

Texas Tech University Health Sciences Center El Paso

Attachment A

DATA TRANSFER AGREEMENT

This Data Transfer Agreement (“Agreement”) is made and entered into by and between TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER at EL PASO (“Covered Entity”), a public institution of higher education in the State of Texas, and _____ (“Data Recipient”), a _____ . Both Covered Entity and Data Recipient are also referred to herein as "Party" or, collectively, "Parties."

WHEREAS:

Upon employment separation from Covered Entity, Covered Entity may transfer, disclose or make available to Data Recipient, and Data Recipient may use, disclose, receive, transmit, maintain or create from, certain information in conjunction with research; and

Upon transfer of Data Set, Data Recipient accepts all legal responsibility for the possession and use of the requested Data Set; and

Covered Entity and Data Recipient are committed to compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology Act of 2009 ("HITECH"), and regulations promulgated thereunder including, but not limited to, the Privacy Rule as provided in 45 CFR Part 160 and 164, and as these may be amended; and

The purpose of this Agreement is to satisfy the obligations of Covered Entity under HIPAA and to protect the integrity and confidentiality of certain information disclosed or made available to Data Recipient and certain information that Data Recipient uses, discloses, receives, transmits, maintains or creates, from Covered Entity;

NOW, THEREFORE, the Parties agree as follows.

A. DEFINITIONS

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the Privacy Rule and as it may be amended or renumbered.

1. HIPAA Regulations is defined as the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
2. Disclosure or Disclose is defined in 45 CFR 160.103 as "the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information."
3. Individual is defined in 45 CFR 160.103 as "the person who is the subject of protected health information." For purposes of this Agreement, "Individual" shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

4. Covered Entity is defined as a health plan, a health care clearinghouse, or a healthcare provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations. 45 CFR 160.103.
5. Privacy Rule means the Standards for Privacy of Individually Identifiable Information at 45 CFR Part 160 and Part 164, Subparts A and E, and as may be amended from time to time.
6. Protected Health Information or PHI is defined in 45 CFR 164.501 as "individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium" [excluding education and employment records].
7. Required by Law is defined in 45 CFR 164.103 as "a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law."
8. Use is defined in 45 CFR 160.103 as "with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information."

B. SCOPE AND PURPOSE OF DISCLOSURE OF DATA SET

1. For the purpose of this Agreement, Covered Entity will disclose a data set to Data Recipient: _____. The data set requested resides in _____ that was assigned to Data Recipient. The files, "_____" are listed in Attachment A and may contain PHI or other identifiers.

Such data sets, as requested by Data Recipient, may contain research conducted by Data Recipient and/or former laboratory staff employees working in Data Recipient's laboratory. The data sets may also include data from Data Recipient's research collaborators. ***Data Recipient guarantees that the requested files do NOT contain data of other researchers to which Data Recipient does not have expressed written consent to possess.***

2. Data Recipient may use and disclose the data set received from Covered Entity only in connection with the performance of the research activities.

Data Recipient shall limit the use or receipt of the data set to the following individuals or classes of individuals who need the data set for the performance of the activities.

Research activities associated with publication of the data in peer-reviewed scientific journals provided no PHI is disclosed;

Research activities associated with reports to any grantors or foundations that have a vested financial interest or contractually obligated right to research data provided that no PHI is disclosed;

C. OBLIGATIONS AND ACTIVITIES OF DATA RECIPIENT

1. Data Recipient shall not use or further disclose the data sets except as permitted or required by this Agreement.
2. Data Recipient shall not disclose the data sets to any non-employee agent, subcontractor of Data Recipient except with the express prior written consent of Covered Entity. Data Recipient shall

ensure that any agents, including subcontractors, to whom it provides the data sets agree in writing to be bound by the same restrictions and conditions that apply to Data Recipient with respect to such data sets.

3. Data Recipient agrees to use appropriate safeguards to prevent use or disclosure of the data sets other than as provided for by this Agreement.
4. Data Recipient agrees to report to the Covered Entity any use or disclosure of the data sets **not** provided for by this Agreement of which it becomes aware including, without limitation, any disclosure of PHI to an unauthorized subcontractor, within 72 hours of Data Recipient becoming aware of any use or disclosure of the data sets in violation of this Agreement or applicable law.
5. Data Recipient agrees to ensure that any agent, including a subcontractor, to whom it provides the data sets agrees in writing to the same restrictions and conditions that apply through this Agreement to the Data Recipient with respect to use or disclosure.
6. Data Recipient agrees not to identify the information contained in the data sets or contact the individual whose PHI is included in the data set.
7. Data Recipient will indemnify, defend and hold harmless Covered Entity, its regents, officers, employees, agents and affiliates, and their respective trustees, officers, directors, employees and agents (“Indemnitees”) from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney’s fees and court costs) arising out of or in connection with any unauthorized or prohibited use or disclosure of the data sets or any other breach of this Agreement by Data Recipient or any subcontractor, agent or person under Data Recipient’s control or who made unauthorized use or disclosure of the data sets which is the subject of this Agreement.
8. The respective rights and obligations of Data Recipient under this Section D shall survive termination of this Agreement.

D. OBLIGATIONS AND ACTIVITIES OF COVERED ENTITY

1. The Covered Entity may use or disclose these data sets upon execution of this Agreement by the Data Recipient.
2. The Covered Entity is exempt from the accounting of disclosure of a data set in accordance with 45 CFR 46.
3. The Covered Entity may use or disclose a data set only for the purposes of research, public health or health care operations.

