



Data Usage Agreement

This **Data Usage Agreement** ("DUA" or "Agreement") is entered into as of the "Effective Date" identified below, between **DIGITAL HEALTH CRC LIMITED** ("DHCRC") and **//Insert name of User's institution//** ("User"). (User and DHCRC may each be referred to as a "Party," and collectively, as the "Parties.").

DHCRC has been licensed by Health Management Systems Inc. ("**HMS**") to make the Data (defined below) which is the subject of this Agreement available to the User.

In some instances, the User's access of the Data will require the use or disclosure of a Limited Data Set or Protected Health Information ("**PHI**") (defined below) pursuant to the terms of this Agreement.

This Agreement consists of: (i) this cover page ("**Cover Page**") and (ii) the attached Terms.

The Parties agree as follows:

Effective Date:	
DHCRC Legal Name:	DIGITAL HEALTH CRC LIMITED
State of Organization:	New South Wales, Australia
Street Address:	Level 3, 55 Harrington Street
City, State, Zip:	Sydney NSW, Australia 2000
Contact Name:	Eve Martin
Telephone:	+61 406 660 251
Email:	eve.martin@dhcrc.com
User Contact Information:	
Contact Name:	//Insert//
Street Address:	//Insert//
City, State, ZIP:	//Insert//
Telephone:	//Insert//
Email:	//Insert//



SIGNATURES	
The duly authorized representatives of the User and DHCRC have signed this Agreement to be effective as of the Effective Date.	
USER	DIGITAL HEALTH CRC LIMITED
Signature:	Signature:
Name (printed):	Name: Victor Pantano
Title:	Title: Chief Executive Officer
Date:	Date:





TERMS

I. Background and Purpose

- (a) HMS and DHCRC have entered into an agreement, pursuant to which DHCRC will undertake certain projects with HMS. One of the projects aims to facilitate making HMS data available to researchers and students.
- (b) HMS has granted DHCRC the right to make HMS data available to the User on the terms and conditions set out in this Agreement.
- (c) The User acknowledges that use of the HMS Data may require the User to be provided access to a Limited Data Set that will contain PHI.
- (d) HMS, as a business associate of its clients (which are Covered Entities, as defined below), has contractual obligations to its clients to protect the privacy and security of PHI received from such Covered Entities. HMS is thus subject to and must comply with the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act (Division A, Title XIII, and Division B, Title IV, of Pub. L. No. 111-5) (which was part of the American Recovery and Reinvestment Act of 2009 ("ARRA")) and relevant implementing regulations, including the Privacy Rule (defined below), the Security Rule (defined below), and the Breach Notification Rule (defined below). HMS is further contractually required to pass such statutory and regulatory obligations on to its subcontractors, agents, and vendors, including entities such as DHCRC.
- (e) The Parties mutually intend that this Agreement between them will assure compliance with HMS' Business Associate Agreements or other agreements with its clients, as well as with applicable provisions of law and regulation pertaining to the responsibilities of business associates of Covered Entities and the obligations that are properly imposed upon and undertaken by "downstream" subcontractors, vendors, or agents of such business associates.
- (f) This Agreement replaces any existing Agreement or other terms and conditions entered into or agreed upon by the Parties governing their respective rights and obligations under HIPAA, as amended, and/or its implementing rules and regulations.

II. Definitions

Terms used, but not otherwise defined, in this Agreement will have the same meaning as the definitions for such terms in the federal regulations implementing HIPAA, as amended by HITECH provisions of ARRA (which is published in the C.F.R. at Title 45, Parts 160 and 164), and/or the Privacy, Security, Enforcement & Breach Notification Final Omnibus Rule, as such rules and provisions are amended from time to time (collectively, the "HIPAA Rules").

- (a) "Academic and Non-commercial Research Purposes" means research or development that is internally funded by the User, or that is funded by the Commonwealth or a State, local, federal, or Territory government or statutory corporation or by a philanthropic or charitable organisation under a funding agreement that does not transfer ownership of Intellectual Property rights to the funding



party. Further, Academic and Non-commercial Research Purposes means the research and any resulting Intellectual Property will not be used to Utilise the Intellectual Property related in any way to research using the Data.

