

MASTER RESEARCH DATA USE AGREEMENT

De-identified Outcomes Data

THIS MASTER RESEARCH DATA USE AGREEMENT (the “**Agreement**”) is made and entered into between Focus On Therapeutic Outcomes, Inc. (“**FOTO**”), and the party identified on the signature page of this Agreement (“**Researcher**”).

FOTO markets and supports an outcomes management system used by health care providers for risk-adjusted, benchmarked reporting and quality management. Researcher desires to perform one or more outcomes research projects (each, a “**Project**”) as described in research project proposals submitted by Researcher from time to time and approved and signed by FOTO (each, a “**Research Project Proposal**”), each of which is incorporated as part of this Agreement.

Each Project will utilize certain data maintained by FOTO in the course of its business, de-identified in accordance with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder by the United States Department of Health and Human Services (as amended from time to time, “**HIPAA**”) and de-identified as to the health care providers that are the sources of such data (such data, as mutually agreed by FOTO and Researcher with regard to a given Project, the “**Data**”).

Each Project will be deemed to create, and will be subject to, an instance of this Agreement effective as of the date upon which Researcher first receives or has access to Data for the particular Project (the “**Effective Date**”).

NOW, THEREFORE, in consideration of the recitals above and other good and valuable consideration, the parties hereby agree as follows:

1. Term. The term of this Agreement as to a given Project (the “**Term**”) shall commence on the Effective Date and, if not sooner terminated as provided herein, expire upon the earlier of (i) the conclusion or termination of the Project or (ii) unless extended by the express written agreement of the parties, the Project end date indicated in the relevant Research Project Proposal or, if none, the first anniversary of the Effective Date (the “**Project End Date**”).

2. License Grant and Restrictions.

2.1 Use of Data. Subject to the terms and conditions set forth in this Agreement, FOTO grants to Researcher during the Term a non-exclusive, non-transferable license solely to conduct the Project. Researcher shall not, in any manner or at any time, use or authorize the use of any Data except as is necessary to effectuate the Project.

2.2 Restrictions. Except as necessary to effectuate the Project or as otherwise expressly approved by FOTO in writing, Researcher shall not do, nor shall it authorize any person do, any of the following: (i) distribute, republish, download, display, post, or transmit any portion of the Data; (ii) modify, adapt, translate, or create derivative works from or based upon any part of the Data; (iii) remove, erase, or tamper with any copyright or other proprietary notice and any trademark notice or logo of FOTO printed on, affixed to, or encoded or recorded in the Data or any media containing the Data; (iv) sell, market, license, sublicense, distribute, rent, loan, or otherwise grant to any third party any right to possess or utilize any portion of the Data; or (v) attempt to do or assist any party in attempting to do any of the foregoing.

3. Publication. Prior to submission for publication of any report or article regarding or relating to the Project (a “**Project Manuscript**”), Researcher shall offer FOTO the opportunity to review and comment on such Project Manuscript draft to ensure proper descriptions and use of FOTO measures and Data. FOTO shall treat all Project Manuscripts as the confidential information in accordance with [Section 8](#).

4. Attribution. Researcher shall identify “Focus On Therapeutic Outcomes, Inc. (FOTO)” as the source of Data for its outcomes research in the “Method” section of any Project Manuscript or other formal or informal article, publication, poster, pamphlet, or other presentation regarding or relating to the Project.

5. Reviews. Researcher shall inform FOTO and provide FOTO copies of any published reviews and articles regarding or relating to the Project.

6. Extension Requests and Status Reports. Any extension of the Project End Date is subject to approval by FOTO. The principle investigator for the Project shall make any such extension request to FOTO in writing at least 30 days prior to the Project End Date setting forth the proposed new Project End Date, the status of the Project, and reason(s) for the requested extension. If FOTO approves an extension of the Project End Date by more than one year, the principal investigator for the Project shall submit to FOTO on each anniversary of such approval a report on the status of the Project in reasonable detail (not to exceed a one letter-size page single-spaced).

7. Security of Data.

7.1 Safeguards. Researcher shall maintain all Data under secure conditions, using reasonable security measures, including without limitation administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality of Data.

7.2 Security Incidents. Researcher shall report to FOTO **by telephone** within three days of Researcher’s discovery or reasonable suspicion of any of the following and shall cause any Representative to do: (i) the attempted or successful unauthorized access, use, disclosure, modification, or destruction of any Data, (ii) the loss or inability to account for any Data, or (iii) the attempted or successful unauthorized access, modification, destruction, or interference with operation of any system, network, device, or facility that maintains or processes Data (including without limitation a ransomware event) other than events that are trivial, routine, do not constitute a material threat to the security of such information (such as typical pings and port scans). **Immediately following such report by telephone**, Researcher deliver to FOTO written notice, in accordance with [Section 19.1](#), of such occurrence in reasonable detail and shall cooperate as reasonably requested with any investigation undertaken by or on behalf of FOTO with respect thereto.

