Stellenbosch University Research Data Repository: General Terms and Conditions of Use

1. **Preamble**

This document sets out the terms and conditions of use pertaining to the Stellenbosch University Research Data Repository, SUNScholarData, (the Repository).

The Repository manages research data on behalf of Stellenbosch University (the University); and the Repository wishes to make various services available to Users which will enable them to gain access to some of the University's research data.

2. Definitions

2.1 **Account** – A User-controlled means of access to the Repository that is protected by a User-created login username and password, with which Users can obtain access to the Repository's uploading and downloading functionalities.

2.2 **Author** – The person(s) from whom the data within a dataset originated; or the person(s) who conducted the research that led to the creation of the dataset. This person can but need not be the same as the depositor.

2.3 **Authorising Agent** – A member of Stellenbosch University's staff who is authorised act on behalf of right-holders, and who undertakes to grant or refuse requests for access. Repository administrators are authorising agents by default. Additional or alternative agents may be nominated.

2.4 **Content** – Any information found on the Repository including but not limited to research data, datasets, metadata, models, templates, and interactive features.

2.5 **Curation** – A process of maintaining and adding value to data throughout its lifecycle.

2.6 **Data File** - For the purposes of the Repository, any file containing research data or related Documentation.

2.7 **Dataset** – A set or multiple sets of files or a database constituting a discrete and clearly defined set of data and/or the means of generating data related to a research activity or project, or supporting one or more research publications. It may include both data and the means to generate, interpret or validate data, such as computer models and software code. A dataset will include data files (including, where relevant, program files) and documentation. It is possible for a dataset to be stored in the Repository, held elsewhere in other online data repositories, or to be published by other means – for example as supplementary materials alongside a journal article.

2.8 **Data Dissemination –** The publication or public transmission, communication or distribution of data.

2.9 **Data Sharing –** The peer-to-peer transmission or disclosure of data privately between researchers and other parties. Data sharing is not restricted to, but includes collaborative research.

2.10 **Deposit** – The act of uploading a dataset in the Repository and creating an associated metadata record.

2.11 **Depositor** – Any Stellenbosch University User who uploads files into the Repository and/or creates a metadata record in the repository for a dataset or collection. A depositor may register a dataset without uploading files, for example where the Dataset is held outside of the Repository.

2.12 **Documentation** – Any digital supplementary context files such as README.txt files, laboratory notebooks, data dictionaries, metadata schemas, standards, administrative materials, codebooks, user manuals, workflows, protocols, technical specifications or methodologies which explain the production, provenance, processing or interpretation of research data.

2.13 **Download** – The act of copying data from the Repository to another system or device.

2.14 **Downloader** – An individual or entity who/which downloads content from the Repository.

2.15 **Download Data** – Information collected whenever a dataset is downloaded, including but not limited to user account name, time of download, and downloaded file name.

2.16 **Group** – A Stellenbosch University academic department, research institute, unit, centre, bureau or sector.

2.17 **Information Regulator** – The Information Regulator (South Africa) is an independent body established in terms of Section 39 of the Protection of Personal Information Act 4 of 2013. It is subject only to the Law and the Constitution and it is accountable to the National Assembly.

2.18 **License Agreement** – A legal statement of the rights that exist in an item of intellectual property and the permissions granted by the right-holders to any Users of the item. This is an umbrella term which includes common licenses such as Creative Commons, Open Data Commons and Open Source licenses.

2.19 **Metadata** – Data that plays the role of documentation for data/resource discovery, description/documentation and contextualisation.

2.20 **Metadata Record** – A structured description of a dataset which enables the identification, discovery, interpretation, use and administration of a dataset or collection. Metadata records can refer to datasets held in the Repository or elsewhere.

2.21 **Public User** – Any User who is not a Stellenbosch University User. This refers to non-Stellenbosch University Users who may access and use all publicly-accessible content in the Repository as well as those with whom research data from the Repository is shared privately.

2.22 **Publish** – A function available for user submissions which enables repository administrators to make datasets containing data files publicly available and publicly searchable on the Repository application search engine and third-party search engines (e.g., Google Search or Bing Search).

