

Data Use and Services Agreement

This Data Use and Services Agreement (the “Agreement”) is made as of April 12, 2024, by and between the **University of Pittsburgh – Of the Commonwealth System of Higher Education**, with an office located at The Offices at Baum, 4th Floor, 5607 Baum Boulevard, Pittsburgh, PA 15206-3701 (“University”), and the County of Monterey. The University and the County of Monterey shall be referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, the National Retail Data Monitor (“NRDM”) is a public health surveillance tool which was created by the University’s Real-time Outbreak and Disease Surveillance Laboratory (“RODS Laboratory”), which collects and analyzes over-the-counter drug sales to identify disease outbreaks, either naturally occurring or as a result of bioterrorism;

WHEREAS, the RODS Laboratory provides services regarding the NRDM, which enable public health departments to access and analyze relevant data for the purpose of public health surveillance (“Services”); and

WHEREAS, the County of Monterey through its Health Department has implemented a public health surveillance system within its jurisdiction and utilizes the NRDM data (the “Project”) in order to protect the public health, and wishes to appoint the University as its agent for collection of such data.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and intending to be legally bound hereby, the Parties agree as follows:

1. Definitions.

- (a) “OTC Data” shall mean over-the-counter sales data provided by retailers to the RODS Laboratory’s National Retail Data Monitor, in aggregate form and de-identified, limited to retailers located within the County of Monterey Health Department’s jurisdiction.
- (b) “Authorized User” shall mean employees of public health agencies within the jurisdiction of the County of Monterey Health Department who have (i) received written approval from authorized representatives of both the County of Monterey Health Department and the University; (ii) executed an Authorized User Agreement in the form attached hereto as Exhibit A, Authorized User Agreement; and (iii) have received a password to access the OTC Data.
- (c) “Confidential Information” shall mean all OTC Data and all other written or orally disclosed information or electronically exchanged information of any Party provided to any other Party, directly or indirectly, pursuant to the Project which is clearly designated in writing as “Confidential,” or, in the case of oral disclosure, is reduced to writing and identified in writing as “Confidential” within ten days of such oral disclosure, with the exception of any information that: (i) was in the recipient Party’s lawful possession prior to disclosure by the owner Party; or (ii)

is lawfully received by a Party without restriction regarding use or confidentiality from an independent third party who is in lawful possession of said information; or (iii) is now or hereafter becomes generally available to the public through no action, inaction, or fault of any Party hereto receiving the Confidential Information of the other Party.

2. Access to OTC Data. Access to the OTC Data is provided to County of Monterey Health Department employees for the sole purpose of the Project for public health surveillance and evaluation. Access to the OTC Data will be provided to Authorized Users in the County of Monterey Health Department's jurisdiction to enable them to review aggregate and spatially displayed data. The County of Monterey Health Department shall be responsible for proposing the Authorized Users who are given passwords to access the OTC Data, subject to the review and acceptance of such proposed Authorized Users by the University. The County of Monterey Health Department shall direct its public health officials for whom it wishes to grant access to the OTC Data to complete an Authorized User Agreement in the form attached hereto as Exhibit A and submit it to the RODS Laboratory at the address or facsimile number stated in Section 15, Notice, for approval.
3. Payment for Services. In consideration of the Services provided, and in order to maintain the NRDM to permit use by the County of Monterey pursuant to this Agreement, the County of Monterey agrees to pay to the University an annual fee of One Thousand Five Hundred Nineteen Dollars and Thirty-Two Cents (\$1,519.32). The County shall certify the invoice, either in the requested amount or in such other amount as the County approved in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
4. Rights in OTC Data and Software. Ownership of the OTC Data remains vested in third party data providers, and the OTC Data is subject to third party confidentiality agreements. County of Monterey Health Department understands and agrees that, without prior written permission of an authorized representative of the University, the OTC Data may not be: (i) disclosed to any third party, (ii) used for any purpose other than public health surveillance and evaluation; (iii) copied, downloaded, or retransmitted. The University shall retain ownership of all RODS software, and use by the County of Monterey shall be pursuant to the terms of the GNU License for Open Source Software.
5. Management of OTC Data. OTC Data may not be used by County of Monterey Health Department for any other research projects or commercial use without the prior written consent of an authorized representative of the University. The County of Monterey represents and warrants that the OTC Data will be used only for public health surveillance and for no other purpose and that the OTC Data will not be published in any form.
6. No Distribution or Transfer of Data. No copies or derivatives of the OTC Data shall be made except as necessary for the purpose authorized in this Agreement. The County of Monterey shall keep an accurate written account of all such copies and derivative files, which shall be furnished to the RODS Laboratory upon request. Upon termination of this Agreement or at the request of the RODS Laboratory, the OTC Data shall be destroyed at the County of Monterey's expense, and any derivative files and copies shall be destroyed.

