**DATA USE AGREEMENT**

This Data Use Agreement ("**DUA**") is entered into and effective as of the date of last signature by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_("**Data Provider** ") and The University of South Florida Board of Trustees for University of South Florida ("**Data Recipient**").

**Premises**

Data Provider seeks to disclose or make available to Data Recipient, and Data Recipient seeks to receive and use, limited data sets as defined below, subject to the restrictions in this DUA and in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and its implementing regulations (“**HIPAA**”), and the Privacy Rule (45 CFR Part 160 and Part 164, Subparts A and E, as amended from time to time).

Accordingly, the parties agree as follows:

1. **TERMS USED**

Terms used but not otherwise defined in this DUA have the same meaning as those terms in the Privacy Rule.

1. **Individual** means that term defined in 45 CFR § 164.501 of the Privacy Rule, and includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g) of the Privacy Rule.

1. **Limited data set** means that term defined in 45 CFR § 164.514(e) of the Privacy Rule.
2. **Protected Health Information** (“**PHI**”) means that term defined in 45 CFR § 164.501 of the Privacy Rule, to the extent that such information is created or received by Data Recipient from Data Provider.
3. **Required by law** means that term defined in 45 CFR § 164.501 of the Privacy Rule.

# PERMITTED USES AND DISCLOSURES BY DATA RECIPIENT

Except as otherwise specified in this DUA, Data Recipient and its workforce may use or disclose limited data sets disclosed or made available by Data Provider if such uses or disclosures (a) are necessary to conduct research activities, public health activities, or health are operations of Data Recipient ("**Projects**"); and (b) would be permitted under federal and state law if made by Data Provider.

# OBLIGATIONS OF DATA RECIPIENT

1. Data Recipient must not use or disclose a limited data set for any purpose other than the Projects or as required by law.

1. Data Recipient may not sell or monetize a limited data set in any form, including, but not limited to, aggregating such information into a larger data set that will be sold, even if the limited data set is anonymized.
2. Data Recipient must use appropriate safeguards to prevent use or disclosure of limited data sets not permitted under this DUA.
3. Data Recipient is required to report to Data Provider any use or disclosure of a limited data set not permitted under this DUA of which it becomes aware, including, without limitation, any disclosure of PHI to an unauthorized subcontractor, within 10 days of its discovery.
4. Data Recipient will ensure that any agent, including a subcontractor, to whom it provides a limited data set, agrees to the same restrictions and conditions that apply to Data Recipient under this DUA.
5. Data Recipient will not identify the information included in limited data sets, or contact Individuals whose information is included in limited data sets.
6. To the extent of its waiver of sovereign immunity under Florida law, Data Recipient assumes liability for actual damages arising out of or in connection with (a) any unauthorized or prohibited use or disclosure, including, without limitation, a data breach, with respect to a limited data set disclosed or made available to Data Recipient by Data Provider; or (b) any breach of this DUA by Data Recipient or any subcontractor, agent, or person under Data Recipient's control.

# TERM AND TERMINATION

The provisions of this DUA are effective as of the Effective Date and remain in effect until terminated by Data Provider. If Data Provider learns of a material breach by Data Recipient, Data Provider will either immediately terminate this DUA or, in its sole discretion, grant Data Recipient a reasonable period to cure the breach or end the violation.

**E.** **MISCELLANEOUS**

1. A reference in this DUA to a section in the Privacy Rule means the section as amended or as renumbered.

1. The parties will take such action as is necessary to amend this DUA from time to time as is necessary for Data Provider to comply with the requirements of the Privacy Rule and HIPAA.
2. The obligations of Data Recipient under Section C (7) of this DUA survive the termination of this DUA.
3. Any ambiguity in this DUA must be resolved to permit Data Provider to comply with the Privacy Rule.
4. There are no intended third-party beneficiaries to this DUA. Without in any way limiting the foregoing, nothing in this DUA gives rise to any right or cause of action, contractual or otherwise, of or on behalf of any Individual whose PHI is used or disclosed under this DUA.
5. No provision of this DUA may be waived, except by an agreement in writing signed by the waiving party. A waiver of any term or provision will not be construed as a waiver of any other term or provision.
6. The persons signing below have the right and authority to execute this DUA, and no further approvals are necessary to create a binding agreement.
7. In the event of any conflict between the terms and conditions in this DUA and those contained in any other agreement or understanding between the parties, written, oral, or implied, the terms of this DUA govern. Without limiting the foregoing, no provision of any other agreement or understanding between the parties limiting the liability of Data Recipient to Data Provider applies to the breach of any covenant in this DUA by Data Recipient.
8. This DUA is entered into in the state of Florida, and must be construed and interpreted in accordance with the laws of Florida. Venue lies exclusively in Hillsborough County, Florida.

10. This DUA may be executed in counterparts; each is an original, but all together are considered one agreement. A signed copy of this DUA delivered by facsimile, email, or other means of electronic transmission has the same legal effect as delivery of an original signed copy.

*Signature page follows*

The parties execute this DUA as of the date of last signature by a party below.

**DATA PROVIDER DATA RECIPIENT**

Name: Eric Kern, MBA

Title: Director, Sponsored Research

Date: Date:

Read and Understood:

USF Faculty