- (b) "Breach" will have the meaning given to such term in 45 C.F.R. § 164.402.
- (c) "Breach Notification Rule" will mean the final omnibus rule related to breach notification for unsecured protected health information at 45 C.F.R. §§ 164.400-414.
- (d) "Business Associate" will have the meaning given to such term in 45 C.F.R. § 160.103.
- (e) "Covered Entity" will have the meaning given to such term in 45 C.F.R. § 160.103.
- (f) "Data" means //insert a description of the Data which will be the subject of the access by the User//.
- (g) "Designated Record Set" will have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.501.
- (h) "Discovery" will mean the first day on which an event is known to DHCRC (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of DHCRC), or should reasonably have been known to DHCRC, to have occurred.
- (i) "Electronic Health Record" will have the meaning given to such term in Section 13400 of the HITECH Act (42 U.S.C. § 17921).
- (j) "Electronic Protected Health Information" or "E PHI" will have the same meaning given to such term under the Security Rule at 45 C.F.R. § 160.103, including, but not limited to protected health information in electronic form that is created, received, maintained, or transmitted by the health care component of a Covered Entity.
- (k) "HIPAA" or "Health Insurance Portability and Accountability Act of 1996" are those provisions set forth in Public Law 104-191 and its implementing rules and regulations.
- (l) "HITECH Act" or "HITECH" or "Health Information Technology for Economic and Clinical Health Act" are those provisions set forth in Title XIII of the ARRA of 2009, Public Law 111-5 as enacted on February 17, 2009 and its implementing regulations.
- (m) "Individual" will have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 160.103, and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (n) "Limited Data Set" will have the meaning given to such term at 45 C.F.R. § 164.514(e)(2).
- (o) "Personnel" means any employee, student, officer, agent, professional adviser or subcontractor of User.
- (p) "Privacy Rule" will mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Part 160 and Part 164, Subparts A and E.



- (q) "Project" means //insert a description of the research project to be undertaken by the User//.
- (r) "Protected Health Information" or "PHI" will have the meaning given to such term under the Privacy and Security Rules at 45 C.F.R. § 160.103, limited to the information created or received by DHCRC from or on behalf of HMS, which HMS received from a Covered Entity.
- (s) "Required by Law" will have the meaning given to such term under the Privacy Rule at 45 C.F.R. § 164.103.
- (t) "Researchers" mean //insert names of researchers or students who will use the Data//.
- (u) "Secretary" will mean the Secretary of the Department of Health and Human Services or his or her designee.
- (v) "Security Breach" will have the same meaning given to the term "breach of security" in Section 13407 of the HITECH provisions of ARRA (42 U.S.C. § 17937).
- (w) "Security Incident" will have the meaning given to such phrase under the Security Rule at 45 C.F.R. § 164.304.
- (x) "Security Rule" will mean the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. Part 160 and Part 164, Subparts A and C.
- (y) "Subcontractor" will have the meaning given to such term under in 45 C.F.R. § 160.103.
- (z) "Unsecured Protected Health Information" will have the meaning given to such phrase under the Breach Notification Rule at 45 C.F.R. § 164.402.
- (aa) "Utilisation" means the technology transfer and take-up and use of research outputs. Utilisation includes the manufacture, sale, hire or other exploitation of a product or process, or the provision of a service, incorporating Intellectual Property or licensing of any third party to do any of those things, or otherwise licensing or assigning the IP. "Utilise" has a corresponding meaning.

