

Data Transfer and Use Agreement (“Agreement”)

Provider:	Recipient:
Provider Scientist: Name: Email:	Recipient Scientist: Name: Email:
Agreement Term: Start Date: End Date:	Project Title:

Terms and Conditions

- 1) Provider shall provide the data set described in Attachment 1 (the “Data”) to Recipient for the research purpose set forth in Attachment 1 (the “Project”). Provider shall retain ownership of any rights it may have in the Data, and Recipient does not obtain any rights in the Data other than as set forth herein.
- 2) If applicable, reimbursement of any costs associated with the preparation, compilation, and transfer of the Data to the Recipient will be addressed in Attachment 1.
- 3) Recipient shall not use the Data except as authorized under this Agreement. The Data will be used solely to conduct the Project and solely by Recipient Scientist and Recipient’s faculty, employees, fellows, students, and agents (“Recipient Personnel”) and Collaborator Personnel (as defined in Attachment 3) that have a need to use, or provide a service in respect of, the Data in connection with the Project and whose obligations of use are consistent with the terms of this Agreement (collectively, “Authorized Persons”).
- 4) Except as authorized under this Agreement or otherwise required by law, Recipient agrees to retain control over the Data and shall not disclose, release, sell, rent, lease, loan, or otherwise grant access to the Data to any third party, except Authorized Persons, without the prior written consent of Provider. Recipient agrees to establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use of or access to the Data and comply with any other special requirements relating to safeguarding of the Data as may be set forth in Attachment 2.
- 5) Recipient agrees to use the Data in compliance with all applicable laws, rules, and regulations, as well as all professional standards applicable to such research.
- 6) Recipient is encouraged to make publicly available the results of the Project. Before Recipient submits a paper or abstract for publication or otherwise intends to publicly disclose information about the results of the Project, the Provider will have thirty (30) days from receipt to review proposed manuscripts and ten (10) days from receipt to review proposed abstracts to ensure that the Data is appropriately protected. Provider may request in writing that the proposed publication or other disclosure be delayed for up to thirty (30) additional days as necessary to protect proprietary information.
- 7) Unless instructed otherwise by Provider in Attachment 1, Recipient agrees to recognize the contribution of the Provider as the source of the Data in all written, visual, or oral public disclosures concerning Recipient’s research using the Data, as appropriate in accordance with scholarly standards and any specific format that has been indicated in Attachment 1.

- 8) Unless terminated earlier in accordance with this section or extended via a modification in accordance with Section 13, this Agreement shall commence upon the Start Date and expire as of the End Date set forth in the signature page. The term of this Agreement shall be for no less than one (1) year. Either party may terminate this Agreement with thirty (30) days written notice to the other party's Authorized Official as set forth below. Upon expiration or early termination of this Agreement, Recipient shall follow the disposition instructions provided in Attachment 1, provided, however, that Recipient may retain one (1) copy of the Data to the extent necessary to comply with the records retention requirements under any law, and for the purposes of research integrity and verification. Provider may suspend the transfer of the Data during such thirty (30) day notice period if Provider reasonably believes that Recipient has breached its obligations under this Agreement and Recipient does not promptly cure such breach after notice by Provider of intent to suspend transfer of data or if Provider reasonably believes the transfer no longer complies with applicable law and regulation.
- 9) Except as provided below or prohibited by law, any Data delivered pursuant to this Agreement is understood to be provided "AS IS." PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS 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. Notwithstanding, Provider, to the best of its knowledge and belief, has the right and authority to provide the Data to Recipient for use in the Project.
- 10) Except to the extent prohibited by law, the Recipient assumes all liability for damages which may arise from its use, storage, disclosure, or disposal of the Data. The Provider will not be liable to the Recipient for any loss, claim, or demand made by the Recipient, or made against the Recipient by any other party, due to or arising from the use of the Data by the Recipient, except to the extent permitted by law when caused by the negligence or willful misconduct of the Provider. No indemnification for any loss, claim, damage, or liability is intended or provided by either party under this Agreement.
- 11) Neither party shall use the other party's name, trademarks, image, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. The parties agree that each party may disclose factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for other purposes without written permission from the other party provided that any such statement shall accurately and appropriately describe the relationship of the parties and shall not in any manner imply endorsement by the other party whose name is being used.
- 12) Unless otherwise specified, this Agreement and the below listed Attachments embody the entire understanding between Provider and Recipient regarding the transfer of the Data to Recipient for the Project:
 - I. Attachment 1: Project Specific Information
 - II. Attachment 2: Data-specific Terms and Conditions
 - III. Attachment 3: Identification of Permitted Collaborators (if any)

