

**DATA USE AGREEMENT**  
**Minnesota Hospital Association**

This Data Use Agreement ("Agreement") is between Minnesota Hospital Association ("MHA") and \_\_\_\_\_ ("Data User").

MHA collects and maintains certain data comprising a limited data set ("Limited Data Set") on behalf of members of MHA pursuant to a Business Associate and Mutual Data Use Agreement. The Limited Data Sets are also made available to certain data users on a de-identified basis (De-Identified Data Set). Limited Data Sets and De-Identified Data Sets are collectively referred to in this Agreement as Data Sets.

Under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and section 924(c) of the Public Health Service Act (42 U.S.C. 299c-3(c)), data that identifies individuals or establishments collected by MHA may be used only for the purpose for which they were collected and consistent with the applicable requirements of HIPAA. The purpose of this Agreement is to obtain satisfactory written contractual assurances from Data User that Data User will use and disclose the Data Sets only for permitted purposes and will appropriately safeguard the information.

The parties agree to the following:

1. **Purpose of Request.** Data User has requested MHA to disclose to Data User data from a Data Set to be used by Data User consistent with this Agreement for the purpose(s) stated in an attached Addendum. Additional Addenda may be attached to this Agreement for multiple data requests by Data User. For any such request, Data User warrants that Data User's request is limited to the minimum necessary data to accomplish the intended purpose of the request and all further uses and disclosures of the Data Set by Data User must be necessary to carry out the stated purpose. Data User represents and warrants to MHA that the purpose(s) stated in the attached Addendum qualifies as research, public health or "health care operations" of a named "covered entity" as those terms are defined in HIPAA. Data User shall indemnify, defend and hold MHA harmless from all claims, liability, causes of action and damages (including civil monetary penalties or settlement amounts entered into with the Secretary of HHS or the Office of Civil Rights) arising out of or in any way relating to the purpose for which the Data Sets were disclosed to Data User or relating to MHA's reliance on the representations provided herein by Data User.
2. **Disclosure to Data User.** MHA shall disclose to Data User the Data Set subject to the following terms and conditions:
  - a. Data User shall not use or further disclose, nor permit any employee, agent or subcontractor to use or further disclose, any data in the Data Sets in any way except for purposes of public health, research or the health care operations of the covered entity specifically named in the attached Addendum or as otherwise required by law;
  - b. Data User is not authorized to use or further disclose the Data Sets in a manner that would violate the requirements of HIPAA if done by MHA or any covered entity member of MHA;
  - c. Data User shall ensure that all employees, agents and subcontractors who will use or have access to information from the Data Sets to agree in writing to adhere to the same restrictions and conditions that apply to Data User hereunder;
  - d. Data User shall ensure through policy and safeguards that only the people identified in the attached Addendum under the control of Data User will receive or have access to, and use or be permitted to use, information from the Data Sets furnished under this Agreement;

- e. Data User shall use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality and integrity of the Data Sets to prevent use or disclosure of information from the Data Sets other than as provided for in this Agreement;
- f. Data User will report to MHA any use or disclosure of the Data Sets not provided for by this Agreement of which Data User becomes aware within three (3) days of discovery of the unauthorized use or disclosure. The report shall include (1) a description of all circumstances surrounding the unauthorized use or disclosure; and (2) the information in the Data Sets that was used or disclosed in violation of this Agreement. Data User shall cooperate as requested by MHA in order to ascertain any additional facts that may be required to determine notification requirements;
- g. Data User shall not disclose nor permit any employee, agent or subcontractor to disclose any information from the Data Sets that identifies persons, directly or indirectly;
- h. Data User will not attempt to link nor permit any employee, agent or subcontractor to attempt to link the hospital stay records of persons in the Data Sets with personally identifiable records from any other source;
- i. Data User will not attempt to use nor permit any employee, agent or contractor to use the Data Sets to learn the identity of any person included in any Data Sets;
- j. Data User shall not sell information contained in the Data Sets except as permitted under 45 C.F.R. § 164.502(a)(5)(ii) and only to the extent consistent with this Data Use Agreement and the purpose(s) stated in the attached Addendum.
- k. Data User will not use nor permit any employee, agent or subcontractor to use information from the Data Sets concerning individual establishments (1) for commercial or competitive purposes involving those individual establishments, (2) to determine the rights, benefits, or privileges of individual establishments nor (3) to report, through any medium, data that could identify, directly or by inference, individual establishments;
- l. When the identities of establishments are not provided in the Data Sets, Data User will not attempt to use nor permit any employee, agent or subcontractor to use the Data Sets to learn the identity of any establishment in the Data Sets;
- m. Data User may not contact nor permit any employee, agent or subcontractor to contact establishments or persons in the Data Sets to question, verify, or discuss data in the Data Sets;
- n. Data User will make no statement nor permit any employee, agent or contractor to make statements indicating or suggesting that interpretations drawn are those of data sources or MHA;
- o. Data User shall acknowledge in all reports based on the Data Sets that the source of the data is the "Minnesota Hospital Association";
- p. Data User may make backup/archival copies of the Data Sets, but shall not otherwise copy or transfer the Data Sets except as otherwise provided in this Agreement; and

q. Data User shall not license, rent, lease, or transfer the Data User's rights to use the Data Sets to any other person except as otherwise provided in this Agreement.

