

ATTACHMENT E

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ARKANSAS DEPARTMENT OF HEALTH

DATA USE AGREEMENT ACCESS TO CONFIDENTIAL DATA

The Arkansas Department of Health and _____ enter in to this Data Use Agreement to insure the proper use of certain data to be provided by the Arkansas Department of Health.

SECTION 1 - Definitions:

- (a) **ADH** "ADH" shall mean the Arkansas Department of Health (ADH).
- (b) **ADH Data.** "ADH Data" shall mean the Protected Health Information and /or confidential data provided by ADH contained in, or any document, manuscript, table, chart, study, report, etc. which is created either wholly or in part from the data contained in, ADDENDUM 2 to this Agreement.
- (c) **Data User.** "Data User" shall mean the _____.
- (d) **Data Room.** "Data Room" as used in this agreement shall mean a secure, physical room with controlled access, in which the data provided by ADH, as listed in ADDENDUM 2 to this agreement, will be permanently stored.
- (e) **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (f) **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (g) **Protected Health Information.** "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 160.103, limited to the information received by Data User from or on behalf of ADH or created from data received by Data User from or on behalf of ADH.
- (h) **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.
- (i) **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his designee.
- (j) **Unauthorized Use.** "Unauthorized Use" shall mean any use of, disclosure of, access to, or release of ADH Data if such use, disclosure, access or release is unintentional, unauthorized or otherwise not specifically allowed by this Agreement.

SECTION 2 - Obligations and Activities of Data User

- (a) Data User agrees that the ADH data file(s) listed in ADDENDUM 2 to this agreement may contain Protected Health Information.
- (b) Data User agrees to not use or disclose PHI or ADH Data other than as permitted or required by the Agreement or as Required by Law.
- (c) Data User agrees to take any and all steps required to prevent Unauthorized Use of ADH Data. Additionally, Data User agrees to implement administrative, physical and technical safeguards, prior to the effective date of this agreement and throughout the duration of this agreement that appropriately protect the confidentiality, integrity and availability of the ADH Data that the Data User receives from ADH, maintains or transmits on behalf of the ADH, or is created, either wholly or in part, from the data listed in ADDENDUM 2 to this Agreement. Administrative, physical and technical safeguards shall meet or exceed the following requirements:
 - (1) Data User agrees to comply with the Arkansas Department of Information Services - Office of Information Technology policies listed in ADDENDUM 1 to this agreement. The Data User agrees that all PHI and ADH Data will be treated, at a minimum, as Data Sensitivity Level C pursuant to Arkansas Department of Information Services - Office of Information Technology System Standard SS-70-001.
 - (2) Data User agrees to comply with the Health Insurance Portability and Accountability Act of 1996, (HIPAA), specifically, the HIPAA Privacy rule (Privacy rule), 45 CFR Parts 160 and 164, and the HIPAA Security Rule (Security Rule), 45 CFR Parts 160, 162 and 164.
- (d) The Data User shall not attempt to identify or contact any specific individual whose record is included in the ADH Data. Data User will notify ADH regarding linkages of ADH Data to other sources of information.



