



California Emergency Medical Services Authority

DATA USE AGREEMENT with AN EXTERNAL ORGANIZATION

This Data Use Agreement (DUA) is a legally binding agreement between the California Emergency Medical Services Authority (EMSA) and an external entity such as a contractor, private company, academic institution, federal governmental agency, other state agency, or local governmental entity.

Background

EMSA may coordinate with other entities in order to develop detailed data for use in analyses and reports as a means of accomplishing its responsibility to assess and coordinate the effective integration of prehospital and hospital specialty care services such as stroke, STEMI (ST Segment Elevation Myocardial Infarction), pediatrics, and data to promote injury control activities. The purpose of this document is to define the parameters of data requests to EMSA and to provide written assurance that all appropriate measures will be taken to protect and maintain the data.

Term of the Agreement:

The term of this agreement is entered into as of this _____ day of _____, 20__ by _____ (Requesting Entity) and Emergency Medical Services Authority (EMSA) for the period of _____ to _____

Contact Persons:

EMSA contact person: Kathleen Bissell, Manager - Data, Quality Improvement, and HIE

Requesting entity contact person: _____

Definitions

1. **Individual** has the same meaning as the term "individual" in 45 CFR Sect. 164.501 of the Privacy Rule and includes a person who qualifies as a personal representative in accordance with 45 CFR Sect. 164.502(g) of the Privacy Rule
2. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended.
3. **Data** has the same meaning as the term "limited data set" in 45 CFR 164.514(e) of the Privacy Rule.
4. **Protected Health Information or PHI** means "protected health information" in 45 CFR Sect. 164.501 of the Privacy Rule.
5. **Required by Law** has the same meaning as the term "required by law" in 45 CFR Sect. 164.501 of the Privacy Rule

Limitations (164.502 – 164.514):

The intent of this DUA is to document the purpose(s) for which the data will be used and the means by which the data will be protected and maintained. This DUA is in compliance with the data security and privacy standards stated by the State of California Office Health Information Integrity (CalOHII). The providing entity and EMSA are committed to compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and related regulation. The purpose of this DUA is to satisfy the obligations of the requesting entity and EMSA under HIPAA and to ensure the integrity and confidentiality of certain information disclosed or made available by EMSA to the providing entity.

Protected Health Information:

Protected health information means individually identifiable health information. The permitted use of protected health information data is:

- (i) Release to the individual;
- (ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

- (iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of §§ 164.502(b), 164.514(d), and 164.530(c) with respect to such otherwise permitted or required use or disclosure;
- (iv) Except for uses and disclosures prohibited under § 164.502(a)(5)(i), pursuant to and in compliance with a valid authorization under § 164.508;
- (v) Pursuant to an agreement under, or as otherwise permitted by, § 164.510; and
- (vi) As permitted by and in compliance with this section, § 164.512, § 164.514(e), (f), or (g)

Purpose of the Data:

Data are being requested for the following purpose and as indicated in the completed Data Request Form: *(attach additional sheets if needed)*

Ownership

EMSA is the owner of the raw data. The requesting entity is the owner of the analyses and the related data.

Data Protection

The requesting entity must ensure the data provided by EMSA be maintained in a secure location accessible only to appropriate staff.

Data Transfer

The data will be transferred from EMSA to the requesting entity in an encrypted file or other secure data transfer process.

Reporting Requirements

Reporting specifics, if any, will be developed at the time that the data set parameters are developed and the DUA is finalized.

Record Keeping and Record Retention

The requesting entity will maintain records as appropriate. Source documents shall be returned to EMSA after the project completion, if requested by EMSA. Copies of the source documentation may be made for record retention if appropriate. Record retention length will be based on the design of the project

Costs

Costs related to documentation and distribution of the data or its analyses of will be responsibility of the requesting entity.

Obligations of the Requesting Entity

1. The requesting entity agrees not to use or disclose the data for any purpose other than the intended uses noted above under "*Purpose of the Data*";
2. The requesting entity agrees to use appropriate safeguards to prevent misuse or inappropriate disclosure of the data;
3. The requesting entity agrees to report to EMSA any use or disclosure of the data not provided for by this agreement of which it becomes aware, including without limitation, any disclosure of PHI to an unauthorized entity, within ten (10) days of its discovery per 164.514 (e)(4)(ii)(C)(3);
4. The requesting entity agrees to ensure that any agent to whom it provides the data agrees to the same restrictions and conditions that apply through this DUA;
5. The requesting entity agrees not to identify the information contained in the data or contact any individual pursuant to 45 CFR Subtitle A - DEPARTMENT OF HEALTH AND HUMAN SERVICES, CFR Subtitle A, 164.514 (e)(4)(ii)(C)(5); and

6. The requesting entity will indemnify, defend, and hold harmless EMSA and any of the providing entities affiliates, and their respective trustees, officers, directors, employees and agents (“Indemnitees”) from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney’s fees and court costs) arising out of or in connection with any unauthorized or prohibited use or disclosure of the data set or any other breach of this DUA by the requesting entity or any agent or person under its control.

Obligations of EMSA

1. EMSA will provide the data in a flat file ASCII format;
2. EMSA will be available to answer questions related to the data parameters; and
3. EMSA will provide a data dictionary relevant to the data provided.

Termination

1. The provisions of this DUA shall be effective immediately and shall terminate when the data submittal process is complete or in the case of a research project, when all of the data provided by EMSA are destroyed or returned to EMSA.
2. EMSA may terminate this agreement immediately with cause, or upon 15 day notice without cause. Upon termination, the requesting entity shall return all physical data materials and devices to EMSA, and shall permanently delete or destroy any and all copies of the data and any derivate files that contain source data.

Miscellaneous

1. The parties agree to take such action as is necessary to amend this DUA as is necessary for the parties to comply with the requirements of the Privacy Rule and HIPAA;
2. Any ambiguity in the agreement shall be resolved to permit EMSA to comply with the Privacy Rule;
3. There are no intended third party beneficiaries to this DUA. It is the parties’ intent that nothing contained in this DUA gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the individuals whose PHI is used or disclosed pursuant to this Agreement;
4. No provision of this DUA may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision;
5. The persons signing this agreement have the right and authority to execute this DUA and no further approvals are necessary to create a binding agreement; and
6. In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the parties, written, oral or implied, the terms of this DUA shall govern. No provision of any other agreement or understanding between the parties limiting the liability of EMSA to the LEMSA shall apply to the breach of any covenant in this DUA by EMSA.

Date Signed: _____

Requesting Entity Official Name and Title: _____

EMSA Official Name and Title: _____