III. Limited Data Set/Data Use Provisions

- (a) The User acknowledges that the Data is the property of HMS, not DHCRC, and is made available to the User through DHCRC as a service to the research community.
- (b) Responsibilities of Limited Data Set Recipient/Custodian. The User, either as a recipient or custodian of, or person with access to a Limited Data Set, agrees to:
 - (1) Use appropriate safeguards to prevent use or disclosure of the Limited Data Set other than as permitted by this DUA or required by law;



- (2) Report to DHCRC and HMS any use or disclosure of the Limited Data Set of which it becomes aware that is not permitted by this DUA or required by law (including the presence of prohibited identifiers in the Limited Data Set), in accordance with the Breach notification and reporting provisions contained in this DUA or as otherwise Required by Law;
 - (3) Require any of its subcontractors or agents that receive or have access to the Limited Data Set (subject to appropriate consents, as set forth below) to agree to the same restrictions and conditions on the use and/or disclosure of the Limited Data Set that apply to the User under this DUA; and
 - (4) Not use the information in the Limited Data Set, alone or in combination to identify or contact the individuals who are data subjects.
- (c) Intellectual property in the Data and any information relating to the Data will remain vested in HMS (and/or its clients).
 - (d) The User is granted a non-exclusive, limited, royalty-free, worldwide licence to use the Data for the purposes of the Project only.
 - (e) IP arising from the Project ('Project IP') will be owned by the User. The User may use the Project IP for Academic and Non-commercial Research Purposes only. Other Utilisation will be agreed between the Parties.
 - (f) The User accepts all responsibility for ensuring that the Data provided to it under this Agreement suits the purpose for which it will be used. DHCRC and HMS accept no liability or responsibility for the Data not meeting the suitability requirements of the User.
 - (g) The Data will be accessed and used only by the Researchers who have agreed to comply with this DUA. The use of screen scraping, screen imaging, or any other technology used to extract, download, copy, or move any data from the HMS Amazon Web Services portal that houses the Limited Data Set used in this Project is prohibited. The Researchers will not further distribute the Data to any other parties or transfer the Data to another institution or organisation without the express written consent of DHCRC.
 - (h) The User is responsible for obtaining any necessary ethics approvals prior to commencing any research using the Data and will not undertake any research requiring ethics approval using the Data prior to obtaining the necessary approvals.
 - (i) In using the Data, the User must comply with any applicable laws.
 - (j) The User agrees to inform DHCRC of the results of the research using the Data. The User further agrees to:
 - a. on request, provide DHCRC (which may in turn provide HMS) with a copy of any publication containing results obtained in the course of the research using the Data; and
 - b. acknowledge HMS and DHCRC as the providers of the Data in any publication or presentation of such results.



- (k) The Parties acknowledge that the dissemination of knowledge is an important function of DHCRC. The User may publish the Project IP provided that it first complies with the requirements of this clause. If any proposed publication contains a reference to Project IP or the Data or may put a Party or HMS at a competitive disadvantage, the User must first seek the written consent of DHCRC and HMS (via DHCRC) to such publication. Such consent may not be unreasonably withheld by DHCRC or HMS provided that User agrees that where publication will prejudice a Party's or HMS' Utilisation rights to such Party IP, put a Party or HMS at a competitive disadvantage or when necessary to protect Confidential Information or IP of a Party or HMS, such refusal is reasonable.. DHCRC and HMS (via DHCRC) must each advise the User within 30 days of receipt of a proposed publication if it objects to that publication.
- (l) DHCRC and HMS make no representations and extend no warranties of any kind, either expressed or implied. There are no express or implied warranties of merchantability or fitness for a particular purpose, or that the use of the Data will not infringe any patent, copyright, trademark, or other proprietary rights.
- (m) Preparation of the Limited Data Set. From time to time, DHCRC will prepare and furnish to the User a Limited Data Set for use and disclosure in accordance with this DUA and the HIPAA Rules. The User will not create a Limited Data Set except as approved in writing by DHCRC and HMS (via DHCRC).
- (n) The User agrees that any Limited Data Set that it creates under this DUA will include the data fields specified by the Parties from time to time, which will be the minimum necessary to accomplish the purposes set forth in this DUA, and will comply with the requirements of the HIPAA Rules, and must not include any of the following "Prohibited Identifiers": Names; postal address information (other than town, cities, states and zip codes; telephone and fax numbers); email addresses, URLs and IP addresses; social security numbers; certificate and license numbers; vehicle identification numbers; device identifiers and serial numbers; biometric identifiers (such as voice and fingerprints); and full face photographs or comparable images.
- (o) The User, either as a recipient or custodian of a Limited Data Set, agrees to:
 - (5) Require any of its subcontractors or agents that receive or have access to the Limited Data Set to agree to the same restrictions and conditions on the use and/or disclosure of the Limited Data Set that apply to the User under this DUA; and
- (p) Permitted Uses and Disclosures of the Limited Data Set. The User may access, use, and/or disclose the Limited Data Set only for the purposes described in this DUA, or as Required by Law. The User will obtain written consent from DHCRC and HMS (via DHCRC) prior to the disclosure of any Limited Data Set to any agent, subcontractor, or other entity.

