

DATA SHARING AGREEMENT

This Data Sharing Agreement (“**Agreement**”), effective as of _____ (the “**Effective Date**”), is entered into by and between [HOSPITAL/HEALTH SYSTEM] (“**Contributor**”) and the HEC Analytics project hosted by *Pediatric Ethicscope*, a Virginia-based nonprofit journal, c/o Stowe Locke Teti, editor-in-chief (“**HEC Analytics**”).

WITNESSETH:

WHEREAS, **HEC Analytics** is a coalition of health care system contributors that desires to make certain categories of deidentified data available to members of the coalition to assist in establishing benchmarking criteria for clinical ethics consultation activities (“**Activities**”) and desires to obtain the categories of data from each of the contributors for use in performance of the Activities;

WHEREAS, such categories of data for the Activities will be posted in a central password protected repository hosed by Pediatric Ethicscope for access by other health care systems’ contributors;

WHEREAS, **Contributor** agrees to disclose such Data to **HEC Analytics** for use by **HEC Analytics** in performance of the Activities; and

WHEREAS, **HEC Analytics** agrees to limit its use of the Data in accordance with the terms of this Agreement.

THEREFORE, in consideration of the mutual agreements, covenants, terms, and conditions contained herein, the parties agree as follows:

1. **Definitions.**

- a) “**Data**” means any data provided by Contributor to Recipient for performance of the Activities, including but not limited hospital name, system name, hospital characteristics, licensed bed count, case mix index, licensed ICU bed count, number of admissions, clinical ethics consults, palliative care status, service line information, and other Contributor-related information.

2. **Preparation of the Data for the Activities.** HEC Analytics shall receive Data as identified in this Agreement. The Data fields shall include only those Data fields specified by the parties from time to time, which are the minimum necessary to accomplish the Activities and other purposes set forth in this Agreement.

3. **Responsibilities of Recipient.** HEC Analytics shall:

- a) use or disclose the Data:
- i. only as permitted by this Agreement or as Required by Law,
 - ii. only among the HEC Analytics’ directors, officers, employees, contractors and agents, as well as other health care systems, as necessary to accomplish the Activities, and
 - iii. only to the extent minimally necessary to accomplish the Activities and other the purposes set forth in this Agreement;

- b) use appropriate safeguards to prevent use or disclosure of the Data other than as permitted by this Agreement or Required by Law;
- c) report to each Contributor any use or disclosure of the Data not provided for by this Agreement of which it becomes aware no later than five (5) days after HEC Analytics discovers the unauthorized use or disclosure. An unauthorized use or disclosure shall be treated as discovered by HEC Analytics as of the first day on which such use or disclosure becomes known to HEC Analytics or, through the exercise of reasonable diligence, would have become known to HEC Analytics. HEC Analytics will cooperate with Contributor, as reasonably requested, in determining whether the unauthorized use or disclosure may be prohibited or reportable by law;
- d) require any of additional recipients of this Data that receive or have access to the Data to agree to the same restrictions and conditions on the use and/or disclosure of the Data that apply to HEC Analytics under this Agreement;
- e) not use the information in the Data, alone or in combination, to identify or contact any patients who may be connected to the data; and
- f) fully cooperate with Contributor if, in Contributor's sole discretion, Contributor determines that it needs to seek injunctive relief concerning the access, use, or disclosure of the Data to a third party.

