

# SPARK Platform: Legal Information/Terms of Use

## 1. Your Acceptance

- a. By using the Shared Platform for Antibiotic Research and Knowledge (“SPARK”) and the website on which it is hosted (the “Website”), you signify your agreement to these terms and conditions (the “SPARK Terms of Use”).
- b. If you access or use the SPARK platform or Website on behalf of another person or entity, you represent and warrant that you have the authority to bind the person or entity to these SPARK Terms of Use, and your acceptance of the SPARK Terms of Use will be deemed an acceptance by that entity, and “you” and “your” herein shall refer to that entity.
- c. The host of the Website (“Host”), at the direction of, and in consultation with, The Pew Charitable Trusts (“Pew”) may modify or revise these SPARK Terms of Use and policies at any time, and you agree to be bound by such modifications or revisions. Although the Host or Pew may attempt to notify you when major changes are made to these SPARK Terms of Use, you should periodically review the most up-to-date version at [www.pewtrusts.org/SPARK-antibiotic-discovery](http://www.pewtrusts.org/SPARK-antibiotic-discovery), or wherever it is posted on the Website. Except as set forth in Section 7, nothing in these SPARK Terms of Use shall be deemed to confer any third-party rights or benefits.
- d. Nothing herein will (i) require Pew or Host to make the Website available twenty-four (24) hours a day, seven (7) days a week, or (ii) prevent Pew or Host, at Pew’s direction, from transferring, or discontinuing all access to, the Website for any reason.
- e. Without limiting any of the terms or conditions of these SPARK Terms of Use, your attention is brought, in particular, to the bolded Sections 3.b.iii, 3.c, 4.a.i, 4.b, 7.a, and 8.a below.

## 2. Website and Host Accounts

- a. The Website is accessible only through accounts obtained by Pew. These accounts can be requested through the internet-based SPARK program landing page that is administered and hosted by Pew and accessible at [www.pewtrusts.org/SPARK-antibiotic-discovery](http://www.pewtrusts.org/SPARK-antibiotic-discovery). You may never use another account without permission from Pew and/or Host. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Pew and/or Host immediately of any breach of security or unauthorized use of your account.
- b. Although Host and Pew will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of Host and/or Pew or others due to such unauthorized use.
- c. Notwithstanding the foregoing, in order to access SPARK Public Projects Data (as defined in Section 3.a below) that may be hosted by Host on the public portion of Host's website, you will have to obtain your own Host account, the use of which is subject to the same conditions described in Sections 2.a and 2.b.
- d. Host or Pew may suspend or disable your Website and/or Host account(s), including your access to the Website in its entirety, if Host or Pew reasonably believe you have engaged in any use of the Website that is inconsistent with the SPARK Terms of Use.
- e. In the event of any conflict between these SPARK Terms of Use and any other terms of use on the Website, these SPARK Terms of Use shall control with respect to SPARK.

## 3. Uploading and/or Sharing SPARK Public Projects Data

- a. As a holder of an account for the Website and/or a contributor of data to the SPARK program, you may, in accordance with Section 3.b, and in consultation with Host and at the direction of Pew, upload to, and/or share

on, the SPARK database, data that Host and/or Pew may curate/transform (while maintaining data integrity) and format before making it accessible to all other Website account holders (“SPARK Public Projects Data”). You understand that whether or not such SPARK Public Projects Data is previously published, neither Host nor Pew guarantees any confidentiality amongst other Host account holders or Website account holders with respect to any SPARK Public Projects Data.

