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## **Agreement on Use (AI)**

This Agreement on Use (hereinafter "Agreement") is made between Company X (hereinafter "Party A") and Company Y (hereinafter "Party B").

### **RECITALS**

Whereas:

1. Parties A and B have developed a Trained Model by working together based on the Joint Research and Development Agreement (hereinafter the "Joint R&D Agreement") executed on [date].
2. Parties A and B now intend to set forth the terms for providing services through the use of said Trained Model.

NOW IT IS HEREBY AGREED as follows:

### **Article 1 (Definitions)**

As used herein, the following terms shall have the following meanings. Otherwise, terms only defined in the Joint R&D Agreement shall have the meaning defined in said agreement.

#### **(1) End User**

A nursing care business operator who executes an agreement for use of a Monitoring Camera system (without regard to name and form of agreement in legal terms) with its provider and uses such Monitoring Camera system.

#### **(2) Monitoring Camera**

A camera system provided (without regard to how it is provided in legal terms: sold, lent, or leased) by Party B (provider of Monitoring Camera) to an End User.

#### **(3) Data**

The Data described in Exhibit (1) "Description of Data."

(4) Data Analysis Service

The condition of a person in the Data is estimated and the estimation results is provided to Party B. The details of this service are defined in Article 2 below.

(5) Additional Training Service

Additional training given by Party A to the Trained Model. The details of this service are defined in Article 4 below.

(6) Services

The Data Analysis Service and the Additional Training Service shall be collectively called the "Services."

(7) Additionally Trained Model

The Trained Model that has received the Additional Training.

(8) Personal Information

"Personal information" and "personal data" specified in paragraphs (1) and (6), respectively, of Article 2 of the Personal Information Protection Act (the Act on the Protection of Personal Information (Act No. 57 of May 30, 2003)).

(9) In Written Form

In a writing, or alternatively, in an electronic form, which is separately agreed on by both Parties.

**Article 2 (Data Analysis Service)**

Party A shall provide Party B with the Data Analysis Service defined below:

(i) Data to be analyzed

Data to be analyzed upon request from Party B sent through the API.

(ii) Trained Models used for analysis

The Trained Model and the Additional Trained Model.

(iii) Objective of analysis

To estimate the condition of a person by the use of the Trained Models specified in (ii) and to provide the estimation results to Party B.

(iv) Period for service

Same as the duration of this Agreement.

### **Article 3 (No Exclusivity)**

(1) Party A may provide any third party other than Party B with services using the Trained and Additionally Trained Models (regardless of whether or not said third party is provided with copies of these models).

(2) Party B may use the Data Analysis Service for itself or a third party, pursuant to the conditions set forth herein.

### **Article 4 (Additional Training Service)**

Party A shall provide Party B with the Additional Training Service defined below:

(1) Trained Models to be worked on in the process of Additional Training:

The Trained Model and the Additional Trained Model.

(2) Types of data used in the Additional Training:

The Data defined herein and data provided to Party A by any third party other than Party B.

(3) Period for service:

Same as the duration of this Agreement.

(4) Tasks carried out by Party A:

- To create a Data Set for use in the Additional Training Service (hereinafter "Data Set for Additional Training") by adjusting or processing the Data.

- To generate an Additionally Trained Model by using the Data Set for Additional Training in the process of Additional Training and by making architectural changes.

(5) Frequency/number of times of provision of Service:

The frequency or the number of times Party A finds appropriate during the period for service.

(6) Handling of Data Set for Additional Training:

(i) Party A shall have no obligation to disclose the Data Set for Additional Training to Party B.

(ii) During and after the term of this Agreement, Party A may use the Data Set for Additional Training for the purposes specified in paragraph (1) of Article 5 hereof.

(iii) Party A shall not disclose or provide the Data Set for Additional Training to a third party.

(7) Ownership of copyrights to Additionally Trained Model etc.

(i) All copyrights (including the rights specified in Articles 27 and 28 of the Copyright Act, the same applies hereinafter) that arise in connection with the Additionally Trained Model or in the course of the Additional Training Service shall belong to Party A, unless otherwise held by Party B or a third party.

