



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
WV Health Care Authority

Bill J. Crouch
Cabinet Secretary

Barbara Skeen
Interim Executive Director

LIMITED DATA USE AGREEMENT

This Limited Data Use Agreement ("Agreement") is executed on this X day of MONTH, 20XX ("Execution Date"), to be effective on the X day of MONTH, 20XX, ("Effective Date"), by and between the West Virginia Health Care Authority ("Authority") and **DATA USER** ("Data User"). Unless extended pursuant to section 5.2, this Agreement will terminate on MONTH X, 20XX.

RECITALS

WHEREAS, the Data User performs certain research functions ("Activities");

WHEREAS, the Authority agrees to disclose a Limited Data Set, via electronic media, as defined herein to the Data User for use by Data User in the performance of the Activities, defined below;

WHEREAS, the Data User agrees to limit its use of the Limited Data Set and protect the Limited Data Set according to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual agreements, covenants, terms and conditions herein contained, the Authority and the Data User agree as follows:

I. DEFINITIONS FOR USE IN THIS AGREEMENT

"Electronic Media" shall mean the mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmission that are physically moved from one location to another using magnetic tape, magnetic or solid-state disk, compact disks or other physical media.

"Protected Health Information" shall mean Individually Identifiable Health Information that is "(i) transmitted by electronic media; (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. Protected health information shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended 20 U.S.C. § 1232g and (ii) records described in 20 U.S.C. §1232g(a)(4)(B)(iv).

"Record" shall mean any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used or disseminated by the Authority.

II. DISCLOSURE OF LIMITED DATA SET TO THE DATA USER

Section 2.1 Activities. The Data User performs the following activities:

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Section 2.2 Limited Data Set. The Data User agrees to use and the Authority agrees to disclose the following Limited Data Set, which variables and supporting documentation are contained in Exhibit "A", to the Data User for use by the Data User in the performance of the Activities described above.

III. OBLIGATIONS OF THE DATA USER

Section 3.1. Use of Limited Data Set. The Data User may use the Limited Data Set only as permitted under the terms of this Agreement or required by law, but shall not otherwise use the Limited Data Set and shall ensure that its, governing body, employees, contractors and agents do not use the Limited Data Set in a manner that would constitute a violation of this Agreement. The Data User agrees not to use the Limited Data Set in such a way as to identify any individual and further agrees not to contact any individual. The Data User agrees that it will limit use of the Limited Data Set within its organization to the minimum number of individuals necessary to achieve the Activities outlined above. The Data User agrees not to use the data for a commercial or competitive purpose, but may use, to the extent necessary, the Limited Data Set to prepare a certificate of need application. The Data User shall limit the use or disclosure of the Limited Data Set to the individuals set forth in Exhibit "B" and shall identify, in this same exhibit, one person with whom the Authority may contact regarding this agreement. To the extent that this list changes, the Data User will provide a supplementary list to the Authority within fifteen (15) business days.

Section 3.2. Disclosure of Limited Data Set. The Data User may disclose the Limited Data Set only as permitted under the terms of this Agreement. The research focused Data User will not report tabulated data in an external report in a cell size less than or equal to 10. The Data User may, to the extent necessary, disclose data contained in the Limited Data Set in order to complete a certificate of need. Otherwise, the Data User will not in any manner, directly or indirectly, make known, disclose, publish or communicate the Limited Data Set, or any part thereof, to any person, firm, or corporation without the express written consent of the Authority. The Data User will provide electronic copies of any external reports and publications utilizing the data set to the WV Health Care Authority.

Section 3.3. Safeguards Against Misuse of Information. The Data User shall use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as permitted under this Agreement. The Data User shall make audit reports available upon the Authority's request. The Data User will allow the Authority or its designee to conduct audits of its security.

Section 3.4. Reporting of Disclosures of Protected Health Information. The Data User shall, within thirty (30) days of becoming aware of any use or disclosure of the Limited Data Set in violation of the Agreement by the Data User, its governing body, employees, contractors or agents or by a third party to which the Data User disclosed the Limited Data Set pursuant to 3.2, report any such disclosure to the Authority. Such notice shall be mailed to the attention of the Privacy Officer, West Virginia Department of Health and Human Resources, One Davis Square, Suite 100 Charleston, West Virginia 25301.

