

The Children's Brain Tumor Network
DATA USE AGREEMENT

INTRODUCTION AND STATEMENT OF POLICY

The Children's Brain Tumor Network ("CBTN"), formally referred to as Children's Brain Tumor Tissue Consortium (CBTTC), is a multi-institutional cooperative research program dedicated to the study of childhood brain tumors. The ultimate goal of the CBTN is to improve outcomes for children with brain tumors by supporting research leading to new biomarkers and therapies. The mission of the CBTN is to collect high-quality brain tumor and associated biofluid specimens with correlative highly dimension clinical data, facilitate the generation and integration of data from biospecimens, develop cell lines and transplantable tumor models from submitted specimens, and share the data, research results, and resources from these efforts among CBTN member institutions and with the world-wide scientific and medical research communities. The long-term goal of the CBTN is to actively stimulate tissue-based research and increase worldwide access to the genomic, molecular, and imaging analysis of large numbers of brain tumor specimens in support of our community's shared mandate to develop new therapies, identify new therapeutic targets, and employ new biologically-based biomarkers.

Implicit in the CBTN mission is the establishment of data management and collaborative analyses systems to further scientific progress in brain tumor research recognizing that such data-driven research and discovery will be greatly enhanced by making data rapidly and readily available to all scientific investigators and in a manner consistent with the human subjects protocols under which a participant's data and samples were donated to the CBTN. To support this vision, the CBTN supports data sharing and collaborative discovery through CBTN-supported portals/platforms, NIH-supported portals/platforms, or other public platforms with approved security and patient privacy protection. Because the volume of human genomic, phenotypic, and imaging data contained in the CBTN is substantial and, in some instances, potentially sensitive (e.g., data related to the presence or risk of developing particular diseases or conditions and information regarding family relationships or ancestry), data must be shared in a manner consistent with the research participants' informed consent, and the confidentiality of the data and the privacy of participants must be protected. As such, access to human genomic and imaging data will be provided to research investigators who, along with their institutions, have certified their agreement with the expectations and terms of access detailed below.

RECITALS

This data use agreement ("Agreement") governs the terms on which users who are not members of the CBTN will be granted access to data generated within the CBTN.

For the sake of clarity, the parties to this Agreement are The Children's Hospital of Philadelphia, acting as coordinating center of the CBTN ("CHOP"), and the User Institution.

In signing this Agreement, User Institution, on behalf of itself and the User(s), agrees to be bound by the terms and conditions of access set out in this Agreement. Moreover, User Institution represents that User(s) is a researcher dedicated to the advancement of

research and User Institution takes responsibility for the (i) distribution restrictions defined in this Agreement, and (ii) use and protection of the Data by User(s) and other Approved Users.

Defined terms used in this Agreement that are not found in the body are found in Appendix A attached hereto.

The effective date of this Agreement shall be the date of the last signature below (“**Effective Date**”).

TERMS OF ACCESS

1. Research Use

A. User Institution agrees that **(a)** the User named in the DAR and **(b)** any other investigators, trainees, or employees working on the proposed research project under the oversight of such User, shall become Approved Users of the requested Data. Research use will occur solely in connection with the research project described in the DAR. New uses of the Data outside those described in the DAR will require submission of an amendment to the existing DAR and/or submission of a new DAR.

B. User Institution, either directly or through the User, acknowledges that they have shared this Agreement and any received CBTN Policies with any Approved Users.

C. The CBTN anticipates that the CBTN datasets will be regularly updated with additional information on existing Data Subjects and addition of new Data Subjects and datasets. Unless otherwise expressly indicated, all statements herein are presumed to be true and applicable to the access and use of all versions of CBTN datasets.

D. User Institution, on behalf of itself and the Approved Users, acknowledges that CHOP serves as the steward for all specimens and data in the CBTN.

2. Approved User Responsibilities

A. User Institution agrees through the submission of the DAR that User has reviewed and understands the principles for responsible research use and data handling of the Data. User Institution further acknowledges that it is responsible for ensuring that all uses of the Data are consistent with all applicable national, tribal, state and local laws and regulations, as well as relevant institutional policies and procedures for managing sensitive data.

B. The CBTN adheres to key principles and practices agreed to by all research investigators requesting access to Data. User Institution, on behalf of itself and its Approved Users, agrees to comply with CBTN’s Policies. Failure to abide by the CBTN Policies may result in revocation of an Approved User’s access to any and all CBTN datasets.

C. To assure adherence to CBTN Policies, User Institution, through the User, agrees to provide progress updates on how the Data has been used, as required by the CBTN Policies.