7.3 Security Questionnaires/Audits. Promptly upon the written request of FOTO from time to time, Researcher shall (i) provide accurate and complete written responses to questionnaires from FOTO

regarding Researcher's internal practices, books, and records relating to the use, disclosure, and safeguarding of Data and (ii) make its internal practices, books, and records relating to the use, disclosure, and safeguarding of Data available to FOTO or FOTO's designee for the purposes of determining Researcher's compliance with its obligations under this Agreement. The fact that FOTO exercises its rights under this paragraph, fails to exercise such rights, or has such rights shall not relieve Researcher of its obligations pursuant to this Agreement, nor shall FOTO's review of any report provided pursuant to this paragraph, failure to review any such report, failure to detect, or detection of but failure to notify Researcher or require Researcher's remediation of, any practice or condition of Researcher constitute acceptance of such practice or condition or a waiver of any of FOTO's rights under this Agreement.

8. Confidentiality of Data and Project Manuscripts.

8.1 Non-Disclosure. Except as otherwise permitted under this Agreement or specifically authorized by FOTO (as to Data) or Researcher (as to a Project Manuscript) in writing, Researcher shall keep all Data confidential and FOTO shall keep all Project Manuscripts confidential, and the receiving party shall not disclose (or permit the disclosure by any of its employees, contractors, or agents of) any Data or Project Manuscripts, as the case may be; provided, however, that a party may disclose appropriate portions thereof to those of its consultants, assistants, employees, contractors, agents, and professional advisors (and, as to Researcher, co-investigators) who have a substantial need to know the specific information in question in connection with such party's exercise of rights or performance of obligations under this Agreement (each, a "**Representative**") so long as any such Representative (i) has been instructed that such Data or Project Manuscript is subject to the obligation of confidence set forth by this Agreement and (ii) is bound by a written contract setting forth substantially the same obligations as bind the receiving party under this Agreement (or, as applicable, is bound by a legal fiduciary or professional ethical obligation to maintain such information in confidence, safeguard it appropriately, and use it only for the purpose for which it was disclosed).

8.2 Disclosure under Legal Compulsion. Any provision of this Agreement to the contrary notwithstanding, in the event the receiving party (or its Representative) becomes legally compelled to disclose any Data or Project Manuscript, such party shall provide the other party with prompt notice thereof so that the other party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or if the other party waives compliance with the provisions of this Agreement, the receiving party agrees to furnish (or cause such Representative to furnish) only the portion of the Data or Project Manuscript that the receiving party (or such Representative) is required by such legal compulsion to disclose, as advised by written opinion of counsel. The receiving party also shall exercise (and shall cause such Representative to exercise) reasonable efforts to obtain reasonable assurance that confidential treatment as provided in this Agreement will be accorded to the Data or Project Manuscript so disclosed.

9. Copying of Data. Except as necessary to effectuate the Project or as otherwise expressly approved by FOTO in writing, Researcher shall not copy or otherwise reproduce any part of any Data, nor attempt to do so or assist any party in doing or attempting to do so. Researcher shall preserve (and ensure that any Representative

preserves) in any copy of the Data any copyright or other proprietary notice and any trademark notice or logo of FOTO printed on, affixed to, or encoded or recorded in the Data or any media containing the Data. Any embodiments of Data that may be generated by or on behalf of Researcher, either pursuant to or in violation of this Agreement, will be deemed to be Data and thus the property of FOTO.

10. Return/Destruction of Data.

10.1 Obligation to Return or Destroy. Except as expressly provided in Section 10.2, as soon as Data is no longer needed by Researcher to perform the Project, and in any case immediately upon the expiration or termination of this Agreement, Researcher shall return or permanently and securely destroy all copies and other physical embodiments of the Data in the possession or under the control of Researcher and all Representatives and permanently and securely delete any electronic embodiments of the Data from the computers and storage devices and media of Researcher and all Representatives.

10.2 Exception upon FOTO Approval. If Researcher determines that return or destruction of all Data is not technically feasible or Researcher otherwise has a legitimate need to retain any Data for a time beyond that described in Section 10.1, Researcher shall notify FOTO thereof and, upon FOTO's agreement in writing, Researcher may retain such portion of the Data as to which return or destruction is not technically feasible until return or destruction is feasible and/or may retain such portion of the Data as to which the legitimate need exists until such legitimate need no longer exists, provided in each case that Researcher extends the protections of this Agreement to the Data and strictly limits its further use or disclosure to such legitimate need, if any.

11. No Re-identification of Data. Researcher shall not attempt to re-identify any patients, clinicians, or other individuals, nor any health care facilities or practices, represented in or associated with any Data and shall not assist or permit any third party to do so. In the event that Researcher becomes aware of or suspects the identity of any of the foregoing, Researcher immediately shall notify FOTO thereof and shall not attempt to contact any of the foregoing.

12. No Transmission, Access, or Storage Outside U.S. Except as expressly authorized by FOTO in writing, Researcher shall not permit any Data to be transmitted to, received by, or stored at any location outside of the United States of America and shall not permit any person outside of the United States of America to access or view Data.

13. Ownership of Data. As between FOTO and Researcher, FOTO has and retains exclusive ownership of all Data and all intellectual property and proprietary rights therein or related thereto, and Researcher acknowledges that the foregoing constitute valuable assets of FOTO and/or its licensors. Nothing contained in this Agreement shall be construed as granting to or conferring upon Researcher any right, by license or otherwise, expressly or by implication, in respect of any Data or any applications thereof except for the license expressly granted herein.

