

DATA USE AGREEMENT
LOUISIANA DEPARTMENT OF HEALTH AND
PARISH OFFICE OF HOMELAND SECURITY AND EMERGENCY PREPAREDNESS

This Data Use Agreement (the “Agreement”) is made and entered into as of the _____ day of _____, 2020 (the “Effective Date”), by and between the State of Louisiana, Department of Health (“LDH”) and the _____ Parish Office of Homeland Security and Emergency Preparedness (“OHSEP”).

BACKGROUND

- A. On March 11, 2020, the Governor of the State of Louisiana declared a public health emergency related to COVID-19.
- B. LDH, specifically the Office of Public Health (“OPH”), is charged with monitoring the outbreak of COVID-19 and implementing infection control precautions.

DEFINITIONS

- A. “COVID Data” shall mean the information related to COVID-19 cases and test results to which OHSEP will have access pursuant to this Agreement.
- B. “Data Report” shall mean each discrete package of current updated COVID Data that LDH periodically transmits to OHSEP pursuant to this Agreement.
- C. Capitalized terms not defined in this Agreement shall have the definition set forth in the HIPAA Privacy Rule.

MINIMUM NECESSARY

The parties agree that OHSEP’s access to, and use of, the COVID Data shall be limited to the Minimum Necessary, as set forth in the HIPAA Privacy Rule, to accomplish the intended purpose of this use, disclosure or request as detailed in this Agreement.

ACTIVITIES OF LDH

- A. LDH will periodically provide OHSEP with Data Reports listing all individual residents of OHSEP’s parish who have recently tested positive for COVID-19, to the extent that such information is known and reasonably available to LDH, including:
 - 1. Name; and
 - 2. Residence address.
- B. LDH will transmit the Data Reports containing the information described above to OHSEP via a secure web service.**

- C. LDH is and remains the owner of the COVID Data. OHSEP does not obtain any right, title, or interest in any of the data furnished to it by LDH.

OBLIGATIONS AND ACTIVITIES OF OHSEP

- A. The parties agree and understand that OHSEP is permitted use the COVID Data solely on an internal basis for the following purpose directly related to public health: protecting the health and safety of law enforcement officers, emergency medical technicians, and other first responders employed by or working on behalf of OHSEP by enabling them to be aware and take appropriate protective measures when responding to emergency calls involving individuals known to have tested positive for COVID-19. OHSEP shall not use the COVID Data for any other purpose unless specifically authorized by LDH in writing.
- B. OHSEP shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to individual level COVID Data to the public or to any person, company, organization, or agent outside the organizational structure of OHSEP itself and shall not use or further disclose the COVID Data except as specified in this Agreement or as required by law. OHSEP agrees that within its organization, access to the COVID Data shall be limited to the minimum number of individuals necessary to achieve the purpose of this Agreement and to those individuals on a need-to-know basis only.
- C. The parties agree and understand that when OHSEP receives a new Data Report from LDH, it is possible that some of the individuals newly identified in that Data Report may not yet have been notified of their positive COVID-19 test results by their healthcare provider.
- D. Immediately upon receipt of a new Data Report from LDH, OHSEP shall destroy all paper documents containing COVID Data from any previous Data Report by using an appropriate method of destruction, such as crosscut shredding or contracting with a company that specializes in confidential destruction of documents.
- E. Within 30 days after receipt of a new Data Report from LDH, OHSEP shall sanitize all COVID Data in electronic form from any previous Data Report in accordance with NIST Special Publication 800-88 Revision 1, "Guidelines for Media Sanitization", or as approved in writing by LDH. Media may also be physically destroyed in accordance with NIST Special Publication 800-88 Revision 1.
- F. Upon termination of this Agreement for any reason, OHSEP shall sanitize all COVID Data in electronic form and shall destroy all paper documents containing COVID Data still in its possession in accordance with the requirements set forth in the preceding Paragraph D or E, as appropriate.
- G. OHSEP agrees that no COVID Data, any parts or copies thereof, including data derived from COVID Data (electronic, paper, or otherwise), shall be retained when the data is destroyed or sanitized in accordance with the preceding Paragraph D, E, or F, as appropriate, unless authorization in writing for the retention of such data has been

received from LDH. Upon termination of this Agreement for any reason, OHSEP shall certify to LDH the sanitization of all COVID Data in electronic form and the destruction of all paper documents containing COVID Data.

- H. OHSEP agrees to establish and maintain appropriate administrative, technical, and physical safeguards to protect the confidentiality of COVID Data to which it has access and/or in its possession and to prevent unauthorized use or access to the COVID Data.
- I. OHSEP agrees that COVID Data in the possession of OHSEP shall not be co-mingled or stored with other data held by OHSEP. COVID Data in the possession of OHSEP shall be easily identifiable and exportable.
- J. OHSEP agrees that all COVID Data in its possession will be encrypted using industry standard encryption levels or better at all times (i.e., whether data is in transit or at rest).
- K. OHSEP agrees to report to LDH any use or disclosure of the COVID Data not provided for by this Agreement of which it becomes aware, without unreasonable delay, and no later than seventy-two (72) hours after discovery.
- L. OHSEP agrees to mitigate, to the extent practicable, any harmful effect that is known to OHSEP of a use or disclosure of COVID Data by OHSEP in violation of the requirements of this Agreement.
- M. OHSEP agrees to train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities under this Agreement and use or disclose COVID Data, and to discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment if necessary.
- N. The provisions of this Agreement governing the privacy and security of COVID Data shall remain in effect until all data has been destroyed or sanitized in accordance with the preceding paragraph D, E, or F, as appropriate.

TERM AND TERMINATION

- A. This Agreement is effective as of the Effective Date and will terminate when the Governor declares that the public health emergency has ceased, or it may be terminated sooner by LDH at its sole discretion.
- B. If OHSEP commits a material breach or violation of this Agreement, including but not limited to a use or disclosure of the COVID Data for any purpose or in any manner not expressly authorized by this Agreement, LDH, at its sole discretion, may immediately terminate this Agreement.

MISCELLANEOUS

- A. Notice. Notices permitted or required under this Agreement shall be in writing and shall be given by certified or registered mail (in which case notice shall be deemed delivered on the third business day after deposit with adequate postage), or with next-business-day instruction by a recognized courier service (in which case notice shall be deemed delivered on the next business day). Such notices shall be sent to: Alexander C. Billioux, Assistant Secretary, OPH – LDH and _____, OHSEP.

Either party may change its address for purposes of notice by notice thereof to the other party.

- B. Amendment and Waiver. No modification or amendment to this Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound thereby. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself or a waiver of any right under this Agreement.
- C. Entire Agreement. Except as may be expressly provided otherwise herein, this Agreement constitutes the entire agreement between the parties concerning the subject matter hereof.
- D. Severability. If any one or more of the provisions of this Agreement should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held wholly or partly invalid or unenforceable would be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling, and/or the controlling principle of law leading to the ruling, subsequently is overruled, modified, or amended by legislative, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law.
- E. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- F. Counterparts. This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts constitute one and the same instrument.

Thus done and signed by the parties on the date(s) shown below.

Alexander C. Billioux, M.D., D.Phil.
Assistant Secretary, Louisiana Department of
Health, Office of Public Health

Date: _____

Signature

Date: _____

Type/print name: _____

Type/print title: _____

_____ Parish OHSEP