- 13) No modification or waiver of this Agreement shall be valid unless in writing and executed by duly authorized representatives of both parties.
- 14) The undersigned Authorized Officials of Provider and Recipient expressly represent and affirm that the contents of any statements made herein are truthful and accurate and that they are duly authorized to sign this Agreement on behalf of their institution.

By an Authorized Official of Provider:

By an Authorized Official of Recipient:

Date

Name: Eric M. Reiman, MD
 Title: CEO/CSO Banner Research

Date

Name: Elisha Johnson, JD
 Title: Assistant Director, Research Administration

Contact Information for Formal Notices:

Name: Don Saner, Data Science Sr. Director
 Address: Banner Alzheimer's Institute
 901 E. Willetta Street
 Phoenix, AZ 85006
 Email: Don.Saner@bannerhealth.com
 Phone: (602) 839-6938

Contact Information for Formal Notices:

Name: Lauren Zajac, Assistant Vice President,
 Research Administration
 Address: 888 N. Euclid Avenue, #515
 Tucson, AZ 85719
 Email: UAHSContracts@email.arizona.edu
 Phone: 520-621-0724

Acknowledged:

Recipient Research Scientist

4. Reimbursement of Costs: (select one)

None

As set forth herein:

a. Describe cost:

b. Payor Contact Information:

Name:

Address:

Email:

Phone: () -

c. Payee Contact Information:

Name:

Address:

Email:

Phone: () -

5. Disposition Requirements upon the termination or expiration of the Agreement:

Recipient shall return or destroy the Data to Provider upon written request from Provider. Recipient shall provide to Provider a written confirmation of complete return or destruction Data upon Provider's request. *In the event Recipient does not return or destroy the Data, Recipient will remove or destroy all information that identifies the individual who is the subject associated with actual records as soon as the purposes of the Project have been accomplished including applicable retention periods relevant to publication. [Parties to select inclusion of provision.]*

Attachment 2
Data Transfer and Use Agreement
Data-specific Terms & Conditions

Provider has determined that the transfer of Data to Recipient contemplated by this Agreement is of mutual interest and benefit to Provider and Recipient, and will further the instructional and research objectives of Provider in a manner consistent with its status as a nonprofit educational, research, and health care institution.

In addition to the other terms of this Agreement, the following terms shall govern any transfer of Data:

1. Required Approvals. The Data transferred to Recipient in connection with this Agreement is subject to proper oversight by Recipient and may be subject to other approvals required by law (e.g., Institutional Review Board (“IRB”) or Privacy Board approval). With regard to the Project, Recipient shall obtain and/or confirm the foregoing approvals, when applicable, are properly and fully obtained prior to initiation of the Project. Recipient shall comply with applicable human subjects research and clinical trials regulations, which may include 45 C.F.R. Part 46, and 21 C.F.R. Parts 50 and 56. Provider warrants that it has full authority to share the Data with the Recipient.

