

**DATA USE AGREEMENT**

This Data Use Agreement (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the New Hampshire Department of Health and Human Services (NH DHHS), and \_\_\_\_\_ (“Data Recipient”).

**WITNESSETH:**

WHEREAS, Recipient shall have the right to use all data provided to it by NH DHHS for the Research, Public Health or Health Care Operations purposes as listed below:

**PLEASE PROVIDE NAME OF STUDY:**

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**RESTRICTIONS:**

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WHEREAS, NH DHHS and Data Recipient are committed to compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and regulations promulgated thereunder; and

WHEREAS, the purpose of this Agreement is to satisfy the confidentiality obligations of DHHS and to ensure the integrity and confidentiality of certain information disclosed or made available to Data Recipient and certain information that Data Recipient uses, discloses, receives, transmits, maintains or creates, from NH DHHS.

NOW, THEREFORE, in consideration of the foregoing recitals the parties agree as follows:

**A. DEFINITIONS**

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

1. Individual shall have the same meaning as the term “individual” in 45 CFR Sect. 164.501 of the Privacy Rule and shall include a person who qualifies as a personal representative in accordance with 45 CFR Sect. 164.502(g) of the Privacy Rule.

2. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended from time to time.

3. Protected Health Information or PHI shall have the same meaning as the term “protected health information” in 45 CFR Sect. 164.501 of the Privacy Rule, to the extent such information is created or received by Data Recipient from NH DHHS.

4. Required by Law shall have the same meaning as the term “required by law” in 45 CFR Sect. 164.501 of the Privacy Rule.

**B. SCOPE AND PURPOSE**

1. This Agreement sets forth the terms and conditions pursuant to which NH DHHS will disclose certain Data to the Data Recipient.

2. This Agreement and the release of data is conditional to strict adherence to any and all terms and conditions mandated by any administratively attached board, review committee or personnel authorized by NH DHHS to review requests for confidential data for health-related research or other purposes, which includes, but is not limited to, the NH Vital Records Privacy Board, the DPHHS Hospital Discharge Data Review Committee and the NH Cancer Registry Review Committee.

3. Except as otherwise specified herein, Data Recipient may make all uses and disclosures of the Data Set necessary to complete the study.

4. In addition to the Data Recipient, the individuals, or classes of individuals, who are permitted to use or receive the Data Set for purposes of the Project is limited to:

**PLEASE LIST NAMES OF INDIVIDUALS WHO WILL BE GRANTED ACCESS TO DATA:**

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

1. Data Recipient agrees to not use or disclose the Data Set for any purpose other than the project or as Required by Law.

2. Data Recipient shall employ technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized access to the data. Such safeguards should include, but not be limited to, locking access to all electronic and print files. NH DHHS shall be notified if the identified contact person and/or overall responsible party change due to personnel turnover, or for any other reason. The Data Recipient agrees that data, statistics, or information derived from the data that directly or inferentially identifies any individual(s) (including cases, family members, or providers) shall not be published or released in any form.

3. Data Recipient agrees that derived tabular data, percentages, subtotals, totals, or statistics prepared for publication, or public presentation, or distribution of research/study results shall neither display cells with frequencies between one and four, nor information that allows the derivation of cells with frequencies between one and four when the unit of analysis is at the individual town level, or any grouping of towns smaller than a county level.

4. Data Recipient agrees that neither the data, nor copies of the data shall be released, in whole or in part for any reason, to any other party without the written consent of NH DHHS.

5. Data Recipient agrees that linking the data to other databases in a manner not approved by NH DHHS is prohibited as is commercial use, *i.e.*, sale or distribution for profit of the requested health data. Any attempt to identify individuals through any method including linkage is expressly prohibited unless approved in advance by NH DHHS.

6. Data Recipient agrees to report to NH DHHS 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 to an unauthorized subcontractor, within ten (10) days of its discovery.

7. Data Recipient agrees to ensure that any agent, including a subcontractor, to whom it provides the Data Set, agrees to the same restrictions and conditions that apply through this Agreement to the Data Recipient with respect to such information.

8. Data Recipient will indemnify, defend and hold harmless NH DHHS and any of NH DHHS's affiliates, and their respective trustees, officers, directors, employees and agents from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited Use or Disclosure of the Data Set or any other breach of this Agreement by Data Recipient or any subcontractor, agent or person under Data Recipient's control.

9. Data Recipient agrees that any report using data or statistics derived from the data that has been prepared for publication, public presentation, or distribution shall acknowledge the Department of Health and Human Services as the source of data.

