# IASLC
# DATA USE AGREEMENT

This Data Use Agreement (this "**Agreement**"), dated as of the date of the last signature to this Agreement (the "**Effective Date**"),

**BETWEEN**

_____, a _____, located at _____ ("**Institution**");

INTERNATIONAL ASSOCIATION FOR THE STUDY OF LUNG CANCER, a Colorado nonprofit corporation, ("**IASLC**") located at 999 17th Street, Suite 200, Denver, Colorado 80202 USA;

**AND**

CANCER RESEARCH AND BIOSTATISTICS, a Washington non-profit corporation ("**CRAB**"), located at 1505 Westlake Ave. N., Suite 750, Seattle, Washington 98109-3050 USA.

**RECITALS:**

A.      Institution is the owner or licensee of a dataset composed of clinical and molecular features (the "**Institution Dataset**").

B.      IASLC is a global organization dedicated to the study of lung cancer that has compiled an extensive staging and clinical lung cancer dataset (the "**IASLC Dataset**"), which is maintained by CRAB.

C.      Institution desires to grant IASLC full access to the Institution Dataset for IASLC's general research and publication purposes, which will include the inclusion of the Institution Dataset with the IASLC Dataset (the combination of which shall hereinafter be referred to as the "**Combined Dataset**") as maintained by CRAB (collectively, the "**Institution-Approved Purpose**").

D.      By this Agreement the parties seek to set out the terms under which they will cooperate in good faith to license the Institution Dataset and perform their respective obligations hereunder.

4575050.20

IN CONSIDERATION OF THE MUTUAL COOPERATION BETWEEN THE PARTIES, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. <u>Definitions</u>.

   a. "**Confidential Information**" means, subject to Section 6(b), all written, electronic or oral information, disclosed by IASLC or the Institution (the "**Discloser**") to the other or its designee (the "**Recipient**"), identified as confidential or proprietary, as well as information that, based on its nature and the circumstances surroundings its disclosure, a reasonable person would consider to be confidential or proprietary. The parties agree that the IASLC Dataset shall be deemed Confidential Information of IASLC.

   b. "**Dataset(s)**" means either individually or collectively as the context may require the Institution Dataset, IASLC Dataset or the Combined Dataset.

   c. "**GDPR**" means EU General Data Protection Regulation 2016/679.

   d. "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations at 45 C.F.R. Parts 160, 162 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act, which is at Section 13400, *et. seq*. of ARRA, 42 U.S.C. §§ 17921, *et. seq.*, and guidance promulgated thereunder.

2. <u>Combined Dataset Creation and Management</u>.

   a. *Combined Dataset*. Within a reasonable time after the Effective Date, Institution shall deliver to CRAB, at IASLC's direction, the Institution Dataset in a format mutually agreeable to the parties. Upon receipt of the Institution Dataset, CRAB, on IASLC's behalf, shall create the Combined Dataset by incorporating the Institution Dataset into the IASLC Dataset as set forth herein or otherwise agreed to by the parties in writing.

   b. *CRAB Dataset Management and Maintenance*. Institution acknowledges that IASLC has engaged CRAB to maintain, manage and perform certain research tasks with respect to the Combined Dataset. All fees and expenses associated with CRAB's management and maintenance of the Combined Dataset shall be born exclusively by IASLC pursuant to then effective agreements between IASLC and CRAB.

   c. *Additional Third-Party Datasets*. No rights are granted to Institution to any third-party data whether currently held or later acquired by IASLC. To the extent Institution desires to acquire any additional rights or licenses to any third-party dataset, Institution agrees it will enter into separate agreements with such third parties, exclusive of IASLC and CRAB.

d. *Required Forms*.  Institution shall complete and submit all required forms, as determined by IASLC and CRAB, online.  Institution shall also timely update such required forms as necessary to insure their continued accuracy.

e. *SPFC Viewing Rights.*  The members of the subcommittee of the IASLC Staging and Prognostic Factors Committee ("SPFC") that provides a data quality review for CRAB and the SPFC Advisory Committee members are permitted to view the Combined Dataset for adherence to quality standards.

3. <u>Licenses and Ownership</u>.

a. *Assignment of Rights to the Combined Dataset*.  Institution hereby assigns, transfers and conveys to IASLC all its right, title and interest, including all intellectual property and other proprietary rights, in and to the Combined Dataset.

b. *License to Institution Dataset*.  Institution hereby grants to IASLC a perpetual (subject to each the termination rights in Section 8(b)), non-exclusive, royalty-free, fully-paid, sublicensable, transferable license to use the Institution Dataset for the Institution-Approved Purpose.

c. *Ownership*.  The parties agree that IASLC shall be the sole owner of all right, title and interest, including all intellectual property rights, in the IASLC Dataset and Combined Dataset and that Institution shall be the sole owner of all right, title and interest, including all intellectual property rights, in the Institution Dataset. Except for the limited licenses granted in this Section, each party shall retain all rights to and title in its respective Dataset and any other intellectual, proprietary or property rights owned by, or otherwise controlled by that party.  CRAB shall not have an ownership interest in any Dataset.

d. *Institution right to IASLC Dataset and Combined Dataset*.  Unless otherwise provided pursuant to Section 5, Institution is granted no right, title, interest or license of any kind in or to the IASLC Dataset or the Combined Dataset.