2.23 **Repository** – The Stellenbosch University Research Data Repository.

2.24 **Repository Administrator** - A member of the University staff who is authorised to register, deposit, modify, validate, curate, publish and delete data (datasets and metadata records) and perform any other activities necessary for the management and maintenance of the Repository.

2.25 **Research Data**: Recorded information, obtained during a research process, regardless of form or the media on which it may be recorded. The term includes computer software (computer programmes, scripts, databases and documentation thereof), and records of scientific or technical nature. The term does not include information incidental to research administration such as financial, administrative, cost or pricing, or management information. In practice scientific data include both intangible data (statistics, findings, conclusions) and tangible data. Tangible data include, but are not limited to notes, text, formulae, models, photographs, slides, negatives, films, scans, images, graphs, graphics, audio recordings, autoradiograms, electro-physical recordings, gels, blots, spectra, cell lines, reagents, modified organisms, specimens, consent forms, case report forms, collected organisms and other materials that are relevant to the research project.

2.26 **Service** – The Repository application and all of the available services, functions, and capabilities associated with the Site.

2.27 **Site** – The Repository application and server.

2.28 **Spamming** – Any unauthorised or unsolicited advertising, junk or bulk e-mail, messages, comments, or other communications directly or indirectly stemming from use of the Repository application, including but not limited to comments posted to author's dataset pages and messages or other communications sent to User's email addresses, accounts, or other means of contact.

2.29 **Stellenbosch University Research Data Repository** – A multidisciplinary online service for the registration, archival storage, sharing, and dissemination of research datasets produced, generated or collected in relation to research conducted under the auspices of Stellenbosch University.

2.30 **Stellenbosch University User** – A member of Stellenbosch University's staff or student body who is entitled to register and deposit data by accessing the Repository with their university account. Stellenbosch University users may be: current Stellenbosch University staff; Stellenbosch University visitors or collaborators associated with a Stellenbosch University research project as well as Stellenbosch University-registered postgraduate students.

2.31 **Unpublished Dataset** – An uploaded dataset that has not yet been made available to the public and is viewable only to the depositor, authorising agents or other users to whom the depositor has granted access.

2.32 **Use of Service** – Any access to, use of, or other action involving the Repository application's functions, services, resources, and datasets, including but not limited to any uploading, posting,

submitting, storing, searching for, downloading, distributing, facilitating distributions, and otherwise utilising any content found on the Repository application.

2.33 **User** – Either a public or Stellenbosch University user.

2.34 **User Submission** – An uploaded dataset which is electronically presented by Stellenbosch University users to repository administrators for consideration as content which can be made accessible beyond the default private access setting that is applicable to uploaded datasets.

2.35 **User Uploads** – Any uploaded, submitted, disclosed, distributed, or otherwise posted content by a User, including but not limited to new datasets, metadata information, and other contributions either originating from the User or originating from a third-party author who gave permission to the User to disseminate the contributions on the Repository application.

3. Acknowledgements by all Users of the Repository

3.1 In using the service, you confirm that:
    you have read and understood the Stellenbosch University Research Data Repository Regulation.
3.2 In having an account on the Service, you acknowledge that:
    3.2.1   your account details (first name and surname) are searchable by other users; your account details may be recorded when you download datasets; and your first name, surname, and affiliation will be displayed on the service in connection with your User Uploads.

4. General Rules of Conduct

4.1 You shall abide by all applicable local, national and international laws and regulations in your use of the service, and your use of service shall not:

    4.1.1   infringe any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity;
    4.1.2   be unlawful, threatening, abusive, harassing, defamatory, deceptive, fraudulent, invasive of another's privacy, or otherwise offensive or unlawful;
    4.1.3   engage in Spamming;
    4.1.4   cause, introduce into the service, or otherwise use software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment, or that are designed or intended to damage or obtain unauthorised access to any system, data files or other information of the Repository or any third party;
    4.1.5   impose an unreasonable or disproportionately large load on Stellenbosch University's (or its third party providers') infrastructure;
    4.1.6   interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; or

4.1.7   bypass any measures Stellenbosch University may use to prevent or restrict access to the service (or other accounts, computer systems or networks connected to the service).