4. Term and Termination.

- a) Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate on the first to occur of the following: (i) when termination is conducted in accordance with Section 4(b) or 4(c) of this Agreement; (ii) when all of the Data provided by Contributor to HEC Analytics are returned to Contributor or destroyed (and one or more certificates of destruction are provided as requested by Contributor), or if it is not feasible to return or destroy the Data, when protections are extended to such information, in accordance with Section 4(d)(ii) of this Agreement; or (iii) within thirty (30) days from when the purposes and Activities have concluded for which HEC Analytics received the Data from Contributor.
- b) Termination by Recipient. HEC Analytics may terminate this Agreement at any time by notifying **Contributor** and returning or destroying the Data.
- c) Termination by **Contributor** or Covered Entity. Contributor may terminate this Agreement at any time by providing prior written notice to HEC Analytics.
- d) Effect of Termination.
 - (i) Except as provided in paragraph (ii) of this subsection, upon termination of this Agreement or upon request of Contributor, whichever occurs first, HEC Analytics shall return or destroy all Data received from Contributor. This provision shall apply to any Data that is in the possession of subcontractors of HEC Analytics. Neither HEC Analytics nor its subcontractors shall retain copies of any Data.
 - (ii) In the event that HEC Analytics determines that returning or destroying the Data is not feasible, HEC Analytics shall provide to Contributor notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties, that return or

destruction of such Data is not feasible, HEC Analytics and its applicable subcontractors shall extend the protections of this Agreement to such Data and limit further uses and disclosures of such Data to those purposes that make the return or destruction not feasible, for so long as HEC Analytics and its applicable subcontractors maintain such Data.

5. Miscellaneous.

- a) Ownership. HEC Analytics acknowledges that the Data contributed by respective Contributors is the property of the Contributor, and that Recipient has no rights in any Data except those expressly granted by this Agreement.
- b) No Use of Name. Recipient is prohibited from using the Contributor's name, or any other Contributor trademark, tradename, or service mark without the prior express written consent of Contributor.
- c) Indemnification. HEC Analytics shall indemnify, defend, and hold harmless Contributor, its subsidiaries and affiliates, and their respective trustees, directors, officers, employees, and agents, from and against any and all third party claims, liabilities, losses, expenses, damages, judgments, penalties, and costs (including litigation expenses and attorneys' fees) arising out of or relating to (i) HEC Analytics' breach of this Agreement, or (ii) the negligent, reckless, or intentionally wrongful act or omission of HEC Analytics or its officers, employees, agents, or subcontractors, including but not limited to the violation of any federal or state law applicable to the use, disclosure or protection of the Data subject to this Agreement.
- d) Change in Law. The parties agree to negotiate in good faith to amend this Agreement to comport with changes in federal 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 terminate this Agreement as provided in section 4.
- e) 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.
- f) Notices. All notices hereunder shall be in writing and shall be delivered personally, sent by facsimile, mailed by registered or certified mail, postage prepaid, or mailed by overnight courier service to the following addresses of the respective parties:

If to Contributor:

Name
Street Address
City, State, Zip Code

If to: HEC Analytics
HEC Analytics/ *Pediatric Ethicscope*
Attn: Stowe Locke Teti
9501 Lagersfield Circle
Vienna, VA 22181

Notices shall be effective upon receipt if personally delivered or delivered by facsimile, on the third business day following the date of mailing if sent by certified or registered mail, and on the second business day following the date of delivery to the overnight courier service if sent by overnight courier. Either party may change its address listed above by written notice to the other party, as set forth herein.

- g) Amendment. This Agreement may be amended or modified only in a writing signed by the parties. However, in the event there is a change in federal or state law or regulations having effect on this Agreement, the parties agree that this Agreement automatically will be amended to conform to any such changes as is necessary for the parties to comply with the current requirements of those federal or state laws or regulations.
- h) Governing Law. To the extent not preempted by federal law, this Agreement will be governed by the laws of the State of North Carolina.
- i) Waiver. The waiver by any Party of any breach of any provision of this Agreement by another Party shall not be construed as a waiver of any subsequent breach of the same or any other provision of this Agreement. The failure to exercise any right under this Agreement shall not operate as a waiver of any such right.
- j) Entire Agreement. This Agreement, including any attachments, is the final and complete expression of the agreement between the parties regarding the subject matter hereof.
- k) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

[HOSPITAL/HEALTH SYSTEM]

HEC Analytics

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date: _____

Date: _____