



Whereas, the PERMITTED USER desires to obtain from THEW access to the Data for the purpose of conducting the purpose and project described hereto on Attachment 1 (the “Project”);

Now, therefore, the parties agree as follows:

1. Subject to the terms and conditions of this Agreement, THEW and NYUSoM agree to share the Data to the PERMITTED USER for use in the Project.
2. The PERMITTED USER represents and warrants further that the PERMITTED USER shall not disclose, release, sell, rent, lease, loan, or otherwise grant access to the Data to any person. The PERMITTED USER agrees that, within the PERMITTED USER’s research group, access to the data covered by this Agreement shall be limited to individuals on a need-to-know basis only. The PERMITTED USER agrees to establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or access to the Data.
3. No studies other than those specifically outlined in Attachment 1 will be conducted by the PERMITTED USER with the Data without the prior written consent of NYUSoM. If additional studies are desired by the PERMITTED USER, such additional studies may be added by a letter sent by PERMITTED USER and approved by NYUSoM.
4. Except as otherwise provided in this Agreement, THEW and the PROVIDERS hereby exclude any and all warranties, implied or express, including warranties of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE or of non-infringement of patents or other proprietary rights. In no event shall either THEW or the PROVIDERS be liable for direct, indirect, special, incidental or consequential damages in connection with the Data.
5. The PERMITTED USER acknowledges that THEW is not responsible for the content of the THEW database, including the Data.
6. The PERMITTED USER undertakes to use the Data in accordance with all relevant laws and regulations.
7. All Data contained in the THEW is intended to be de-identified for the purposes of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations promulgated thereunder. In the event of an inadvertent disclosure of “protected health information” as defined in 45 CFR Section 164.501, each Party agrees to (a) fully comply with HIPAA and the regulations promulgated thereunder with respect to the use of such protected health information and (b) inform the other parties of such disclosure, and the PERMITTED USER agrees not to use or disclose such protected health information.

8. In an effort to avoid simultaneous submission of similar articles to scientific journals, the PERMITTED USER agrees to join an authorship group consisting of representatives from THEW and the PROVIDERS for all publication based on findings from analysis of the Data. Notification for scheduling conference call and meetings shall be directed to the THEW point-of-contact specified in Section 18 and the NYUSoM points-of-contact specified in Section 19. The PERMITTED USER agrees to send a reprint of the manuscript that uses the THEW Data to the THEW and the NYUSoM points-of-contact specified in Sections 18 and 19.
9. The PERMITTED USER agrees that the following credit line and disclaimer will be used on all reports, publications and other materials resulting from use of the Data:

**Data used for this research was obtained in the Occluded Artery Trial supported by Grant No. R01 HL 07546-04S1/HL/NHLBI NIH HHS, R01 HL075456/HL/NHLBI NIH HHS, U01HL062509/HL/NHLBI NIH HHS, and U01HL062511/HL/NHLBI NIH HHS, and provided by New York University School of Medicine and The State University of New York at Stony Brook, and the Telemetric and Holter ECG Warehouse of the University of Rochester (THEW), NY.**

10. The PERMITTED USER agrees that, in the event THEW or a PROVIDER determine or has a reasonable belief that the PERMITTED USER has made or may have made disclosure of the aforesaid Data in a manner that is not authorized by this Agreement, or has used the aforesaid files for commercial purposes, THEW or a PROVIDER in its sole discretion may require the PERMITTED USER to: (a) promptly investigate and report to THEW and the PROVIDER the PERMITTED USER's determinations regarding any alleged or actual unauthorized disclosure and/or uses, (b) promptly resolve any problems identified by the investigation; (c) if requested, submit a formal response to an allegation of unauthorized disclosure and/or use; (d) if requested, submit a corrective action plan with steps designed to prevent any future unauthorized disclosures and/or uses; and (e) if requested return the Data files to THEW. The PERMITTED USER understands that as a result of THEW's or a PROVIDER's determination or reasonable belief that unauthorized disclosures and/or uses have taken place, THEW may refuse to release further data to the PERMITTED USER for a period of time to be determined by the THEW.
11. The PERMITTED USER shall indemnify, defend and hold harmless THEW and the University of Rochester, NYUSoM, SUNYRF, their affiliates, and each of their employees, officers, trustees and agents from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorneys fees) arising out of or in connection with the use of all or any portion of the Data by the PERMITTED USER or any of its subcontractors, agents, employees or other assigns.