IV.. Breach Notification and Reporting Obligations of the User

- (a) The User agrees that beginning on the Effective Date of this Agreement, it will report to DHCRC and HMS any actual or suspected Breach, Security Incident required by HIPAA or HITECH, Security Breach, or any use or disclosure of the Limited Data Set not provided for by this Agreement no later than one (1) business day after the Discovery of a reportable incident under this DUA. As applicable, the Parties agree that unsuccessful Security Incidents (such as scans, pings, unsuccessful



log-on attempts, and other failed attempts to access the User's systems that do not result in unauthorized access, use, or disclosure of the Limited Data Set) do not need to be reported under this section, but that the User will provide information about such unsuccessful Security Incidents upon written request from DHCRC or HMS. In addition, the User will provide any additional information reasonably requested by DHCRC or HMS for purposes of investigating the event for which report is required under this Section. As directed by HMS, the User's notification of a Breach under this Section will comply in all respects with each applicable provision of Section 13400 of Subtitle D (Privacy) of ARRA, 45 C.F.R. § 164.410, and any related guidance issued by the Secretary from time to time.

- (b) The User agrees to mitigate, to the extent practicable and as directed by HMS, any harmful effect of any use or disclosure that is known to the User to have occurred in violation of the terms of this DUA, including but not limited to compliance with all mitigation factors and other provisions listed at 45 C.F.R. § 160.408.
- (c) The User agrees that it will keep such records and submit such compliance reports, in such manner and containing such information, as the Secretary may determine to be necessary to enable the Secretary to ascertain whether DHCRC or HMS has complied or is complying with the applicable administrative simplification provisions, in accordance with 45 C.F.R. § 160.310(a).
- (d) The User agrees that it will cooperate with DHCRC, HMS and the Secretary in the event that the Secretary undertakes an investigation or compliance review of the policies, procedures, or practices of DHCRC or HMS or the User to determine whether they are complying with HIPAA and the applicable administrative simplification provisions. Such cooperation will include permitting the Secretary to access its facilities, books, records, accounts, and other sources of information, including protected health information, that are pertinent to ascertaining compliance.
- (e) The User agrees that in accordance with 45 C.F.R. § 164.502(a)(4), it will disclose the Limited Data Set (1) when required by the Secretary, and after notification to HMS, under Part 160, Subpart C to investigate or determine the Business compliance with the HIPAA Rules, or (2) to DHCRC or HMS, as necessary to satisfy DHCRC's or HMS's obligations under HIPAA.

V. Obligations of HMS

- (a) **Notice of Privacy Practices.** HMS has agreed to undertake certain projects with DHCRC in accordance with its clients' Notice of Privacy Practices (NPP). DHCRC has agreed that it will comply with any applicable requirements of HMS' clients' NPPs, as communicated to DHCRC by HMS. In turn, DHCRC requires the User to comply with any applicable requirements of HMS' clients' NPPs, as communicated to the User by DHCRC. To the extent the User is unable to comply, it will so notify DHCRC and HMS in writing and the Parties will determine the most appropriate course of action which may include terminating the Project.



