

DATA USE AGREEMENT

This Data Use Agreement (the "Agreement"), effective as of the ___ day of _____, 20__, is by and between _____ ("Covered Entity") and _____ ("Limited Data Set Recipient" or "Recipient") (collectively, the "Parties"; each, a "Party") for purposes of complying with the federal Standards for Privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Parts 160 and 164 (the "Privacy Standards").

RECITALS

WHEREAS, Limited Data Set Recipient would like to use certain individually identifiable health information maintained by Covered Entity for purposes of _____ **[such purposes must relate to health care operations, research, or public health]**;

WHEREAS, Recipient recognizes that Covered Entity is a covered entity under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and that Covered Entity is required by the Privacy Standards adopted pursuant to HIPAA to protect the privacy of the individually identifiable health information maintained by Covered Entity;

WHEREAS, the Privacy Standards permit Covered Entity to disclose a Limited Data Set of information to Recipient for purposes of health care operations, research, or public health if Recipient enters into a Data Use Agreement with Covered Entity;

WHEREAS, 45 C.F.R. § 164.514(e) of the Privacy Standards requires Covered Entity to receive adequate assurances from Recipient that Recipient will comply with certain obligations with respect to the individually identifiable health information received from Covered Entity; and

WHEREAS, the purpose of this Agreement is to comply with 45 C.F.R. § 164.514(e) of the Privacy Standards as it may be amended from time to time.

NOW THEREFORE, in consideration of the mutual promises and covenants, herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Definitions.

1. "Limited Data Set Recipient." "Limited Data Set Recipient" shall mean _____ **[insert name of Limited Data Set Recipient]**.
2. "Covered Entity." "Covered Entity" shall mean _____ **[insert name of Covered Entity]**.
3. "Limited Data Set." "Limited Data Set" shall mean PHI that excludes the following direct identifiers of the individuals or of the relatives, employers, or household members of individual: (i) names; (ii) postal address information,

other than town or city, state and zip code; (iii) telephone numbers; (iv) fax numbers; (v) electronic mail addresses; (vi) social security numbers; (vii) medical record numbers; (viii) health plan beneficiary numbers; (ix) account numbers; (x) certificate/license numbers; (xi) vehicle identifiers and serial numbers, including license plate numbers; (xii) device identifiers and serial numbers; (xiii) web universal resource locators (URLs); (xiv) Internet Protocol (IP) address numbers; (xv) biometric identifiers, including finger and voice prints; (xvi) full face photographic images and any comparable images.

4. “Individual.” “Individual” shall mean the person who is the subject of the Protected Health Information.
5. “Privacy Standards.” “Privacy Standards” shall mean the Standards for Privacy of Individually Identifiable Health Information set forth at 45 C.F.R. Parts 160 and 164.
6. “Protected Health Information” or “PHI.” “Protected Health Information” or “PHI” shall mean individually identifiable health information regardless of the form in which it is maintained or transmitted.
7. “Required by Law.” “Required by Law” means a mandate contained in law that compels a use or disclosure of PHI and that is enforceable in a court of law.

B. Creation and Disclosure of Limited Data Set. Covered Entity may use PHI to create a Limited Data Set and may disclose PHI to Recipient for the purposes of _____ **[such purposes must relate to health care operations, research, or public health].**

C. Limited Data Set Recipient Obligations. As a condition of receiving the Limited Data Set for purposes of carrying out _____ **[such purposes must relate to health care operations, research, or public health],** Limited Data Set Recipient agrees to comply with applicable federal and state privacy and security laws. Recipient further agrees:

1. not to use or disclose PHI except as necessary to fulfill the purposes of this Agreement as described in Sections B and C, above;
2. not to use or further disclose the Limited Data Set in a manner that would violate the Privacy Standards if done by Covered Entity;
3. not to use or further disclose the Limited Data Set other than as permitted by this Agreement or otherwise required by law;
4. to use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as provided for by this Agreement;
5. to report to Covered Entity any use or disclosure of the Limited Data Set not provided for by this Agreement of which Recipient becomes aware;

6. to ensure that any agents, including a subcontractor, to whom it provides the Limited Data Set agrees to the same restrictions and conditions that apply to the Recipient with respect to such information; and
7. not to identify the individuals who are the subjects of the Limited Data Set or contact such individuals.

D. Term and Termination.

1. Term. The term of this Agreement shall be effective as of the date first set forth above and shall continue from year to year unless terminated with or without cause by either party by thirty (30) days notice to the other party.
2. Termination for Breach. If Recipient breaches any provision in this Agreement, Covered Entity may, at its option, access and audit the records of Recipient related to its use and disclosure of PHI, require Recipient to submit to monitoring and reporting, and such other conditions as Covered Entity may determine is necessary to ensure compliance with this Agreement, or Covered Entity may terminate this Agreement on a date specified by Covered Entity.
3. Continued Confidentiality of Information. After the termination of this Agreement, Recipient agrees to maintain the confidentiality of the PHI as set forth in this Agreement and the Privacy Standards.

E. Miscellaneous.

1. Indemnification. To the extent permitted by law, Recipient agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments, or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Recipient in connection with the performance of Recipient's duties under this Agreement. This indemnity shall apply even if Covered Entity is *alleged* to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Recipient. Covered Entity shall provide Recipient with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist Limited Data Set Recipient in establishing a defense to such action.

The indemnities set forth in this Section D(1) shall survive termination of this Agreement and Covered Entity reserves the right, at its option and expense, to

participate in the defense of any suit or proceeding through counsel of its own choosing.

2. Rights of Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and/or Limited Data Set Covered Entity discloses to Recipient.
3. Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:

Attn: _____

If to Limited Data Set Recipient:

Attn: _____

4. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as needed to assure Covered Entity's compliance with the Privacy Standards.
5. Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the State of _____ **[Insert State]**, without regard to applicable conflict of laws principles.
6. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

7. Nature of Agreement. Nothing in this Agreement shall be construed to create: (i) a partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates; (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates; or (iii) an agency or employment relationship between the Parties or any of their affiliates.
8. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
9. Equitable Relief. Any disclosure or misappropriation of Limited Data Set information by Recipient in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Recipient therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Recipient from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Recipient expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
10. Severability. The provisions of this Agreement shall be severable and, if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
11. No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on any person other than the Parties to this Agreement or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
12. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.
13. Entire Agreement. This Agreement, together with the all exhibits, schedules, riders, and amendments, if applicable, which are fully completed and signed by authorized Persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the

subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the exhibits, schedules, or riders, the provisions of this Agreement shall control.

- 14. Regulatory References. A citation in this Agreement to the Code of Federal Regulations (“C.F.R.”) shall mean the cited section as that section may be amended from time to time.

Agreed to:

Agreed to:

LIMITED DATA SET RECIPIENT

COVERED ENTITY

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Name: _____
(Type or Print)

Name: _____
(Type or Print)

Title: _____

Title: _____

Date: _____

Date: _____

Sources: 67 Fed. Reg. 53182, 53234-53238 (Aug. 14, 2002); 45 C.F.R. § 164.514(e) as it may be amended from time to time.

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