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- (e) Data User agrees that ADH retains all ownership rights to all data provided by ADH as listed in ADDENDUM 2 to this agreement, and that the Data User does not obtain any right, title, or interest in any of the data furnished by ADH. The parties further agree that ADH makes no representation or warranty, either implied or express, with respect to the accuracy of any data listed in ADDENDUM 2.
- (f) The Data User acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the ADH Data is prohibited.
- (g) The Data User agrees that the ADH Data provided to them may not be physically moved or electronically transmitted in any way from the device on which it is stored in the Data Room without prior written approval from ADH.
- (h) The parties mutually agree that the Data User will name an individual to be designated as Custodian of the data file(s) provided by ADH, on behalf of the Data User and that this person shall oversee and comply to the observance of all conditions of use and the establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The Data User agrees to notify ADH of the name of this person upon designation and within fifteen (15) days of any change of custodianship. The parties mutually agree that ADH may disapprove the appointment of a custodian or may require the appointment of a new custodian at any time.
- (i) Data User agrees to promptly report to ADH any Unauthorized Use of PHI or ADH DATA of which it becomes aware of. ADH in its sole discretion may require the Data User to: (a) promptly investigate and respond to ADH concerns regarding any Unauthorized Use of PHI or ADH Data; (b) promptly resolve any problems identified by the investigation; (c) submit a corrective action plan with steps designed to prevent any future Unauthorized Use; and/or (d) require that all data files contained in ADDENDUM 2 to this agreement be immediately returned.
- (j) Data User agrees that the same restrictions and conditions, including but not limited to criminal background checks and all other restrictions and conditions which apply to the ADH or its employees shall apply through this Agreement to Data User, and agrees to ensure that the same conditions and restrictions shall apply to any employee or agent, including a subcontractor, to whom it provides PHI or ADH Data.
- (k) Data User agrees to provide access, at the request of ADH, and in the time and manner acceptable to ADH, to PHI and/or ADH Data in a Designated Record Set, to ADH or, as directed by ADH, to an Individual in order to meet the requirements under 45 CFR 164.524.
- (l) Data User agrees to make any amendment(s) to PHI in a Designated Record Set that the ADH directs or agrees to pursuant to 45 CFR 164.526 at the request of ADH and in the time and manner acceptable to ADH.
- (m) Data User agrees to make PHI, ADH Data, internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Data User on behalf of, ADH available to the ADH, in a time and manner acceptable to ADH or to the Secretary or his designee, for purposes of the Secretary determining ADH's compliance with the Privacy Rule and or Security Rule.
- (n) Data User agrees to document such disclosures of PHI and information related to such disclosures as would be required for ADH to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- (o) Data User agrees to provide to ADH or at the direction of ADH, an Individual, at a time and in a manner acceptable to ADH, information collected in accordance with Section (i) of this Agreement, to permit ADH to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- (p) Data User agrees that it will restrict access to the data provided under this agreement to only those individuals essential to the performance of the above-stated purpose, and will ensure that the individuals are under the direction and control of Data User at the time of the individual's performance of any such services.
- (q) Data User will require that each individual with access to ADH provided data to accurately complete a Confidentiality Certification Form before access to the data is permitted and will maintain a file of such executed forms and will produce them for review upon the request of ADH. A copy of the Confidentiality Certification Form is attached as Addendum 4.
- (r) Data User will monitor the use of the data by the individuals to ensure the data's use in a manner and for purposes only as are consistent with this Agreement.



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- (s) Data User will keep all data provided under this Agreement secured in a manner which will ensure its confidentiality, and develop and require all Data Users to follow security procedures designed to keep the data confidential and to limit its access to only authorized Data Users.
- (t) Prior to the effective date of this agreement and throughout the duration of this agreement, the Data User agrees to establish a Data Room, which will be a secure, physical room where the data provided by ADH as listed in ADDENDUM 2 to this agreement will be permanently stored and where any and all viewing, analysis, comparison to other data, etc. of the ADH data will occur.
 - (1) The Data User will ensure that the computer(s), processor(s), or data storage media in the Data Room on which the data provided by ADH is stored will not have electronic access, (i.e. phone line, wireless, wifi or local area network, etc.) to any site, location or device located outside of the Data Room. When the computer(s), processor(s), or data storage media, on which the data provided by ADH is stored, is not in use, all connections between it and other computers in the Data Room will be severed.
 - (2) The Data User will implement policies to ensure that the Data Room and its contents are Secure, that all doors to the data room are locked and that all access to the Data Room is monitored and logged. The Data User agrees to implement Data Room access logs which will, at a minimum, list the date and time of access, name of person accessing the Data Room, reason for access to Data Room (what files will be accessed and why), and the date and time the person exits the Data Room. Access logs will be retained for a period of 6 years. The Data User agrees to allow ADH to review the Data Room access logs within 30 days upon request. The Data User agrees to implement procedures that strictly control the keys that permit access to the Data Room.
 - (3) The Data User agrees to ensure that the data room is reasonably soundproof and that data cannot be viewed from outside the Data Room.
 - (4) The Data User agrees to encrypt, via full disk encryption or similar technology, the ADH data stored in the Data Room.
- (u) The Data User agrees to implement reasonable Building Security policies which will insure the integrity and physical security of ADH data during and after normal work hours. This policy will include a procedure for handling unauthorized individuals on premises. This policy will include Data Security procedures for emergency incidents (including, but not limited to, tornados, floods, fires, fire drills, power outages, disasters, etc.) that either result in work interruptions, emergency evacuations or occur after hours.
- (v) Data User agrees to conduct and pay for periodic Data Security Assessment (at least annually) resulting in independent verification of data integrity/security utilizing a mutually approved third party. This assessment will include, at a minimum, external and internal vulnerability risk assessments, penetration testing, and social engineering testing. The Data User agrees to allow ADH to review any resulting report or analysis and will implement any mitigation or corrective procedures deemed necessary by the ADH within 30 days of ADHs' recommendation.