(ii) No Party shall enforce its moral rights against the other Party or a third party who legitimately acquire or succeed to the Party's rights, in connection with the use of the Additionally Trained Model under this Agreement.

(iii) Notwithstanding paragraph (7)(i) above, if paragraph (1) (ii) or (iii) of Article 15 hereof applies to Party A, Party B may request that Party A assign the copyrights specified in paragraph (7)(i) above to Party B or a third party designated by Party B without charge, and grant a royalty-free, perpetual license under Party A's Intellectual Property Rights that are needed to use the assigned copyrights, as well as to take any necessary measures for the use of said copyrights.

(8) Ownership of patent and other intellectual property rights to Additionally Trained Model etc.

(i) Patent rights or other intellectual property right (excepting copyrights) (collectively, Patent Rights Etc.) in the Additionally Trained Model etc. shall be owned by the Party to which the creator of such intellectual property found in the Additionally Trained Model etc. belongs.

(ii) If the Additionally Trained Model etc. is created jointly by Parties A and B, the Patent Rights Etc. shall be owned jointly by the Parties (the percentage of ownership shall be allocated based on the degree of contribution).

(iii) For the joint ownership of Patent Rights Etc. under paragraph (8)(ii) above, Parties A and

B shall carry out procedures needed for the acquisition of an employee invention (in accordance with an adequate system for employee invention such as rules and a procedure for assignment).

(9) Conditions for use of Additionally Trained Model

The conditions for the use of the Additionally Trained Model shall be to the same as the conditions for the use of the Trained Model defined herein.

(10) Articles 6 (Obligations of Parties), 8 (Recommission), and 9 (Changes to Agreement) of the Joint Research and Development Agreement shall apply mutatis mutandis to the generation of an Additionally Trained Model using the Additional Training Service provided by Party A.

(11) Change in accuracy due to Additional Training Service

Party B shall accept any change in the output accuracy of the Data Analysis Service due to the Additional Training Service provided by Party A. If such a change occurs, both Parties shall discuss the measures to be taken. Party A shall not be liable for any damage incurred by Party B due to said change in the accuracy.

**Article 5 (Use of Data)**

(1) During and after the term of this Agreement, Party A may use the Data to:

(i) Provide Party B with the Data Analysis Service,

(ii) Provide Party B with the Additional Training Service,

(iii) Provide any third party other than Party B with services using the Trained and Additionally Trained Models (regardless of whether or not said third party is provided with copies of these models),

(iv) Develop additional functions for use in the services specified in (i) to (iii) above, and

(v) Carry out additional training to the Trained and Additionally Trained Models.

(2) Party B shall guarantee to Party A that the following facts are true and correct:

(i) Party B is duly authorized to provide the Data to Party A for use in the Data Analysis Service and the Additional Training Service, and such provision is not against the law.

(ii) Party B is duly authorized to permit Party A to use the Data as provided for in the preceding paragraph.

(3) In connection with the Data, Party B shall not enforce by itself or let a right holder enforce its moral rights against Party A or a third party designated by Party A.

#### **Article 6 (Management of Data)**

(1) All of the Data provided by Party B for use in the Services shall be stored and accumulated on a server used by Party A to provide the Services (hereinafter the "Server").

(2) Party A shall manage the Data properly and shall not disclose or provide it to a third party unless it is necessary to disclose it as required by law or Party B gives prior consent in Written Form.

(3) Party B shall be responsible for taking measures to preserve, the Data it provides to Party A, such as preparing data backups.

(4) Given that Party A is responsible for administering the Server, if all or part of the Data stored on the Server is lost or damaged, Party B may ask Party A to recover said data to the extent possible. However, Party A shall have no liability even if all or part of said data could not be recovered in spite of its recovery efforts.

(5) If this Agreement expires or is terminated for whatever reason, Party A may delete all of the Data that remains on the Server without prior notice to Party B.

