

## Data Use Agreement

### **1. Parties**

1.1. This Data Use Agreement (“Agreement”) is entered into between Fort Bend County, on behalf of the Fort Bend County District Attorney’s Office and the Fort Bend County Sheriff’s Office (the “COUNTY”) and the Texas A&M University, a member of The Texas A&M University System and an agency of the State of Texas (the “University”).

### **2. Background**

2.1. The University is conducting a study of homicide including intimate partner homicide in Texas (the “Study”).

2.2. The Data will include information about victims, defendants, and victim next-of-kin (the “Study Subjects”)

2.3. Data are expected to include information that is not subject to public dissemination for various reasons, including (but not limited to) personally identifying information (“PII”), confidential criminal-history information when available in investigation files, and circumstances of the homicide event. The subset of the Data that are not subject to public dissemination is referred to as “Confidential Information”.

“Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of or includes any or all of the following: (1) Client Information; (2) Protected Health Information in any form including without limitation, Electronic Protected Health Information or Unsecured Protected Health Information; (3) Sensitive Personal Information defined by Texas Business and Commerce Code Ch. 521; (4) Federal Tax Information; (5) Personally Identifiable Information; (6) Social Security Administration Data; (7) All non-public budget, expense, payment and other financial information; (8) All privileged work product or other information excepted from disclosure under Chapter 552 of the Government Code; (9) All information designated as confidential under the laws of the State of Texas and of the United States, and; (10) To the extent permitted under the laws and constitution of the State of Texas, all information designated

by HHS or any other State agency as confidential, including but not limited all information designated as confidential under the Texas Public Information Act, Texas Government Code, Chapter 552.

- 2.4. COUNTY wishes to disseminate Data to the University, subject to the prohibitions, restrictions, terms, and conditions in this Agreement and subject to applicable public information, confidentiality, and privacy laws of the State of Texas and the United States.
- 2.5. The University will use the analysis of the Data provided by COUNTY to engage in ongoing research and the development of prevention and intervention efforts based on the Data.

### **3. Data Transfer**

- 3.1. COUNTY will disseminate responsive Data directly to the University. COUNTY will provide data (case files) directly to University employees electronically through a secure server.
- 3.2. Data from COUNTY will include all solved (cleared and exceptionally cleared) intimate partner and intimate partner related investigation case files from 2016-2020. Only exceptionally cleared cases and cases that have been adjudicated through the Court system will be eligible to be provided.
- 3.3 In the event that Data needs to be electronically transferred, COUNTY will be responsible for the transfer of Data to the University securely through electronic file sharing system, email or hard drive.
  - 3.3.1 University will encrypt the Data, using Advanced Encryption Standard (AES) 256 bit technology, with a strong password using the 7-Zip software application prior to being transmitted through email. University will provide the machines(s) to transmit the data electronically
  - 3.3.2 University will use strong passwords with the following characteristics:
    - 3.3.2.1 A minimum of 12 to 14 characters in length;

- 3.3.2.2 A mix of different types of characters to ensure enhanced security;
  - 3.3.2.3 No obvious dictionary words and combinations of dictionary words; and
  - 3.3.2.4 No common substitutions such as replacing the letter “o” with the number 0 in “H0use.”
- 3.3.3 The University will keep all Data in locked offices and all files shall be protected with strong passwords as set forth above in Section 3.3.2.
- 3.3.4 The University will maintain any back-up copies of the Data with strong passwords as set forth above in Section 3.3.2 to ensure continuity in security.

#### **4 Data Use and Dissemination.**

- 4.1 COUNTY will provide the University or individuals it designates with the Data and will provide access to COUNTY staff relevant to the Study. COUNTY agrees that the University may use the Data for further research and evaluation of intimate partner and intimate partner related homicide in Texas.
- 4.2 To maintain confidentiality about the Study Subjects, the University will assign a unique numeric code for each Study Subject that will be used in all computer and hard copy records of the Data that is provided to the University.
- 4.3 University agrees that all investigators, research assistants, and other personnel with access to these data have undergone Institutional Review Board (IRB) training (e.g., CITI training) and have been approved to work on the study by IRB (e.g., are added to the IRB protocol). Research assistants will also sign an internal document that outlines their responsibilities with regard to confidentiality of data, consistent with IRB regulations. University agrees that contact with next of kin will be handled by persons who are equipped to communicate with next-of-kin in trauma informed ways.

