

DATA USE AGREEMENT
between FORT BEND COUNTY
and
THE TEXAS POLICY LAB,
REGARDING RESEARCH AND DATA USE

This Data Use Agreement (“Agreement”) is between Fort Bend County (hereinafter referred to as “Data Owner”), and Rice University, a non-profit organization, with its principal offices at 6100 Main Street, MS-531, Houston, Texas 77005, on behalf of The Texas Policy Lab (“TPL”), each individually referred to as a “Party”, and collectively as the “Parties”.

I. PURPOSE

- a. TPL aims to assist state and local governments and agencies in improving the program and services they provide to Texans using rigorous, data-driven, scientific evaluations. TPL translates the technical expertise of its staff and affiliate faculty into relevant, timely and robust program and service evaluations from which governments and agencies can benefit; and
- b. Data Owner is a body corporate and politic under the laws of the State of Texas and aims to better serve the citizens of Texas by protecting public health and providing essential human services to Fort Bend County residents; and
- c. The purpose of this Agreement is to outline the terms and conditions agreed to by the Parties regarding the provision of Data, from Data Owner to TPL for research. No Data shall be provided by Data Owner to TPL until the execution of a “Research Project Description”, which is attached hereto as “Exhibit A”; and
- d. Research planned by TPL that involves generalizable research on human subjects shall be submitted in advance to an Institutional Review Board for human subjects research.

II. TERM OF AGREEMENT

- a. This Agreement shall be effective upon execution by both Parties (“Effective Date”), and continue for a period of ten (10) years, unless terminated by either Party pursuant to Section VII.

III. DEFINITIONS

- a. “Aggregate Level Data” means Data that is received or created by TPL that includes summary statistics of information related to groups of individuals or observations. Such Data does not contain Sensitive Personal Information.
- b. “Breach” shall have the meaning given such term under 45 C.F.R. § 164.402 as such regulation is revised from time to time.
- c. “Breach of System Security” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Sensitive Personal

Information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data.

- d. “Data” means the information to be provided by Data Owner to TPL that is described in a Research Project Description(s) (“Data”). Data may be collected through a partnership between the Data Owner and the TPL, or may be administrative and collected before the Effective Date.
- e. “Data Linking” means, with respect to Data created or received by TPL, the combining of such Data by TPL with the Data received by TPL of another Data Owner, to permit data analyses that relate to the operations of the respective Data Owners.
- f. “FERPA” means the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g
- g. “FERPA Regulations” means the regulations promulgated by the United States Department of Education under FERPA including, but not limited to, 34 CFR Part 99.
- h. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- i. “HIPAA Regulations” means 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 subparts A and E (“The Privacy Rule”) and the Security Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C (“The Security Rule”).
- j. “HITECH Act” means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009, known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and implementing regulations and guidance, including the regulations implemented in 78 Fed. Reg. 5566 (January 25, 2013).
- k. “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and:
 - i. is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
 - ii. relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - 1. that identifies the individual; or
 - 2. with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- l. “MRPA” means Texas Medical Records Privacy Act, as codified in Section 181 et seq. of the Texas Health and Safety Code and as implemented through regulations

including the Standards Relating to the Electronic Exchange of Health Information, codified at Title 1, Section 390.1 et seq. of the Texas Administrative Code.

- m. “Protected Health Information” or “PHI” means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. The term excludes Individually Identifiable Health Information in educational records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g; records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); and employment records held by a Covered Entity in its role as employer and regarding a person who has been deceased more than 50 years.
- n. “Research” means the Research to be conducted, as outlined in the Research Project Description (Exhibit A).
- o. “Research Project Description” means the document attached as Exhibit A, that describes the Data to be provided by the Data Owner to TPL and the Research, as described in Exhibit A, for which that Data shall be used.
- p. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a routine basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by TPL.
- q. “Sensitive Personal Information” means: (1) an individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: (a) social security number; (b) driver’s license number or government-issued identification number; (c) account number or credit or debit card number in combination with any required security code, access, code, or password that would permit access to an individual’s financial account; or (2) PHI information that identifies an individual and relates to: (a) the physical or mental health or condition of the individual; (b) the provision of health care to the individual; or (c) payment for the provision of health care to the individual.

