

**MHDO Data Use Agreement**  
**Between**  
**Maine Health Data Organization (MHDO)**  
**And**  
**XXXX**

This MHDO Data Use Agreement (“Agreement or MHDO DUA”) is made and entered into by and between **the Maine Health Data Organization (“MHDO”), XXXX (“Data Applicant”), and XXXX (“Data Recipient”) (“the parties”)** on XX/XX/XXXX. The MHDO DUA details the MHDO’s requirements and the parties’ commitments to data privacy and security, as well as the restrictions on the disclosure and use of the authorized MHDO Data approved for release in data request number 20XXXXXXX and as defined in MHDO Rule 90-590 Code of Maine Rules (“CMR”) Chapter 120-Release of Data to the Public and 22 Maine Revised Statutes (“MRS”) Chapter 1683.

The MHDO, the Data Applicant, and Data Recipient will ensure the confidentiality, privacy, and security of the MHDO Data released to the Data Recipient as required by state and federal laws. By signing this MHDO Data Use Agreement the Data Applicant and Data Recipient agree to comply with applicable requirements in federal law; 22 MRS Chapter 1683; 90-590 CMR Chapter 120 (“Chapter 120”); and specifically, with the following provisions. Now therefore, the parties agree as follows.

**1. GENERAL PROVISIONS**

- A. Maine law controls the confidentiality, release, and use of MHDO Data.
- B. The MHDO shall retain all ownership rights to MHDO data; the Data Applicant and Data Recipient do not obtain any right, title, or interest in any of the data furnished by the MHDO.
- C. The MHDO Data shall not be used to take legal, administrative, regulatory or other actions against individual subjects of data or to contact or assist others to contact any individual patient and/or physician.
- D. The Data Applicant and Data Recipient shall specify the person(s) responsible for ensuring compliance with this MHDO DUA. These individuals are responsible for the observance and fulfillment of all conditions and obligations as specified in this Agreement for all employees in their organizations who will have access to the MHDO Data. Failure to update the Data Use Agreement within 15 days of changes in personnel will result in a suspension in accessing MHDO authorized data.
- E. The Data Applicant and Data Recipient shall make appropriate provision for the destruction of MHDO Data as defined in Attachment B as media sanitation, when use is complete, or when directed to by the MHDO Executive Director.

- F. The Data Applicant and Data Recipient must download and complete Attachment C, the Certification of MHDO Data Destruction form and submit through MHDO's Data Request Portal within 5 business days from the data destruction date. Failure to do so may result in a suspension in accessing and using MHDO authorized data.
- G. The Data Applicant and Data Recipient will only use the Data Set for the purposes necessary to conduct the activities described in data request 20XXXXXXXX (Attachment A) and for no other purpose.
- H. If the Data Applicant and or Data Recipient create de-identified or other data sets (including copies) of MHDO Data containing single record data elements, those shall remain under ownership of MHDO.

## **2. DATA PRIVACY AND DATA SUPPRESSION**

- A. The Data Applicant and Data Recipient will not use or display MHDO Data in any way that violates Maine or federal law.
- B. The Data Applicant and Data Recipient will not release, furnish, disclose, publish or otherwise disseminate MHDO Data to any person or entity not explicitly authorized by MHDO.
- C. The Data Applicant and Data Recipient accept sole responsibility for the implementation of data privacy and technical security requirements under this agreement, regardless of whether MHDO Data are stored in a local or cloud-based computing environment by the Data Applicant or Data Recipient. If the Data Applicant and or Data Recipient utilize "the cloud" to store and or compute MHDO data, the Data Applicant is responsible to ensure that the "cloud" vendor they contract with complies with all state and federally mandated security and privacy standards.
- D. The Data Applicant and Data Recipient will reference the MHDO as the source of the data in all reports, publications, tables, graphs, or other products produced from the data.
- E. The Data Applicant and Data Recipient will not use the MHDO Data in any way or link these data to other records or data bases, if the result allows for identifying individuals, unless authorized in writing by the MHDO.
- F. The Data Applicant and Data Recipient agree not to publish or otherwise release findings deriving from output from cell sizes (e.g., admittances, discharges, patients, services) of 10 or fewer. Also, percentages or other mathematical formulas shall not be used if they result in the display of a cell of 10 or less.
- G. The Data Applicant and Data Recipient must submit by uploading to the MHDO Data Request Portal a copy of any manuscript, report, data compilation, data aggregation, program, application, or any other type of document intended for

dissemination or publication beyond the data recipient that contains and/or uses MHDO Data at least twenty (20) business days prior to releasing it. If the MHDO determines that the manuscript, report, or any other type of document violates the MHDO DUA or does not provide adequate data suppression, the Data Applicant will be notified and must modify the item(s) prior to its release.

- H. The Data Applicant and Data Recipient agree to include the following language in any manuscript, report, data compilation, data aggregation, program, application, or any other type of document intended for dissemination or publication that contains/uses the Cancer Incidence Registry Data: *The Cancer Incidence Registry Data was collected by the Maine Cancer Registry which participates in the National Program of Cancer Registries (NPCR) of the Centers for Disease Control and Prevention.*

### **3. DATA SECURITY AND SAFEGUARDING REQUIREMENTS**

- A. The Data Applicant and Data Recipient agree to establish, comply with, and update appropriate administrative, technical, and physical safeguards to protect the confidentiality of MHDO Data and to prevent unauthorized use, access to, or disclosure of the MHDO Data other than as provided for by this Agreement.
- B. The Data Applicant and Data Recipient shall ensure that all MHDO Data is stored and accessed only in areas that are always physically safe from access by unauthorized persons.
- C. The MHDO Data shall be protected electronically to prevent unauthorized access by computer, remote access, or any other means.
- D. The Data Applicant and Data Recipient agree that all MHDO Data and work product derived therefrom that has not been approved by MHDO for publication will be encrypted at rest and in transit. Block level encryption of all media is required where MHDO data are stored. The strength of data encryption must be a certified algorithm which is 256 bit or higher. Any encryption keys protecting the storage or transmission of MHDO Data, including the MHDO encryption key, shall only be used by individual persons specified on this MHDO DUA. Such keys shall be stored and transmitted separately from the information they protect.
- E. The Data Applicant and Data Recipient expressly agree that MHDO Data will not be accessed, tested, maintained, backed-up, transmitted, or stored outside of the United States.
- F. The Data Applicant and Data Recipient may not sell, re-package or in any way make MHDO Data available at the individual element level, unless the ultimate viewers of that data have applied to MHDO for this data, been approved for such access and signed an MHDO DUA.

