# AGREEMENT FOR TRANSFER OF DATA FROM THE UTAH CONTROLLED SUBSTANCE DATABASE TO AN INDIVIDUAL PRACTITIONER’S OR A SMALL ENTITY’S ELECTRONIC HEALTH RECORDS SYSTEM

THIS AGREEMENT is entered into by and between the entity or individual applying for transfer of information from the Utah Controlled Substance Database (hereinafter “Database”) (hereinafter referred to as “APPLICANT") and Utah Division of Occupational and Professional Licensing of the Utah Department of Commerce (hereinafter referred to as “Agency”).

WHEREAS, Agency and APPLICANT desire to establish a system to transfer information contained in the Database to the electronic health record system of APPLICANT to positively affect the care provided to patients of APPLICANT; and

WHEREAS, such information may be used or disclosed only in accordance with the privacy regulations [45 CFR §§ 164.502(e); 164.504(e)] and the security regulations [45 CFR §§ 164.308; 164.314] issued pursuant to the Health Insurance Portability and Accountability Act [42 USC §§ 1320 - 1320d-8], relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, §§ 13400 *et seq*.], the terms of this Agreement, and the laws of the State of Utah, including Utah Code Ann. §§ 58-37f-101 through 801, the Utah Controlled Substance Database Act (“hereinafter referred to as “Act”); and

WHEREAS, APPLICANT understands and acknowledges that Agency has authority to enter into this Agreement to ensure the effective operation of the Database and to the maintain the integrity and security of the information in the Database; and

WHEREAS, APPLICANT understands, acknowledges, and agrees that all information contained in the Database, may only be used in conformance with the restrictions and limitations set forth in Utah Code Ann. §§ 58-37f-101 through 801.

**APPLICANT’S RESPONSIBILITIES**

1. APPLICANT shall comply with all laws and requirements set forth in Utah Code Ann. §§ 58-37f-101 through 801, and all rules and requirements set forth in Utah Administrative Code R156-37f-101 et seq. APPLICANT understands and acknowledges the criminal and civil penalties set forth in Utah Code Ann. § 58-37f-601 for unlawful access, use, or release of Database information.

2. APPLICANT may store Database information in a patient’s medical record, electronic or otherwise, for future access by medical practitioners. However, APPLICANT shall not redisclose or distribute Database information to any person not described in the previous sentence.

3. APPLICANT shall comply with Health Insurance Portability and Accountability Act (HIPAA), and all federal and state privacy laws, when dealing with information received from the Database.

4. APPLICANT shall cooperate in any investigation conducted by the Agency, or any law enforcement agency, regarding unlawful access, use, or distribution of Database information. APPLICANT shall provide access to APPLICANT’S files, computers, and electronic health record system to Agency or any law enforcement agency to assist in any investigation. APPLICANT agrees to conduct its own investigation to determine any violation of law or of this Agreement by any of its officers, employees, subcontractors, or agents, and report the result of the investigation immediately to the Agency.

5. APPLICANT agrees that the terms of this Agreement apply to APPLICANT, APPLICANT’S business entity, and all of APPLICANT’S officers, partners, employees, subcontractors, and agents.

6. APPLICANT agrees to immediately notify the Agency if it discovers or suspects that Database information has been unlawfully accessed, used, or disclosed. APPLICANT shall immediately notify the Agency if

7. APPLICANT, APPLICANT’S business entity, and all of APPLICANT’S officers, partners, employees, subcontractors, and agents claim no ownership of any Database information.

8. APPLICANT agrees to train and inform all of its officers, partners, employees, subcontractors, and agents, of the terms and conditions of the Agreement.

9. APPLICANT shall ensure that only persons that are lawfully authorized to access database information, pursuant to Utah Code Ann. § 58-37f-301, shall have access to Database information.

10. APPLICANT shall establish and maintain a searchable audit trail that specifically identifies every individual who accessed Database information. APPLICANT shall ensure that every user has appropriate credentials and authorization to access, receive, and view Database information. The audit trail shall include the name of the person who accessed the Database information, the date and time the Database information was accessed, and the specific credentials of the person who accessed the Database information. The audit trail shall be provided to the Agency immediately upon the Agency’s request.

11. APPLICANT and all of APPLICANT’S officers, partners, employees, subcontractors, and agents shall not edit or alter Database information.

12. APPLICANT agrees that Database information stored in APPLICANT’S electronic health record system shall not be used as a substitute for fresh, up-to-date Database information about an individual patient. A new request for Database information shall be made upon every new interaction with a patient.

13. APPLICANT shall immediately notify the Agency whenever the APPLICANT’S business, practice, or need for Database information terminates.