5. User Uploads

5.1 General

5.1.1 Only Stellenbosch University users are provided with the ability to submit User Uploads. The service also allows Stellenbosch University users to share datasets with other users by searching for their first name, surname and email address.

5.1.2 The service also gives each authorising agent the ability to change dataset access/download restrictions by designating User Uploads as restricted user submissions. Datasets are by default unpublished, but repository administrators can modify the access restrictions and publish or deaccession any User Uploads at any time. Depending on the permissions granted by the authorising agent in question, depositors may also change dataset access/download restrictions by designating User Uploads as restricted user submissions.

5.1.3 The Repository has no obligation to monitor the site, service, content, or User Uploads. The Repository may remove any User Upload at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such User Upload).

5.1.4 You acknowledge that the Repository does not endorse, take responsibility for, or make any representations or warranties for any User Uploads, and will not be liable for (1) User Upload content, format, metadata, or lack thereof; (2) representations or warranties made by the user about the User Uploads; and (3) any loss of or damage to User Uploads, either in whole or in part, from whatever cause.

5.2 Restrictions

5.2.1 In publishing content on the Repository, you must ensure that the content complies with the General Terms and Conditions of Use.

5.2.2 If your User Upload does not comply with the General Terms and Conditions of Use, the Repository has the right in its sole discretion to take down your User Upload(s).

5.2.3 Even though Stellenbosch University's repository administrators will review all User Uploads before they are made available on the Site, or before they are published, you will still be held legally and financially responsible for all damages if content you contribute violates anything in this General Terms and Conditions of Use.

5.3 Representations and Warranties

5.3.1 By publishing User Uploads or by allowing others to do so, you make the following representations and warranties to Stellenbosch University:

5.3.1.1 User Uploads, to the best of your knowledge, do not infringe upon the copyrights or other intellectual property rights, including, but not limited to patent, trademark, trade secret, copyright, right of publicity or other right of any third party;

5.3.1.2 User Uploads, to the best of your knowledge, do not violate any laws;

5.3.1.3 in the event you become aware of any issues after submitting a User Upload, you will promptly notify Stellenbosch University, at rdm@sun.ac.za, of any confidentiality, privacy or data protection, licensing, or intellectual property issues regarding the User Uploads;

5.3.1.4 User Uploads do not contain software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorised access to any system, data files, or other information of the Repository or any third party;

5.3.1.5 User Uploads have been given all relevant, obligatory, and applicable approvals for posting such materials with the content included and in the format uploaded, including but not limited to approvals from Research Ethics Committees and third parties with whom Users have relevant contractual obligations; and

5.3.1.6 Published User Uploads must be void of all identifiable information, such that re-identification of any subjects from the amalgamation of the information available from all of the materials (across datasets) uploaded under any one author and/or User should not be possible. Specifically, published User Uploads cannot contain any content which would constitute personal information in terms of the Protection of Personal Information Act 4 of 2013. The only exceptions for when identifiable information may be published are when:

5.3.1.6.1 the information has been previously released to the public;

5.3.1.6.2 the information describes public figures, where the data relates to their public roles or other non-sensitive subjects;

5.3.1.6.3 all identified subjects have given explicit informed consent allowing the public release of the information in the dataset; or

5.3.1.6.4 all identified subjects are deceased and no South African law explicitly restricts the release of the data.

5.4 Data Curation

5.4.1 The Repository may make the content you submit or deposit available for archiving, preservation and access, within the site. This includes, the ability to perform the following tasks:

5.4.1.1 re-disseminate copies of the content in a variety of distribution formats according to the standard General Terms and Conditions of Use of the Stellenbosch University Research Data Repository;

5.4.1.2 promote and advertise the content in any publicity (in any form);

5.4.1.3 describe, catalogue, and document the user submissions;

5.4.1.4 store, translate, copy or re-format the content in any way to ensure its future preservation and accessibility, and improve usability and/or protect respondent confidentiality; and

5.4.1.5 incorporate metadata or documentation in the content into public access catalogues.