- b. Your right to upload data to, and/or share data on, the Website is subject to your proper use of the function at all times. As part of such proper use, you agree that you will:
- i. notify Pew in writing at [SPARK-data@pewtrusts.org](mailto:SPARK-data@pewtrusts.org) prior to uploading and/or sharing any SPARK Public Projects Data;
  - ii. upload and/or share SPARK Public Projects Data in accordance with all applicable instructions and guidance received during Website training or from Host technical support;
  - iii. only create projects for the purpose of uploading and/or sharing SPARK Public Projects Data at the direction of Host and Pew. You have the option to first upload and/or share your SPARK Public Projects Data in a staging project to ensure quality and accuracy before such data is made publicly accessible on the Website. **You agree to make such SPARK Public Projects Data in the staging projects public on the Website no later than nine (9) months after the date you initiate the uploading or sharing of such SPARK Public Projects Data into the staging projects.** If the SPARK Public Projects Data is not made public on the Website within such nine-month timespan, such SPARK Public Projects Data may be removed from the Website at the direction of Pew.
- c. **Without limiting Section 3.h, you shall be solely responsible for your own SPARK Public Projects Data and the consequences of posting, sharing, or publishing it via the Website. In connection with your SPARK Public Projects Data, you will not upload and/or share material that is copyrighted, protected by patents, trade secret, or otherwise, and in the instances when you do upload and/or share material that is, you affirm, represent, and warrant that: you own or have obtained in writing the necessary assignments, licenses, rights, consents, and permissions to use, modify, and/or otherwise disseminate and authorize Host, Pew, and/or any Host account or Website account holders to use all patent, trademark, trade secret, copyright or any other proprietary rights known or otherwise in and to any and all SPARK Public Projects Data, free of any infringement**

**or other third party claims that might impact the proprietary rights thereto, to enable inclusion and use of the SPARK Public Projects Data in the manner contemplated by the Website, your Data Sharing Agreement with Pew (the “Data Sharing Agreement”), to the extent applicable, and these SPARK Terms of Use (particularly if you have not entered into a Data Sharing Agreement with Pew). Further, you hereby provide to Pew and/or Host any necessary rights to share, disseminate, or otherwise promulgate the SPARK Public Projects Data.**

- d. For clarity, you retain all of your ownership rights in the SPARK Public Projects Data to which you hold rights. However, by uploading and/or sharing SPARK Public Projects Data to the SPARK platform, you hereby grant Host and Pew a worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use, reproduce, distribute, prepare derivative works of, and display the SPARK Public Projects Data in connection with the Website and Host’s obligations and responsibilities to maintain and host the Website. You also hereby grant each Host account and/or Website account holder a license to access your SPARK Public Projects Data, and to use, modify, transform, export, and prepare derivative works of such SPARK Public Projects Data only for research and development purposes, without consent from or accounting to you, as permitted under these SPARK Terms of Use. You also acknowledge and agree that the SPARK Public Projects Data, and any other data you upload to and/or share on the Website, may, at the request of Pew, be hosted by Host on the public portion of Host’s website (“Host Public Website”), which may be accessed without an account to the Website. Any data submitted by you to the Website shall be deemed SPARK Public Projects Data and may be hosted on the Website or Host Public Website, and in each case will be subject to these SPARK Terms of Use. The above licenses granted in your SPARK Public Projects Data by you are perpetual and irrevocable.
  
- e. Neither Host nor Pew endorse any SPARK Public Projects Data or any opinion, recommendation, or advice expressed therein, and Host and Pew each expressly disclaim any and all liability in connection with SPARK Public Projects Data. Neither Host nor Pew permits copyright infringing activities and infringement of intellectual property rights on the Website, and Host will remove all SPARK Public Projects Data if properly notified that such SPARK Public Projects Data infringes on another’s intellectual property rights. Host and Pew reserve the right to remove, or cause to be removed, SPARK Public Projects Data for any reason without prior notice.

