



## DATA LICENSE AGREEMENT

This Evaluation Agreement (this “Agreement”), is made as of \_\_\_\_\_, 20\_\_ (“Effective Date”) between MarketPharm LLC D.B.A. OZMOSI with offices at 600 Warren Ave, Spring Lake, NJ 07762 (“Provider”) and \_\_\_\_\_ (“Client”). Provider and Client may each be referred to herein as a “Party” and, collectively, as the “Parties”.

WHEREAS, Provider has created and maintains a global clinical trial database (the “Data”); and

WHEREAS, Client desires to access and license the Data.

NOW THEREFORE, in consideration of the mutual promises and understandings contained herein, the Parties agree as follows:

### **1. Term and Termination of Agreement; Survival of Provisions.**

a. *Term.* This Agreement shall commence as of the Effective Date and shall terminate on August 31<sup>st</sup>. 2021; provided, however, that either Party may terminate this Agreement at any time on \_\_\_\_ days written notice to the other Party (the “Term”).

b. *Termination for Material Breach.* This Agreement may be terminated by either Party upon written notice to the other Party for material breach provided that the terminating Party has submitted written notice of the breach to other Party stating the nature of the breach and such breach has not been cured within thirty (30) days after receipt of such written notice.

c. *Termination for Non-Payment.* Provider may terminate this Agreement upon written notice to Client if Client fails to pay any undisputed amounts within thirty (30) days after the date such amounts were due.

d. *Termination for Bankruptcy.* Either party may terminate this Agreement immediately upon written notice to the other Party if (i) the other Party has availed itself of, or been subjected to by any third party, a proceeding in bankruptcy in which such Party is the named debtor, (ii) there has been an assignment by such other Party for the benefit of its creditors, (iii) there has been an appointment of a receiver for such other Party, or (iv) there is any other proceeding involving insolvency or the protection of, or from, creditors, and appointment of a receiver for such other Party, and same has not been discharged or terminated without any prejudice to such other Party’s rights or interests under this Agreement within thirty (30) days.

e. The provisions of Sections 2.b, 2.c, 4, 5, 6, and 7 will survive any termination of this Agreement.

### **2. License Grant.**

a. *License.* Subject to the terms and conditions of this Agreement, Provider grants to Client a non-transferable, non-sublicensable, non-exclusive license for Client and its Affiliates to use the Data solely in connection with their respective internal business purposes for the Term. To the extent Client provides access to the Data to its Affiliates, Client will be responsible for ensuring such Affiliates compliance with this Agreement and for any breach of this Agreement by any of its Affiliates. As used herein, “Affiliate” means, with respect to a Party, an entity either directly or indirectly Controlled by, Controlling or under common Control with such Party, where “Control” (including “Controlled” and “Controlling”) means the majority power to direct or cause the direction of the management or policies of the entity, whether through the ability to exercise voting power, by contract or otherwise.

b. *Ownership.* Ownership of the Data, all intellectual property rights in or to the Data, any related documentation, and any copies, modifications and derivative works of the foregoing (in whole or in part) and all related copyright, patent, trade secret and other proprietary rights, are and will remain the sole and exclusive property of Provider or its licensors or third party providers, as applicable. Client acknowledges and agrees that any enhancements or modifications to the Data and any related documentation, based upon feedback, recommendations or other feedback from Client or its Affiliates are and will remain the exclusive property of Provider or its licensors or third party providers, as applicable. Provider shall retain and own all right, title and interest (including all intellectual property rights) in and to any work produced by Provider in the ordinary course of Provider's business (including, without limitation, notes, reports, documentation, creations, works, models, and works-in-progress). Provider reserves all rights not expressly granted to Client or its Affiliates hereunder. No ownership interest in any intellectual property right or other rights is assigned or otherwise transferred under this Agreement, and there are no implied rights or licenses.

c. *Restrictions.* Client agrees not to directly or indirectly: (i) sell, repackage, redistribute, divert, sublicense, rent or resell the Data to any unaffiliated third party, or (ii) reverse engineer, decompile, disassemble or otherwise attempt to duplicate the performance characteristics of all or any part of the Data or to derive the source code or algorithms underlying the Data.

3. **Data License Fee.** Client shall pay Provider a monthly fee of \$8,500 for the license of the Data. Client shall pay all invoiced amounts due within fifteen (15) days after Client's receipt of Provider's invoice. Any payments due hereunder shall accrue interest at a rate of one and one-half percent (1.5%) per month if not paid within seven (7) days after the applicable due date. Client shall pay the applicable sales, use, value added, excise, and similar taxes related to Client's use of the Data, excluding taxes based on or measured by Provider's net income.

