

Hawaii State Department of Health, Chronic Disease Prevention and Health Promotion Division (DOH-CDPHPD) Data Use Agreement

This Data Use Agreement (“Agreement”), effective as of _____ (“Effective Date”), is entered into by and between _____ (“RECIPIENT”) and the Hawaii State Department of Health, Chronic Disease Prevention and Health Promotion Division (“DOH-CDPHPD”). The purpose of this Agreement is to provide RECIPIENT with access to certain Healthcare Information (HI) in the form of a Limited Data Set (LDS) for use in its Research and Public Health analyses and for the Health Care Operations of DOH-CDPHPD.

All PARTIES to this agreement understand and acknowledge that they are not subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), however, PARTIES may refer to HIPAA requirements, definitions, and scope throughout this agreement for its purposes. Other federal and State confidentiality laws may be applicable.

1. Items excluded from the LDS. DOH-CDPHPD shall prepare and furnish to RECIPIENT a LDS containing certain HI excluding any of the following identifiers of the individuals who are the subject of the HI, or of relatives, employers, or household members of the individuals: names; postal address information other than state, city, community, or zip code; telephone numbers; fax numbers; electronic mail addresses; social security numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers, Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.
2. Minimum Necessary Data Fields in the LDS. In preparing the LDS, DOH-CDPHPD or its Business Associate shall include the data fields specified by the PARTIES from time to time, which are the minimum necessary to accomplish the purposes set forth in Section 4 of this Agreement. RECIPIENT understands that, while all efforts have been taken to ensure the data are of high quality, there is no guarantee of accuracy for the data and the possibility of errors exists.
3. Responsibilities of RECIPIENT. RECIPIENT agrees to:
 - a. Use or disclose the LDS only as permitted by this Agreement or as required by law, and only for the project described and approved in the Proposal Approval Form submitted with the current data request;
 - b. Use appropriate physical safeguards (e.g. lockable cabinets, secured facility) to prevent use or disclosure of the LDS other than as permitted by

this Agreement or required by law;

- c. Report to DOH-CDPHPD any use or disclosure of the LDS of which it becomes aware that is not permitted by this Agreement or required by law;
 - d. Require any of its subcontractors or agents that receive or have access to the LDS to agree to the same restrictions and conditions on the use and/or disclosure of the LDS that apply to RECIPIENT under this Agreement;
 - e. Shall not resell or redistribute the LDS to any non-employee agent or subcontractor, without the prior written consent of DOH-CDPHPD;
 - f. Shall not use the information in the LDS to identify or contact the individuals who are data subjects, or the individual's relatives, employers, or household members; and
 - g. Provide DOH-CDPHPD a copy of the draft manuscript(s), presentations, fact sheets, posters, or any other material developed for dissemination *prior to* release of the findings for review and approval by DOH-CDPHPD.
4. Permitted Uses and Disclosures of the LDS. RECIPIENT may use and/or disclose the LDS for its Research and Public Health activities and the Health Care Operations of DOH-CDPHPD.
5. Term and Termination.
- a. Term. The term of this Agreement shall commence as of the Effective Date and shall continue for so long as RECIPIENT retains the LDS, unless sooner terminated as set forth in this Agreement.
 - b. Termination by RECIPIENT. RECIPIENT may terminate this agreement at any time by notifying DOH-CDPHPD and returning or destroying the LDS.
 - c. Termination by DOH-CDPHPD. DOH-CDPHPD may terminate this agreement at any time by providing thirty (30) days prior written notice to RECIPIENT.
 - d. For Breach. DOH-CDPHPD shall provide written notice to RECIPIENT within ten (10) days of any determination that RECIPIENT has breached a material term of this Agreement. DOH-CDPHPD shall afford RECIPIENT an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to agree on mutually agreeable terms for cure within thirty (30) days shall be grounds for the immediate termination of this Agreement by DOH-CDPHPD.

- e. Effect of Termination. Sections 3, 4, 5(e), and 7 of this Agreement shall survive any termination of this Agreement under subsections c or d.

6. Security and Technical Safeguards

- a. PARTIES to this Agreement understand and agree that ownership of the data contributed by the Disclosing Agency is retained by the Disclosing Agency.
- b. PARTIES shall perform an annual information security risk analysis of their own data systems. PARTIES shall use either the standard security risk analysis/assessment currently used by the DOH HIPAA Office Security section or a third-party risk assessment meeting the ISO/IEC 27002 standards and using the National Institute of Standards and Technology Special Publication 800-30 (NIST SP800-30) process and approved by the Office of Enterprise Technology Services.
- c. Each PARTY shall use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the data it creates, receives, maintains, or transmits.
- d. Depending on the information systems accessed or types of data provided, PARTIES may be subject to user background checks and may be required to complete certain request forms prior to being granted access.
- e. When information is transferred electronically through the internet, information shall be encrypted and transmissions shall be consistent with the rules and standards promulgated by federal statutory requirements regarding the electronic transmission of identifiable information.

7. Miscellaneous.

- a. 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 5.
- b. 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.
- c. 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.

- d. Headings. The headings and other captions in this Agreement are for convenience and reference only and shall not be used in interpreting, construing, or enforcing any of the provisions of this Agreement.

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

DOH-CDPHPD

Signature: _____

Print Name: _____

Print Title: _____

RECIPIENT

Signature: _____

Print Name: _____

Print Title: _____

ADDITIONAL RECIPIENT

Signature: _____

Print Name: _____

Print Title: _____

ADDITIONAL RECIPIENT

Signature: _____

Print Name: _____

Print Title: _____

ADDITIONAL RECIPIENT

Signature: _____

Print Name: _____

Print Title: _____