IV. LICENSE GRANT

- a. To the extent Data Owner has an ownership interest in the Data or copyright to the Data, in order for TPL to conduct the research and only for TPL to conduct the research, Data Owner grants TPL a perpetual, irrevocable, royalty-free licence to:
 - i. Reproduce the data within the secure TPL data infrastructure;
 - ii. Prepare derivative works from the data within the secure TPL data infrastructure;
 - iii. Distribute copies of the data and of derivative works from the data within the secure TPL data infrastructure;
 - iv. Display the data, including through electronic means within the secure TPL data infrastructure; and
 - v. Use the data and publish the results of the Research.

V. DATA SECURITY, CONFIDENTIALITY, AND DATA ACCESS

- a. Data Owner shall transfer Data to TPL in a secure manner, such as secure file transfer protocol, an encrypted cloud-based solution, or an encrypted hard drive.
- b. Data shall be stored on TPL's secure data infrastructure. Data shall be analyzed on TPL's data infrastructure only, using thin clients on authorized remote machines. The TPL data infrastructure is kept in a locked room with two-factor authentication, in a building that is monitored 24 hours per day, with guard response. TPL also employs a disaster recovery plan that requires storing back up versions of the data in safe, locked rooms with two-factor authentication in a building that is monitored 24 hours per day, with guard response.
- c. TPL shall comply, at a minimum, with recommended security standards at the Rice University campus.
- d. In the event of a Breach or Breach of Security System, TPL shall, as soon as practicable but not more than five (5) business days after becoming aware of any successful Security Incident or use or disclosure of Data Owner's FERPA data, PHI or Sensitive Personal Information in violation of this Agreement, report any such use or disclosure to Data Owner.
- e. TPL shall not access and use the Data except to accomplish the Research described in each Research Project Description, or for administrative purposes related to data security.
- f. TPL may use any Data received from Data Owner in order to provide Data Linking services relating to the Research described in each Research Project Description only with the Data Owner's written permission
- g. TPL shall strictly limit the number of TPL staff, faculty, students, and affiliates who have access to the Data to those necessary to accomplish the Research described in each Research Project Description, or for administrative purposes related to data security ("Authorized Users"). TPL shall maintain a log establishing an audit trail of who has accessed the Data.
- h. TPL shall be responsible for ensuring that all Authorized Users adhere to the confidentiality, disclosure, transmission, destruction, storage of, and access to the Data described in this Agreement.
- i. TPL shall instruct all its staff and affiliates about the requirements for handling any Data, and about the potential sanctions for unauthorized disclosure or use of this Data. TPL shall ensure that Authorized Users have been informed of the procedures they must follow to maintain the confidentiality of the Data and that unauthorized dissemination or use of the Data may be a crime and could lead to civil and criminal penalties. TPL shall report to Data Owner any unauthorized use or disclosure of the information of which it becomes aware.
- j. TPL shall not merge, match or link any of the Data provided by Data Owner with any other confidential data, unless specifically expressed in a Research Project Description(s).

- k. The Parties acknowledge that various federal and state laws, including FERPA, FERPA regulations, HIPAA, HIPAA Regulations, the HITECH Act, and the MRPA, protect Data Owner's Data from unauthorized disclosure and it is the Parties' intent to ensure that the provision and use of such Data between the Parties is done in compliance with those laws.