Such updates may include data-deposition, presentations, publications, generation of Intellectual Property, a summary of any plans for future research use of the Data, and any violations of the terms of this Agreement. In submitting progress updates, User Institution, through the User, is encouraged to include general comments regarding topics such as the effectiveness of the data access process (e.g., ease of access and use), appropriateness of data format, challenges in following the CBTN Policies, and suggestions for improving data access or the program in general.

3. Public Posting of Approved User's Research Use Statement

A. User Institution agrees, on behalf of itself and the Approved Users, that information about the Approved Users and the DAR will be posted publicly on the CBTN website and/or associated CBTN portals/platforms. This information includes the: Approved Users' name(s), institution, project name, research use statement, and a non-technical summary of the research use statement.

4. Non-Identification of Data Subjects

A. User Institution, on behalf of itself and the Approved Users, agrees to preserve, at all times, the confidentiality of information and Data pertaining to Data Subjects. In particular, User Institution undertakes not to use or attempt to use, and shall ensure that Approved Users do not use or attempt to use, the Data to re-identify any Data Subjects. User Institution, on behalf of itself and the Approved Users, accepts that Data may be provided "AS IS" without associated phenotype data or data verifying and/or validating the presence of putative genetic alterations.

5. Non-Transferability of Data

A. User Institution, on behalf of itself and the Approved Users, agrees not to transfer or disclose the Data, in whole or part, to persons who are not Approved Users. If User wishes to share the Data with a Collaborator who is within the same User Institution, User must inform the CBTN through submission of an addendum to the DAR. Upon approval of the addendum to the DAR, such Collaborator shall become an Approved User of the Data. If User wishes to share Data with a third party outside User Institution, such third party must submit a separate application for access to the Data.

B. User Institution expressly agrees that the Data, in whole or in part, may not be sold at any point in time for any purpose.

6. Data Security and Data Release Reporting

A. User Institution, on behalf of itself and the Approved Users, acknowledges that they have reviewed and agree to handle the Data according to the most-current version of the NIH publication entitled "NIH Security Best Practices for Controlled-Access Data Subject to the NIH Genomic Data Sharing (GDS) Policy"¹, including the detailed descriptions of requirements

¹ A copy of the document can be found at <https://sharing.nih.gov/accessing-data/accessing-genomic-data/using-genomic-data-responsibly>

for security and encryption. These include, but are not limited to, keeping the Data secure and confidential at all times and adhering to information technology practices in all aspects of data management to assure that only Approved Users can gain access to the Data. Such requirements extend to the maintenance of appropriate controls over any copies or derivatives of the Data.

B. In addition, User Institution, on behalf of itself and the Approved Users, understands that the Data may be reissued from time to time, with suitable versioning. If instructed to do so by CBTN, User Institution, either directly or through the User, shall destroy earlier versions of the Data upon receipt of a new version of the Data.

C. User Institution agrees to notify CHOP and the CBTN of any **(a)** uses of the Data not authorized under this Agreement, and **(b)** breaches of data security or inadvertent releases of the Data that may compromise the confidentiality of the Data, within twenty-four (24) hours of when the incident is identified. As permitted by applicable law, notifications should include any known information regarding the incident and a general description of the activities or process in place to define and remediate the situation fully. Within three (3) business days of providing such notification to CHOP and the CBTN, User Institution agrees to submit to CHOP and the CBTN a detailed written report including the date and nature of the event, actions taken or to be taken to remediate the issue(s), and plans or processes developed to prevent further problems, including specific information on timelines anticipated for action.

D. All notifications and written reports of data security incidents provided under this Section 6 should be sent to:

(i) CHOP CONTACT: legal@chop.edu with cc to researchcontracts@chop.edu, with the Subject: CBTN DUA-Urgent-Data Security Issue; and

(ii) CBTN CONTACT: research@cbtn.org, with the Subject: Urgent-Data Security Issue.

7. Intellectual Property

A. By requesting access to the Data, User Institution, on behalf of itself and the Approved Users, acknowledges the CBTN intellectual property principles as outlined below, which align with NIH guidelines:

(i) Achieving maximum public benefit is the ultimate goal of data distribution through the CBTN approved/designated data repositories. Subject to Section 7.B. below, the CBTN encourages broad use of CBTN-supported genotype phenotype data that is consistent with a responsible approach to management of intellectual property derived from downstream discoveries, as outlined in NIH's Best Practices for the Licensing of Genomic Inventions and Research Tools Policy².

(ii) CBTN institutions maintain an intellectual property consensus policy

² Copies of the documents can be found at <https://www.techtransfer.nih.gov/policy/policies-reports>.

defined within the consortium's constitution which outlines the specific policy and procedures related to CBTN-associated discoveries following NIH guidelines.