4. <u>Mutual Obligations.</u>

a. *Security*.  Without limiting any party's obligations under this Agreement or under applicable law, each party shall implement administrative, physical and technical safeguards to protect the Datasets that are no less rigorous than accepted industry practices, and shall ensure that all such safeguards, including the manner in which the data comprising the Datasets is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

b. *Compliance with Law.*  The parties agree to comply with all applicable law, including laws, rules and regulations, including U.S. federal and state law (e.g., HIPAA) in the performance of their obligations under this Agreement.  In the event of a conflict between the requirements of any applicable law, rule or

regulation and the requirements stated in this Agreement, the applicable law, rule or regulation under a conflict-of-law analysis, including the preemption analysis required under HIPAA, shall apply.

5.    <u>Use of Combined Dataset by Institution</u>.  Institution may not use the Combined Dataset (including for any research or publication purposes) unless it receives the prior written approval of IASLC, which IASLC may refuse in its sole discretion. Institution may petition for IASLC's consent by sending IASLC a written research proposal containing a detailed description of the proposed research, which proposal will not be unreasonably denied by IASLC. In any case, Institution may not directly access individual cases within the Combined Dataset.  IASLC shall consider only non-commercial research purposes.

6.    <u>Confidential Information</u>.

a.  In addition to the parties other obligations under this Agreement and with respect to any Confidential Information received by the Recipient from the Discloser, the Recipient shall: (i) protect and maintain confidentiality of the Confidential Information using the same care that it would use for its own confidential information, but in any event no less than reasonable care; (ii) use the Confidential Information solely for the purposes of fulfilling its obligations under the Agreement and only for the benefit of the Discloser; (iii) not disclose any Confidential Information of Discloser to third parties or to Recipient's employees, except where employees of Recipient have a need to know about the Confidential Information and are subject to obligations of confidentiality at least as restrictive as those in this Agreement; (iv) cease use of such Confidential Information immediately upon termination or expiration of the Agreement and remove all Confidential Information from the active Combined Dataset; however, due to the need to maintain backup data, Confidential Information included on tapes and other media that is not part of the active Combined Dataset will not be removed; and (v) not attempt to reverse engineer, decompile or create derivate works from or using the Confidential Information.

b.  The confidentiality obligations of this Section 6 shall terminate with respect to any Confidential Information when the Recipient can prove that such information was (i) in the public domain at the time of Discloser's communication to the Recipient, or it subsequently entered the public domain through no fault of the Recipient, (ii) in the Recipient's possession free of any obligation of confidence at the time of the Discloser's communication to the Recipient, (iii) subsequently rightfully communicated to the Recipient free of any obligation of confidence, or (iv) was or is independently developed by the Recipient without reference or recourse to the Discloser's Confidential Information.

c.  Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with Applicable Laws, provided that the party making the disclosure pursuant to the order shall first have

given written notice to the other in order to seek protective relief, if legally permissible, and provided such assistance as may be reasonably requested to limit or prevent such disclosure.

7.      Representations and Warranties; Disclaimer.

a.  *Mutual Representations and Warranties*.   Each party hereby represents and warrants that such party is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and has all requisite power and authority to enter into this Agreement.

b.  *Institution Representations and Warranties*.   Institution hereby represents and warrants that:

   i.   Institution has all rights, permissions and authority necessary to grant the licenses and ownership rights in the Institution Dataset to IASLC under this Agreement for the uses contemplated hereunder and that the Institution Dataset does not infringe, misappropriate or otherwise violate the intellectual property or proprietary rights of any third party;

   ii.   Institution gathered all identifiable private information of subject in compliance with applicable law and with respect and regards for human subjects;

   iii.   Institution agrees unequivocally to prohibit the release of individually identifiable private data to CRAB for research purposes and to provide only a de-identified or anonymized data set described in the applicable project documents;

   iv.   neither Institution's license or assignment of any right in the Institution Dataset nor the use of such Dataset for the purposes contemplated by this Agreement will violate any law, rule or regulation or conflict with, result in any breach of, or constitute a default (or an event which would, with the passage of time or the giving of notice or both, constitute a default) under, or give rise to a right to terminate, amend, modify, abandon or accelerate, any contract which is applicable to, binding upon or enforceable against Institution; and

   v.