10. The Data Recipient agrees to specify that the analyses, conclusions, interpretations, and recommendations drawn from such data are solely those of the Data Recipient, and are not necessarily those NH DHHS.

11. Data Recipient agrees that if an unauthorized disclosure of these data is made, the NH DHHS may impose any or all of the following measures: (1) request a formal response to an allegation of an unauthorized disclosure, (2) require submission of a corrective action plan to prevent future unauthorized disclosure; (3) require the return of the data; and/or (4) sanctions against further release of data to the organization/requestor in question.

12. Data Recipient acknowledges that criminal liability under New Hampshire state statutes for vital records data, RSA 126:24-i, including possible class B felony charges, may apply with respect to any disclosure of information in the file(s) that is inconsistent with the terms of the Agreement. The Data Recipient further acknowledges that criminal penalties under Federal privacy statutes may apply if it is determined that the Requestor, or any individual employed or affiliated therewith, knowingly and willfully obtained the file(s) under false pretenses.

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

1. Data Recipient will be approved to retain the data for a specific period of time as determined by the authorizing data review committee. Data Recipient may request an extension to this retention date through the completion of a Request for Continued Use of Data Form

submitted to NH DHHS prior to the actual retention date. If NH DHHS does not agree to an extended retention, the data shall be destroyed or returned to NH DHHS and the Data Recipient shall verify the destruction or return to NH DHHS by means of a notarized statement as part of the Termination Report. If NH DHHS agrees to an extended retention date, the terms and conditions of this agreement will carry forward until the termination of the extended retention date.

2. In the event that the Data Recipient determines that returning or destroying the data is infeasible, Data Recipient shall provide to NH DHHS notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of the data is infeasible; the Data Recipient shall extend the protections of this Data Use Agreement to such data and limit further uses and disclosures of such data to those purposes that make the return or destruction infeasible, for so long as Data Recipient maintains the data.

3. This agreement may be cancelled or terminated without cause at any time, subject to the restrictions and prohibitions set forth herein, by providing not less than thirty (30) days prior written notice thereof to the Parties.

#### **E. MISCELLANEOUS**

1. A reference in this Agreement to a section in the Privacy Rule means the section as amended or as renumbered.

2. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for NH DHHS to comply with the requirements of the Privacy Rule and any and all uses and disclosures of data not presently addressed herein.

3. The respective rights and obligations of Data Recipient under Section C of this Agreement shall survive termination of this Agreement.

4. Any ambiguity in this Agreement shall be resolved to permit NH DHHS to comply with the Privacy Rule.

5. There are no intended third party beneficiaries to this Agreement. Without in any way limiting the foregoing, it is the parties' specific intent that nothing contained in this Agreement gives rise to any right or cause of action, contractual or otherwise, in or on behalf of the individuals whose PHI is Used or Disclosed pursuant to this Agreement.

6. No provision of this Agreement may be waived or modified except by an agreement in writing signed by the waiving or modifying party. A waiver of any term or provision shall not be construed as a waiver or modification of any other term or provision.

7. The persons signing below have the right and authority to execute this Agreement and no further approvals are necessary to create a binding agreement.

8. In the event of any conflict between the terms and conditions stated within this Agreement and those contained within any other agreement or understanding between the parties, written, oral or implied, the terms of this Agreement shall govern. Without limiting the foregoing, no provision of any other agreement or understanding between the parties limiting the

liability of Data Recipient to NH DHHS shall apply to the breach of any covenant in this Agreement by Data Recipient.

9. This Agreement shall be construed in accordance with and governed by the laws of the State of New Hampshire.

10. No party shall be deemed to be the legal representative of the other. Each party agrees to assume complete responsibility for its own employees with regard to federal or state employers liability an withholding tax, workers compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements and other federal, State and local laws.

11. In the event that any New Hampshire, or federal law hereinafter enacted (including applicable rulings of a State or federal regulatory agency) or any current law prohibits the State from providing certain or all of the data requested by Data Recipient, then the State will be relieved of its obligation to provide same.

**F. PREVIEW CLAUSE:**

Any reports or publications shall be previewed by NH DHHS to ensure the integrity of the data release policy. This review is intended only to verify the policy and will not examine content, conclusions, or grammar. The preview and response will take one week from the time of receipt. Responses will be made by phone or e-mail to ensure that this review does not create barriers to dissemination of findings.

IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the Effective Date set forth above.

**COVERED ENTITY**

**DATA RECIPIENT**

\_\_\_\_\_  
**Marcella Jordan Bobinsky**  
**Acting Director**  
**New Hampshire**  
**Department of Health and Human Services**

\_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

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

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