
Data License Agreement – Research Use

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1. Definitions

“Commercial Use” means: (i) with respect to use of Licensed Data or Results, (1) use of Licensed Data or Results in connection with a product, service or other offering made available to, or used for the benefit of, a third party, whether or not for consideration and whether directly or indirectly; and/or (2) use of Licensed Data or Results directly or indirectly for purposes of generating any revenue or other commercial benefit; and (ii) with respect to use of Licensed Data, Processing of Licensed Data for purposes of generating Results for use as specified in the foregoing subsection (i).

“Effective Date” means the date this Agreement is accepted by Licensee.

“Licensed Data” shall mean the *Qualcomm Exercise Video Dataset* made available by QTI for download to Licensee following Licensee’s acceptance of this Agreement.

“Process” means, with respect to a given set of data, to process such data through machine learning or other artificial intelligence software.

“Processing” shall carry a correlative meaning.

“Research Use” means internal Processing of Licensed Data and internal use of Results solely for non-profit research purposes. Without limitation, Research Use excludes any Commercial Use.

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2. License Grant

Subject to the terms and conditions of this Agreement, QTI hereby grants to Licensee during the term of this Agreement a limited, non-transferable, non-sublicensable right and license to Process the Licensed Data internally within its organization for the sole purpose of generating and using Results, in each case solely for Research Use. Licensee may be a non-profit or for-profit entity.

3. Restrictions

QTI reserves all rights in and to the Licensed Data not expressly granted to Licensee under Section 2 above. Licensee shall not, and shall not permit any third party to, in each case directly or indirectly and in whole or in part: (i) publish, sell, sublicense, license, distribute, transfer, disclose or otherwise make available the Licensed Data (in whole or in part) to any third party; (ii) alter, remove or obfuscate any copyright or other intellectual property notices contained on or in the Licensed Data; (iii) make any copies of the Licensed Data or Results (other than such copies as are reasonably necessary for Licensee’s Research Use); (iv) incorporate or combine with the Licensed Data any data owned by a third party; or (v) use the Licensed Data for any Commercial Use.

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The Licensed Data is licensed, not sold. QTI shall retain all of its rights, title and interest in and to the Licensed Data. Licensee acknowledges that the Licensed Data constitutes the valuable intellectual property of QTI that QTI has acquired it at great expense, and that the Licensed Data is subject to copyright and other laws. Except as expressly granted to Licensee under Section 2 above, nothing in this Agreement shall be deemed to provide a grant, assignment, license or other right to use any concept, idea, technology, intellectual property right (including but not limited to patent rights, copyrights and trademarks), or other right owned by QTI or its affiliates. Licensee acknowledges that any violation of the terms of this Agreement would cause QTI irreparable harm for which monetary damages may not suffice and would diminish substantially the value of QTI’s intellectual property. QTI is entitled to receive injunctions, specific performance and other equitable remedies in connection with any such violations in addition to all other remedies available to QTI under applicable law without delay or posting of any bond. Licensee further acknowledges that any Commercial Use of the Licensed Data or Results shall entitle QTI to an injunction preventing any further use or distribution of any products or services enabled by such Commercial Use and disgorgement of any and all profits accruing in connection therewith.

5. Filings

Licensee shall not and shall not permit any third party to: (a) use the Licensed Data or other Confidential Information (as defined below) to investigate, threaten or assert any claim of infringement or misappropriation against QTI or any of its affiliates, licensees or customers (direct or indirect); or (b) prepare, file, prosecute or enforce any patents or patent applications based upon or arising from the use of the Licensed Data or any other Confidential Information. If, notwithstanding this Section 5, Licensee or any of its affiliates prepares, files, prosecutes or enforces any patents or patent applications in breach of the foregoing, then QTI shall have (and Licensee hereby grants to QTI) a paid-up, royalty-free, worldwide license under such patents to make, have made, use, sell, offer for sale, import, otherwise exploit and sublicense; *provided, however*, that this shall not be construed as limiting any other rights or remedies available to QTI for Licensee’s breach of this Section 5.

6. Confidentiality.

QTI may disclose to Licensee certain confidential information which will be identified as such in writing (“Confidential Information”). The Licensed Data shall also be regarded as Confidential Information of QTI whether or not it is identified in writing as “Confidential”. Licensee agrees to protect the confidentiality of the Confidential Information with at least the same degree of care that it utilizes with respect to its own similar proprietary information, but in no event less than reasonable care. Licensee further agrees: (i) not to disclose or otherwise permit any other person or entity access to, in any manner, the Confidential Information, or any part thereof in any form whatsoever, except that such disclosure or access shall be permitted to an employee of the Licensee requiring access to the Confidential Information in the course of his or her employment in connection with Licensee’s exercise of its rights under Agreement and who has signed an agreement obligating the employee to maintain the confidentiality of the confidential information of third parties in the Licensee’s possession that is at least as protective as the terms of this Agreement; (ii) to notify QTI promptly and in writing of the circumstances surrounding any suspected possession, use or knowledge of the Confidential Information or any part thereof at any location or by any person or entity other than those authorized by this Agreement; and (iii) not to use the Confidential Information for any purpose other than as explicitly authorized herein or in writing by an authorized representative of QTI.