7. Support Services. Support for the Services shall consist solely of an online user manual providing instructions on use of the system, help in verifying possible outbreaks indicated by greater-than-expected increases in OTC sales via the NRDM online ticket report system (<https://internal.rods.pitt.edu/jira/secure/Dashboard.jspa>) requiring username and password, notification of system downtime via email, and thirty (30) days' notice of changes to the user manual. The RODS Laboratory will provide assistance in interpreting the OTC Data on a reasonable best effort basis.
8. Term. The term of this Agreement shall begin on April 12, 2024, and shall end on April 11, 2025. Provided that the Contract is renewed in writing, and the County of Monterey agrees to continue to pay for Services, this Agreement may be renewed in one (1) year increments, at a revised service fee, unless this Agreement is terminated in accordance with Section 9 hereof prior to the end of the then current term.
9. Termination. Either Party may terminate this Agreement without cause upon sixty (60) days prior written notice to the other Party. In such event, Sections 4, 6, 13 and 14 shall survive the termination of this Agreement and the annual fee paid to the University pursuant to Section 3 shall be prorated for the year in which the Agreement is terminated.
10. Regulatory Compliance. The County of Monterey shall take such actions as are necessary to comply with all applicable federal, state or local statutes or regulations related to the OTC Data. Such actions shall be completed within the times specified for compliance within such statute or regulation. The University shall have the right at all times to review and inspect the steps taken and procedures implemented by County of Monterey Health Department to assure the anonymity of the OTC Data and the compliance with all such requirements and the terms of this Agreement.
11. University's Disclaimer of Warranties. THE UNIVERSITY OF PITTSBURGH DISCLAIMS ALL WARRANTIES WITH RESPECT TO RODS, THE OTC DATA AND THE NRDM, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF DATA ACCURACY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
12. Audits. The RODS Laboratory shall be permitted to perform reasonable audits to ensure that appropriate controls have been established so that data management and use is consistent with the terms of this Agreement. Based upon such audits, the RODS Laboratory may require the County of Monterey Health Department to modify its practices to comply with any of the RODS Laboratory's requested changes.
13. Confidential Information.
 - (a) Each Party shall hold all Confidential Information of the other Parties in strict confidence and shall not disclose any Confidential Information to any person or entity except as authorized by this Agreement or as required by law.

- (b) Each Party shall use the Confidential Information of the other Parties only for the purpose of performing the public health surveillance functions of the Project and for no other purposes whatsoever. No Party shall release any Confidential Information of any other Party without the express written consent of the other Parties.
 - (c) Each Party shall strictly limit access to the relevant portions of the Confidential Information of the other Parties to such of its employees as delineated herein who have a need to know such portions of the Confidential Information regarding the Project.
 - (d) No Party shall make copies of any Confidential Information of the other Parties, except for its internal use regarding the Project.
 - (e) Each Party shall return or destroy all originals and copies of the Confidential Information (and derivatives thereof) immediately upon request of an owner Party.
 - (f) The nonuse and confidentiality limitations and all other restrictions set forth herein shall be binding upon the subsidiary and affiliated entities of the Parties hereto. Each Party hereto shall take such necessary actions to ensure the compliance herewith by any such subsidiary and affiliated entities.
14. Hold Harmless. Each Party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No Party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.
15. Notice. Any notice or communication pursuant to this Agreement shall be sufficiently made or given if sent by certified or registered mail, postage prepaid, or by overnight courier, with proof of delivery by receipt, addressed to the address below or as either party shall designate by written notice to the other party.