B. CBTN considers the Data as pre-competitive and urges User Institution, either directly or through its Approved Users, to avoid making IP claims derived directly from the Data. It is expected that the Data, and conclusions derived therefrom, will remain freely available (excluding the requirement of data use or similar agreements, as applicable), without any requirement of licensing for non-commercial research.

C. However, the CBTN also recognizes the importance of the subsequent development of IP on downstream discoveries, especially in therapeutics, which will be necessary to support full investment in products to benefit the pediatric cancer patient population. Toward that end, User Institution will report to CHOP, in writing, all Foreground Intellectual Property promptly and no later than three (3) months from the time the invention is disclosed to User Institution's Office of Technology Transfer (or equivalent department) by User.

D. Revenues accruing to a User Institution and/or User from licensing or otherwise commercializing Foreground Intellectual Property shall be distributed in accordance with the User Institution's institutional policy, provided, however, that ten percent (10%) of gross revenues realized from licensing or otherwise commercializing Foreground Intellectual Property shall be distributed to CHOP solely for the support and maintenance of the CBTN, provided that any unreimbursed expenses related to IP protection on such Foreground Intellectual Property may be recovered from revenue before any sharing with CHOP of such revenue occurs.

E. User Institution grants, or shall grant, to CHOP and the other CBTN member institutions, a non-exclusive, royalty-free, non-transferable, perpetual license to use the Foreground Intellectual Property solely for CHOP and such CBTN member institution's educational, teaching and research purposes.

8. Research Dissemination and Acknowledgement

A. The intent of the CBTN is to promote dissemination of research findings from use of the Data as widely as possible through web-based portals, data repositories, scientific publications or other appropriate public dissemination mechanisms (collectively, "**Publication(s)**"). As such, CBTN strongly encourages User Institution, either directly or through the Approved Users, to publish and disseminate results generated through use of the Data in Publications. For clarity, the Data itself, as received from the CBTN, may not be included in Publications without the prior written consent of the CBTN.

B. User Institution, on behalf of itself and the Approved Users, agrees that any Publications of findings generated through the use of the Data will contain an associated acknowledgement section stating as follows:

This research was conducted using data made available by The Children's Brain Tumor Network (CBTN).

C. It is also suggested and preferable that projects leveraging the CBTN infrastructure and special integrated data requests cite the CBTN/Biorepository Portal Toolkit Paper:

Felmeister AS, Masino AJ, Rivera TJ, Resnick AC, Jeffrey W. The biorepository portal toolkit : An honest brokered , modular service oriented software tool set for biospecimen-driven translational research. BMC Genomics. 2016;17(Suppl 4):1-22. doi:10.1186/s12864-016-2797-9.

D. Except as required by law, rule or regulation, neither party shall use the name, insignia, logo, abbreviation, trademark, trade name, nickname or other identifying term or mark of the other party, its affiliates, employees or staff for any purpose without the express prior written consent of the other party, provided, that, each party may use the other party's name in its internal routine listings of sponsored projects, as required for publication in a peer-reviewed journal, or as required on a grant application. In the case of CHOP, User Institution shall obtain the prior written approval of CHOP's Chief Marketing Officer for any other use. Requests for such use shall be made to CHOP's Office of General Counsel at legal@chop.edu.

9. Return of Results

A. The CBTN maintains several data repositories and collaborative research environments and as such, the CBTN also strongly encourages return and deposition of the projects results and associated data within CBTN-hosted portals. As such, User Institution, either directly or through the Approved Users, agrees that any publicly hosted data derived from or including Data may be requested for integration and use within CBTN approved data platforms.

10. Non-Endorsement, Indemnification

A. User Institution, on behalf of itself and its Approved Users, acknowledges that although all reasonable efforts have been taken by CHOP and the CBTN to ensure the accuracy and reliability of controlled-access data obtained hereunder, CHOP, the CBTN, its members, and Contributing Investigators, do not and cannot provide any warranty regarding the results that may be obtained by using the Data.

B. CHOP, the CBTN, its members, and all Contributing Investigators to the Data disclaim all warranties as to performance or fitness of the Data for any particular purpose.

C. No indemnification for any loss, claim, damage, or liability is intended or provided by CHOP, the CBTN, its members or any Contributing Investigators.

D. To the extent allowable by applicable laws, User Institution agrees to indemnify, defend and hold harmless CHOP, the CBTN, its members and all Contributing Investigators, from and against any and all liability, losses, damages, claims, demands and/or fees (including reasonable attorney's fees), costs, penalties and/or judgments (collectively, the "**Losses**") but only in proportion to and to the extent arising from **(a)** User Institution or any of its Approved

Users use, storage or disposal of Data, **(b)** User Institution or any of its Approved Users use of Foreground Intellectual Property, or **(c)** the material breach of this Agreement by the User Institution or its officers, directors, employees, affiliates, contractors, representatives or agents; except insofar as such Losses arise from CHOP's material breach of this Agreement or the gross negligence or intentional misconduct by CHOP, the CBTN or a Contributing Investigator.