7. Data Protection

Licensee agrees to only use Personal Data included as a part of the Licensed Data for the limited purposes set out in this Agreement. Under no circumstances shall Licensee use the Licensed Data for any research purposes related to facial recognition or other similar technologies that could facilitate the identification of individuals.

Licensee shall comply with Data Protection Laws and provide notice to QTI promptly if it makes a determination that it can no longer meet its obligations under Data Protection Laws in connection with the Licensed Data. QTI may take reasonable and appropriate steps to (i) ensure that Licensee uses Licensed Data in a manner consistent with QTI's obligations under Data Protection Laws, including through annual audits, and (ii) upon reasonable notice, stop and remediate Licensee's unauthorized use of Licensed Data. Upon QTI's request, Licensee shall provide assistance to QTI with QTI's compliance obligations under Data Protection Laws with respect to the Licensed Data, including Data Subject requests and data protection assessments.

Where applicable, Licensee shall take all reasonable steps to maintain and use the Licensed Data in a deidentified or anonymized form, which includes: (i) not attempting to infer the identity of a Data Subject using the Licensed Data or obtaining additional information, including Personal Data, to link the Licensed Data with a Data Subject; (ii) taking reasonable measures to ensure that the Licensed Data cannot be associated with a Data Subject; and (iii) publicly committing to maintain and use the Licensed Data in deidentified or anonymized form and not attempt to reidentify the information.

Licensee will maintain the appropriate level of administrative, physical, and technical safeguards designed for the protection of the security, confidentiality, and integrity of the Licensed Data, to ensure a level of security appropriate to the risks reasonably foreseeable associated with such data. At a minimum, such safeguards will include measures designed to prevent unauthorized, accidental or illegal access, use, modification, destruction, loss or disclosure of Licensed Data.

Where the Licensed Data, or any subset or category of the Licensed Data, may need to be transferred across countries, regions or territories, and be subject to restrictions of Data Protection Laws requiring a condition for the valid export of such data, Licensee shall adopt measures, safeguards, or mechanisms recognized by such Data Protection Laws.

Licensee agrees to enter into an agreement compliant with Data Protection Laws and to ensure that appropriate data protection measures will be maintained to protect the Licensed Data if it needs to be disclosed or made available to a third party.

Licensee shall not retain the Licensed Data for longer than necessary to achieve the research purpose as specified under this Agreement, nor store it on any devices or servers located in jurisdictions that lack robust privacy protection legal regimes, except where the Licensed Data has been anonymized (e.g., with adequate facial data blurring).

For the purpose of this Agreement, the capitalized terms hereunder shall be defined as follows: (i) "Data Protection Law(s)" means any and all transnational, national, federal, state or local laws (statutory, common or otherwise), treaties, conventions, ordinances, codes, rules and regulations of any applicable jurisdiction related to privacy, personal data protection and information security, to the extent such laws, treaties, conventions, ordinances, codes, rules and regulations govern and are binding upon the relevant Party in its performance of its obligations or exercise of its rights under the Agreement, including but not limited to the General Data Protection Regulation (EU) 2016/679 ("GDPR") and/or the California Consumer Privacy Act of 2018 (as amended) and the final regulations ("CCPA"); (ii) "Data Subject" means 'data subject' as defined in the GDPR and other substantially similar roles in other Data Protection Laws; (iii) "Personal Data" means 'personal data' as defined in the GDPR or other substantially similar terms in other Data Protection Laws such as 'personal information' in the CCPA.

8. Term and Termination

This Agreement shall commence on the Effective Date and shall continue until terminated pursuant to this Section 7. This Agreement may be terminated by either party at any time, for any reason or for no reason, upon written notice to the other party. If Licensee breaches any provision of this Agreement, this Agreement (including all of Licensee's rights and licenses with respect to the Licensed Data and Results) shall immediately terminate without further notice from or action by QTI. Upon termination or expiration of this Agreement, Licensee agrees to cease all use of the Licensed Data and Results and delete all copies thereof in Licensee's possession or control, and to provide to QTI, if requested, (in a form acceptable to QTI) a written certification of the same signed by Licensee or (if Licensee is an entity) an officer of Licensee. The provisions of Sections 1 and 3 through 16 shall survive any termination of this Agreement.

9. Disclaimer

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10. Limitation of Liability

EXCEPT FOR LIABILITY ARISING OUT OF QTI'S WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES SHALL QTI BE LIABLE TO LICENSEE (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM LICENSEE'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, OR LOSS OF GOODWILL OR REPUTATION) WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER QTI WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. UNDER NO CIRCUMSTANCES SHALL QTI'S MAXIMUM LIABILITY TO ANY PERSON OR ENTITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE), EXCEED FIVE U.S. DOLLARS.