In the case of University:

University of Pittsburgh
RODS Laboratory, Department of Biomedical Informatics
The Offices at Baum, 4th Floor
5607 Baum Boulevard
Pittsburgh, PA 15206-3701
Attention: Maria Bond, Program Manager
National Retail Data Monitor
Telephone: (412) 624-7583
Facsimile: (412) 648-9118
E-mail: bond@pitt.edu

In the case of the County of Monterey:

County of Monterey Health Department
Public Health Bureau-Accounts Payable
1270 Natividad Road
Salinas, CA. 93906
(831)755-4500
412-phfiscal@co.monterey.ca

County of Monterey
1270 Natividad Road
Salinas, CA. 93906
Attention: Diksha Ramnani
Telephone: (831)755-4553
E-mail: ramnanid@co.monterey.ca.us

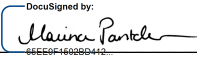
16. Publication. The Parties acknowledge that the NRDM is a service and research project of the University. Notwithstanding any other terms contained in this Agreement, the University shall have the right to publish the results of its research involving the NRDM, provided that such publications contain only aggregate, de-identified data and do not identify the County of Monterey without prior consent.
17. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the date first above written.

COUNTY OF MONTEREY

Approve as to Form

By: 
Title: County Counsel

Date: 3/11/2024 | 11:47 AM PDT

By: _____

Name: Elsa Mendoza Jimenez
Title: Director of Health Services

Date: _____

Approve as to Fiscal Provisions

By: 
Title: Auditor/Controller

3/12/2024 | 7:05 AM PDT

UNIVERSITY OF PITTSBURGH – OF THE
COMMONWEALTH SYSTEM OF HIGHER
EDUCATION

By: Rob A. Rutenbar/NLB

Name: Rob A. Rutenbar
Title: Senior Vice Chancellor for Research

Date: 02/29/2024

EXHIBIT A**AUTHORIZED USER AGREEMENT****University of Pittsburgh Real-time Outbreak Disease Surveillance System - National Retail Data Monitor**

1. The County of Monterey (“Authorized User”) will receive upon the execution of this Agreement a password-protected account for access to the National Retail Data Monitor (NRDM) to view aggregate sales data of over-the-counter (“OTC”) medications for city/county/state of County of Monterey in the state of California. Authorized User has represented that he/she is authorized by the appropriate state/regional public health authority to review public health information for this state/region.
2. The Authorized User agrees that this password will not be shared with anyone.
3. Access to the OTC Data is provided to Authorized User for the sole purpose of public health surveillance.
4. The OTC Data are provided to the University of Pittsburgh under Confidentiality Agreements with third party data providers. The Authorized User understands and agrees that the OTC Data may not be disclosed to any other third party, or used for any purpose other than public health surveillance, without the prior written permission of the University of Pittsburgh.
5. Any breach of the terms of this Agreement by Authorized User will result in the immediate termination of Authorized User’s account. The University retains the right to take legal action, including seeking an injunction to prevent Authorized User’s breach of this Agreement.
6. The Authorized User may not use the name or marks of the University of Pittsburgh or participating retailers in any press release or publicity without the prior written permission of the University and/or participating retailers. The RODS or NRDM systems, including interface screens, may not be used in any publicity without prior written approval of the University of Pittsburgh.
7. NO WARRANTIES OF ANY KIND ARE MADE BY UNIVERSITY OR THE ENTITIES SUPPLYING THE OTC DATA WITH RESPECT TO THE OTC DATA OR ANY USE THEREOF, AND UNIVERSITY AND THE DATA PROVIDERS HEREBY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Neither University nor the data providers shall be liable for any claims, losses or damages of any kind arising from Authorized User’s use of the OTC Data. It is understood that no patent, copyright, trademark or other proprietary right or license is granted by this Agreement, and ownership of all rights, title and interests in and to the OTC Data remain vested in the entities that supplied such data.

Diksha Ramnani

Authorized User Signature	Title	Date
Monterey County Health Department Public Health Bureau	Monterey	
Health Department Name	County	
1270 Natividad Road	Salinas CA 93906	
Address	City/State	
(831)755-4553	ramnanid@co.monterey.ca.us	
Phone Number	Fax Number	E-mail Address

Approved by authorized representative of Health Department:

Elsa Mendoza Jimenez	Director of Health Services		
Signature	Name	Title	Date

Scan signed agreement & send to Maria Bond, Program Manager, NRDM bond@pitt.edu, or fax to 412-648-9118.