#### 4. **Warranties; Covenants; Disclaimer of Warranties.**

a. *Joint Warranties.* Each of the Parties represents and warrants as to itself that (i) it has the authority to enter into and perform the duties and obligations described in this Agreement; (ii) the performance of the obligations and duties described in this Agreement does not conflict with any other agreement either signed or contemplated; and (iii) it will comply with all applicable laws with respect to its duties and obligations under this Agreement.

b. *Joint Covenants.* Each of the Parties represents, warrants and covenants as to itself that it has not and shall not knowingly (i) incorporate into the Data any viruses, Trojan horses, trap doors, back doors, worms, or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information; or (ii) include, without the other party's prior written approval, any code that would have the effect of disabling or otherwise shutting down all or any portion of the Data or any software, computer, or technology of the other Party or its affiliates.

c. **EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4, THE DATA IS PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY TYPE WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE DATA IS SUBJECT TO CHANGE AND ITS ACCURACY CANNOT BE GUARANTEED. PROVIDER DOES NOT WARRANT THAT THE DATA WILL MEET THE REQUIREMENTS OF THE CLIENT OR THAT THE OPERATION OF THE DATA OR ITS DELIVERY METHODS WILL BE UNINTERRUPTED OR ERROR FREE.**

#### 5. **Limitation of Liability and Indemnification.**

a. *Limitation of Liability.* **EXCEPT IN CONNECTION WITH A BREACH OF A PARTIES CONFIDENTIALITY AND/OR INDEMNIFICATION OBLIGATIONS OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO**

EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN CONNECTION WITH A BREACH OF A PARTIES CONFIDENTIALITY AND/OR INDEMNIFICATION OBLIGATIONS OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S LIABILITY FOR ANY DAMAGES WITH RESPECT TO ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE AN AMOUNT EQUAL TO THE TOTAL FEES PAID TO PROVIDER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE MOST RECENT EVENT GIVING RISE TO LIABILITY OCCURRED.

b. *Indemnification by Provider.* Provider will defend, indemnify and hold Client harmless, at Provider's sole cost and expense, from and against any and all third party claims, actions, suits or proceedings ("**Claims**") and reasonable costs (including, without limitation, reasonable out-of-pocket attorneys' fees), damages, interest and liabilities ("**Costs**") assessed against or incurred by Client to the extent it is based upon a claim that the Data misappropriate, infringe or violate any United States patents, copyrights, trademarks or trade secrets of any third party..

c. *Indemnification by Client.* Client will defend and hold Provider harmless, at Client's own cost and expense, from and against any Costs arising from or out of any Claims that are, directly or indirectly, the result of a breach by Client or any of its Affiliates of Section 2.

d. *Procedures* The indemnified party pursuant to subsection (b) or (c) of this Section 5 will promptly notify the indemnifying party following the indemnified party's awareness of any Claim (provided that the failure to provide such notification will not abrogate the indemnifying party's obligations under this paragraph, except to the extent that the indemnifying party is materially prejudiced thereby). The indemnifying party will have the right to control the defense of the underlying matter, and the indemnifying party will not be responsible for the fees, costs or disbursements of any separate counsel retained by the indemnified party. The indemnifying party will not enter into any settlement or compromise with respect to the foregoing without the prior written consent of the applicable indemnified party (which consent will not be unreasonably withheld or delayed), unless such settlement or compromise is limited to the indemnifying party's payment of monetary damages and (for the avoidance of doubt) does not obligate the indemnified party to any affirmative obligation, including any admission of wrongdoing.

## 6. Confidentiality.

a. *Confidential Information.* Each Party (in such capacity, the "**Receiving Party**") hereby agrees to hold in confidence, in accordance with the terms and conditions hereof, any confidential or proprietary information it may obtain from the other Party (in such capacity, the "**Disclosing Party**") regarding the Disclosing Party or its Affiliates including, without limitation: data, trade secrets, know-how, research, product or service ideas or plans, software codes and designs, algorithms, inventions, processes, techniques, information relating to employees, principals and consultants, suppliers, pricing and pricing methodologies, cost data, market share data, marketing plans, contract information, business plans, financial forecasts, historical financial data, budgets or other proprietary business information including, with respect to the Provider, the Data (the "**Confidential Information**"). The Receiving Party agrees not to disclose, directly or indirectly, the Disclosing Party's Confidential Information to any unaffiliated third party without the Disclosing Party's prior written consent; provided that the Receiving Party may disclose such information to the Receiving Party's Affiliates or its or its Affiliates' respective employees, officers, directors, consultants, auditors, advisors or other representatives (those of the foregoing to whom Confidential Information is disclosed hereunder will be referred to herein as the Receiving Party's "**Representatives**") to the extent reasonably necessary to assist the Receiving Party in exercising its rights or fulfilling its obligations hereunder. The Receiving Party will, and will

cause its Representatives to, protect the Confidential Information using the same degree of care (including with respect to the use of administrative, physical and technological safeguards), that the Receiving Party uses to protect its own confidential information of a similar nature, which will, in any event, be no less than a commercially reasonable degree of care. Receiving Party shall be responsible for any breach by its Representatives of its obligations under this Section 6.