Section 3.5. Agreements by Third Parties. The Data User shall obtain and maintain an agreement with each agent or subcontractor that has or will have access to the Limited Data Set, which is received by or on behalf of the Data User, pursuant to which agreement such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to the Data User pursuant to this Agreement with respect to the Limited Data Set. Special restrictions, terms and conditions, if any, may be found on Exhibit "C". Prior to any disclosure to a Third Party, the Data User must obtain the written consent of the Authority in conformity with Section 3.2 of this Agreement.

Section 3.6 Notice of Request for Data. The Data User agrees to notify the Authority within five (5) business days of the Data User's receipt of any request, including a freedom of information request, or subpoena for the Limited Data Set. To the extent that the Authority decides to assume responsibility for challenging the validity of such request, the Data User shall cooperate fully with the Authority in such challenge.

Section 3.7 Indemnification. The Data User shall indemnify, defend (if requested by the Authority), and hold the Authority harmless from and against any actual or threatened legal or administrative action, claim, liability, penalty, fine, assessment, lawsuit, litigation, or other loss, expense or damage, including without limitation any reasonable attorney's fees and costs that the Authority may incur directly or indirectly resulting from any action or omissions of the Data User, its agents, subcontractors, including failure to perform its obligations under this Agreement, without regard to any limitation or exclusion of damages provision otherwise set forth in this Agreement.

Section 3.8 Injunction. The Data User acknowledges and agrees that the Authority will suffer irreparable damage upon the Data User's breach of this Agreement and that such damages shall be difficult to quantify. The Data User acknowledges and agrees that the Authority may file an action for an injunction to enforce the terms of this Agreement against the Data User, in addition to any other remedy the Authority may have.

Section 3.9. Ownership of the Information. The Data User acknowledges that, as between the Data User and the Authority, all data contained in the Limited Data Set shall be and remain the sole property of the Authority, including any and all forms thereof developed by the Data User in the course of its fulfillment of its obligations pursuant to the Agreement.

IV. TERMINATION

Section 4.1 Termination Upon Breach of Provisions Applicable to Protected Health Information. Any other provision of this Agreement notwithstanding, this Agreement may be terminated by the Authority upon five (5) days written notice to the Data User in the event that the Data User breaches any provision contained in this Agreement and such breach is not cured within such five (5) day period. Data User acknowledges and agrees that in the event Data User's efforts to cure the breach are unsuccessful, the Data User has a duty to discontinue disclosure of the Limited Data Set and to report the breach to the Authority, notwithstanding any other provision of this Agreement to the contrary.

Section 4.2 Return or Destruction of Protected Health Information upon Termination. Upon termination of this Agreement, the Data User shall either return or destroy all data contained in the Limited Data Set received from the Authority or created or maintained in any form. If the data is destroyed, the Data User must submit the following: the date of the destruction, the means used to destroy the data, and two people within the organization must certify that the destruction actually took place. The Data User shall not retain any copies of such data. Notwithstanding the foregoing, to the extent that the Authority agrees that it is not feasible to return or destroy such data, the Data User will continue to be bound by the terms of this Agreement as long as the Data User retains the Limited Data Set, in any form.

V. GENERAL PROVISIONS

Section 5.1 Effect. The terms and provisions of this Agreement shall supersede any other conflicting or inconsistent agreement between Authority and Data User, including all exhibits or other attachments thereto and all documents incorporated therein by reference. Without limitation of the foregoing, any limitation or exclusion of damages provisions shall not be applicable to this Agreement.

Section 5.2 Amendment. The Data User and the Authority may amend this Agreement, upon joint, written agreement of both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

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| West Virginia Health Care Authority |
| By: _____ Barbara Skeen |
| Its: Interim Executive Director |
| Date: |

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| Data User |
| By: _____ |
| Its: |
| Telephone: |
| Email: |
| Date: |