

## DATA USE AGREEMENT

This Data Use Agreement ("Agreement") is made and entered into by and between \_\_\_\_\_, an operating division of \_\_\_\_\_ ("Covered Entity"), and the **Oregon Health Authority Public Health Division (OPHD)**, an agency of the State of Oregon ("Data Recipient" and "Public Health Authority").

### WITNESSETH:

**WHEREAS**, Covered Entity may disclose or make available to Data Recipient, and Data Recipient may use, disclose, receive, transmit, maintain or create from, certain information in conjunction with public health surveillance and as permitted or required by law; and

**WHEREAS**, Data Recipient is a public health authority and under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Covered Entity may disclose protected health information to Data Recipient and Data Recipient may use and disclose protected health information for public health purposes and activities under 45 CFR § 164.512(b)(1)(i); and

**WHEREAS**, Data Recipient has the duty to assess the public health status and needs of the state through statewide data collection and has the responsibility to conduct epidemiological investigations of public health importance under ORS 433.004 ; and

**WHEREAS**, Covered Entity is committed to compliance with HIPAA and regulations promulgated thereunder and other applicable law; and the Health Information Technology for Economic and Clinical Health ("HITECH").

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### A. DEFINITIONS

Terms used but not otherwise defined in the Agreement shall have the same meaning as those terms in the Privacy Rule.

1. Covered Entity shall have the same meaning as the term "covered entity" in 45 CFR Sect. 160.103 of the Privacy Rule.
2. Public Health Authority shall have the same meaning as the term "public health authority" in 45 CFR Sect. 164.502 of the Privacy Rule.

3. Privacy and Security Rules shall mean the Standards for Privacy of Individually Identifiable Information and the Standards for Electronic Security at 45 CFR Part 160, 162 and Part 164, Subparts, as amended from time to time.
4. Protected Health Information or PHI shall have the same meaning as the term "protected health information" in 45 CFR Sect. 160.103 of the Privacy Rule, to the extent such information is used, created or, received, maintained or transmitted by Data Recipient from Covered Entity.
5. Electronic Protected Health Information or EPHI shall have the same meaning as the term "electronic protected health information" in 45 CFR Sect. 160.103 of the Privacy Rule, to the extent such information is used, created, received, maintained or transmitted by Data Recipient from Covered Entity.
6. The BioSense System means both the cloud-enabled, web-based platform and tools used to store, maintain, process, display, receive, analyze, and destroy Data, and the program run by the Centers for Disease Control and Prevention (CDC) that tracks health problems as they evolve and provides public health officials with data, information and tools for national situational awareness.

## **B. SCOPE, PURPOSE AND DATA SET**

1. This Agreement sets forth the terms and conditions pursuant to which Covered Entity will disclose certain PHI and EPHI to Data Recipient.
2. Except as otherwise specified herein, Data Recipient may make all uses and disclosures of the Data Set as defined herein necessary to conduct the following public health surveillance project known as ESSENCE (the "Project"): The Project is to assist Data Recipient and Covered Entity in monitoring and detecting syndromic trends in emergency room patients. Data Recipient may also make all uses and disclosures of the Data Set for the following purposes:
  - a. To facilitate the interchange of information that can be used to coordinate responses and monitor events routinely and during a potential health event;
  - b. For early detection and characterization of events (or health-related threats) by building on state and local health departments systems and programs;
  - c. To provide health-related information for: (i) public health situation awareness, (ii) routine public health practice;
  - d. To improve the ability to detect emergency health threats by supporting the enhancement of systems to signal alerts for potential problems in collaboration with federal, state and local health jurisdictions and other potential stakeholders.
3. Covered Entity will provide the data elements marked as "R" or "RE" ("Data Set") set forth in Appendix A attached to this Agreement and incorporated by reference herein on behalf its hospitals and urgent care facilities. This Data Set comprises the minimum number of data elements necessary for conducting ongoing public health duties (i.e., syndromic surveillance).

4. Covered Entity shall submit the Data Set information to the Data Recipient using the designated secure method (Secure File Transfer Protocol or other means). Data Recipient will parse, process, and analyze the Data Set information, creating alerts, graphs, charts, and maps and other reports on the Project web application. Data Recipient will then provide Covered Entity with access to data reports created from the Data Set via Data Recipient's systems (secure login of the ESSENCE website) for Covered Entity's health care operations.

### **C. OBLIGATIONS AND ACTIVITIES OF DATA RECIPIENT**

1. Data Recipient agrees not to use or disclose the Data Set for any purpose other than as set forth in Section B. Data Recipient shall not use or disclose information in the Data Set in any manner that would violate the requirements of the Privacy and Security Rules as those apply to a Public Health Authority. Data Recipient will not permit others who are not designated public health authorities, not authorized by Data Recipient to assist with the Project or otherwise legally authorized to access the Data Set.
2. Data Recipient agrees to implement administrative, physical and technical safeguards to protect the security and confidentiality, integrity and availability of PHI and EPHI that Data Recipient receives, maintains or creates, and prevent its unauthorized use or disclosure. At a minimum, Data Recipient will maintain Covered Entity's Data Set in a secured server and only permit access to the Data Set to employees, subcontractors, or grantees who have signed confidentiality agreements and have a need to know the information maintained in the Data Set for the purposes set forth in Section B. Disclosure to the following Third Parties is permitted:
  - a. CDC or its subcontractors for use in the national BioSense System.
  - b. The Oregon Public Health Division and county public health departments for syndromic surveillance, routine disease investigations, and situational awareness activities.
  - c. Johns Hopkins University's Applied Physics Laboratory (JHU/APL), under U.S. government contract number N00024-03-D-6606/0116, JHU/APL has developed the Early Notification of Community-Based Epidemics (ESSENCEII) System. ESSENCE receives data sets, groups them in syndromes and presents advanced analytical support and outbreak detection algorithms to OPHD officials and data providers.
3. Data Recipient agrees to report to the Covered Entity any use or disclosure of the Data Set not provided for by this Agreement of which it becomes aware, including without limitation, any disclosure of PHI and EPHI to an unauthorized subcontractor, or any security incident as that term is defined in the Security Rule or any breach as that term is defined by the Privacy Rule and HITECH ACT within forty eight (48) hours of its discovery by Data Recipient.