(6) Party A may delete any of the Data that Party A finds is inappropriate because, e.g., it is illegal, without prior notice to Party B.

#### **Article 7 (Provision of Personal Information)**

(1) Party B shall guarantee to use procedures required by the Personal Information Protection Act when providing Party A with the Data containing Personal Information for use in the Services.

(2) When providing Party A with Data containing Personal Information for use in the Services, Party B shall clearly state so in advance.

(3) When Personal Information is provided in accordance with the preceding paragraph, Party A shall comply with the Personal Information Protection Act and take measures necessary to manage the Personal Information.

**Article 8 (Fees for Use of Services)**

(1) As remuneration for the Services defined herein, Party B shall pay a fee calculated according to the following formula:

[Calculation formula]

Price of a single API request: [●] yen (tax-exclusive price, hereinafter "API unit price") x  
Number of uses

(2) Notwithstanding the preceding paragraph, in consideration of the fact that the Trained Model was jointly developed by Parties A and B, the API unit price calculated in the preceding paragraph shall be reduced for three years from the date of execution of this Agreement, according to the formula shown below. In said formula, "business operator" refers to a business operator who receives the Data Analysis Service from Party A in the field of nursing care business, except the following operators are excluded:

(i) A business operator for which the API unit price has already been reduced on the grounds that, as in the case of Party B, it contributed to the generation of the Trained Model used by Party A to provide services.

(ii) Any business operator (including but not limited to a system integrator) other than those who provide a Monitoring Camera system directly to an End User.

(iii) A business operator who receives the Data Analysis Service from Party A through the business operator specified in (ii) above.

[Calculation formula]

Lowest API unit price (tax-exclusive price) for the Data Analysis Service that is provided to a business operator (who is not Party B) x 90%

(3) After the date of execution hereof, Party B shall pay Party A the fee specified in paragraph (1) of this article, every month within [●] days after the last day of that period.

(4) Party B shall pay the above-mentioned fee by bank transfer to the account designated by Party A. The remittance charge shall be borne by Party B.

(5) The amount of each fee specified in this article shall not include the consumption tax.

(6) The annual rate of a charge for late payment of each fee specified in this article shall be 14.6 percent.

#### **Article 9 (Audit)**

(1) Concerning the fees specified in the preceding article, one Party may request the other Party to disclose its accounting books, financial statements, and other documents.

(2) When one Party makes a request for the disclosure of the accounting books etc. concerning the fees reported by the other Party in accordance with the preceding paragraph, the former may also request an audit by CPA or an impartial third party.

(3) The cost for the audit in the preceding paragraph shall be borne by the Party who made the audit request. However, if the amount reported by the audited Party is at least 10 percent smaller than the actual amount to be paid, the Party who requested the audit may demand compensation for the cost.

#### **Article 10 (No Refund of Fees)**

No Party shall demand a refund of a fee it paid to the other Party under this Agreement, on any grounds, or make any other demand in this respect, except in the case of an overpayment caused by miscalculation. Demand for a refund on the grounds of an overpayment by mistake, may be made in Written Form, within 30 days after the payment of the fee. After said 30-day period, no refund may be demanded for any reason whatsoever.

#### **Article 11 (Prohibited matters)**

When using the Services, Party B shall not commit by itself or let a third party commit any act that is or could be:

(i) contrary to law or public policy,

(ii) Infringing the rights and interests such as intellectual property rights of Party A or a third party,



(iii) a Distillation (i.e., generation of a new trained model using a new dataset that consists of data input into the Trained Model and processing results output from the Trained Model),

(iv) Entering improper data or commands into the Services, or

(v) Placing an excessive burden on the network and systems used in the Services.

#### **Article 12 (No Guarantee and Disclaimer)**

(1) Party A gives Party B no guarantee of fitness, availability, integrity, safety, or legal conformity of the Services for a particular purpose.

(2) Party A gives Party B no guarantee that the use of the Services will not infringe a third party's Intellectual Property Right, such as a patent, utility model, design, copyright, etc.

