Data Exchange Agreement

This Data Exchange Agreement (the "Agreement") is made and entered into this _____ day of,_____, _____, by and between the American Psychological Association ("APA") and _____ ("Vendor"), hereinafter referred to individually as a "Party" and together as "the Parties."

Pursuant to the Service Agreement dated _____ (the "SA"), into which this Agreement is incorporated by reference, Vendor provides certain services (the "Services") to APA. In its provision of the Services, Vendor may create, receive, maintain, or transmit Confidential Information for or on behalf of APA. The Parties wish to set forth the terms and conditions pursuant to which Vendor may use or disclose Confidential Information throughout the term of the SA.

The Parties therefore agree as follows:

1. <u>Definitions</u>.

   1.1 "<u>Approved Subcontractor</u>" means any third party approved in advance by APA to work with and under the control of Vendor to provide the Services.

   1.2 "<u>Confidential Information</u>" means all Personal Data and other non-public information of APA that is maintained as confidential, including, but not limited to, suppliers, customers, prospective customers, contractors, clinical data, the content and format of various clinical and medical databases, utilization data, cost and pricing data, software products, programming techniques, data warehouse and methodologies, proprietary information, know-how, trade secrets, technical and non-technical materials, products, specifications, processes, sales and marketing plans and strategies, designs, and any discussions and proceedings relating to any of the foregoing, whether disclosed in oral, electronic, visual, written or any other form. The term "Confidential Information" does not include information that (a) is or becomes generally available to the public other than as a result of disclosure by Vendor in violation of this Agreement; (b) becomes available to Vendor on a non-confidential basis from a source (other than APA) which is not prohibited from disclosing such information to Vendor by a contractual, legal, or fiduciary obligation to APA; (c) was known to Vendor or in its possession, without restriction and prior to disclosure of the Confidential Information hereunder; or (d) is independently developed by Vendor outside of this Agreement and does not include derivatives of any Confidential Information.

   1.3 "<u>Data Incident</u>" means an actual or suspected incident involving unauthorized collection, access, use, or disclosure, or accidental or unlawful destruction, loss, or alteration of Confidential Information.

   1.4 "<u>Data Subject</u>" means an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, and online identifier or

to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

1.5 "Personal Data" means any information relating to a Data Subject, or as otherwise defined by applicable Privacy and Security Law.

1.6 "Privacy and Security Law" means laws and regulations applicable to the processing of Confidential Information, including Personal Data, and privacy and data security requirements in all jurisdictions relevant to APA, Vendor, Approved Subcontractors, or Confidential Information.

2. Compliance.

2.1 Compliance with Applicable Law. Vendor shall comply with all applicable Privacy and Security Law to which it is subject, or which is otherwise applicable to its information security, privacy, and data protection obligations in connection with providing the Services.

2.2 Cooperation and Audits. Vendor shall cooperate with APA to ensure and verify that Confidential Information is used and disclosed in compliance with the terms of this Agreement and applicable Privacy and Security Law. Vendor shall make available to APA all information necessary to demonstrate compliance with Vendor's obligations under applicable Privacy and Security Law and this Agreement. Further, Vendor shall permit, and cooperate with, audits conducted by APA or another auditor designated by APA to assess Vendor's practices with respect to Confidential Information.

3. Vendor's Confidentiality Obligations.

3.1 Use. Vendor shall only use Confidential Information to the limited extent necessary to provide the Services in accordance with the terms of the SA. Confidential Information shall not be used or retained for any other purpose.

3.2 Disclosure. Vendor shall disclose Confidential Information only to Vendor's employees or Approved Subcontractors who need to know the Confidential Information to perform the Services and who agree to be bound by the terms and conditions of this Agreement. Notwithstanding the foregoing, Vendor may disclose Confidential Information to the extent such disclosure is required to comply with applicable law or the valid order or requirement of a governmental or regulatory entity or court of competent jurisdiction, provided that Vendor:

3.2.1 limits the disclosed Confidential Information to the minimum necessary to comply with such law, order, or requirement;

3.2.2 notifies APA as soon as practicable of any such disclosure; and

3.2.3 agrees that such disclosed Confidential Information shall in all respects remain subject to the restrictions set forth in this Agreement.