VI. PUBLICATIONS AND REPORTS

- a. TPL shall be free to distribute and publish research results and other products of its research in works such as academic journals, books, online publications, unpublished working papers, and reports, materials and information included in presentations for academic seminars and conferences derived from ("Publications"), based on or using the Data, but only after the Data Owner has had an opportunity to review as described in this Section VI.
- b. TPL shall recognize the contribution of the Data Owner in all written or oral public disclosures concerning TPL's research using the Data, as appropriate in accordance with scholarly standards. Such recognition shall also include a disclaimer to the effect that published material does not necessarily reflect the views of Data Owner.
- c. TPL shall only include Aggregate Level Data in any Publications based on the Data provided by Data Owner. No research results shall be reported in a manner that permits direct or indirect identification of any individual. TPL shall not put in any Publication information describing a group of persons numbering fewer than five (5). This minimum cell size is intended to maintain the confidentiality of potentially re-identifiable subgroups.
- d. TPL shall submit to Data Owner for review and comment any Publications intended for publication, release, and/or dissemination, and Data Owner shall keep such proposed Publication confidential for a period of one (1) year or until the Publication is released publicly, whichever date is earlier. Data Owner shall have thirty (30) days for its review of the Publication to ensure that no Data is released that permits direct or indirect identification of any individual. Data Owner will make every effort to work with TPL to resolve outstanding questions. TPL shall interpret the absence of feedback from Data Owner within that thirty (30) day period that no Data has been identified in the Publication that may permit direct or indirect identification of any individual and the publication may be published, released and/or disseminated as originally written.

VII. TERMINATION OF AGREEMENT

- a. This Agreement shall expire as of the date described in Section II, unless extended by agreement of the Parties or terminated earlier under this Section VII. Either Party may terminate this Agreement for any reason upon sixty (60) days prior written notice to the other Party.
- b. Upon termination or expiration (subject to Section II) of this Agreement, Data Owner shall instruct TPL in writing to either retain, return, or destroy the Data to Data Owner. TPL shall make all commercially reasonable efforts to comply within sixty (60) days from the date of notification, provided, however, that TPL may retain one (1) copy of the Data to the extent necessary to comply with the records retention

requirements under any law or regulation and for the purposes of research integrity and verification.

VIII. GENERAL TERMS

- a. **NO REPRESENTATIONS AND WARRANTIES.** Data Owner warrants that it has the right to disclose the data to TPL. All data are provided “as is.” Except as provided in the first sentence of this paragraph, Data Owner makes no representation or warranty, express or implied, regarding the Data’s accuracy, completeness or use. 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. The TPL make no representations or warranties of any kind concerning the research and publications and disclaim all representations and warranties, express or implied, including, without limitation, warranties of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights.
- b. **USE OF NAME.** Except as expressly provided in this Agreement, neither Party shall use or register the other Party’s name (alone or as part of another name) or any logos, seals, insignia or other words, names, symbols or devices that identify the other Party, including any school, unit, division or affiliate (“Names”) in any advertisement, press release, or publicity with reference to this Agreement or any product or service resulting from this Agreement, without the prior written approval of, and in accordance with restrictions required by, an authorized representative of the Party whose name who is to be used. The foregoing notwithstanding, the Parties agree that each Party may respond to legitimate business inquiries with factual information regarding the existence and purpose of the relationship that is the subject of this Agreement, without written permission from the other Party. Without limiting the foregoing, each Party shall cease all use of Names of the other Party permitted under this Agreement on the termination or expiration of this Agreement except as otherwise approved by the other Party.
- c. **INDEMNIFICATION.** TLP SHALL INDEMNIFY AND DEFEND COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, FOR ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, FOR WHICH SOVERIEGN IMMUNITY IS NOT APPLICABLE AS A DEFENSE FOR COUNTY AND ARISING FROM ACTIVITIES OF TLP, ITS AGENTS, SERVANTS, EMPLOYEES, OR STUDENTS PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF TLP OR ANY OF TLP’S AGENTS, SERVANTS, EMPLOYEES OR STUDENTS. HOWEVER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING LOST REVENUES OR PROFITS, ARISING FROM BREACH OF THE TERMS IN THIS AGREEMENT.
- d. **GOVERNING LAW & LANGUAGE.** This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of Texas, without giving effect to any choice or conflict of law provision. To the extent allowed by

law, any action, suit or other proceeding arising under or relating to this Agreement (a "Suit") where Fort Bend County is the defendant shall be brought in a court of competent jurisdiction in Fort Bend County in the State of Texas, and any Suit where TPL is the defendant shall be brought in a court of competent jurisdiction in Harris County in the State of Texas.