- (b) DHCRC will notify the User of any restriction to the use or disclosure of Protected Health Information that DHCRC or HMS has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the User's use or disclosure of the Limited Data Set. Where such restrictions will result in the User being unable to meet its obligations under this Agreement, it will so notify DHCRC in writing and the Parties will determine the most appropriate course of action which may include terminating the Project.
- (c) **DHCRC Compliance.** DHCRC will comply with the HIPAA Rules in undertaking the Project with the User and providing access to the Limited Data Set to the User under this Agreement. Further, DHCRC will not request that the User access, use, or disclose the Limited Data Set in a manner that violates HIPAA or any other applicable law, or would violate applicable law if done by DHCRC or one of its clients.
- (d) **Authorizations.** HMS will obtain all consents and authorizations necessary and/or Required by Law for HMS, DHCRC and the User to use the Data under applicable the HIPAA Rules and this Agreement.
- (e) **Accounting of PHI Disclosures.** HMS will include in individual accountings requested under the HIPAA Rules, including without limitation, 45 C.F.R. § 164.528, any disclosures by DHCRC to HMS, and by DHCRC to the User, to the extent such disclosures are applicable. The User will provide, upon written request from DHCRC, information regarding all such disclosures by the User in order to allow HMS to comply with this subsection and 45 C.F.R. § 164.528.

VII. Compliance

- (a) User agrees to comply with all applicable laws and regulations and with all applicable HMS policies and procedures including the relevant provisions of the HMS Code of Conduct <http://investor.hms.com/corporate-governance.cfm> (e.g., fraud, record keeping, conflicts of interest, no bribery, no harassment, insider trading, safeguarding information, security and workplace violence, alcohol/drugs, and fair employment practices). User agrees to promptly sign and return to HMS (via DHCRC) and to ensure that each of its Personnel having access to Data promptly signs and returns to HMS any certification/attestation form provided by HMS regarding compliance with HMS' policies and procedures.
- (b) User represents and covenants that (i) User and its Personnel having access to the Data are not presently Excluded; (ii) User will, on request by HMS (via DHCRC), undertake, or enable HMS to undertake, background checks (as detailed in Annexure 1) to ensure that User and those of its Personnel who have access to the Data are not Excluded; and (iii) User will provide verbal and email notice to HMS (via DHCRC) (promptly followed by formal written notice to HMS) no later than three business days after obtaining knowledge that User or any of its Personnel having access to the Data have become Excluded. For purposes of this Agreement, "Excluded" means being included in: (i) the "Excluded Parties List System" database maintained by the U.S. General Services Administration; (ii) the "List of Excluded Individuals/Entities" maintained by U.S. the Office of Inspector General; or (iii) any global sanctions and enforcement list, including the OFAC "Specially Designated National" list.



- (c) Prior to their involvement on the Project, User and its Personnel shall have signed an agreement for the protection of Confidential Information, Data, and intellectual property if deemed necessary by HMS and undertake HIPAA training as determined necessary by HMS.
- (d) User may provide students with access to tools and Data, but students will be unable to extract or download Data and findings without proceeding through a custodian supplied by User.
- (e) User shall, or shall enable HMS to, conduct a background check (as detailed in Annexure 1) on students prior to students having access to Data. Any student with an unfavorable background check is prohibited from, directly or indirectly, accessing Data or otherwise interacting with HMS (including via DHCRC). An unfavorable background check could include, without limitation, being disbarred or included on a sanctions list. Notwithstanding anything to the contrary in this Agreement, HMS reserves the right to determine, in its sole discretion, which of the students are to be provided access to the Data. User shall provide HMS (via DHCRC) with a proposed list of students who have favorable background check results and who User wishes to provide access to Data. If requested by HMS, User agrees to provide to HMS for confidential review the associated background check results/reports for such students.