3.3 Ownership of Confidential Information. Vendor acknowledges that it has no right, title, or interest in the Confidential Information and may not sell, rent, or lease the Confidential Information to anyone.

4. <u>Vendor's Security Obligations</u>.

    4.1 <u>Safeguards</u>. Vendor shall implement, maintain, and regularly verify the continued effectiveness of appropriate technical and organizational measures to ensure a level of security appropriate to the risk associated with the Confidential Information and with the Services provided, including appropriately:

        4.1.1 Assessing and minimizing risks associated with providing the Services using Confidential Information, including the risk of unauthorized collection, access, use, and disclosure, and of accidental or unlawful destruction, loss, or alteration;

        4.1.2 Using pseudonymization and encryption;

        4.1.3 Ensuring the ongoing confidentiality, integrity, and availability of systems that process Confidential Information;

        4.1.4 Maintaining the ability to restore the availability of and access to Confidential Information in a timely manner in the event of a physical or technical incident; and

        4.1.5 Testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the confidentiality, integrity, and availability of Confidential Information.

    4.2 <u>No Copying or Reproducing</u>. Vendor shall not copy or reproduce any Confidential Information except as necessary to provide the Services (e.g., for data backup purposes) or to comply with statutory or regulatory data retention requirements without the written authorization of the APA.

5. <u>Data Incident Notification and Management</u>.

    5.1 <u>Incident Response Policies</u>. Vendor warrants that it has implemented, and shall maintain, incident detection and response policies and procedures appropriate to the risks associated with the Confidential Information.

    5.2 <u>Notice and Mitigation</u>. Vendor shall notify APA of any actual or suspected Data Incident or other use or disclosure of Personal Data not permitted under this Agreement. Vendor shall provide such notification as soon as possible, but no later than 24 hours after discovery. Notifications to APA shall be provided via email sent to itssecurity@apa.org. Vendor's notification to APA shall describe at least:

        5.2.1 the nature of the Data Incident including, where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;

        5.2.2 the likely consequences of the Data Incident; and

        5.2.3 the measures proposed to be taken by Vendor to address the Data Incident, including, where appropriate, measures to mitigate its possible adverse effects.

    5.3 <u>Mitigation</u>. Vendor shall mitigate, to the extent practicable, the harmful effects of a Data Incident and cooperate fully with APA in investigating the Data Incident.

5.4   Communications with Third Parties. Except to the extent required by law or authorized in writing by APA, Vendor shall not communicate to any third parties regarding the Data Incident. Vendor shall only take such actions as APA deems necessary and reasonable with regard to remediating the Data Incident and communicating with third parties.

6.   Cooperation in Responding to Access Requests and Other Communications.

6.1   Forwarding Communications. Within five business days of receipt, Vendor shall forward to APA any access request, complaint, notice, subpoena, court order, or other communication from a Data Subject, government entity, court, or other third party in connection with the Confidential Information (collectively, "Communications").

6.2   Cooperation. Vendor shall cooperate fully with APA in responding to Communications and shall seek APA's approval before responding to a Communication unless otherwise agreed with APA or required by Privacy and Security Law. At no additional cost to APA, Vendor shall promptly provide APA with any data in its possession as APA may reasonably require to respond to a Communication or comply with the rights of Data Subjects under applicable Privacy and Security Law.

7.   Disposition of Confidential Information.

7.1   Return and Destruction. To the extent feasible, Vendor shall return or destroy all Confidential Information received from APA or created on behalf of APA immediately at APA's request and upon the termination or expiration of the underlying SA. The destruction of the data will be confirmed in writing to the APA within 24 hours.

7.2   Return or Destruction Infeasible. If return or destruction is infeasible, Vendor shall provide notification to APA of the conditions that make return or destruction infeasible, extend the protections of this Agreement to such Confidential Information, and limit further uses and disclosures of such Confidential Information to those purposes that make the return or destruction infeasible for as long as Vendor maintains such Confidential Information.