- 4.4 Prior to University contact of the next-of-kin of homicide victims, the University will provide template letter and/or telephone call script and language will be agreed to by both Parties. This language/script will be used to contact next-of-kin asking for their assistance in providing information for this research. COUNTY employees will not be required to facilitate cooperation or contact with IPH families; however, the COUNTY may request that Victim Advocates from the COUNTY be involved if the next-of-kin agrees.
- 4.5 Use and Disclosure of Confidential Information. The University acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by the University or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by the University shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the University) publicly known or is contained in a publicly available document; (b) is rightfully in the University's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of the University who can be shown to have had no access to the Confidential Information.

The University agrees to hold Confidential Information in strict confidence, using at least the same degree of care that the University uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. the University shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, the University shall advise County immediately in the event the University learns or has reason to believe that any person who

has had access to Confidential Information has violated or intends to violate the terms of this Agreement and the University will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or the University against any such person. the University agrees that, except as directed by County, the University will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, the University will promptly turn over to County all documents, papers, and other matter in the University's possession which embody Confidential Information.

The University acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. The University acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content. The University in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

## **5 DATA STORAGE**

- 5.1 The University will maintain an electronic file, and one hard copy backup, containing all information linking Study Subject PII with the Data. The electronic file will be maintained in a secure, electronic repository hosted in a Texas A&M Data Center or Texas A&M Managed Cloud-Based electronic storage. The hard copy backup will be stored in a locked office in a locked filing cabinet.
- 5.2 The University will use strong passwords as set forth above in Section 3.3.2 for the computer housing the single computer file containing the Study Subject PII.
- 5.3 Only the University's study investigators and study research assistants will have access to the Study Subject PII.
- 5.4 The University will destroy the Study Subject PII once it is no longer needed.

- 5.5 In obtaining and storing Data from COUNTY, the University agrees to comply with all applicable privacy and data protection laws, including the Texas Privacy Act (“TMRPA”), the Texas Public Information Act, the Health Insurance Portability and Accountability Act (HIPAA), A.R.S. §§ 8-409, 8-413, 12-2239, 12-2240, 13-4430, 13-4434, 18-521,18-522; and A.R.S. Title 49 (public records), and all privacy and data protection laws applicable to the Study, and not to make any disclosures to third parties in violation of these laws.
- 5.6 The University will not disseminate or disclose any PII to any other organization or individual, other than COUNTY and the study’s researchers.
- 5.7 Any and all reports or publications produced as a part of the Study will present data and findings in aggregated form.
- 5.8 If any disclosure or dissemination is made in contravention of the foregoing, the University must return all research materials to COUNTY.
- 5.9 COUNTY agrees to refrain from disclosing any information about the Study to any third parties without prior approval from the University.

## **6 Requests for Data by Third Parties**

- 6.1 In the event that the University receives a request from a third party for the disclosure of Data, for example a subpoena or public records request, the University will notify COUNTY within three business days, and will discuss with COUNTY an appropriate response to the request. The parties expressly acknowledge that the parties are subject to the Texas Public Information Act, TEX. GOV’T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, the parties will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to the University by the County shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be

disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

- 6.2 In responding to such a request, the University will abide by all Federal, State, and local laws regarding the confidentiality and privileged nature of the information requested. All requests will be held to standards and laws set forth by the State of Texas. All requests will be subject to the relevant and applicable laws of the State of Texas and the United States, including, but not limited to the Texas Public Information Act (and court caselaw and Texas Attorney General opinions/rulings interpreting said Act), HIPAA, and the Texas Medical Privacy Act.
- 6.3 If COUNTY promptly notifies the University that it believes information responsive to the request is not subject to disclosure under applicable law, the University will not disclose the information that COUNTY believes is not subject to disclosure for twenty (20) business days following the University's notification to COUNTY so that COUNTY may seek a court order enjoining or otherwise prohibiting the disclosure.

## **7 Ownership, publication, and release of research.**

- 7.1 The University shall own all right, title, and interest in the research and any acts of authorship related to or derived from the Study. Case information provided by the COUNTY to the University for the Study remains the property of the COUNTY.
- 7.2 The University may prepare analyses, studies, reports, presentations, or other material using the Data ("Data Products"). Any Data Products that do not contain identifying or otherwise confidential information included in the Data may be used and disseminated publicly by the University. On request of COUNTY, the University must provide, at no cost to COUNTY, a copy of any Data Products produced by the University.
- 7.3 The University agrees to provide, at no cost to COUNTY, analytical support, reports, and/or presentations for matters related to data collected as part of this research project. This support will be agreed to on an ad hoc basis between the Parties.