   to the extent a Dataset may be derived from Protected Health Information (as such term is defined by HIPAA), each Dataset  is compromised solely of either (A) de-identified data, which excludes all of the necessary identifiers as required by the applicable HIPAA regulations;   or (B) anonymized data, which cannot be used to identify or authenticate an individual and is not subject to regulation by any law, rule or regulation, including, but not limited to, the HIPAA regulations;.   Institution acknowledges that neither CRAB nor IASLC have any obligation to ensure that Institution provides data in compliance with this subsection (v).

c.  *CRAB Representations and Warranties.*   CRAB hereby represents and warrants that:

i. where CRAB identifies that personal identifiers have been inadvertently included with the data received , CRAB will delete or destroy this identified data from electronic media, and immediately notify Institution to replace with de-identified or anonymized data;

ii. if ever visiting Institution, CRAB employees may access or utilize individually private information, but these activities become subject to the oversight of Institution's institutional review board, and at no time will CRAB employees record any private information;

iii. CRAB will not provide any information to IASLC or include any information in the IASLC Dataset or the Combined Dataset unless it is de-identified by the expert determination method (as such term is defined by HIPAA) and, to the extent that GDPR applies, has been rendered anonymous in such a manner that data subjects (as such phrase is defined by GDPR) are not or are no longer identifiable; and

iv. CRAB, as an institution, is not considered to be "engaged" in human subjects research for the Institution-Approved Purpose.

d. *Disclaimer*. EXCEPT AS OTHERWISE PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY DISCLAIMS AND EXCLUDES ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER TERMS, WHETHER WRITTEN OR ORAL, EXPRESSED OR IMPLIED, OF ANY KIND, INCLUDING ANY REPRESENTATIONS AND WARRANTIES, CONDITIONS OR OTHER TERMS WITH RESPECT TO A PARTY'S DATASET, INCLUDING ANY REPRESENTATION OR WARRANTY OF NONINFRINGEMENT, QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

8. <u>Term; Termination.</u>

a. *Term*. This Agreement shall be binding on IASLC and the Institution from the Effective Date until terminated in accordance with this Section. This Agreement shall be binding on CRAB from the Effective Date until the termination of all then applicable agreements between CRAB and IASLC in accordance with their terms.

b. *Termination*. This Agreement may be terminated by either IASLC or the Institution, but not CRAB, (i) immediately if the other party breaches a material term of this Agreement and cure of such breach is not possible, or (ii) if the other party breaches a material term of this Agreement that is subject to cure and fails to cure such breach within thirty (30) days of receiving notice of such breach from the non-breaching party. This Agreement may be terminated by the Institution, but not IASLC or CRAB, (i) immediately if CRAB breaches a material term of this Agreement and cure of such breach is not possible, or (ii) if CRAB breaches a material term of this Agreement that is subject to cure and fails to cure such breach within thirty (30) days of receiving notice of such breach from the non-breaching party. CRAB shall not have any termination rights under this

Agreement; however, to the extent that CRAB ceases to provide services with respect to the IASLC Dataset or the Combined Dataset pursuant to one or more then applicable agreements between IASLC and CRAB, CRAB shall have no liability for the acts or omissions of its successor.

c. *Knowledge of Non-compliance.* Any non-compliance by Institution with this Agreement or with HIPAA, or any equivalent laws or regulations, automatically will be considered a breach or violation of a material term of this Agreement if Institution knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

d. *Effect of Termination.*

i. Upon termination of this Agreement by IASLC, Institution shall confirm that all data, analysis or reports from the Combined Dataset (if it has received information from the Combined Dataset in accordance with Section 5) and all Confidential Information received from IASLC has been destroyed or returned to IASLC, and Institution shall provide written confirmation of such destruction to IASLC.

ii. All of the terms of the Agreement which by their nature extend beyond the expiration or termination of the Agreement, including indemnification obligations, confidentiality obligations, shall survive expiration or termination of the Agreement and remain in full force and effect.

9.   Indemnification.

a. Each of IASLC and the Institution ("**Indemnitor**") shall indemnify, defend and hold harmless the other and its Affiliates, and their respective licensors, officers, directors, employees and contractors (each, an "**Indemnitee**" and collectively "**Indemnitees**"), from and against any and all third-party claims (including, but not limited to, labour claims), liabilities, demands, causes of action, judgments, settlements and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or in connection with any breach of any covenant, representation or warranty made by Indemnitor or, with respect to IASLC only, CRAB hereunder (each a "**Claim**").