(3) If a third party files a claim against Party B for infringement of any of the rights specified in the preceding paragraph, in connection with the use of the Services under this Agreement (including but not limited to a situation where a lawsuit is filed), Party B shall notify Party A of this fact and upon request from Party B, Party A shall make an effort to provide information needed for Party B's defense in the lawsuit.

(4) Party A shall have no liability for any damage incurred by Party B for reasons not attributable to Party A, which include, but are not limited to the following:

(i) Planned maintenance.

(ii) Natural disaster including earthquake, typhoon, flood, storm etc., epidemic, war, civil war, and riot;

(iii) Order issued by an administrative or judicial body to suspend the business activities;

(iv) Trouble with the client environment;

(v) Trouble with the network used for connection to the Services;

(vi) Incorrect operation by a contractor;

(vii) Attack or misconduct by a third party.

#### **Article 13 (Handling of Confidential Information)**

(1) Party A or B (hereinafter the "Receiving Party") shall keep as confidential any "Confidential Information" it receives from, and shall not disclose or leak it to a third party without obtaining prior consent in Written Form from, the other Party (hereinafter the "Disclosing Party"). As used herein, "Confidential Information" refers to any information (except Data, as defined

herein) disclosed or provided by the Disclosing Party to the Receiving Party for the purpose of performing this Agreement, whether in writing, orally, by the use of an electromagnetic medium or any other type of disclosure and provision (hereinafter collectively "Disclosure") method or means, regardless of whether this Agreement has already been executed.

(2) Notwithstanding the preceding paragraph, such information as specified in one of the following shall not be considered confidential:

- (i) Information that is already publicly known at the time of the Disclosure,
- (ii) Information that becomes publicly known for reasons not attributable to the Receiving Party after the Disclosure,
- (iii) Information the Receiving Party legitimately obtains from a third party who is duly authorized to disclose or provide it, with no obligation of confidentiality,
- (iv) Information the Receiving Party already owns in a legitimate manner at the time of the Disclosure, and
- (v) Information the Receiving Party gains or creates by itself, without use of the information disclosed or provided by the Disclosing Party.

(3) The Receiving Party may not use, reproduce or modify Confidential Information for any purpose other than that of performing under this Agreement, without obtaining prior consent of the Disclosing Party in Written Form. Confidential Information may only be used, reproduced and modified to the extent reasonably necessary for the purpose of performing under this Agreement.

(4) The Receiving Party may only disclose or provide Confidential Information to its directors and employees (hereinafter collectively the "Directors") who need to know it in order to perform under this Agreement. If disclosed or provided, the Directors shall have the same obligations as those of the Receiving Party specified herein during and after the period of their employment.

(5) Notwithstanding paragraphs (1), (3) and (4) of this article, the Receiving Party may disclose or provide Confidential Information in each of the following cases, provided that the Disclosing Party is notified in advance, wherever possible:

- (i) If it is necessary to disclose or provide it as required by law,
- (ii) If it is necessary to disclose or provide it as required by a court order, the competent authorities or other regulations, or
- (iii) If the Receiving Party needs to consult with someone who is legally required to comply

with an obligation of confidentiality, such as an attorney at law, a certified public accountant, a tax accountant and a judicial scrivener.

(6) The Receiving Party shall destroy media as well as unused materials, devices, other tangible objects on which Confidential Information (including reproduced information and modified information of any Confidential Information) is recorded or return them to the Disclosing Party, as instructed by the Disclosing Party, and delete Confidential Information from all electromagnetic media under the management of the Receiving Party, if this Agreement expires or is terminated, or the Disclosing Party makes a request for the destruction of Confidential Information. The Disclosing Party may ask the Receiving Party to provide a document certifying the destruction or deletion of the Confidential Information.

(7) The Receiving Party shall ensure that the disclosure of Confidential Information does not result in the Disclosing Party's Intellectual Property Rights being assigned, transferred or licensed, unless otherwise specified herein.

(8) This article represents the entire and complete agreement between both Parties with respect to the Confidential Information and shall supersede all other suggestions and comments concerning the Confidential Information, whether written or oral, communicated between the Parties.