**8 Effective Date, Term, and Termination.** This Agreement will commence upon the last date of execution by both parties and will remain in effect until completion of the data collection and analysis described above, not to exceed four (4) years from the last execution date, unless otherwise extended by mutual agreement of the parties. Either party may terminate this Agreement upon written notice to the other party.

**9 Destruction of Data on Termination**

9.1 On termination of this Agreement, the University must destroy the Data containing Victim identifying information and personal identifying information as defined in 2.3. Destruction of this Data will include any copies stored on a local computer or server and any paper copies. Notwithstanding the foregoing, University shall not be required to destroy or delete copies that become embedded in its electronic storage systems through routine backup processes. Redacted Data does not require destruction.

**10 Forum Selection; Choice of Law**

10.1 This Agreement is governed by and must be construed under the laws of the State of Texas.

**11 Remedies**

11.1 The Parties agree that any violation of this Agreement that results in the misuse, improper storage, or improper dissemination of the Data is not remediable by money damages and that any misuse, improper storage, or improper dissemination of the Data will entitle COUNTY to injunctive relief ordering the University to specifically perform under this Agreement.

11.2 Remedies in this Agreement are non-exclusive, and the non-exercise of one remedy does not waive others.

11.3 Applicable Law; Arbitration; Attorney Fees. The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and

waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by the University in any way associated with the Agreement.

## **12 Miscellaneous**

12.1 *Advice of Counsel.* Each Party has consulted with and obtained the advice of counsel regarding this Agreement.

12.2 *Construction.* This Agreement is the product of negotiation and must not be construed for or against any Party on the basis that that Party drafted this Agreement.

12.3 *No Assignment.* No party may assign its rights or obligations under this Agreement without the consent of all other Party.

12.4 *Cancellation for Conflict of Interest.* This Agreement is subject to cancellation under T.G.C. 572.

12.5 *Compliance with Laws.* The parties agree to comply with all applicable federal, state, and local laws, rules, regulations, standards, and executive orders in the performance of this Agreement.

12.6 *Notices.* All notices or demands upon either Party to this Agreement must be in writing and must be personally delivered, or sent by certified mail, return receipt requested, to:

For TAMU:  
Texas A&M University  
Office  
400 Harvey Mitchell Parkway, Suite 300  
College Station, TX 77845  
Email: [kkissmann@tamu.edu](mailto:kkissmann@tamu.edu)

Copy: Nora Montalvo-Liendo, PhD, Professor  
Email: nliendo@tamu.edu

For County:  
Fort Bend County Attorney's Office  
301 Jackson ST, Rm. 101  
Richmond, TX 77469

Copy: Wesley Wittig, Second Assistant District Attorney  
Email: Wesley.Wittig@fbctx.gov

Copy: Captain Dalia Simons, Fort Bend County Sheriff's Office  
Email: Dalia.Simons@fbctx.gov

Any notice under this paragraph will be deemed delivered on the date of delivery, if personally delivered, or three business days after mailing, if sent by certified mail.

*12.7 Severability.* In the event that any provision of the Agreement or the application thereof is held invalid, such invalidity will have no effect on other provisions and their application which can be given effect without the invalid provision, or application, and to this extent the provisions of the Agreement are severable.

*12.8 Waiver.* Waiver by any Party of any breach of any term, covenant or condition in this Agreement is not a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition in this Agreement.

*12.9 Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.


*12.10 Inspection and Audit of Equipment and Records.* COUNTY may inspect and perform a reasonable audit of the University's records and equipment related to

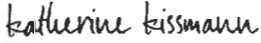
its use and storage of the Data to determine whether the Data are being used and stored in accordance with this Agreement and applicable law. Such inspection or audit shall be during normal business hours with advance notice. Any request for inspection or audit under this paragraph must be made in writing and addressed and delivered under the Notices provision of this Agreement.

12. **Signature Approvals.** IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the respective dates entered below.

**Fort Bend County**

**Texas A&M University**

Signature:   
County Judge KP George  
KP George, County Judge

DocuSigned by:  DS  
HM  
g710314A233E43E  
Signature: \_\_\_\_\_  
Director of Research Contracts

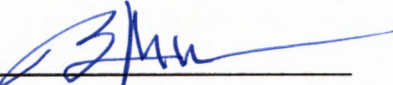
Print Name: KP George

Print Name: Katherine Kissmann

Date: March 7, 2023

Date: 2/22/2023 | 1:23:21 CST

Attest:  
  
Laura Richard, County Clerk

APPROVED:   
Brian Middleton  
FBC District Attorney

APPROVED:   
Eric Fagan  
FBC Sheriff