- e. NOTICES. Any communication under this Agreement, excluding transmission of Data, may be delivered in person, by electronic mail, by registered or certified mail, postage prepaid, or by recognized delivery service, to the appropriate addresses listed here:

To Data Owner:
Fort Bend County
ATTN: County Judge
401 Jackson
Richmond, TX 77469

To TPL:
Ekim Cem Muyan, Executive Director
Texas Policy Lab-MS 272
P.O. Box 1892
Houston, Texas 77251-1892
ekimcmuyan@rice.edu

Copy to:
Fort Bend County
ATTN: IT Director
500 Liberty Street
Richmond TX 77469

Any Notice of Termination must be sent by U.S. mail in addition to any other method of transmission.

- f. INDEPENDENT CONTRACTOR. The Parties are independent contractors and neither Party shall be deemed to be an agent or employee of the other Party. Neither Party shall have authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to take any action which shall be binding on the other Party.
- g. ASSIGNMENT. This Agreement and all rights and obligations hereunder shall not be assigned (whether through merger or consolidation, by operation of law, or otherwise), without the written consent of the other Party and any attempt to assign without such consent shall be void.
- h. MODIFICATION. No modification or waiver of any provision of this Agreement shall be valid unless in writing and executed by duly-authorized representatives of both Parties. A failure by one of the Parties to this Agreement to assert its rights hereunder shall not be deemed a waiver of such rights. No such failure or waiver in writing by any one of the Parties hereto with respect to any rights shall extend to or affect any subsequent breach or impair any right consequent thereon.
- i. SEVERABILITY. If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected.

- j. COUNTERPARTS. This Agreement may be executed in two or more counterparts, and by facsimile or electronic transmission, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- k. ENTIRE AGREEMENT. Unless otherwise specified, this Agreement and any exhibits attached hereto embody the entire understanding between Data Owner and TPL for the purpose, and any prior or contemporaneous representations, either oral or written, are hereby superseded.
- l. SURVIVAL CLAUSE: Sections V and VI will survive the termination of this agreement.

IX. SIGNATURES

The Parties have executed this Agreement by and through their duly authorized representatives.

Fort Bend County



County Judge KP George

By: _____
KP George, County Judge

Date: 7/14/2020

Rice University Texas Policy Lab

By: _____

Date: _____

Susan McIntosh, Interim Dean, School of Social Sciences

Exhibit A-____ - Research Project Description [TEMPLATE]

This Research Project Description is issued under the Data Use Agreement (the “Agreement”) between Data Owner and TPL, with an effective date _____. Together with the Agreement, this Research Project Description governs the conduct of the research contemplated herein.

1. Project Title:
2. Year-Number (e.g., 2017-3): _____
3. Description of the research (“Research”):

4. Description of data to be provided (“Data”):

5. Individual(s) authorized to access the Data (“Authorized Users”):

6. OPTIONAL: List any additional compliance, research use, or data security requirements beyond those specified in the Agreement that apply to this specific Data:

7. Can the Data be linked with other datasets? Yes No
If yes, restrictions on how the Data can be linked:

8. Upon completion or termination of this project, Data shall be:

Retained by TPL _____ Returned to Data Owner _____ Destroyed _____

IN WITNESS WHEREOF the Parties hereto have caused this agreement to be executed by their duly authorized representatives:

Texas Policy Lab

Signature _____
Name
Title

Date: _____

Fort Bend County



County Judge KP George

Signature _____
Name: KP George
Title: County Judge

Date: 7/14/2020