3. **Payment by Data User.** If Payment by Data User is selected on the attached Addendum, in consideration for the receipt of the Data Sets, Data User agrees to pay the fees outlined on the Addendum. This fee represents a reasonable, cost-based fee for preparing and transmitting the Data Sets. All fee amounts payable under this Agreement are exclusive of any taxes or other assessments which are or may be due by reason of this Agreement. Data User agrees to and shall pay any taxes or other assessments which are or may be due by reason of this Agreement. There shall be no refund of the fees paid under any circumstances. Annual fees for the data will not exceed \$5,000.

4. **Term and Termination.** This Agreement shall become effective on the date last signed by the parties below ("Effective Date") and shall continue until terminated by the parties in writing, or MHA terminates the Agreement or any Addendum for a breach as described in this Section. In the event MHA becomes aware of a material breach of Data User's obligations with respect to use and disclosure of the Data Sets, MHA may (i) provide an opportunity for Data User to cure the breach or end the violation and terminate this Agreement in the event Data User does not cure the breach or end the violation within the time specified by MHA or (ii) immediately terminate this Agreement or an attached Addendum.

In the event of an actual or threatened breach by Data User of the permitted uses and disclosures of the Data Sets, MHA shall be entitled to an injunction restraining and enjoining Data User from violating the requirements of this Agreement. Nothing in this Agreement shall be construed as prohibiting MHA from pursuing any other remedies available to MHA for such breach or threatened breach, including the recovery of damages from Data User and no remedy shall be considered exclusive. Data User agrees to be responsible for and pay for any costs and expenses incurred by MHA, including court costs and reasonable attorneys' fees, in the event that MHA is required to enforce its rights under this Agreement.

Upon termination of this Agreement or an attached Addendum for any reason, Data User shall return or destroy all Data Sets received by Data User from MHA (or the Data Set received under a single Addendum if termination applies only to one Addendum in MHA's discretion). This provision shall also apply to information that is in the possession of subcontractors or agents of Data User. Data User shall retain no copies of the information. In the event that return or destruction of the information is not feasible, Data User shall provide to MHA notification of the conditions that make return or destruction not feasible. In such case, Data User shall extend the protections required under this Agreement and limit further uses and disclosures to those purposes that make the return or destruction not feasible, for as long as Data User maintains such information.

5. **Indemnification and Limitation of Liability.** Data User shall indemnify, defend and hold harmless MHA against any claim, loss, or injury, including those of employees of Data User or third parties, and including any governmental fines, penalties or other monetary resolutions, which arise out of or relate to, directly or indirectly, Data User's use or reliance upon, or further disclosure of, the Data Sets, including any use or disclosure that does not comply with the restrictions of this Agreement. MHA makes no representations as to the quality or accuracy of the data in the Data Sets. MHA is not responsible for the operation of the Data Sets, or any claim, loss, or injury resulting from operation or use of the Data Sets by Data User, including those of employees of Data User or third parties. Data User shall bear the entire risk and consequences of operation or use of the Data Sets, and shall bear all risk as to the quality of the data which results from that operation or use.

**6. Miscellaneous**

- a. Assignment. This Data Agreement shall not be assignable by either party except upon the written consent to such assignment by the other party.
- b. Entire Agreement. This Agreement contains the entire understanding and agreement between MHA and Data User regarding Data User's rights to receive the Data Sets. Any previous understandings or agreements between MHA and Data User regarding rights in or usage of the Data Sets, whether oral or written, are null and void as of the date of the signing of this Agreement.
- c. Governing Law. This Agreement shall be governed by the laws and decisions of the State of Minnesota.
- d. Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Data User, MHA, and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Relationship of the Parties. Data User is an independent contractor and not an agent of MHA under this Agreement.

\_\_\_\_\_ **[DATA USER]**

Signed: \_\_\_\_\_ (see next page) Date: \_\_\_\_\_

Print or Type Name: \_\_\_\_\_

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

Address: 250 S 4<sup>th</sup> Street, Room 510

City: Minneapolis State: MN Zip code: 55415

Phone Number: 612-673-2301 Fax: 612-673-3866 E-mail: \_\_\_\_\_

**MINNESOTA HOSPITAL ASSOCIATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**FOR THE CITY:**

\_\_\_\_\_  
**Finance Officer Designee  
City Purchasing Agent  
Enterprise Contract Administrator**

**DATE** \_\_\_\_\_

Approved as to Form:

**By:** \_\_\_\_\_  
**Assistant City Attorney**

**DATE** \_\_\_\_\_

\_\_\_\_\_  
**Gretchen Musicant, Commissioner of Health  
Department Head responsible for Contract Monitoring for this contract**

**DATE** \_\_\_\_\_