SECTION 3 - Permitted Uses and Disclosures by Data User General Use and Disclosure Provisions

- (a) Except as otherwise limited in this Agreement, Data User may use or disclose PHI and or ADH Data on behalf of, or to provide services to, ADH for the purposes set forth in the ADH's applicable policies, if such use or disclosure of PHI and/or ADH Data would not violate the Privacy Rule if done by ADH or the minimum necessary policies and procedures of ADH as set out in the ADH Notice of Privacy Practices incorporated herein by reference.
- (b) Except as otherwise limited in this Agreement, Data User may use or disclose ADH Data in the conduct of its official mandate as permitted or required by State and/or Federal law and pursuant to State and Federal laws.



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SECTION 4 - Specific Use and Disclosure Provisions

- (a) Except as otherwise limited in this Agreement, Data User may use PHI and ADH Data for the proper management and administration of the Data User or to carry out the legal responsibilities of the Data User.
- (b) Except as otherwise limited in this Agreement, Data User may disclose PHI and ADH Data for the proper management and administration of the Data User, provided that disclosures are required by law.
- (c) Data User may use PHI to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).
- (d) Neither the data provided by ADH as listed in ADDENDUM 2 to this agreement, nor copies of said data shall be released, in whole or in part for any reason, to any other party, person or entity without the written consent of the Chief of the Health Statistics and Data Management Section of ADH.
- (e) Commercial use, i.e., sale or distribution for profit, of ADH Data is specifically prohibited. The Data User shall not use, disclose, market, release, show, sell, rent, lease, loan, or otherwise grant access to the ADH Data, except as expressly permitted by this Agreement or otherwise required by law.
- (f) The Data User agrees not to publish or release, in any form, any data, statistics, or information derived from the ADH Data that directly or inferentially identifies any individual(s) (including cases, family members, or providers). The Data User agrees that any document (manuscript, table, chart, study, report, etc.) which is created, either wholly or in part, from the data listed in ADDENDUM 2 to this Agreement, must be previewed and approved for release by the Health Statistics and Data Management Section of ADH, prior to release. This review is intended to ensure, by using generally accepted statistical and scientific principles and methods for rendering individual information unidentifiable, that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information. The preview and response will take 72 hours from the time of receipt by ADH. ADH response and/or approval will be made by email or in writing to the Data User's Custodian of the data file(s).
- (g) The Data User agrees that it may be monitored by ADH during the term of this agreement, through a site visit or by other means, to insure the integrity and security of the data provided by ADH as listed in ADDENDUM 2 to this agreement, and to ensure compliance with the provisions of this agreement. The Data User agrees that it will resolve to the satisfaction of ADH, any issues found by ADH pertaining to the integrity and security of the data provided by ADH, within a period of time agreed to by ADH.

SECTION 5 - Obligations of ADH

- (a) ADH shall notify Data User of any limitation(s) in its notice of privacy practices of ADH in accordance with 45 CFR 164.520, to the extent that such limitation may affect Data User's use or disclosure of PHI or ADH Data.
- (b) ADH shall notify Data User of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Data User's use or disclosure of PHI.
- (c) ADH shall notify Data User of any restriction to the use or disclosure of PHI that ADH has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Data User's use or disclosure of PHI.

SECTION 6 - Term and Termination

- (a) **Term.** This Agreement shall continue until a successor agreement is entered into or until either party terminates the Agreement with written notice to the other. Said notice to consist of a minimum of 30 calendar days unless the termination is requested for cause. The Term of this Agreement shall be effective upon execution of this Agreement and shall terminate when all of the PHI and/or ADH Data provided by ADH to Data User, or created or received by Data User on behalf of ADH, is destroyed or returned to ADH, or, if it is infeasible to return or destroy PHI or ADH Data, protections are extended to such information, in accordance with the termination provisions in this Section.