11. Term and Termination

A. This Agreement will be in effect from the Effective Date, and shall continue for as long as the User Institution, either directly or through an Approved User, maintains any Data, or until terminated as set out in this Section 11.

B. User Institution, on behalf of itself and the Approved Users, acknowledges that CHOP may terminate this Agreement without prior notice and immediately revoke access to all CBTN datasets at any time if User Institution or an Approved User is found to no longer be complying with the CBTN Policies.

C. Either party may terminate this Agreement for any reason upon thirty (30) days prior written notice to the other party hereunder.

D. Upon termination of this Agreement, User Institution, through the User, agrees to release any new data generated from use of the Data to the CBTN, and if requested, to destroy all local copies of the Data unless required to maintain such Data pursuant to law or publication practices. New data generated from the Data may not be destroyed prior to releasing to the CBTN.

E. With advance notice and approval by CHOP and the DAC, this Agreement may be transferred to another researcher at User Institution.

12. Miscellaneous

A. This Agreement does not create a joint venture, partnership, or employee-employer relationship between the parties, nor an obligation to buy or sell products or services, or to enter into or negotiate any other business relationship. Other than expressly specified herein, no rights or licenses of any nature are implied or granted under this Agreement. All right and title to the Data shall remain with the CBTN.

B. This Agreement shall not be assigned by either party without the prior written consent of the other party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.

C. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future state or federal laws or rules and regulations promulgated thereunder effective during the term hereof, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions hereof shall remain in full force and

effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. The parties agree to negotiate in good faith a substitute for any provision or term held to be unenforceable and to be bound by the mutually agreed substitute provision.

D. This Agreement constitutes the final, complete and exclusive agreement of the parties relating to the subject matter hereof and supersedes all previous and contemporaneous agreements and understandings between the parties relating to the subject matter hereof. No waiver, alteration or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by a duly authorized representative of the party to be bound.

IN WITNESS WHEREOF, the duly authorized representative of the User Institution hereby executes this Agreement as of the Effective Date.

For and On Behalf of User Institution:

Read and Acknowledged By User:

By: _____

By: _____

Institutional
Representative Name: _____

User Name: _____

Title: _____

Date: _____

Date: _____

If Applicable:

By: _____

IT Director Name: _____

Title: _____

Date: _____

APPENDIX A DEFINITIONS

“Approved User(s)” is (i) a User approved by the DAC to access the Data for the purposes outlined in the DAR; and (ii) investigators, trainees, or employees of User Institution working on the proposed research project under the oversight of such User. Collaborators added to a DAR and approved by the DAC are also Approved Users as provided for in Section 5.A.

“CBTN Policies” means CBTN’s policies and procedures regarding the use of any Data, as provided to or otherwise made available to the User Institution or Approved Users.

“Collaborator(s)” is an employee of User Institution who is not under the direct supervision of the User (e.g., not a member of the User’s laboratory), who will be assisting with the User’s research project.

“Contributing Investigator(s)” is an investigator who submitted data to a CBTN-approved data repository or an associated NIH-designated data repository.

“DAC” means the CBTN Data Access Committee responsible for oversight of the CBTN repository, including the assessment and approval of data requests.

“DAR” is a Data Access Request submitted to the DAC for a specific project specifying the data to which access is sought, the planned research use, and the names of any Collaborators.

“Data” means any and all clinical, genomic, molecular, imaging (including, but not limited to, MRIs), phenotypic or other data obtained from the CBTN.

“Data Subject” means a person who is the subject of the Data provided by the CBTN.

“Foreground Intellectual Property” means Intellectual Property created with the use of Data.

“Intellectual Property” or **“IP”** means any material, composition of matter, method, process, product, biological material or other tangible or intangible property, regardless of whether such property is patentable or not and shall include, without limitation, any foreign or domestic patent right together with any extension, registration, reissue, re-examination or renewal thereof, and any pending application, including any continuation, or divisional thereof for any of the foregoing.

“IT Director” is the Information Technology Director, or equivalent individual, with the necessary expertise and authority to vouch for the information technology capacities at User Institution and the ability of the User Institution to comply with the data security requirements of this Agreement.

“NIH” means the National Institutes of Health, a division of the United States of America Department of Health and Human Services.

“User” means a researcher whose User Institution has previously completed this Agreement and has received acknowledgement of its acceptance by CHOP or the CBTN and who serves as the principal investigator of the project described in the DAR.

“User Institution” means the organization at which the User is employed, affiliated, or enrolled.

Appendix B
DAC Approval

Please attach the dated DAC approval notification.