VIII. Term and Termination

- (a) **Term.** The Term of this DUA will be effective on the Effective Date, and will terminate when the Project is completed, subject to earlier termination pursuant to this Agreement.
 - (1) **Termination for Cause.** In the event a Party materially breaches this Agreement, the non-breaching party may terminate this Agreement without penalty or fee upon 10 business days' advance written notice to the other party, if the breach is not cured within such the 10 business day period.
 - (2) **Termination Without Cause.** DHCRC may terminate this Agreement (or may be directed by HMS to terminate this Agreement) at any time due to scientific or economic reasons in its absolute discretion or where the agreement between DHCRC and HMS which gives DHCRC or HMS the right to give the User access to the Data is terminated.
- (b) **Obligations of the User Upon Termination**
 - (1) Except as provided in paragraph (2) of this subsection, and to the extent that the User receives any Data, upon termination of this DUA for any reason, the User will return to DHCRC or destroy all Data received from DHCRC, or created, maintained, or received by the User on behalf of DHCRC. This provision will also apply to any Data information that is in the possession of subcontractors or agents of the User. The User will retain no copies of the Data.
 - (2) In the event that DHCRC or HMS, within their sole discretion, determine that return or destruction of the Data to not be feasible for technical, legal, or operational reasons,



the User will identify the data that remains in their possession, extend the protections of this DUA to such information, and limit further uses and disclosures of such information to those purposes that make the return or destruction infeasible, for so long as the User maintains such information.

- (3) The termination or expiration of this Agreement for any reason will not affect HMS' or DHCRC's rights or obligations that expressly or by their nature continue and survive.
- (4) The rights of termination under the terms set forth in this Agreement are absolute, and the Parties have considered the possibility of such termination and the possibility of loss and damage resulting therefrom, in making expenditures pursuant to the performance of this Agreement. Neither Party will be liable to the other for damages or otherwise by reason of the termination or expiration of this Agreement as provided for herein, except for payment owed or other liability to the other party which existed under the terms of this Agreement prior to termination. Exercise of the right of termination will not be exclusive but will be in addition to all other rights and remedies set forth in this Agreement.

IX. Law

If a law applicable to the relationship between DHCRC and the User contains additional or more stringent requirements than US federal law for the User regarding any aspect of privacy or security, then the User agrees to comply with the additional or more stringent standard contained in applicable law.

X. Miscellaneous

- (a) **Regulatory References.** A reference in this DUA to a section in the HIPAA Rules means the section as is presently in effect or amended.
- (b) **Amendment.** This DUA may only be modified through a writing signed by the Parties and, thus, no oral modification hereof will be permitted. DHCRC and the User agree to take such action as is necessary to amend this DUA from time to time as is necessary for the Parties to comply with the requirements of HIPAA or the Privacy, Security or Breach Notification Rules.
- (c) **Privileges and Protections.** This Agreement does not constitute or evidence a waiver of, nor does it amend, the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privileges or protections.
- (d) **Indemnification.** The User agrees to defend, indemnify and hold DHCRC and HMS harmless from and against any and be liable for all penalties, claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of a breach or violation by the User of its obligations under this DUA, the HIPAA Rules, or applicable law, rules, or regulations.
- (e) **Survival.** The respective rights and obligations of the User pursuant to this Agreement will survive the termination of this Agreement.



- (f) **Interpretation.** The Parties will work together in good faith to determine applicability of HIPAA Rules, to comply with applicable HIPAA Rules, and to amend this Agreement as necessary for the User, HMS and DHCRC to comply with applicable HIPAA Rules. Any ambiguity in this Agreement will be resolved to permit HMS and DHCRC to comply with the HIPAA Rules.
- (g) **Notice.**
- a. **To the User.** Any notice or reporting required under this DUA to be given to the User will be made in writing to:

//insert details//





- b. **To DHCRC**. Any notice or reporting required under this DUA to be given to DHCRC will be made in writing to:

Name: Eve Martin

Title: Director, Commercial and Operations

Digital Health CRC Limited

Level 3, 55 Harrington Street

Sydney NSW

Australia 2000

Phone: +61 406 660 251

Email: eve.martin@dhcrc.com

- (h) **Applicable Law.** This Agreement will be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties will be governed by the federal laws of the United States of America, and the State laws of Texas, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal courts of the United States of America, with venue permitted only in the Northern District of Texas, Dallas Division.