2. Confidential Information.

2.1 Data Subject/Patient Privacy Considerations. The following shall apply in the event that Recipient comes into contact with or otherwise views, obtains or receives PHI pursuant to this Agreement: For the purpose of this Agreement Protected Health Information shall be defined consistent with the HIPAA Privacy Standards referenced below and shall also include identifiable private information as defined by the “Common Rule” (45 CFR Part 46.102(f)) (hereinafter together “PHI”). To the extent Recipient receives PHI pursuant to this Agreement Recipient will protect and maintain the confidentiality of all PHI. Where Recipient receives PHI Recipient will not use PHI except for the purpose set forth in this Agreement or as required by law or regulation. Where Recipient receives PHI Recipient will not disclose PHI to any third party unless the third party is a recipient of PHI listed in Attachment 3 or where Recipient is required to do so by law or regulation. In the event Recipient receives PHI and contracts with any agents to whom it provides PHI, it shall include provisions in such agreements whereby its agents agree to the same restrictions and conditions that apply to it with respect to PHI. Where a third party is set forth in Attachment 3, Recipient shall assure that it secures a written agreement with such third party where such third party agrees to the same restrictions and conditions that apply to Recipient with respect to PHI.

2.2 Additional HIPAA Privacy Considerations. Provider is required to comply with the Standards for Privacy of Individually Identifiable Information under the Health Insurance Portability and Accountability Act of 1996 contained in 45 CFR Parts 160 and 164 (the “HIPAA Privacy Standards”). If this Agreement must be amended to secure compliance under the HIPAA Privacy Standards, the parties will meet in good faith to agree upon such amendments. If the parties cannot agree upon such amendments, then any party may terminate the Agreement upon written notice to the other party. Any ambiguity in this Agreement shall be resolved to permit Provider to comply with all applicable federal and state requirements regarding privacy and confidentiality of PHI or the Data subjects.

2.3 PHI Requirements. Recipient will immediately terminate access to individuals identified in Attachment 3 who no longer have a need to access the PHI.

2.4 Privacy and Security Verification. Recipient shall allow any state or federal regulatory agency, including but not limited to the Office of Civil Rights of the U.S. Department of Health and Human Services (“OCR”), Provider, or their agents to inspect Recipient premises and operations upon reasonable notice and during regular office hours to confirm compliance with this Agreement. Such compliance shall include providing access to any personnel, facility or records, including, if applicable, access to Collaborator’s personnel, facility or records.

2.5 Recipient Proprietary Information & Data. Recipient may disclose to Provider proprietary information and materials during the course of Recipient’s work involving use of the Data. Provider agrees to keep in confidence, not use and not disclose such proprietary information and materials, except as expressly permitted by this Agreement or as required by law or regulation. However, there is no obligation as to information or materials that were already in Provider’s possession without restriction prior to the date of such disclosure; was developed by Provider independent of and without use of or reference to such Recipient proprietary information and material; is in or hereafter comes into the public domain through no fault of Provider; or is properly obtained by Provider without restriction from a third party not under a confidentiality obligation to Recipient.

2.6 External Data Inquires. Provider will make ~~Provider will make~~ reasonable efforts to mark Data as confidential. However, to the extent such marking is not practicable, then in the absence of written markings, information disclosed (written or verbal) that a reasonable person familiar with the Project would consider to be confidential or proprietary from the context or circumstances of disclosure shall be deemed as such. Recipient shall make good faith efforts to assure that Data is categorized, marked, and stored in a manner that will allow Recipient to take the position that such information is not subject to a public records request and subject to applicable law and regulation. Recipient will provide notice of a public records request which will include Data. [*Parties to select inclusion of provision*]

3. No Federal Exclusion. All parties represent and warrant that they have not been placed on the sanctions list issued by the Office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. § 1320a(7), have not been excluded from government contracts by the General Services Administration (“GSA”) and have not been convicted of a felony or any crime relating to healthcare. Further, if during any term of this Agreement, any party is placed on the sanctions list, excluded from government contracts or convicted of a felony or any crime relating to healthcare, such party will immediately notify the other party in writing of the event and such notice shall contain reasonably sufficient information to allow such party to determine the nature of the sanction, exclusion or conviction. A party will have the right to terminate this Agreement immediately by written notice to the other party if another party is placed on the sanctions list, banned from government contracts by GSA or convicted of a felony or any crime relating to healthcare.
4. Severability; Change of Law or Regulation. If any provision of this Agreement or the application thereof to any circumstance shall be invalid or unenforceable to any extent, it is the intention of all parties that the remainder of the Agreement and the application of such provision to other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event that state or federal law or regulations should change, alter or modify any operations of Provider such that terms, benefits and conditions of this Agreement must be changed accordingly in order to realize the original expectations of the parties, the parties shall immediately negotiate in good faith to modify the Agreement as necessary to reflect such changes.