- f. You agree not to upload and/or share any Protected Health Information, as such term is defined in the United States Health Insurance Portability and Accountability Act of 1996, as amended by the HITECH Act, and regulations promulgated thereunder, or similarly protected information under EU Data Protection Directive 95/46/EC and the General Data Protection Regulation (EU) 2016/679 and all EU or national implementing measures of these EU Directives and Regulations.
  - g. You represent and warrant that any SPARK Public Projects Data you upload and/or share is free of viruses, worms, trojan horses, malware, defects, date bombs, time bombs and other items of a destructive nature.
  - h. If you have entered a Data Sharing Agreement with Pew, then (i) the Data Sharing Agreement shall control in the event of a conflict between such Data Sharing Agreement and these SPARK Terms of Use and any other terms of use on the Website with respect to your providing of your SPARK Public Projects Data, (ii) these SPARK Terms of Use shall control with respect to any other conflicts, including your use, access, and manipulation of any other provider's SPARK Public Projects Data, and (iii) there is no conflict if the Data Sharing Agreement or these SPARK Terms of Use are silent on a matter addressed by the other.
4. For access to the SPARK platform, use and exporting of third-party SPARK Public Projects Data, the following restrictions and conditions apply specifically to your access to the SPARK platform, use, and exporting of third-party SPARK Public Projects Data on the Website.
- a. With an account to the Website:
    - i. **You may access and export SPARK Public Projects Data owned by third parties ONLY FOR RESEARCH AND DEVELOPMENT PURPOSES, without consent from or accounting to such third party. You understand that it is the sole responsibility of each user of the SPARK Public Projects Data to obtain any and all necessary rights, including, but not limited to, copyrights, trademarks, patents, trade dress, trade secret, publicity or other requirements through federal and/or**

**state laws, if and when disseminating, commercializing, or otherwise creating new intellectual property rights from and in the SPARK Public Projects Data. Pew and Host disclaim all such responsibility and you represent that you will not hold Pew and Host liable for any potential third party claims that may arise from your failure to obtain such rights.**

- ii. You may access and export SPARK Public Projects Data and other content only as permitted under these SPARK Terms of Use.
- iii. You agree not to circumvent, disable or otherwise interfere with security-related features of the Website or Host Public Website; or features that prevent or restrict use or copying of any SPARK Public Projects Data; or enforce limitations on use of the Website, Host Public Website, or the content therein.
- iv. You agree that SPARK Public Projects Data will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act, or any other export laws, regulations or restrictions.
- v. You understand that when using the Website or Host Public Website, if applicable, you will be exposed to SPARK Public Projects Data from a variety of sources, and that neither Host nor Pew is responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such SPARK Public Projects Data. You further understand and acknowledge that you may be exposed to SPARK Public Projects Data that is inaccurate or objectionable.

**b. Experimental Material**

- i. **You acknowledge that (1) some of the SPARK Public Projects Data may contain compounds or other information with biological or chemical properties that are unpredictable and/or unknown, and (2) the absence of any specific warning or disclaimer on any SPARK Public Projects Data with respect to compounds or other information contained therein does not mean that such compounds or other information may not have biological or chemical properties that are unsafe for human use, unpredictable, and/or unknown.**
- ii. **You hereby warrant that you are responsible for your compliance with any and all applicable federal, state and local laws, rules, regulations and other governmental and quasi-governmental standards and guidelines applicable to research and experimentation.**

5. Your use of the Website's communication functionality is as follows.
- a. You may send and receive electronic communications via the Website to and from other SPARK contributors with accounts to access the Website. The name associated with your Website account and all communications you engage in through the Website will be viewable by other Website account holders.
  
  - b. Your use of the communication functionality of the Website is subject to your proper use of the function at all times, including compliance with all applicable laws, rules, and regulations pertaining thereto. As part of such proper use, you agree that your communications to other SPARK participant will not contain any:
    - i. misrepresentations or content that is defamatory or violates any rights of privacy or publicity;
    - ii. pornography or links to such content;
    - iii. discussion of, encouragement of, or links to any form of illegal activity (i.e., how to build a bomb, biochemical weapon, hacking, etc.);
    - iv. gratuitous displays or discussions of violence, obscene or vulgar language, and abusive content or content which endorses or threatens physical harm;
    - v. promotion of any type of hate-mongering (i.e., racial, political, ethnic, religious, gender-based, sexuality-based or personal, etc.);  
or
    - vi. transmission of inappropriate newsgroup postings or unsolicited e-mail (spam).
  
  - c. Host or Pew may suspend or disable your access to the communications functionality of the Website, or your access to the Website in its entirety, if Host or Pew reasonably believe you have engaged in any improper use of the Website's communication capabilities.

6. Privacy Considerations.

You consent to the collection, processing and storage by Host and/or Pew of your personal information in accordance with the terms of each of Pew's Privacy

Policy, which is available at <https://www.pewtrusts.org/en/about/privacy-policy>, and of Host's Privacy Policy, which is available [here](#). You agree to comply with all applicable laws and regulations, and the terms of Pew's Privacy Policy and Host's Privacy Policy, with respect to any personal information that you access, use and/or submit in connection with the Website. In the event of any conflict between Pew's Privacy Policy and Host's Privacy Policy, the Pew Privacy Policy shall control with respect to SPARK.