8.   Approved Subcontractors.

8.1   Vendor Responsibility. Vendor shall be responsible for the acts and omissions of Approved Subcontractors it selects and engages to provide the Services to APA. Vendor remains fully liable for the acts and omissions of Approved Subcontractors giving rise to a breach of this Agreement, including, but not limited to, a Data Incident, as if they were its own acts or omissions.

8.2   Revocation of Consent. APA, at its sole discretion, may revoke consent to the engagement of an Approved Subcontractor at any time, including, but not limited to, a breach of contractual or legal duties by Vendor or the Approved Subcontractor.

9.   Indemnification. Vendor shall fully indemnify and hold harmless APA (and its respective officers, employees, and agents) against all losses arising out of or in connection with any failure by Vendor (including any Approved Subcontractor) to comply with the provisions of this Agreement or any Privacy and Security Law. The indemnification will include all costs of legal

defense and litigation as well as all administrative fines and sanctions imposed on APA, and if Personal Data is involved, all costs associated with notification of individuals or remedial measures offered to individuals, whether or not required by law, including but not limited to: costs of notifying individuals; establishment and operation of call center(s); credit monitoring, identity restoration, or other credit services; and costs of APA personnel responding to a compromise. Vendor will be required to provide credit services for a minimum of two years.

10. <u>Injunctive Relief</u>. Vendor acknowledges that APA may suffer irreparable harm and that monetary damages alone will not adequately compensate APA in the event of a Data Incident or other breach of this Agreement by Vendor. Therefore, in addition to all other remedies available at law or in equity, in the event of a Data Incident or Vendor's breach of this Agreement, APA shall be entitled to interim, emergency, and permanent restraints and injunctive relief for the enforcement thereof (without the need to post any bond or other undertaking), as well as to an accounting and payment by Vendor to APA of any and all amounts received by Vendor as a result of such Incident or breach.

11. <u>Survival</u>. Vendor's obligations under this Agreement shall survive indefinitely beyond the termination or expiration of the SA for as long as Confidential Information remains in Vendor's possession.

12. <u>Supersedes Previous Agreements</u>. This Agreement supersedes and replaces all previous or contemporaneous negotiations, commitments, understandings, agreements, and writings with respect to the subject matter hereof, including, without limitation, any prior Data Exchange Agreement by and between APA and Vendor.

13. <u>Amendment</u>. This Agreement may not be modified, changed, or discharged, in whole or in part, except by an agreement in writing signed by both APA and Vendor.

14. <u>Conflict of Terms</u>. If there is any inconsistency between the terms of this Agreement and those in the SA, the terms of this Agreement will prevail. The Parties shall take any necessary steps to conform the inconsistent terms to the terms of this Agreement.

15. <u>Governing Law</u>. This Agreement will be governed by and construed under the laws of the District of Columbia without regard to its conflict of laws provisions. The Parties consent to the exclusive jurisdiction and venue of any state or federal court of competent jurisdiction in the District of Columbia in any action, suit, or other proceeding arising out of or relating to this Agreement.

16. <u>Successors and Assigns</u>. The rights and remedies of APA pursuant to this Agreement shall inure to the benefit of the respective successors, assigns, and transferees of APA, and APA may assign such rights and remedies without notice to or consent from Vendor. Vendor may not assign any obligations it holds or may hold pursuant to this Agreement without APA's prior written consent.

17. <u>Invalidity</u>. The invalidity and unenforceability of any provision of this Agreement shall not

affect the validity or enforceability of the remaining provisions of this Agreement.

18. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts with an original signature or with electronic signature, each of which shall be deemed an original and all of which shall constitute the same instrument. Further, if a signed Agreement is provided to APA as a photocopy, fax, PDF or other format through an electronic software system, then such Agreement shall be treated and shall have the same binding effect as an original.

Each Party to this Agreement warrants that it has full power and authority to enter into this Agreement, and the person signing this Agreement on behalf of either Party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

APA

By: _____

Name: _____

Title: _____

Date: _____

VENDOR

By: _____

Name: _____

Title: _____

Date: _____

APA (ITS Authorization)
ITS will not sign until signatures are complete above.

By: _____

Name: _____

Title: _____

Date: _____