5.4.2 Notwithstanding the wording of clause 5.4.1 the publication, provision of access to research data and licensing of research data on the Repository may be subject to the following restrictions:

a) prior contracts,

b) grants obligations,

c) institutional copyright and intellectual property policies,
d) South African intellectual property laws,
e) Research and Ethics Committee (RECS) agreements,
f) relevant data retention policies;

5.4.3   Stellenbosch University may disseminate any published content's metadata you submit or deposit.

5.4.4   To the best of your knowledge, Stellenbosch University may use the content you submit or deposit in the ways described in these General Terms and Conditions of Use; and you are not under any obligation or restriction created by law, contract or otherwise that would prevent you from entering into and fully performing these General Terms and Conditions of Use.

5.4.5   None of the above supersedes any prior contractual obligations with third parties that require any information to be kept confidential. Nothing in these General Terms and Conditions of Use obligate you to disclose information to the Stellenbosch University if such information is otherwise confidential or proprietary. Even though the repository's administrators will curate User Uploads before they are published; you are still solely responsible for the User Submissions you post on or through the service and all possible confidentiality or other privacy issues that may arise from your posting any User Uploads.

6. Downloading content from the Repository

6.1   As a user you are able to download content from the Repository.

6.2   Stellenbosch University will use all reasonable efforts to maintain open access to datasets for users to download, subject to depositors' restrictions and any applicable legal restrictions such as restrictions based on intellectual property rights, research contracts as well as data privacy laws. The university collects and stores download data from each download for all users (both Stellenbosch University users and public users) which can then be downloaded and accessed by the Depositor. Downloaders must be users of the Repository who agree to the General Terms and Conditions of Use in order to take advantage of the Repository's services, including downloading any materials or datasets.

6.3   Downloaders agree that, in downloading any material from the Repository, they:

6.3.1 will abide by the applicable license agreement assigned to the dataset;
6.3.2 acknowledge that their account information (for Stellenbosch University users) or temporary site identification information (for public users) may be recorded upon download; and
6.3.3 have done their due diligence in ensuring that they do not download and use any datasets or other materials where prohibited by applicable law.

7. Duties of the Depositor

The Depositor shall promptly notify Stellenbosch University by email to rdm@sun.ac.za when any change of Intellectual Property ownership or control of such rights affecting a dataset, or any accuracy, authenticity, confidentiality, privacy or data protection issues pertaining to a dataset and any change of contact details where these have been provided, comes to the depositor's knowledge.

8. Duties of Stellenbosch University

8.1 Stellenbosch University shall make copies of the dataset available for distribution worldwide in an electronic form, for the purpose of access as outlined in the access provisions of the Repository Regulation;

8.2 Notwithstanding the wording of clause 4.1 the publication, provision of access to research data and licensing of research data on the Repository may be subject to the following restrictions:

   a) prior contracts,
   b) grants obligations,
   c) institutional copyright and Intellectual Property policies,
   d) South African intellectual property laws,
   e) Research and Ethics Committee (RECS) agreements,
   f) relevant data retention policies;

8.3 The University shall make freely available online a metadata record describing the dataset, which may be stored, copied and disseminated without restriction and free of charge;

8.4 The University shall assign to the metadata record or any digital dataset held in the Repository a Digital Object Identifier (DOI) that will enable permanent persistent linking to the metadata record;

8.5 The University shall electronically store, translate, copy or re-arrange the dataset to ensure its future accessibility, unless notified by the depositor that specific restrictions apply;

8.6 The University shall be under no obligation to reproduce, transmit, broadcast or display the dataset in the same formats or resolutions as those in which it was originally deposited, subject to any third-party requirements;

8.7 The University shall retain the right to withdraw all or any part of the dataset if it is found to be in violation of the University's policies/regulations/procedures, any third-party rights or any law, or is the subject of a legitimate complaint. In such a case the University will retain the metadata record for the withdrawn dataset recording the reason for its withdrawal from the Repository;

8.8 The University shall request users publishing any work based in whole or in part on the dataset to include a clear reference to the dataset, acknowledging the original data creators and the University of Stellenbosch as copyright holder and publisher of the dataset;

8.9 The University shall be under no obligation to take legal action on behalf of other rights-holders in the event of any breach of intellectual property rights or any other right in the dataset deposited;

8.10 The University shall take every care to preserve the physical integrity of the dataset but shall incur no liability, either express or implied for the Dataset or for the loss of or damage to the dataset.

