WSU's obligations hereunder are contingent upon compliance with applicable United States laws and regulations, including those for export control.
- 5.19 Severability. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

5.20 Order of Precedence. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable statutes and regulations;
2. Terms and Conditions contained in the basic Agreement;
3. *Attachment A–Scope of Work*;

This Agreement contains all the terms and conditions agreed upon by the PARTIES. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the PARTIES hereto.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed as of the date set forth herein by their duly authorized representatives.

WASHINGTON STATE UNIVERSITY



Digitally signed by Dan

Nordquist

Date: 2020.10.23 12:07:34

AVP/DVP, Authorized Official

-07'00'

Name: _____

Title: _____

Date: _____

CITY OF MERIDIAN

Name: Robert E. Simison

Title: Mayor

Date: _____

Attest:

Chris Johnson, City Clerk

ATTACHMENT A – SCOPE OF WORK
ORSO # 139452-001

This research concerns the development of baseline measures for Use of Force and emotionally intense interactions. WSU will code police interactions as they occur within the community. This coding of police interactions concerns two primary areas: Use of Force and Procedural Justice. By coding this video, WSU can contextualize what situational and dynamic factors were associated with use of force and procedural justice. As they gain better insight into the factors associated with use of force and procedural justice, they are better able to inform policy and practice to improve police-citizen interactions. Additionally, this research will involve the development of a tool for automated analysis and classification of body camera footage as to intensity. When fully developed, this classifier will allow agencies to be able to analyze their recorded footage to identify those interactions that display high intensity.

Application of such classifier include early identification of high-intensity interactions in order to monitor officer response and needs. For example, an officer who underwent a traumatic incident may subsequently change their interactions with people in the field. Currently, the primary way an agency would know of this change is through a complaint or self-reports by the officer. This delay getting assistance to the officer and increases the risk to the public. With WSU's research, an agency would be able to notice this early and intervene to address the issue – by providing support. The potential benefits of this research will allow for the development of early warning systems, verification of police adherence to agency protocol, and allow us to better understand the situational and dynamic factors associated with procedural justice and use of force.

In conducting this research and development, WSU will neither download MPD Body Camera Footage, nor retain video or audio data from such footage. No MPD Body Camera Footage will be included in any patent applications related to this research or any related products/tools developed by WSU.