12. This Agreement shall cover the Data shared hereunder and shall continue indefinitely unless earlier terminated at the request of any of the parties. If THEW or NYUSoM elect to terminate this Agreement, the PERMITTED USER will cease to use the Data and return to the extent possible the Data to THEW.
13. Nothing in this Agreement shall be construed as any representations or commitment that any of the parties will engage the services of the other for any future arrangement.
14. This Agreement is expressly made subject to all laws and regulations of the State of New York, without regard to any choice of law principles.
15. The terms and provisions of this Agreement represent the entire understanding of the parties with respect to the transfer of the Data by THEW to the PERMITTED USERS and the use that the PERMITTED USERS may make of the Data. This Agreement addresses the conditions under which THEW and the PROVIDERS will disclose and the PERMITTED USERS will obtain and use the Data. The parties agree further that any additional instructions or interpretations concerning this Agreement or the Data specified herein but not specified in this agreement shall not be valid unless issued in writing by both the THEW and NYUSoM point-of-contacts specified in Sections 18 and 19.
16. All parties mutually agree that PERMITTED USER shall not obtain any right, title, or interest in any of the Data.
17. All parties mutually agree that the following named individual will be designated as "point-of-contact" for the Agreement on behalf of PERMITTED USER.

[Name]

[Title]

[Address]

[Tel.]

[E-mail address]

18. All parties mutually agree that the following named individual will be designated as "point-of-contact" for the Agreement on behalf of THEW.

Jean-Philippe Couderc/Room No.4322  
265 Crittenden Blvd., CU 420653  
Rochester, NY 14642-0653  
585-275-1096  
heartjpc@heart.rochester.edu

19. All parties mutually agree that the following named individual will be designated as the "points-of-contact" for the Agreement on behalf of NYUSoM.

NYUSoM:

New York University  
650 First Avenue, 6<sup>th</sup> Floor  
New York, NY 10016  
Attention: Abram M. Goldfinger  
Executive Director, Industrial Liaison/Technology Transfer  
Tel: (212) 263-8178  
E-Mail: [Abram.Goldfinger@nyumc.org](mailto:Abram.Goldfinger@nyumc.org)

and

Judith Hochman, M.D.  
New York University School of Medicine  
530 First Avenue, Skirball 9R  
New York, New York 10016  
Tel: 212-263-6927  
E-Mail: [Judith.Hochman@nyumc.org](mailto:Judith.Hochman@nyumc.org)

20 All parties mutually agree that the following named individual will be designated as the "points-of-contact" for the Agreement on behalf of SUNYRF

N5002 Melville Library  
SUNY at Stony Brook  
Stony Brook, NY 11794-3369  
Attn: Jennifer Hsieh, Assistant Director  
Email: [shsieh@notes.cc.sunysb.edu](mailto:shsieh@notes.cc.sunysb.edu)  
Office of Technology Licensing and Industry Relations

Eric J. Rashba, MD  
Stony Brook University Medical Center  
Cardiology Division  
HSC T16-080  
Stony Brook, NY 11794  
Tel: 631-444-3575  
Email: [eric.rashba@sbumed.org](mailto:eric.rashba@sbumed.org)

21. By signing this Agreement, the PERMITTED USER agrees to abide by all provisions set out in this Agreement for protection of the Data.

22. The undersigned individuals hereby attest that he or she is authorized to enter into this Agreement on behalf of his or her respective party and agrees to all the terms specified herein. With the exception of SUNYRF, which shall be a third party beneficiary for all purposes under this Agreement, there are no intended third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the first date written above.

UNIVERSITY OF ROCHESTER  
on behalf of THEW

By : \_\_\_\_\_  
Name:  
Title:

NEW YORK UNIVERSITY SCHOOL OF MEDICINE

By: \_\_\_\_\_  
Name: Abram Goldfinger  
Title: Executive Director, Industrial Liaison/Tech Transfer

[                    ]

By: \_\_\_\_\_  
Name:  
Title:

## ATTACHMENT 1

*[INSERT: PERMITTED USER must provide a BRIEF PROJECT DESCRIPTION (1-2 paragraphs) of their intended use of the DATA .]*