



DATA USE AGREEMENT

This data use agreement (the “Agreement”), effective as of the [redacted] day of [redacted], 201[redacted] (the “Effective Date”), by and between and The University of North Carolina at Chapel Hill on behalf of its School of Medicine/Department of Pediatrics and Perinatal Quality Collaborative of North Carolina (PQCNC) (the “Recipient”) and [redacted] (the “Sender”), establishes the terms and conditions under which Recipient will access and use data related to the name of initiative described below (the ‘Data’).” University and Recipient are sometimes referred to in this Agreement singularly as a “Party” and collectively as the “Parties.” Sender refers to a hospital which is participating in (name of initiative).

WHEREAS, Sender desires to participate in Quality Improvement Initiatives sponsored by the Recipient, and will send deidentified Data for the purposes of identifying opportunities to improve practices related to a name of initiative:

WHEREAS, Recipient will collect, aggregate and report back to “Sender” the Data made available to Recipient for the purposes of the name of initiative:

WHEREAS, Recipient will never report Data identified by center and will only publicly report aggregated Data:

WHEREAS, the Parties agree to the transfer and receipt of the Data according to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Description of Data.** The “Sender” will send deidentified Data to the Recipient. The Recipient will report back to the Sender only Sender specific reports. The Data is related to name of initiative that the Sender is participating in. The Recipient will aggregate the deidentified individual patient Data it receives back to the Sender in an aggregated, real time format. This reporting will allow Sender to evaluate local progress in name of initiative. The Recipient will aggregate all Sender Data in a deidentified format to allow all centers to see progress of the total collaborative. The Recipient will never disclose Sender specific Data or reports. The Sender acknowledges that the Data sent to the Recipient is fully de-identified.
- 2. Recipient’s Use of Data.** Except as otherwise specified herein, Sender grants Recipient the right to use and disclose the Data solely in fulfillment of its professional obligations for analysis as requested to support achieving the Senders’ goals for name of initiative. The Recipient will never report data linked to Sender’s identity.



3. Restrictions on Recipient's Use of Data.

- a. Recipient agrees to comply with all applicable federal and state laws and regulations, and IRB restrictions, concerning the privacy and confidentiality of the Data. Recipient further agrees to use or disclose the Data exclusively for the purposes set forth in **Section 2** above or as required by law.
- b. Recipient agrees to use appropriate safeguards to protect the Data from misuse and unauthorized access or disclosure, including, without limitation, (i) maintaining adequate physical controls and password protections for any server or system on which the Data may reside and (ii) taking any other measures reasonably necessary to prevent any use or disclosure of the Data other than as provided in this Agreement.
- c. Recipient will report to Sender any use or disclosure of the Data not provided for by this Agreement of which Recipient becomes aware. Such report shall be made to the Sender at the address noted in **Section 9** as soon as reasonably possible, but, in any event, no later than ten (10) days from the date on which Recipient becomes aware that the Data has been used or disclosed in a manner not provided for by this Agreement. Recipient will fully cooperate with any remediation that Sender, in its sole discretion, determines is necessary to (i) address any applicable reporting requirements; and (ii) mitigate any effects of such unauthorized use or disclosure of the Data, including, without limitation, measures necessary to restore goodwill with stakeholders, including research subjects, collaborators, governmental authorities, and the public.
- d. Recipient will ensure that any agents, including subcontractors, to whom it provides the Data agree to the same restrictions and conditions set forth in this Agreement.
- e. Recipient will not attempt to identify the individuals whose information is contained in any Data transferred pursuant to this Agreement or attempt to contact those individuals.

4. License to Use Data for Research or Quality Improvement Purposes. This Agreement and the resulting transfer of Data constitute a license to Recipient to use the Data solely for the purposes set forth in **Section 2**. Recipient agrees that nothing herein shall be deemed a grant of any intellectual property rights or other rights to use the Data for any products or processes for profit-making or commercial purposes. The Data will not be used in research that is subject to consulting or licensing obligations to another recipient, corporation or business entity unless written permission is obtained from University. Recipient shall have no rights in the Data other than as provided for in this Agreement. The Recipient may use aggregated or deidentified data to report on **name of initiative**.

5. Limited Warranty. Sender represents and warrants that it has the right to disclose the Data. No other warranties, whether express or implied, are made. All Data transferred to Recipient pursuant to this Agreement is provided "as is."

