**The City University of New York**

**Data Transfer and Non-Disclosure Agreement**

This Data Transfer and Non-Disclosure Agreement (the “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between The City University of New York, having an address at 205 E. 42nd Street, New York, NY 10017 (“CUNY”), and

 , having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Institution”) on behalf of its employee (“Principal Investigator” and collectively with “Institution,” the “Recipient”) for Data that may be provided under the terms of this Agreement.

1. Data.

 (a) The study data to be furnished by CUNY to Recipient consist of that data listed in Exhibit A to this Agreement (the “Data”).

 (b) CUNY retains ownership of the Data and all intellectual property rights therein. Recipient shall not use the Data or make, cause to be made, use or sell for any purpose, any product or other item using, incorporating or derived from the Data, other than for the permitted use set forth in Exhibit A to this Agreement. Recipient agrees that it will not apply or file for any intellectual property protection, including without limitation, copyright or patent protection, in any jurisdiction, for the Data or any patentable development or discovery resulting from its use of the Data, without first notifying CUNY of its intent to do so.

2. Permitted Use. Recipient shall use the Data solely for not-for-profit purposes by the Principal Investigator at the Institution as further described in Exhibit A to this Agreement (“Permitted Use”). Any other use of the Data is prohibited. For the avoidance of doubt, Recipient is prohibited from making any profit-making or commercial use of the Data, whether alone, in collaboration with any party, or through a contractor or agent. However, CUNY retains the unrestricted right to distribute the Data to others, whether commercial or noncommercial entities.

3. Authorized Users.

 (a) Recipient shall limit access to the Data to the Principal Investigator and those individuals affiliated with and working within the Institution under the supervision of Principal Investigator who are listed on Exhibit B to this Agreement and have also accepted the terms of this Agreement (each a “Project Investigator” and collectively with the Principal Investigator, “Authorized Users”). Recipient shall refer to CUNY any request for access to the Data from anyone other than the Authorized Users.

 (b) Recipient shall immediately notify CUNY if it becomes aware that any of the Authorized Users has failed to comply with the terms of this Agreement and/or has compromised the privacy and security of the Data. In such event, Recipient shall comply with Section 4(c) of this Agreement and CUNY, at its sole option, may immediately remove such user from the list of Authorized Users and immediately terminate such user’s access to the Data.

 (c) Except as permitted by this Section 3, Recipient shall not directly or indirectly disclose, distribute, or otherwise allow any third party to have access to any of the Data without such third party executing a data transfer and non-disclosure agreement with CUNY under the same terms, or terms at least as restrictive, as set forth in this Agreement.

4. Safeguards and Notification.

 (a) All transmissions of the Data shall be by secure electronic transfer.

 (b) Recipient shall use appropriate administrative, technical and physical measures to safeguard and keep the Data confidential and secure, including without limitation:

 (i) limiting access to the Data to Authorized Users:

 (ii) storing the Data in secure files that are access-restricted through passwords and/or encryption known only to Authorized Users;

 (iii) encrypting any personal computer, tablet, portable storage device, or other mobile storage tool used to store and/or transmit the Data, with the decryption key known only by Authorized Users;

 (iv) when not in use, maintaining all hardcopy versions of the Data, as well as any personal computers, tablets, portable storage devices, and other mobile storage tools containing the Data, in locked cabinets, file drawers, or other secure locations at Recipient’s or its Authorized Users’ facilities, accessible only to Authorized Users, and not at an Authorized User’s home or a third-party location;

 (v) requiring that all hardcopy versions of the Data, as well as any personal computers, tablets, portable storage devices, and other mobile storage tools containing the Data, be used only in secure locations at Recipient’s or its Authorized Users’ facilities, accessible only to Authorized Users, and not at an Authorized User’s home or a third-party location; and

 (vi) establishing procedures to help ensure that the Data cannot be extracted from a computer mainframe, remote terminal, personal computer, tablet, portable storage device, or other mobile storage tool, by unauthorized individuals.

 (c) Recipient shall promptly report in writing to CUNY any unauthorized or inadvertent use or disclosure of the Data by Recipient, an Authorized User or Recipient’s other employees, representatives, agents and/or contractors in violation of this Agreement, including any remedial action taken by Recipient. Recipient shall make such report within three (3) business days after Recipient becomes aware of the unauthorized or inadvertent use or disclosure. Recipient shall cooperate with any investigation conducted by CUNY or its agents of any unauthorized use or inadvertent disclosure.

 (d) Representatives of CUNY shall have the right to enter the premises of Recipient for purposes of assessing compliance with this Agreement. Upon request by CUNY, Recipient will promptly provide access and respond to CUNY inquiries regarding privacy and security of the Data.

5. Publication.

 (a) Recipient shall not disclose any personally-identifiable information received pursuant to this Agreement in any draft or final publication.

 (b) Subject to the terms of this Agreement and consistent with the Permitted Use, Recipient may publish or publicly present information or results relating to the Data or studies conducted with the Data. However, in the event that Recipient should desire to make such a publication, it will provide CUNY with a copy of all manuscripts or abstracts reporting such information or results not less than thirty (30) days prior to publication or public presentation, for CUNY’s review and comment. Recipient agrees to acknowledge CUNY in all publications and presentations based on the use of the Data.