b. *Exceptions.* The term “Confidential Information”, however, shall not include any information that: (i) is or becomes publicly available without breach of this Agreement by the Receiving Party or its Representatives; (ii) was available to the Receiving Party or any of its Representatives prior to its disclosure hereunder; (iii) is lawfully acquired by the Receiving Party or any of its Representatives from a source not known by the Receiving Party or such Representative to have violated any contractual or legal obligation of confidentiality to the Disclosing Party in its disclosure of such information; or (v) is developed by or on behalf of the Receiving Party or any of its Representatives without reference to the Confidential Information. Nothing in this Agreement will be construed as prohibiting the Receiving Party from disclosing Confidential Information when requested or required to be disclosed pursuant to or in connection with any applicable law, rule, regulation, examination, investigation or procedure of, under or before any governmental, regulatory or administrative agency, self-regulatory organization or court or other tribunal of competent jurisdiction, provided that the Receiving Party (to the extent reasonably practicable and not prohibited under the circumstances) promptly notifies the Disclosing Party in advance of such disclosure and reasonably cooperates, at the Disclosing Party’s expense, with the Disclosing Party’s efforts to limit, restrict or prevent such disclosure.

c. *Survival.* The confidentiality obligations set forth in this Section 6 will continue indefinitely following termination or expiration of this Agreement for as long as the Confidential Information remains a trade secret under applicable law and will continue for three (3) years following termination or expiration of this Agreement with respect to Confidential Information that does not rise to the level of a trade secret.

d. *Remedies.* The Receiving Party acknowledges that disclosure of any Confidential Information or a trade secret by it or its employees will give rise to irreparable injury to the Disclosing Party or the owner of such information and that such injury will not adequately be compensated for by damages. Accordingly, the Disclosing Party will be entitled to seek equitable relief, including injunctive relief and specific performance against the breach or threatened breach of the undertakings in this Section 6, in addition to any other legal remedies which may be available.

c. *Return or Destruction of Confidential Information.* If so requested in writing by the Disclosing Party at any time following the Term of this Agreement, the Receiving Party will promptly return to the Disclosing Party or (at the Receiving Party’s election) destroy any Confidential Information in its possession. The Receiving Party and its Representatives, however, (i) may each retain Confidential Information pursuant to its compliance or document retention policies and for the purpose of defending its rights and obligations hereunder; and (ii) are not required to render any electronic data irrecoverable or to disable any existing electronic data backup procedures (or destroy any data contained therein).

## **7. General Provisions.**

a. *Notice.* Any notice required or desired to be delivered pursuant to this Agreement will be in writing and will be deemed to have been effectively given: (a) when delivered personally if delivered personally; or (b) on the next business day after being deposited for next day delivery with Federal Express or a similar overnight courier. All notices to Client or Provider will be addressed to the addresses set forth above. Client or Provider may also designate a new address by notice to that effect given to the other.

b. *Independent Consultant Status.* Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the Client and the Provider or any Affiliate,

employee, agent, contractor (including any sub-contractor), consultant or other personnel that provides Data hereunder.

c. *Entire Agreement; Amendments; Counterparts.* This Agreement supersedes any and all agreements, either oral or written, between the Parties. Any modification of this Agreement will be effective only if it is in writing signed by each Party. This Agreement may be executed in more than one counterpart (and transmitted via facsimile or "pdf" transmission), each of which will be deemed an original and all of which, taken together, will constitute one and the same agreement.

d. *Assignment.* Neither this Agreement nor any duties or obligations under this Agreement may be delegated, assigned, transferred or sublicensed by either Party without the prior written consent of the other Party. Any such attempted delegation, assignment, transfer or sublicense in violation of the foregoing shall be void. This Agreement will be binding upon and inure to the benefit of the Parties, their permitted transferees, successors, and assigns as permitted by this Agreement. There are no intended third-party beneficiaries of this Agreement.

e. *Use of Name.* Neither Party nor any of its representatives or contractors will advertise, publicly announce or otherwise publicly state that it is providing or (as applicable) receiving services hereunder.

f. *Force Majeure.* Neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet.

g. *Governing Law.* This Agreement will be governed and construed in accordance with the substantive laws of the State of New Jersey. Client hereby submits to the exclusive jurisdiction of the courts located in the County and State of New Jersey, both federal and state, for such matters as are not subject to arbitration as provided in [Section 7.h](#) and as may be necessary to compel arbitration, or in support of arbitration, or to confirm an arbitration award.

h. *Arbitration.* Any dispute arising out of this Agreement shall be resolved by arbitration conducted by and under the rules of the American Arbitration Association in the County and State of New Jersey.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CLIENT: \_\_\_\_\_

**MarketPharm LLC D.B.A. OZMOSI**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Beau Bush

Title: \_\_\_\_\_

Title: President