6. Term and Termination. This Agreement shall be effective as of the Effective Date and shall remain in effect as long as Recipient retains the Data. Either Party may terminate this Agreement with or without cause upon thirty (30) days' written notice to the other Party. Sender may terminate this Agreement immediately, with no advance notice to Recipient, if Sender has any reason to believe that



Recipient has violated any of the conditions set forth in this Agreement or has accessed any information not described herein or for any purpose not described herein. Upon termination of this Agreement, Recipient agrees to destroy and make no further use of the Data. Recipient agrees to provide assurances that destruction has been accomplished pursuant to industry standards for data destruction.

7. Indemnification. In no event shall Sender be liable for any use by Recipient, its employees or agents of the Data, or for any loss, claim, damage or liability, of whatsoever kind or nature, which may arise from, or in connection with, this Agreement or for the use or dissemination by Recipient of the Data. Furthermore, Recipient agrees to indemnify Sender and its employees and agents and hold them harmless from any action, claim, or liability, cost or expense arising directly or indirectly from Recipient's use or misuse of the Data. The limitation on liability and indemnification obligations of **Section 7** shall survive the termination of this Agreement.

8. Equitable Relief. Recipient acknowledges that any disclosure or misappropriation of the Data by Recipient in violation of this Agreement may cause University irreparable harm. Recipient therefore agrees that Sender shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Recipient from any such further disclosure or breach, and for such other relief as Sender shall deem appropriate. Such rights are in addition to any other remedies available to Sender at law or in equity. Recipient expressly waives the defense that a remedy in damages will be adequate.

9. Notice. Notice regarding termination or other matters relating to this Agreement shall be made in writing sent to the following individuals:

If to Sender:

[insert contact information, including name, address, phone and fax]

If to Recipient:

Leon L. Hawley Jr. (Lonnie)
Contracts & Grants Manager
UNC Department of Pediatrics
260 Macnider Hall, Campus Box #7220
Chapel Hill, NC 27599-7220
(919) 843-2509 Voice
(919) 966-7299 Fax
lhawley@email.unc.edu

10. Miscellaneous Provisions.

- a. Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the Parties regarding the subject matter of this Agreement and supersedes any prior



agreements, oral or written, and all other communications between the Parties relating to such matters.

- b. **Severability.** If any provision of this Agreement is determined to be invalid, such determination shall not affect the validity of the remaining provisions.
- c. **Waiver.** The waiver by any Party of any provision or breach of this Agreement shall not operate or be construed as a waiver of any other provision of subsequent breach.
- d. **Representation to Others.** Recipient has no rights to use the names, trademarks or other symbols of the Sender without prior written consent; provided, however, that Recipient may make factual statements regarding its receipt of the Data pursuant to this Agreement.
- e. **Amendments.** This Agreement may be amended or modified only with mutual written consent of the Parties.
- f. **Governing Law.** This Agreement shall be governed by the laws of the State of North Carolina.
- g. **Change in Law.** The Parties agree to negotiate in good faith to amend this Agreement to comport with changes in law that materially alter either or both Parties' obligations under this Agreement, provided however, that if the Parties are unable to agree to mutually acceptable amendment(s) by the compliance date of the change in applicable law or regulations, either Party may immediately terminate this Agreement.
- h. **Relationship of the Parties.** Nothing in this Agreement shall be construed to create a partnership, joint venture, agency, employment or other joint business relationship between the Parties or any of their affiliates.
- i. **No Third Party Beneficiaries.** Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- j. **Assignment.** This Agreement is non-assignable and non-transferrable by Recipient without the prior written consent of Sender. Assignments made in violation of this provision are null and void. Recipient acknowledges and agrees that Sender retains the right to assign or delegate any of its rights or obligations hereunder to any of its affiliates or subsidiaries.
- k. **Authority.** Each Party, and the person signing on its behalf, represents that it is authorized to enter into this Agreement and the Party is capable of performing its obligations under this Agreement.
- l. **Headings.** The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing or enforcing this Agreement.



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth below.

[INSERT LEGAL NAME OF SENDER]

THE UNIVERSITY OF NORTH CAROLINA
AT CHAPEL HILL

By: _____ By: _____

Name (printed): _____ Name (printed): Barbara Entwisle

Title: _____ Title: Vice Chancellor for Research
(Institutional Official)

Date: _____ Date: _____

Address: _____ Address: 104 Airport Drive, Suite 2200
Campus Box #
1350
Chapel Hill, NC 27599-
1350

Acknowledged and Understood

By: _____

Name (printed): Martin McCaffrey

Title: Professor
(Principal Investigator)

Date: _____

Address: CB# 7596, 4th Floor, UNC Hospitals
Chapel Hill, NC 27599-7596