4. Data Recipient agrees to ensure that any agent, including a subcontractor or grantee, to whom it provides the Data Set agrees in writing to the same restrictions and conditions that apply through this Agreement to the Data Recipient with respect to such information.
5. Data Recipient will comply with all applicable laws and regulations regarding privacy and security of information including without limitation, the Privacy and Security Rules as they apply to a Public Health Authority and OAR 943, Division 14.
6. Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Data Recipient will indemnify, defend and hold harmless Covered Entity, and Covered Entity's directors, officers, agents and employees ("Indemnitees") from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited use or disclosure including any security incident or breach of the Data Set or any other breach of this Agreement by Data Recipient or any subcontractor or agent of Data Recipient.
7. Nothing in this agreement limits the Data Recipient from using and disclosing data that is de-identified in accordance with OAR 943-014-0070.

#### **D. TERM AND TERMINATION**

1. The provisions of this Agreement shall be effective upon execution and shall terminate upon written notice by either party to the other party.
2. Covered Entity shall have the right to terminate this Agreement if Covered Entity determines that Data Recipient has violated a material term of this Agreement. If Covered Entity determines that such a violation has occurred, Covered Entity shall either (a) provide Data Recipient with an opportunity to cure the violation within a specified period of time or (b) if cure is not possible, terminate this Agreement immediately.
3. Either party may terminate this Agreement within 30 days notice to the other party.
4. In the event of termination of this Agreement, Data Recipient on behalf of itself and its subcontractors and agents shall destroy the Data Set received from Covered Entity in compliance with state record retention requirements in ORS 192.105.

#### **E. INFORMATION PRIVACY/SECURITY/ACCESS**

If Covered Entity or its subcontractor(s) require the Access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants Covered Entity or its subcontractor(s) the Access to such OHA Information Assets or Network and Information Systems, Covered Entity shall comply and require all subcontractor(s) to which such access has been granted to comply

with OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time.

## **F. SECURITY**

1. The Covered Entity shall have established privacy and security measures in place that meet or exceed the standards set in laws, rules, and regulations, and that are applicable to Users regarding the safeguarding, security and privacy of Client Records, all Information Assets, regardless of the media, and all Network and Information Systems.
2. The Covered Entity shall prevent any unauthorized access to the OHA Network and Information Systems by its users. The Covered Entity shall ensure the level of security and privacy protection required in accordance with this Agreement is documented in a security risk management plan. The Covered Entity shall make its security risk management plan available to OHA for review upon request.
3. The Covered Entity shall maintain security of equipment and ensure the proper handling, storage and disposal of all Information Assets accessed, obtained, or reproduced through this Agreement to prevent inadvertent destruction or loss, ensure proper disposal when the authorized use of that information ends, consistent with the record retention requirements otherwise applicable to this Agreement.
4. For purposes of this Agreement, “User,” and “Client Records,” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time.

**G. MISCELLANEOUS**

1. The respective obligations of Data Recipient under Section C of this Agreement shall survive termination or expiration of this Agreement.
2. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
3. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
4. The persons signing below have the right and authority to execute this Agreement and no further approvals are necessary to create a binding agreement.
5. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate original effective as of the date of the last party to sign below.

COVERED ENTITY

[Hospital name]

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DATA RECIPIENT

Oregon Health Authority

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX A: Data Elements and Required Data Fields

Data Element Name	Description of Field	Usage
Report Date/Time	Date and time of report transmission from original source (from treating facility).	R
Facility Name (Treating)	Name of the treating facility where the patient originally presented.	O
Facility Identifier (Treating)	Unique facility identifier of facility where the patient originally presented (original provider of the data).	R
Facility / Visit Type	Type of facility or the visit where the patient presented for treatment	RE
Unique Patient Identifier	Unique identifier for the patient.	R
Medical Record #	Patient medical record number.	O
Age	Numeric value of patient age at time of visit	R
Age units	Unit corresponding to numeric value of patient age (e.g. Days, Month or Years)	R
Gender	Gender of patient.	RE
City/Town	City/Town of patient residence.	O
Zip Code	Zip Code of patient home address	RE
County	County of patient home address	RE
State	State of patient home address.	RE
Country	Country of patient home address.	RE
Race	Race of patient	RE
Ethnicity	Ethnicity of patient	RE
Unique Visiting ID	Unique identifier for a patient visit.	R
Visit Date / Time	Date/Time of patient presentation.	R
Date of onset	Date that patient began having symptoms of condition being reported	RE
Patient Class	Patient classification within facility	RE
Chief Complaint / Reason for visit	Short description of the chief complaint or reason of patient's visit, recorded when seeking care	RE
Triage Notes	Triage notes for the patient visit	RE
Diagnosis / External Cause of Injury Code	Diagnosis code or external cause of injury code (for injury-related visits) of patient condition.	RE
Clinical Impression	Clinical impression (free text) of the diagnosis	RE
Diagnosis Type	Qualifier for Diagnosis / Injury Code specifying type of diagnosis	RE
Discharge Disposition	Patient's anticipated location or status following ED visit	RE
Disposition Date / Time	Date and time of disposition	RE
Initial Temperature	1st recorded temperature, including units	RE
Initial Pulse Oximetry	1st recorded pulse oximetry value	RE