9. Users' Personal Information

9.1 Collection of personal information

9.1.1 Personal information will be collected and processed in accordance with the provisions of the [Protection of Personal Information Act](#).

9.1.2 Personal information may be collected from Users in the following circumstances:

9.1.2.1 Information which Users provide to the Repository online.

   a) When users make use of the Repository, complete one of its web forms or make support requests, the following personal information is collected: the names, Orcid

identifiers, email addresses and other basic contact details/ professional information pertaining to users.

b) Stellenbosch University will use this information to enable Users to access and use the Repository or fulfil any user requests.

c) Users may also provide additional information about themselves in order to access and use particular features within the Repository, such as to populate a public profile page or make submitted content public.

9.1.2.2   Information which is collected from the usage of the Repository.

a) When Users make use of the Repository information may be collected about that usage and other technical information, such as IP addresses, browser types and any referring website addresses.

b) The automatically collected log information may be combined with other collected information and be used to keep a record of our interactions in order to enable Stellenbosch University to support, personalise and improve the Repository's services.

c) This may involve the creation of aggregate or other non-personal information.

9.1.2.3   In all the above cases, where the Repository has a relationship with Users, the university may also use the collected personal information in order to manage and keep a record of that relationship as well as for other administration purposes which would be reasonably expected.

9.2   Sharing of Personal Information

9.2.1 Stellenbosch University will generally not disclose or share personal information with third parties, except where it is necessary for legitimate reasons, such as:

a) to the agents, advisers and service providers that assist the university in running the Repository and that are responsible for administering the Repository's operations;
b) to the subcontractors and service providers which provide support to the university;
c) in such circumstances for which Users have given their consent;
d) if the university is required by law or ordered by a court to disclose such information;
e) to third party apps which Users have chosen to sync with their account;
f) in the case of a User's Repository profile or details associated with Content which Users have made public, to public users of the Repository;
g) to third parties involved in the scholarly content infrastructure, such as CrossRef, Orcid and Datacite.

9.2.2 Appropriate confidentiality and security obligations are included in contracts with Stellenbosch University's service providers and only permit them to process personal information for specified purposes and in accordance with Stellenbosch University's instructions (not for their own purposes).

9.3   Security of Personal Information

In its contracts with its service providers Stellenbosch University has endeavoured to ensure that appropriate technical and organisational security measures are taken in order to protect personal information from accidental or unlawful destruction, accidental loss and unauthorised access, destruction, misuse, modification or disclosure.

9.4   Retention of your Personal Information

9.4.1   Stellenbosch University will only keep personal information belonging to users for as long as it is necessary for the purposes for which it was collected, after which it will be destroyed, erased or anonymised.

9.4.2   If Content has been made public by a user via the Repository a record associating the user with such content will be retained for a potentially indefinite period of time.

9.5   International transfer of Personal Information

9.5.1   Stellenbosch University may transfer personal information from the Republic of South Africa to its service providers which may be located in other jurisdictions.

9.5.2   Whenever such transfers are made, Stellenbosch University will ensure that an appropriate level of protection is afforded to personal information by confirming that the destination country has been deemed to provide an adequate level of protection for personal information.

9.6   Access to Personal Information

Provided that adequate proof of identify has been furnished, a user has the right to:

9.6.1   Request that Stellenbosch University confirm, free of charge, whether or not the Repository holds personal information about the User in question.

9.6.2   Request from Stellenbosch University the record or a description of the personal information, about the User, that is held by the Repository. This would include information about the identity of all third parties, or categories of third parties who have or have had access to the information.

9.7   Objections to Processing of Personal Information

Users have the right to object to the processing of personal information based on grounds outlined in the Protection of Personal Information Act.