6. No Warranties; Limitation of Liability.

 (a) THE DATA IS PROVIDED “AS IS” AND WITHOUT ANY WARRANTY EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE USE OF THE DATA WILL NOT INFRINGE OR VIOLATE ANY PATENT, COPYRIGHT, TRADEMARK OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

 (b) In no event will CUNY be liable for any use or disclosure of the Data by Recipient, an Authorized User, Recipient’s other employees, representatives, agents, and/or contractors, or for any claims, damages, losses, or liabilities, of whatsoever kind or nature, which may arise out of or in connection with the use or disclosure of the Data by Recipient, an Authorized Users, or Recipient’s other employees, representatives, agents, and/or contractors.

 (c) Recipient agrees to defend, indemnify, and hold harmless CUNY and its trustees, officers, employees, faculty, agents or representatives from any loss, claim, damage, or liability of any kind or nature, which may arise from or in connection with this agreement or from Recipient’s acceptance, use, storage or disposal of the Data, except loss, claims, damages, or liability arising directly from the gross negligence or willful misconduct of CUNY.

7. Compliance with Law. Recipient agrees to use the Data in compliance with all applicable federal, state and local laws, rules and regulations.

8. Termination of Agreement.

 (a) This Agreement shall commence as of the Effective Date and shall terminate upon the earlier of: (a) completion of any research that is a Permitted Use, or (b) two years from the date of this Agreement, unless terminated earlier by mutual written consent of the parties or pursuant to section (b) or (c) below.

 (b) Breach of a material provision of this Agreement by Recipient or an Authorized User (including without limitation failure of Recipient to abide by its obligations of security, confidentiality, limited use and/or nondisclosure) shall be grounds for termination of this Agreement for cause by CUNY. Upon becoming aware of such a breach of a material provision, CUNY may do one or more of the following:

 (i) terminate this Agreement upon thirty (30) days’ notice provided Recipient has been given notice of the breach in writing and failed to satisfactorily cure the breach within thirty (30) days of Recipient’s receipt of notice of such breach;

 (ii) immediately terminate this Agreement;

 (iii) prohibit any Authorized User from obtaining access to the Data; and/or

 (iv) use such other remedies as may be available to it under law or equity.

 (c) Recipient may terminate this Agreement at any time upon notice to CUNY, provided, however, that such termination shall not affect in any way Recipient’s obligations under this Agreement, the nature of which would continue beyond the termination of the Agreement. Such termination shall terminate Recipient’s Permitted Use.

 (d) Upon termination of this Agreement for any reason, Recipient shall discontinue use of the Data and shall return or dispose of all the Data in any form as directed by CUNY, unless permission to retain the Data is specifically provided in writing by CUNY.

9. Transmittal Fee. Recipient agrees to pay $\_\_\_\_\_ as a Transmittal Fee to reimburse CUNY for Data preparation and distribution costs. Payment of the Transmittal Fee shall not be deemed a sale of Data by CUNY and no other right or license is granted or implied as a result of the transfer of Data to Recipient.

10. Miscellaneous.

(a) Recipient’s obligations under this Agreement may not be assigned, subcontracted, or transferred without the prior written consent of an authorized representative of the CUNY.

(b) This Agreement, including its exhibits, all of which are hereby incorporated herein, contains the entire understanding of the parties hereto, supersedes all previous oral or written understandings, representations, or agreements to the extent that they relate to the subject matter hereof, and may not be modified by either party unless such modification is in writing and signed by an authorized representative of each party.

(c) Waiver by either party of a breach of any provision of, or right under, this Agreement shall not operate or be construed as a waiver of any other or subsequent breach of the same provision or right, or of any other provision or right under this Agreement.

(d) If any provision of this Agreement, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision that can be given effect without the invalid provision or application, and to this end the provisions hereof shall be severable.

(e) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(f) This Agreement is governed and construed in accordance with the laws of New York State, without regard to principles relating to conflicts of law, except where the Federal supremacy clause requires otherwise. The courts of the State of New York in New York County and the United States District Court for the Southern District of New York shall have exclusive

jurisdiction over the parties hereto with respect to any dispute or controversy between them arising under or in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**RECIPIENT**

**Institution: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By:

 Name:

 Title:

While not a party to this Agreement, I acknowledge that I have read this Agreement and understand my obligations as an Institution employee and Authorized User:

**Principal Investigator**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

**THE CITY UNIVERSITY OF NEW YORK**

By:

 Name: Colin Chellman, Ph.D.

 Title: Dean for Institutional and Policy Research

**EXHIBIT A**

Description of Data:

Description of research to be conducted with Data (“Permitted Use”):

**EXHIBIT B**

**PROJECT INVESTIGATORS**

1. Each of the undersigned Project Investigators, in consideration of their use of the Data, agrees that:

 (a) s/he has read the Data Transfer & Non-Confidentiality Agreement from The City University of New York to which this Exhibit B is attached (the “Agreement”) and the Permitted Use described in Exhibit A to that Agreement.

 (b) s/he is a “Project Investigator” and an “Authorized User” within the meaning of the Agreement.

 (c) s/he shall comply fully with the terms of the Agreement.

**PROJECT INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

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 Typed Name Institution Affiliation

**PROJECT INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

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 Typed Name Institution Affiliation

**PROJECT INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

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 Typed Name Institution Affiliation

2. The Principal Investigator agrees that the persons designated herein are Project Investigators and Authorized Users within the meaning of the Agreement.

**PRINCIPAL INVESTIGATOR:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Typed Name Institution Affiliation