11. Indemnity

Licensee agrees to indemnify and hold QTI and its affiliated companies, and each of their directors, officers, employees, contractors, suppliers and partners, harmless from any claims, losses, damages, liabilities, costs and expenses, including attorney's fees, arising out of or relating to Licensee's use or misuse of the Licensed Data, breach of this Agreement, violation of applicable law or violation of the rights of any other person or entity. QTI reserves the right, at Licensee's expense, to assume the exclusive defense and control of any matter for which Licensee is required to indemnify QTI and Licensee agrees to cooperate with QTI's defense of these claims.

12. Government Rights

The Licensed Data provided by QTI under this Agreement is a "Commercial Product" as that term is defined at 48 C.F.R. §2.101. If Licensee is an agency, department, or other entity of the United States Government, or funded in whole or in part by the United States Government, then use, duplication, reproduction, release, modification, disclosure, or transfer of this commercial product and any accompanying documentation, is restricted in accordance with 48 C.F.R. §12.211, §12.212, or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211, §12.212, or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, Computer Software, Commercial Computer Software, Commercial Computer Software Documentation, and/or Technical Data are being licensed to the Government (a) only as a Commercial Product and (b) with only those commercial rights granted pursuant to the terms and conditions in this Agreement, including all obligations, restrictions, and conditions set forth herein.

13. Governing Law; Jurisdiction

This Agreement will be governed by and construed in accordance with the law of the State of California without regard to the conflicts of law rules of such state. The parties agree that any suit, action, or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement will be brought in the state and federal courts in the Southern District of California, and each party hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action, or proceeding in any such court or that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

14. Export Control

Licensee and its subsidiaries, affiliates, and agents, acknowledge that the Licensed Data may be subject to U.S. export control and economic sanctions laws, orders, and regulations, including, without limitation, the Export Administration Regulations ("EAR"), 15 CFR Parts 730-774, and the Foreign Assets Control Regulations, 31 CFR Parts 500-599, as well as similar laws and regulations of other applicable jurisdictions (collectively "Export and Sanctions Laws"). In connection with the performance of their obligations under this Agreement, Licensee and its subsidiaries, affiliates, and agents (i) will comply with all Export and Sanctions Laws, including by obtaining any required U.S. or other country licenses, authorizations, or approvals; and (ii) will not engage in any activity that would reasonably be expected to cause QTI to violate any Export and Sanctions Laws. Licensee agrees not to directly or indirectly employ any Licensed Data in, or export, re-export, transfer or release any Licensed Data for, end uses or for end users that would violate the controls in Part 744 of the EAR, without prior U.S. government authorization, including those related to prohibited missile or unmanned aerial vehicle technology; prohibited nuclear, chemical, or biological weapons activities; prohibited supercomputer and semiconductor manufacturing end uses; or for any prohibited military end use or end user.

15. Attribution.

In the event Licensee publishes the Results, or any publication based on the Results, following citation should be, but is not required to be, included in the publication:

Panchal, S., Bhattacharyya, A., Berger, G., Mercier, A., Böhm, C., Dietrichkeit, F., Pourreza, R., Li, X., Madan, P., Lee, M., Todorovich, M., Bax, I., Memisevic, R. (2024) What to Say and When to Say it: Live Fitness Coaching as a Testbed for Situated Interaction. <https://developer.qualcomm.com/software/ai-datasets/qevd>.

16. Miscellaneous

Licensee may not assign its rights under this Agreement without the express prior consent of QTI. If Licensee is a legal entity, any merger involving Licensee, acquisition of all or substantially all of Licensee's assets or change of control shall be deemed an assignment of this Agreement for which prior written consent is required. QTI may freely assign this Agreement. Licensee represent and warrant that Licensee, in connection with the transactions contemplated by this Agreement or in connection with any other business transactions involving both Parties, and everyone acting on Licensees behalf, (A) will comply with and will not violate any applicable anti-corruption law or applicable international anti-corruption standards, or applicable anti-tax evasion measures, including but not limited to the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, Part 3 of the UK Criminal Finances Act, and the Brazil Clean Company Act in connection with the services it has agreed to perform under this Agreement and (B) shall have adequate procedures and policies as required by such measure. Licensee represents and warrants that Licensee has not, and covenants and agrees that Licensee will not, in connection with the transactions contemplated by this Agreement or in connection with any other business transactions involving both Parties, make, promise, or offer to make any payment or transfer anything of value, directly or indirectly, to any individual to secure an improper advantage. It is the intent of the Parties that no payments or transfer of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining or retaining business. This Agreement constitutes the complete and final agreement of the parties with respect to the Licensed Data. If any part of this Agreement is found to be void, unenforceable or invalid, that part will be deemed stricken and will not affect the validity of the other provisions. Failure by QTI to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement may be modified only by an amendment signed by authorized representatives of both parties or by Licensee's electronic acceptance of an amendment or replacement agreement presented to Licensee by QTI. Any notice from Licensee to QTI required or permitted under the terms of this Agreement must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to QTI's mailing address set forth on QTI's website at <http://www.qualcomm.com>. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service. Any notice from QTI to Licensee required or permitted under the terms of this Agreement shall be deemed given when sent by e-mail to the e-mail address provided by Licensee in the registration form on QTI's website in connection with which this Agreement is being entered into.