(9) The provisions in this article shall continue in force for a period of three years after the expiration or termination of this Agreement.

#### **Article 14 (Term of Agreement)**

This Agreement shall remain in force a period of [●] years from the date of execution hereof, and it shall be automatically renewed on yearly basis thereafter under the same conditions, unless either Party gives written notice of its unwillingness to renew it on reasonable grounds, no later than 60 days prior to the original or renewed expiration date.

#### **Article 15 (Termination)**

(1) Either Party may immediately cancel all or part of this Agreement without sending the other Party a letter of demand, in the event of any of the following:

(i) If the other Party is in material breach of this Agreement,

(ii) If the other Party admits its inability to pay debts generally as such debts become due, or if a petition is filed by or against the other Party for the institution of proceedings for bankruptcy, civil rehabilitation, corporate reorganization, or special liquidation, as well as for auction sale of the other Party's assets,

(iii) If the other Party has its transactions suspended by a clearinghouse, or

(iv) If there are other material grounds, comparable to those in the preceding items, that make it difficult to continue this Agreement.

(2) Either Party may cancel all or part of this Agreement if the other Party breaches any of the provisions hereof and fails to cure such default within a reasonable period after its receipt of a letter of demand.

**[Example of Change of Control (COC) clause as grounds for termination]**

If it is found that the ownership of either Party has essentially been transferred to a third party due to a merger or partnership with another company, or a significant change in the shareholding structure.

**Article 16 (Steps after Termination of Agreement)**

Party B shall discontinue the use of the Services (both for itself and for a third party) immediately if this Agreement is terminated by Party A under the preceding article, or within three months if the Agreement expires or is terminated based on mutual consent.

**Article 17 (Compensation for Damages)**

(1) If Party B incurs damage in connection with the use of the Services for reasons attributable to Party A, Party B may file a claim for damages against Party A. However, the scope of damages covered by Party A shall be limited to direct and ordinary damages actually incurred by Party B, regardless of what the grounds for claim may be, such as a failure to fulfill obligations, infringement of Intellectual Property Rights, unjust enrichment, or an act of tort. Party A shall not be liable for special damages including lost profits, regardless of whether they are foreseen by Party A or reasonably foreseeable.

(2) If Party A is liable for damages incurred by Party B as provided in the preceding paragraph, the amount of damages shall be not more than the accumulated amount of fees for the use of the Services actually paid by Party B to Party A during twelve months before the

occurrence of the event that caused the damage.

(3) The preceding two paragraphs shall not be applicable if Party A commits a willful act or gross negligence.

**Article 18 (Survival)**

The provisions in the following articles shall survive the expiration or termination of this Agreement, unless the period of validity of a particular provision is specified separately: Article 5 (Use of Data), Article 7 (Provision of Personal Information), Article 9 (Audit), Article 10 (No Refund of Fees), Article 12 (No Guarantee and Disclaimer), Article 13 (Handling of Confidential Information), Article 16 (Steps after Termination of Agreement), Article 17 (Compensation for Damages), and Article 19 (Governing Law and Dispute Resolution Procedures).

**Article 19 (Governing Law and Dispute Resolution Procedures)**

Disputes arising out of or in connection with this Agreement shall be governed by and in accordance with the laws of Japan, and the Parties hereto shall submit to the exclusive jurisdiction of the [●] District Court, as the court of first instance, for any disputes arising out of or in connection with this Agreement.

■ Other clauses that can be added optionally

**Article [●] (No Assignment)**

No Party shall allow a third party to succeed to its contractual status hereunder, assign or transfer part or all of its rights and obligations hereunder to a third party, or pledge them as collateral without obtaining prior consent in Written Form from the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by placing their signatures and seals thereon, and each Party shall keep one copy of the originals.

(Date)

Party A:

Party B:

[Exhibit (1)]

Description of Data

(e.g.) Photographic data Party B obtains by the use of cameras set up in its nursing home(s). Party B shall obtain consent from each care recipient for provision of his/her photographic data to a third party.