9.8   Lodging Complaints

Users have the right to lodge a complaint, against Stellenbosch University, to the [Information Regulator](#).

10. Termination

10.1 Stellenbosch University may terminate your access to all or any part of the service at any time, with or without cause, with or without notice, effective immediately. If you wish to terminate your account, you may notify the university rdm@sun.ac.za.

10.2 All provisions of the General Terms and Conditions of Use which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

11. Warranties

11.1 The service (including, without limitation, all content and User Uploads) is provided "as is" and "as available" and without warranty of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed. Without limiting the foregoing, the Stellenbosch University does not warrant that:

  11.1.1 the content or User Uploads are timely, accurate, complete, reliable or correct in their posted forms on the Site;
  11.1.2 the service will be secure;
  11.1.3 the service will be available at any particular time or location;
  11.1.4 any defects or errors will be corrected;
  11.1.5 the site, content or any User Uploads are free of viruses or other harmful components; or
  11.1.6 the results of using the service will meet your requirements.

11.2 Your use of the service and any content is solely at your own risk.

12. Limitation of liability
In no event shall the Stellenbosch University and its affiliates, or their directors, employees, agents, partners, or suppliers, be liable under contract, delict, strict liability, negligence or any other legal theory with respect to the service or any content or user submissions for any direct damages, or for any lost profits or special, indirect, incidental, punitive, or consequential damages of any kind whatsoever suffered by a User.

13. Indemnification
You will indemnify and hold Stellenbosch University harmless from and against any and all loss, cost, expense, liability, or damage, including, without limitation, all reasonable attorneys' fees and court costs, arising from (i) your use or misuse of the Service; (ii) your access to the Repository; (iii) your violation of the General Terms and Conditions of Use; or (iv) infringement by you, or any third party using your account, of any intellectual property or other right of any person or entity, including but not limited to infringements upon any and all representations made by you in these General Terms and Conditions of Use. Such losses, costs, expenses, damages, or liabilities shall include, without limitation, all actual, general, special, and consequential damages.

14. Dispute Resolution
These General Terms and Conditions of Use shall be governed by and interpreted in accordance with the laws of the Republic of South Africa (excluding the conflict of laws rules thereof). All disputes under these General Terms and Conditions of Use will be resolved through good faith negotiations or mediation, alternatively in the relevant South African court(s). You consent to the jurisdiction of such courts and waive any jurisdictional or venue defenses otherwise available.

15. Merger
These General Terms and Conditions of Use is the entire agreement between you and Stellenbosch University with respect to the Service and use of this Site, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you

and Stellenbosch University with respect to this site (but excluding the use of any third-party software, widgets, and applications that may be subject to a separate end-user license agreement).

16. Severability

If any provision of the General Terms and Conditions of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the General Terms and Conditions of Use will otherwise remain in full force and effect and enforceable.

17. Assignment and Delegation

Stellenbosch University may assign, transfer or delegate any of its rights and obligations hereunder without consent.

18. Modification of Terms

The Stellenbosch University reserves the right, at its sole discretion, to modify or replace any of the terms in these General Terms and Conditions of Use at any time without prior notice to Users. It is your responsibility to check the General Terms and Conditions of Use periodically for changes. Your continued use of the service following the posting of any changes to the General Terms and Conditions of Use constitutes acceptance of those changes.

19. Acceptance of Terms

These terms and conditions govern all use of the Repository by you and any third parties who use your account. Use of the Service is offered subject to acceptance of and compliance with all of the terms and conditions contained herein (the General Terms and Conditions of Use) and all other applicable operating rules, policies, regulations and procedures of the Service. By clicking "I accept" and/or by your use of the Service, you agree and accept all the terms in this General Terms and Conditions of Use document.

20. Force Majeure

Stellenbosch University will not be held responsible if the fulfilment of any terms or provisions of these General Terms and Conditions of Use are delayed or prevented by any causes which are not within the university's control.

SUNScholarData General Terms and Conditions of Use
Accepted and Approved by Senior Management Team, Library and Information Service
on 15 October 2019
Owner: Stellenbosch University Library and Information Service