14. Data Provided AS-IS. THE DATA IS PROVIDED AS-IS, WITH NO WARRANTIES, AND FOTO DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE DATA OR ANY PART THEREOF, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT FOTO

KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE.

15. Exclusion of Liability. RESEARCHER ACKNOWLEDGES THAT FOTO IS MAKING DATA AVAILABLE FOR THE PROJECT WITHOUT CHARGE IN THE INTEREST OF SCIENTIFIC AND MEDICAL RESEARCH. IN NO EVENT SHALL FOTO BE LIABLE TO RESEARCHER (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE RESEARCHER'S RIGHTS) WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), WHETHER FOR DIRECT DAMAGES OR FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, LOSS OF OR DAMAGE TO DATA, LOSS OF BUSINESS, OR OTHER ECONOMIC DAMAGE), REGARDLESS OF WHETHER FOTO WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE ANTICIPATED, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

16. Compliance with Laws. Researcher shall comply with all applicable federal and state laws in conducting the Project.

17. Responsibility for Representatives. Researcher shall be responsible for any unauthorized use or disclosure of Data by its Representatives to which Researcher disclosed (or authorized disclosure on Researcher's behalf of) Data, and any use or disclosure of such Data by such Representatives that would violate this Agreement if made by Researcher shall be deemed a breach by Researcher.

18. Termination. Researcher may terminate this Agreement as to a given Project upon written notice thereof to FOTO. FOTO may terminate this Agreement with respect to any or all Projects effective immediately upon written notice if FOTO determines that Researcher has breached a material provision of this Agreement.

19. Miscellaneous.

19.1 Notices. Except as otherwise provided in this Agreement, notices and reports given under this Agreement shall be in writing and sent to FOTO at **Attn: Research Office, FOTO, 2910 Tazewell Pike #E, Knoxville, TN 37918**, and to Researcher at the address shown on the signature page hereof. Such written notices shall be deemed given (i) when personally delivered, (ii) on the third business day after deposit, properly addressed and postage pre-paid, when sent by certified or registered U.S. mail to the address provided herein, or (iii) on the next business day when sent with next-business-day instruction by recognized overnight delivery service to the address provided herein; provided, however, that **written notice pursuant to Section 7.2 shall be sent with next-business-day instruction by recognized overnight document delivery service to the address provided herein** and shall be deemed given when so deposited with such overnight delivery service.

19.2 Nature of Relationship. Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto shall create any partnership or joint venture as between Researcher and FOTO or be deemed a commitment by Researcher or FOTO to engage in any Project, relationship, contract, or future dealing with of for the benefit of the other. Neither party shall have the right,

power, or authority under this Agreement to create any duty or obligation on behalf of the other party.

19.3 Survival. The obligations in Sections 3, 4, 5, 8, 10, 11, and 12 shall survive the termination or expiration of this Agreement and shall be in force as long as any Data remains in the custody or control of Researcher or any of its Representatives. Other provisions of this Agreement that, by their nature, are intended to survive the termination or expiration of this Agreement shall so survive.

19.4 Injunctive Relief. Researcher acknowledges that the breach or threatened breach by Researcher of any provision of this Agreement may cause FOTO irreparable harm and that FOTO may not have an adequate remedy for such breach at law, and Researcher therefore agrees that upon any breach or threatened breach of this Agreement, FOTO will be entitled to seek, and Researcher shall not object to, injunctive relief to prevent Researcher from commencing or continuing any action that constitutes or would constitute such breach, or to compel Researcher to take action required under this Agreement or otherwise specifically perform hereunder, without bond, without the need of proof of actual damages, and without prejudice to any other rights or remedies to which FOTO may be entitled as a result of a breach of this Agreement.

19.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Tennessee, without regard to conflict of law principles that would result in the application of any law other than the law of such State, and venue for any dispute under this Agreement shall be in the state or Federal courts in Knoxville, Tennessee.

19.6 Waiver. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of, any right or remedy as to subsequent events.

19.7 Severability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, and/or the controlling principle of law or equity leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

19.8 Entire Agreement. This Agreement, together with each Research Project Proposal, constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect.

19.9 Amendments. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties.

19.10 Interpretation. The headings of the sections used in this Agreement are included for convenience only and are not to be used in construing or interpreting this Agreement.

19.11 Counterparts. This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts constitute one and the

same instrument. Manually-executed counterparts may be delivered in faxed or scanned electronic form, each of which (whether originally executed or such a faxed or scanned electronic document) shall be deemed an original, and all of which together shall constitute one and the same instrument. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart hereof signed by each of the parties.

IN WITNESS WHEREOF, Researcher and FOTO have caused this Agreement to be executed and delivered by themselves or their duly authorized representatives as of the later date indicated below.

RESEARCHER:

FOTO:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

<p>Researcher Name: _____</p> <p>Researcher Address: _____</p> <p>_____</p> <p>_____</p> <p>_____</p>