b. If any Claim is initiated against any Indemnitee, the Indemnitee shall give prompt written notice of such Claim to the Indemnitor. Indemnitee may elect to assume the defense of a Claim and Indemnitor shall reimburse Indemnitee for all reasonable expenses (including reasonable attorneys' fees which may include, without limitation, an allocation for in-house counsel) as such expenses are incurred, relating to the defense of such Claim. If Indemnitee elects not to assume the defense of a Claim, then Indemnitor, at Indemnitor's own expense, shall assume the defense of such Claim. If Indemnitor assumes the defense of such Claim, (i) Indemnitor shall keep the Indemnitees informed of all material developments and events relating to such Claim, (ii) the Indemnitees shall have the right to participate, at its own expense, in the defense of such Claim (but such

participation shall not be deemed to give the Indemnitees the right to control such defense), (iii) the Indemnitees shall cooperate as reasonably requested by Indemnitor in the defense of such Claim, and (iv) Indemnitor shall not settle such Claim without the prior written consent of the Indemnitees, which consent shall not be unreasonably withheld.

c.  Any indemnification obligations between IASLC and CRAB shall be governed by the then applicable separate agreement or agreements between IASLC and CRAB.  CRAB shall not have any direct indemnification obligations to the Institution pursuant to this Agreement.

10.  <u>Miscellaneous</u>.

a.  *Equitable Relief*.  Each party agrees that any other party's breach of any provision of this Agreement will cause immediate and irreparable harm to the other party for which money damages are not an adequate remedy at law.  Therefore, the parties agree that, in the event either party breaches or threatens to breach this Agreement, the other party shall be entitled to an injunction to restrain said breach or threatened breach, without posting any bond or other security.

b.  *Binding Effect*.  This Agreement shall be legally binding as between the parties until such time as it has been expressly superseded by a more detailed agreement should one be duly signed.

c.  *Applicable Law*.  The validity and interpretation of this Agreement shall be governed by the laws of the State of Colorado. The parties agree that any conflict of law provisions, where applicable, are hereby excluded by this express agreement to an applicable law and jurisdiction.

d.  *Assignment*.  Neither IASLC nor the Institution shall transfer, delegate, or assign this Agreement to any other person or legal entity, whether by written agreement, operation of law or otherwise, without the prior written consent of the other party.  To the extent that CRAB ceases to provide services with respect to the IASLC Dataset and the Combined Dataset pursuant to any then applicable agreement or agreements between IASLC and CRAB, CRAB's rights and obligations under this Agreement on and after the date when CRAB ceases to provide such services shall be automatically assigned to its successor; however, such successor shall not have any liability for the acts or omissions of any of its predecessors or successors.  Any assignment or transfer by a party hereto that is not in compliance with the terms and conditions set forth in this Section shall be void and of no effect.  Any permitted assignment or transfer of or under this Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the assigning or transferring party hereto.

e.  *Entire Agreement*.  Subject to this Section 10(e), this Agreement embodies the entire understanding of the parties with respect to the subject matter hereof and

shall supersede all previous communications, representations, or understandings, either oral or written, between the parties relating to the subject matter hereof. This Agreement and the subject matter hereof may not be modified except by a written agreement signed on behalf of IASLC, the Institution and, if the amendment directly impacts CRAB's representations, rights or obligations under this Agreement, CRAB, by their respective duly authorized representatives. Only with respect to IASLC and CRAB, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any other then applicable agreement or agreements between CRAB and IASLC, the terms of such other agreement or agreements between CRAB and IASLC will prevail. The terms of any agreement or agreements between CRAB and IASLC will not impact the rights and obligations of the Institution under this Agreement.

f.  *Independent Contractor Status.*  In connection with this Agreement, each party is an independent contractor and as such will not have any authority to bind or commit the other.  Furthermore, neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.

g.  *Severability; No Waiver.*  To the extent that any term, condition or provision of this Agreement is held to be invalid, illegal or otherwise unenforceable under applicable law, rule, or regulation then such term, condition or provision shall be deemed excluded from this Agreement and the other terms, conditions and provisions hereof shall remain in full force and effect as if such unenforceable term, condition or provision had not been included herein.  The failure of a party to prosecute its rights with respect to a default or breach hereunder shall not constitute a waiver of the right to enforce its rights with respect to any other or later breach.  No waiver of any right or remedy available to a party under this Agreement, at law, or in equity shall be effective unless signed in writing by the waiving party.  Unless otherwise specifically limited under this Agreement, all rights and remedies reserved to either party shall be cumulative and shall not be in limitation of any other right or remedy which such party may have at law or in equity.

[*Signature page follows*]

IN WITNESS WHEREOF, as of the Effective Date, an authorised representative of each party has duly executed this Data Use Agreement.


INSTITUTION

Signed:_____

Name:_____

Title:_____

Date:_____

CANCER RESEARCH AND
BIOSTATISTICS

Signed:_____

Name:_____

Title:_____

Date:_____

INTERNATIONAL ASSOCIATION FOR
THE STUDY OF LUNG CANCER

Signed:_____

Name:_____

Title:_____

Date:_____