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- (b) **Termination for Cause.** Upon ADH's knowledge of a material breach by Data User, ADH shall either:
- (1) Provide an opportunity for Data User to cure the breach or end the violation and terminate this Agreement and the contract Agreement between the Data User and ADH, if Data User does not cure the breach or end the violation within the time specified by ADH;
 - (2) Immediately terminate this Agreement and the contract between the ADH and Data User if Data User has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cure is feasible, ADH shall report the violation to the Secretary.
- (c) **Effect of Termination.**
- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Data User shall return or destroy all ADH Data received from ADH, or created or received by Data User on behalf of ADH. This provision shall apply to ADH Data that is in the possession of subcontractors or agents of Data User. Data User shall retain no copies of the ADH Data.
 - (2) In the event that Data User determines that returning or destroying the ADH Data is infeasible, Data User shall provide to ADH notification of the conditions that make return or destruction infeasible. Upon written notice to the Director of the ADH that return or destruction of ADH Data is infeasible, Data User shall extend the protections of this Agreement to such ADH Data and limit further uses and disclosures of such ADH Data to those purposes that make the return or destruction infeasible, for so long as Data User maintains such ADH Data.

SECTION 7 - Miscellaneous

- (a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- (b) **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for ADH to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (c) **Survival.** The respective rights and obligations of Data User under "Effect of Termination" of this Agreement shall survive the termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit ADH to comply with the Privacy Rule.
- (e) **Criminal Liability.** The Data User acknowledges that criminal liability under Arkansas state statutes for vital records, hospital, and cancer registry data, including possible felony charges, may apply with respect to any disclosure of information in the file(s) that is inconsistent with the terms of the agreement. The Data User further acknowledges that criminal penalties under Federal privacy statutes may apply if it is determined that the Data User, or any individual employed or affiliated therewith, knowingly and willfully obtained the file(s) under false pretenses.
- (f) **Governing Law.** For purposes of application, interpretation or enforcement of any provision of the agreement Arkansas Law shall apply exclusively, and specifically jurisdiction and venue shall be with the Arkansas State Claims Commission.
- (g) **Acceptance.** By signing this Agreement, the Data User agrees to abide by all provisions set out in this Agreement for protection of the data provided by ADH as listed in ADDENDUM 2 to this agreement, and acknowledges having received notice of potential criminal, civil, and/or administrative penalties for violation of the terms of the Agreement.



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SECTION 8 - Signatures

- (a) The undersigned individual hereby attests that he or she is authorized to enter into this Agreement on behalf of the Data User and agrees to all the terms specified herein.

Enter Data User Name or Company ---->

Signature or exSignature

Date

Printed Name of Data User Authorized Signor

Title

Arkansas Department of Health

By:

Signature or eSignature

Date

Printed Name of ADH Signor

Title



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ADDENDUM 1

Arkansas Department of Information Services - Office of Information Technology policies:

POLICY/STANDARD NUMBER	TITLE
SS-70-001	Data and System Security Classification
SS-70-006	Encryption
SS-70-002	Password Management
SS-70-007	Personnel Security
SS-70-008	Physical and Logical Security
SS-70-009	Remote Access
SS-70-010	Wireless Security
PS-52	Data Standardization
PS-60	Network Requirements



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ADDENDUM 2

Arkansas Department of Health Data Files covered by this agreement:

FILE NAME	YEARS



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ADDENDUM 4

Confidentiality Certification Form

I understand that I will or may be exposed to certain confidential data owned by the Arkansas Department of Health and which was released to my employer: _____

This confidential data is described as any record or information contained in the data files listed in ADDENDUM 2 to this agreement, or any document, manuscript, table, chart, study, report, etc.,) which is created, either wholly or in part, from the data listed in ADDENDUM 2 to this Agreement.

I understand that I may use the data only in conjunction with certain duties with respect to my employment with _____ in its use of the data for the specific purpose set forth in this agreement.

I understand that I may not discuss with or reveal to anyone, in any manner, any of the data or any of the information I obtain from that data, except to other persons also having authorization to this data, and only for purposes of performing my duties as set forth above. I understand that I may not reveal such information to my friends or family, nor use the information for any personal, commercial, or political use.

I understand that the data is confidential and may be protected by federal and state laws, and that if I improperly use or reveal this confidential information, I may be subject to prosecution, fines, imprisonment, or other sanctions permissible under said law(s). I understand and agree that I will be liable for any damages resulting from my release of confidential information.

I have read this entire statement and understand that the confidential data must be used only for the specific purpose set forth in this agreement and that use of this information for any other purpose is strictly prohibited.

(signature)

(name--print or type)

(date)