## **7. Liability and Indemnification**

- a. You agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Host, Pew, and/or any given provider of the SPARK Public Projects Data with respect thereto, and agree to indemnify and hold Host, Pew, the provider of such applicable SPARK Public Projects Data and, as applicable, each of Host, Pew, and such SPARK Public Projects Data provider's owners/operators, affiliates, licensors, and/or successors ("Indemnitees") harmless to the fullest extent allowed by law regarding all matters related to your use, including any unauthorized use of your Host account or Pew-issued account, of the Website or, if applicable, the Host Public Website, SPARK Public Projects Data and any compounds identified therein, or any potential legal actions stemming from any and all failures to comply with Section 4.b.ii. You will not hold any Indemnatee responsible for any of the information received through SPARK. You acknowledge and agree that each provider of SPARK Public Projects Data shall be an intended third party beneficiary of these SPARK Terms of Use with respect to this Section 7 and the use of such provider's SPARK Public Projects Data.**
- b. NEITHER PEW NOR HOST MAKE ANY WARRANTIES AS TO THE SPARK PLATFORM, THE WEBSITE, OR THE SPARK PUBLIC PROJECTS DATA. USE OF THE SPARK PLATFORM, THE WEBSITE, AND THE SPARK PUBLIC PROJECTS DATA IS AT YOUR OWN RISK, AND YOU AFFIRMATIVELY ACCEPT THESE RISKS WITH EACH USE. THE SPARK PLATFORM, THE WEBSITE, AND THE SPARK PUBLIC PROJECTS DATA ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. NEITHER PEW NOR HOST WARRANT THAT THE SPARK PLATFORM, THE WEBSITE, OR THE SPARK PUBLIC PROJECTS DATA, OR THEIR CONTENT OR OPERATION WILL BE SECURE, ACCURATE, RELIABLE, UNINTERRUPTED, OR ERROR-FREE.**
- c. IN NO EVENT SHALL PEW OR HOST BE LIABLE FOR ANY DAMAGES OF ANY KIND INCLUDING DIRECT, INCIDENTAL, INDIRECT,**

SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE SPARK PLATFORM, THE WEBSITE, AND THE SPARK PUBLIC PROJECTS DATA, INCLUDING, WITHOUT LIMITATION, LOSS OF LIFE, PHYSICAL INJURY, PROPERTY DAMAGE, LOSS OF DATA, LOSS OF INCOME OR PROFIT, OR ANY OTHER DAMAGES, LOSSES OR CLAIMS, EVEN IF PEW OR HOST HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES OR CLAIMS.

8. References and Citations to Data Sets and the SPARK Program

- a. **As part of your use of the SPARK Public Projects Data, the Website, or anything related thereto, you will adhere to scientific conventions and standards by citing data sets within the SPARK Public Projects Data you used according to the specific source descriptions and suggested language, including proper funding attribution noted in the details section of the relevant SPARK Public Projects Data, in any publications, presentations, or communications that derive from your work with the SPARK program.**
  
- b. As part of your use of the SPARK Public Projects Data, the Website, or anything related thereto, you will acknowledge the SPARK program in any publications, presentations, or communications that derive from your work with the SPARK program.
  
- c. Such acknowledgements to the SPARK program shall be largely in the form as one of the following:
  - i. “Data was analyzed using The Pew Charitable Trusts’ Shared Platform for Antibiotic Research and Knowledge (SPARK), [www.pewtrusts.org/spark-antibiotic-discovery](http://www.pewtrusts.org/spark-antibiotic-discovery), and is available/accessible on the platform. SPARK is powered by technology developed by [Host].”
  
  - ii. “This study used [data from] SPARK, the Shared Platform for Antibiotic Research and Knowledge, ([www.pewtrusts.org/spark-antibiotic-discovery](http://www.pewtrusts.org/spark-antibiotic-discovery)).”