Data Use Agreement

This Data Use Agreement (“Agreement”), effective  (“Effective Date”), is entered into by and between **Cleveland Clinic Nevada d/b/a Cleveland Clinic Lou Ruvo Center for Brain Health**, with a business address at 888 W. Bonneville Avenue, Las Vegas, Nevada 89106 (“**Cleveland Clinic**”) and      , with a business address at       (“**Recipient**”) (each a “**Party**” and collectively the “**Parties**”).

**WHEREAS**, Cleveland Clinic has collected and/or generated certain information and/or data from its research activities associated with the study entitled, “**Core 2 – Clinical and Translational Research Core (COBRE)**” (“**Study**”) with support from the NIH/NIGMS grant (5P20GM109025) (“**Grant**”);

**WHEREAS**, Recipient, on behalf of its researcher, Dr.       (“**Recipient Researcher**") has requested access to certain data, which may or may not include Protected Health Information (“**PHI**”), as defined in the Health Insurance Portability and Accountability Act of 1996, as amended (“**HIPAA**”), arising from the Study (“**Data**”) for the purpose of performing the following **non-commercial** research activities:

      (“**Purpose**”);

**WHEREAS**, Cleveland Clinic may disclose or provide the Data to Recipient, subject to the terms and conditions contained in this Agreement, in the form of either:

1. a “**de-identified data**” set containing no individual patient identifiers constituting PHI, which “de-identified data” shall have the meaning ascribed to it in the HIPAA Privacy Rule at 45 CFR Section 164.514(a), or

(b) a “**limited data set**” of PHI, as defined in the HIPAA Privacy Rule at 45 CFR Section 164.514 (e), so that Recipient is a limited data set recipient as defined in HIPAA; and

**NOW, THEREFORE**, the Parties hereby agree as follows:

1. Permitted Uses and Disclosures. Recipient shall *only* use the Data for the Purpose. Recipient shall receive and use the Data *only* under Recipient Researcher’s direct supervision. Recipient shall *not* disclose the Data to third-parties unless required by law. All other uses and disclosures not authorized by this Agreement are prohibited.

2. Obligations of Recipient. Recipient will:

1. *not re-identify, or attempt to re-identify, or allow to be re-identified*, any patients or individuals who are the subject(s) of the Data, or their relatives, family or household members;
2. *not link any other data elements to the Data* without obtaining reasonable assurances that the Data shall remain either de-identified or continue to constitute a limited data set;
3. *implement and maintain appropriate data security and privacy policies, procedures* and associated physical, technical and administrative safeguards to assure that Data are accessed *only* by authorized personnel;
4. *promptly report to Cleveland Clinic* any use or disclosure of the Data not provided for herein of which it becomes aware;
5. *not use or further disclose the Data* other than as permitted or required herein or as required by law;
6. *assure that all personnel or parties with access to the Data agree to abide by all of the foregoing conditions in this Agreement;* and
7. *comply with all rules and regulations* imposed by Recipient’s Institutional Review Board, or equivalent research ethics committee (“IRB”), in the requesting and use of the Data at Recipient.

3. Unintentional Disclosures. In the event any patient identifiable information, other than that allowable

under a limited data set, is mistakenly provided under this Agreement, Recipient shall:

 (i) *immediately notify* Cleveland Clinic as to the receipt of patient identifiable information;

 (ii) *not use or further disclose* such patient identifiable information; and

 (iii) *treat all* such patient identifiable information as confidential information.

\*Upon the request of Cleveland Clinic, Recipient shall *return or destroy* such patient identifiable information and certify to such destruction.

4. Effective Date and Termination. This Agreement shall become effective on the Effective Date and shall continue for *so long as Recipient or third-parties to which Recipient disclosed the Data retain the Data*, unless sooner terminated as set forth in this Agreement. Cleveland Clinic may terminate this Agreement immediately if Cleveland Clinic makes the determination that Recipient has breached a material term of this Agreement. Cleveland Clinic may terminate this Agreement for any reason or no reason upon thirty (30) days’ advanced written notice to Recipient.

***Upon termination of this Agreement*, *Recipient shall*:** return all Data to Cleveland Clinic, or at Cleveland Clinic’s election, destroy the same and certify to such destruction. The obligations contained herein shall survive the termination or expiration of this Agreement.

5. Publication. Recipient may publish or present its results or conclusions (but not the Data itself) generated from its use of the Data for the Purpose provided herein (“**Publication**”), provided that Recipient *agrees:*

1. *to cite* ***Cleveland Clinic Lou Ruvo Center for Brain Health*** *as the source of the Data; and*
2. *provide an* ***acknowledgement*** *in any manuscript or Publication as follows*:

\*“**Data were generated by Center for Neurodegeneration and Translational Neuroscience (CNTN) at the Cleveland Clinic Lou Ruvo Center for Brain Health and the University of Nevada las Vegas (UNLV) with support from the NIGMS (Grant #5P20GM109025). CNTN investigators have provided data for the authors use, but were not necessarily involved in preparation of this article**.”

6. Notices and Reporting. Any notices or reporting to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party’s address given below.

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| **As to Cleveland Clinic:**Cleveland Clinic Nevada d/b/a Cleveland Clinic Lou Ruvo Center for Brain Health888 W. Bonneville Ave.Las Vegas, NV 89106Attn: **Jeffrey Cummings, MD** | **With copy to:**The Cleveland Clinic FoundationLaw Department – **Research Contracts**3050 Science Park Drive (Mail code: AC321)Beachwood, OH 44122 |

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| As to Recipient:                          | With copy to:                          |

7. No Warranty or Other Rights. Recipient acknowledges that the Data are provided “as is” and without any representations or warranties, express or implied, of any kind. The obligations created under this provision shall survive the termination of this Agreement. Except as expressly set forth herein, neither Party transfers to the other Party, by operation of this Agreement or otherwise, rights to any patent, copyright, trademark, or other intellectual property right of any kind.

8. Liability. Unless otherwise prohibited by law, each Party (which shall include their employees, agents and representatives) agrees to be responsible for their respective acts of negligence and/or reckless acts or omissions in the performance of their duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to, any and all such acts or omissions.  Neither Party shall have any obligations to indemnify the other Party and/or their agents, employees and representatives. Except as prohibited by law, neither Party shall be liable to the other Party for any special, indirect, consequential or punitive damages of any kind arising in any manner from this Agreement regardless of the foreseeability thereof.

9. Use of Name. Neither Party will, without the prior written consent of the other Party, use in advertising, publicity, or otherwise, the name, trademark, logo, symbol, image or likeness of the other Party or that Party's employee or agent.

10. Mutual Drafting. This Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

11. Modification. This document states the entire agreement between the Parties regarding the Data provided by Cleveland Clinic to Recipient. It may not be amended or modified except through a later written agreement, signed by both Parties, and expressly referencing this Agreement.

12. Counterparts & Authority to Sign**.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties electronically or by facsimile and such electronic or facsimile execution and transmission shall have the full force and effect of an original signature. All fully-executed counterparts, whether original executions, or electronic or facsimile executions, or a combination thereof, shall be construed together and shall constitute one and the same Agreement. Each Party represents and warrants that it has the power and authority to enter and perform its obligations under this Agreement without conflict with, default under, or violation of any law, regulation, or agreement binding upon it.

In Witness Whereof, each of the undersigned Parties has caused this Agreement to be duly executed in its name and on its behalf.



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