 **AGENCY’S RIGHTS AND RESPONSIBILITIES**

1. AGENCY shall take measures to ensure that APPLICANT is promptly provided with Database information for transfer to APPLICANT’S electronic health record system.

2. AGENCY has the right immediately terminate or suspend, for any reason, or for no reason at all, without notice or opportunity to be heard, APPLICANT’S access to Database information.

3. AGENCY has the right to investigate the unlawful access, use, or disclosure of Database information, and/or report unlawful access, use, or disclosure of Database information to law enforcement.

4. AGENCY shall not incur any cost or financial liability in its interaction with APPLICANT under this Agreement.

5. AGENCY may audit APPLICANT at any time to determine if APPLICANT’S use and storage of Database information, and access by APPLICANT’S employees and other Database users, is lawful.

**LIABILITY**

APPLICANT assumes comprehensive and complete liability, of every kind, including but not limited to civil claims, tort claims, violation of privacy rights, violation of civil rights, violation of constitutional rights, and any other legal claims, for any unlawful access, use, or disclosure of Database information related to this Agreement by APPLICANT, APPLICANT’S business entity, partners, employees, subcontractors, or agents. APPLICANT assumes comprehensive and complete liability for unlawful access, use, and disclosure of Database information by its technology partners, including technology vendors who provide and service APPLICANT’S electronic health record system.

**DISCLAIMER**

APPLICANT understands and acknowledges that APPLICANT accepts Database information from the Agency on an “As Is” basis. The Agency does not warrant the accuracy of Database information. Information in the Database may contain errors based upon misreporting, faulty transmission, data error entry, or any other reason. For the most accurate information, APPLICANT must obtain prescription information directly from the dispensing pharmacy.

**INDEMNIFICATION**

APPLICANT shall indemnify and hold harmless the Agency, and each of its respective officers, directors, employees, members, contractors, parents, subsidiaries, and affiliates, against any third party claim, including costs and reasonable attorneys’ fees, in which the Agency is named.

 **LIMITATION OF AGENCY LIABILITY**

The Agency shall not be liable for its employees, affiliate, subcontractors, or technology partners, in any amount, for any direct, special, incidental, consequential, indirect, or any other types of damages; loss of goodwill or business profits, work stoppage, data loss, computer failure or malfunction, or exemplary or punitive damages, however arising, even if APPLICANT has been advised of the possibility of such damages.

**TERM AND TERMINATION**

1. This Agreement is effective as soon as APPLICANT’s request for access to Database information for the purposes of transfer to APPLICANT’S electronic health record system is approved by the Agency.

2. Either party may terminate this Agreement at any time, for any reason, or for no reason at all.

 **ASSIGNMENT**

APPLICANT may not assign, in whole or in part, this Agreement to any other person or entity.

 **AMENDMENT TO AGREEMENT**

The Agency may update the contents of the Agreement and may require APPLICANT to sign and enter into the newly updated Agreement.

 **NOTICE TO THE AGENCY**

For any notice to the Agency under this Agreement to be effective the notice must be made immediately to:

Ronald Larsen

Administrator

Utah Controlled Substance Database

160 East 300 South, 1st Floor

Salt Lake City, UT 84114

ronaldlarsent@utah.gov

(801) 530-6197

 **SURVIVORSHIP**

The obligations of APPLICANT to safeguard the confidentiality, privacy and security of PHI and information from the Database imposed herein shall survive the termination of this Agreement.

 **INJUNCTIVE RELIEF**

Notwithstanding any rights or remedies under this Agreement or provided by law, Agency retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of Database by APPLICANT, its partners, employees, subcontractors, or agents, or any third party who has received PHI or information from the Database from APPLICANT.

 **CONTROLLING LAW**

The laws of the State of Utah shall govern the terms of this Agreement.

 **WAIVER OF ANY FEDERAL OR TRIBAL IMMUNITIES, PRIVILEGES, OR STATUTES**

APPLICANT hereby waives and forswears use of any federal or tribal immunity, privilege, or statute, in any dispute with Agency.

**By electronically signing this document, the entity or individual seeking transfer of information from the Utah Controlled Substance Database to the entity’s or individual’s electronic health record system, acknowledges that the entity or individual has read the entire Agreement, understands the Agreement, understands that the entity or individual may seek legal counsel before signing the Agreement, and hereby voluntarily agrees to all of the terms and conditions contained in the Agreement. If signing for an entity, the person electronically signing on behalf of the entity represents and affirms that he or she has informed the entity’s officers of this Agreement and is authorized to electronically sign it on behalf of the entity.**

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Electronic Signature of Applicant Date of signature