5. Miscellaneous.

5.1 No Waivers; Independent Contractor. The failure of Provider to insist at any time upon the strict observance of performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement will not impair any such right or remedy and will not be construed to be a waiver or relinquishment of the right or remedy. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement. The parties are independent contractors and nothing in this Agreement or the performance of the parties under this Agreement shall constitute (or be deemed to constitute in law or in equity) a partnership, agency, distributorship, fiduciary, employment or joint venture relationship between the parties. Neither party has any right or authority to bind the other in any way. The parties hereby agree that there are no third-party beneficiaries to this Agreement.

5.2 No Exclusivity. This Agreement is not exclusive. Accordingly, Provider and Recipient shall have the right to enter into one or more agreements relating to the same or similar matters as are covered by this Agreement and execution by Provider or Recipient of such agreements shall not constitute a breach of this Agreement.

5.3 Counterparts; Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Facsimile signatures, electronic signatures, and signatures transmitted by email after having been scanned shall be accepted as originals for the purposes of this Agreement.

5.4 Conflict of Interest and Non-Referral. This Agreement is in no way conditioned on either party making referrals to the other party or otherwise generating business for the other party. Provider and Recipient each certify as to itself, to the best of its knowledge and belief, that it is not aware of any information bearing on the existence of any potential conflict of interest. Additionally, this Agreement contains the entire agreement of the parties with respect to the services described in the Agreement. Any other arrangements between Provider and the Recipient are the subject of one (1) or more separate agreements. The Banner Health Legal Department maintains a database in which such agreements are listed.

5.5 Assignment. Except as provided herein, Recipient may not assign this Agreement, in whole or in part, without the prior written consent of Provider. In the event Provider provides such written consent, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, together with their respective legal representatives, successors, and assigns, as permitted herein.

6. No Consequential Damages. PROVIDER AND RECIPIENT SHALL NOT BE LIABLE TO EACH OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES SUFFERED BY THE OTHER, INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR LOST PROFITS, WHETHER ARISING IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY OR OTHERWISE, AND REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

7. Compliance. The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity, Non-Discrimination and Immigration.

8. Arizona Conflict of Interest. This Agreement is subject to cancellation under Arizona Revised Statutes section 38-511 regarding conflict of interest on the part of individuals negotiating contracts on behalf of the State of Arizona.

9. Dispute Resolution. Prior to the commencement of any other proceeding, the parties agree to first attempt in good faith to resolve informally any dispute concerning or arising out of this Agreement. The parties further acknowledge that disputes arising from this Agreement may be subject to arbitration in accordance with applicable law and court rules.

Attachment 3
Data Transfer and Use Agreement
Identification of Permitted Collaborators (if any)

There is **NOT** a Collaborator on this Project. “Collaborator Personnel” means: None.

-or-

There **IS** a Collaborator on this Project.

“Collaborator Personnel” means: Faculty, employees, fellows, or students of the Collaborator who have a need to use or provide a service in respect of the Data in connection with its collaboration in the Project, and (iii) has been made aware of the terms of this Agreement and agreed to comply, and to cause its personnel to comply, with such terms.

The Collaborator is:

Full Legal Name:

Business Address:

Attention (Collaborator’s Representative):

Email:

Phone: () -

For all purposes of this Agreement, access and use of Data, where transferred to a Collaborator, shall be limited to Collaborator Personnel.