F. TERM AND TERMINATION; DISPOSITION OF DATA SET

1. The term of this Agreement shall start August 22, 2018 (“Effective Date”).
2. Covered Entity may terminate this Agreement:
 - a. Immediately if Data Recipient is named as a defendant in a criminal proceeding for a

- violation of HIPAA or the HIPAA Regulations;
- b. Immediately if a finding or stipulation that Data Recipient has violated any standard or requirement of HIPAA, the HIPAA Regulations, or any other security or privacy laws is made in any administrative or civil proceeding in which Data Recipient has been joined;
 - c. Immediately if Covered Entity determines that Data Recipient has breached or violated a material term of this Agreement;
 - d. Immediately if it is in the best interest of Covered Entity, as deemed by Covered Entity in its sole discretion to do so; or
 - e. Pursuant to Section G of this Agreement.
3. Upon termination of this Agreement for any reason, including, but not to Data Recipient's decision to cease use of the data set, Data Recipient agrees to return or destroy all Data Set data, including copies and derivative versions.

If it is not feasible to return or destroy the data set, Data Recipient shall give Covered Entity written notice of the conditions preventing return or destruction. Upon mutual written agreement through an amendment to this Agreement, Data Recipient shall continue to extend the protections of this Agreement to the data set for as long as Data Recipient holds the data set. If Data Recipient later elects to destroy the data set, Data Recipient shall notify Covered Entity in writing that the data set has been destroyed within three (3) business days.

G. ENFORCEMENT

From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Data Recipient has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Data Recipient to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Data User's facilities, systems and procedures does not relieve Data Recipient of its responsibility to comply with this Agreement, nor does Covered Entity's (1) failure to detect or (2) detection of, but failure to notify Data Recipient or require Data User's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. The Parties' respective rights and obligations under this Section G shall survive termination of the Agreement.

H. MISCELLANEOUS

1. The Parties agree to take such action as is necessary to amend this Agreement as mutually agreed in writing from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.
2. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
3. There are no intended third-party beneficiaries to this Agreement. Without in any way limiting the foregoing, it is the Parties' specific intent that nothing contained in this Agreement gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the individuals whose PHI is used or disclosed pursuant to this Agreement.
4. No provision of this Agreement may be waived except by an agreement in writing signed by the

waiving Party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.

5. If the Covered Entity or the Data Recipient knows of a pattern of activity or practice that constitutes a breach or violation of this Agreement, and such violations cannot be cured or such violation ended by reasonable measures, both Parties agree to the discontinued disclosure of PHI and agree to report the problem as required by law.
6. If any breach or violation is not cured, and if termination of this Agreement is not feasible, Covered Entity shall report Data User's breach or violation to the Secretary of the United States Department of Health and Human Services, and Data Recipient agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s).
7. In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the Parties, written, oral or implied, the terms of this Agreement shall govern. Without limiting the foregoing, no provision of any other agreement or understanding between the Parties limiting the liability of Data Recipient to Covered Entity shall apply to the breach of any covenant in this Agreement by Data Recipient.
8. Notices or communications required or permitted to be given under this Agreement shall be given in writing to the respective Parties personally or by registered or certified mail, return receipt requested, at the following addresses unless a party shall otherwise designate a change of address by notice provided in accordance herewith. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party to this Agreement shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed as follows:

If to Covered Entity:

Texas Tech University Health Sciences Center El Paso
Attn: Office of the Vice President for Research, MSC 31001
5001 El Paso Drive
El Paso, Texas 79905

If to Data Recipient:

INSERT NAME AND ADDRESS

9. Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship between the Parties. The sole interest and responsibility of the Parties is that the services covered by this Agreement shall be performed and rendered in a competent, efficient, and satisfactory manner. Neither Party shall have the authority to represent or otherwise bind the other Party, nor shall any of their respective agents, employees or representatives be construed to be the agent, employee or representative of the other.

10. If any term or provision of this Agreement is held to be invalid for any reason, the invalidity of that section shall not affect the validity of any other section of this Agreement provided that any invalid provisions are not material to the overall purpose and operation of this Agreement. The remaining provisions of this Agreement shall remain in full force and shall in no way be affected, impaired, or invalidated.
11. Neither Party shall have the right to assign or transfer their rights to any third parties under this Agreement without prior written consent of the non-transferring Party.
12. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas. Venue will be in accordance with the Texas Civil Practices and Remedies Code and any amendments thereto.
13. The Parties acknowledge that each is subject to applicable federal and state laws and regulations, and policies and requirements of various accrediting organizations. Accordingly, each Party will enforce compliance with all applicable laws, regulations, and requirements, and will make available such information and records as may be reasonably requested in writing by the other Party to facilitate its compliance, except for records that are confidential and privileged by law.
14. The person(s) executing this Agreement on behalf of the Parties, or representing themselves as executing this Agreement on behalf of a Party, warrant and guarantee that each has been duly authorized by the appropriate Party to execute this Agreement on behalf of the Party and to validly and legally bind the Party to all of its terms, performances, and provisions.

COVERED ENTITY

Texas Tech University Health Sciences
Center El Paso

By _____
Peter S. Rotwein, M.D.
Title: Vice President for Research

Date _____

DATA RECIPIENT

INSERT NAME

By _____
INSERT NAME
Title: _____

Date _____