- G. The Data Applicant and Data Recipient shall immediately inform the MHDO of any legal process by which third parties try to obtain access to MHDO data held by the Data Applicant or Data Recipient or any subcontractor and shall not turn over any data except as permitted by MHDO.

#### 4. REPORTING AND INVESTIGATIONS

- A. The Data Applicant and Data Recipient agree to report to the MHDO:
- i. all security incidents including attempted or successful unauthorized access, use, disclosure, modification, or destruction of MHDO Data;
  - ii. interference with system operation in an information system that contains MHDO Data;
  - iii. and specifically, any potential or actual breach of Protected Health Information (PHI) from the MHDO Data.
- B. The Data Applicant and Data Recipient shall report any such actual or suspected security incident to the MHDO Executive Director within 24 hours after it is discovered. The Data Applicant and Data Recipient agrees to cooperate fully with MHDO in determining the significance of the security incident, and to provide all internal documents, practices and specific information required by MHDO to assess and resolve security incidents.
- C. The Data Applicant and Data Recipient shall make, at its expense, all reasonable efforts to mitigate any harmful effect known to the Data Applicant and Data Recipient arising from its use or disclosure of MHDO Data in violation of this Agreement.
- D. The Executive Director of MHDO will determine whether there was any breach, if any PHI was compromised, and if so, whether any notification to individuals should be made. An impermissible use or disclosure of PHI is presumed to be a breach unless the Data Applicant and Data Recipient demonstrate and MHDO concludes that there is a low probability that the PHI has been compromised based on a risk assessment including the following factors: the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; the unauthorized person who used the PHI or to whom the disclosure was made; whether the PHI was actually acquired or viewed; the extent to which the risk to the PHI has been mitigated, and whether and how the data was secured, including encryption.
- E. If the Executive Director of MHDO determines that the data were secure data or that there was a low probability of compromise to any PHI involved or that one of the exceptions or safe harbors to the definition of breach exists (such as unintentional or inadvertent disclosures to employees held to same security and privacy standards and not further disclosed or good faith reason to believe unauthorized person to whom a disclosure was made could not reasonably retain the PHI), the Executive Director will determine that no individual notification need be made.

- F. If the Executive Director of MHDO determines that there is a breach of non-secure PHI data such as would require notice to affected individuals if the breach occurred at a HIPAA covered entity, MHDO will provide individual notification similar to notification required by HIPAA.

## **5. HOLD HARMLESS**

The Data Applicant and Data Recipient shall be jointly and severally liable and shall indemnify and hold harmless MHDO and its Directors and employees for any damages, liabilities, and costs, including individual notification, resulting from a Data Applicant's or Data Recipient's breach or other violation of law or of this Agreement. Furthermore, if MHDO determines that notification to affected individual persons of the breach and/or other remedies are required, the Data Applicant and Data Recipient agree to carry out these remedies without cost to MHDO. To the extent legal action based on a Data Applicant and or Data Recipient's breach or other violation of law is taken against an entity that submits data to MHDO, Data Applicant and/or Data Recipient shall indemnify and hold harmless that data provider.

## **6. TERM AND TERMINATION**

- A. This agreement is effective for one year as of the Date MHDO Approves it by signature. After one year, the DUA will expire unless the Data Applicant extends the DUA. To request an extension of the DUA the Data Applicant will submit a written request to the MHDO as defined in Attachment D.
- B. At the termination of this agreement the MHDO Data provided by MHDO to the Data Recipient will be destroyed by the Data Recipient as defined in Attachment C. The Data Recipient shall certify such destruction to the MHDO within 5 business days of the date of data destruction.
- C. The obligations of the Data Applicant and Data Recipient under this Agreement shall survive the termination of this Agreement indefinitely.
- D. The Data Applicant and Data Recipient agree that MHDO may track any person's use of or access to MHDO Data, deny access to MHDO data, and require the destruction of any MHDO Data when in the opinion of the MHDO Executive Director that is necessary to protect the privacy, security, or integrity of the data.
- E. When the MHDO Executive Director requires the destruction of any MHDO Data, the Data Applicant and Data Recipient shall comply promptly consistent with the law and with the requirements contained in this Agreement.

## **7. MISCELLANEOUS**

- A. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for MHDO to increase security and privacy of

the data, including transferring data release to a MHDO portal access program.

- B. Any subcontractor's privacy and security measures shall be commensurate with those required of business associates under HIPAA and of Data Applicant and Data Recipient in this Agreement and shall be in a binding written agreement.
- C. The Data Applicant and Data Recipient shall be legally responsible for any acts or neglect of any of their subcontractors.
- D. The Data Applicant and Data Recipient understand that any person who uses, sells or transfers the MHDO data in violation of Chapter 120 and or this agreement for commercial advantage, pecuniary gain, personal gain or malicious harm is considered to have committed a civil violation under 22 M.R.S. §8705-A for which a fine not to exceed \$500,000 may be levied by the MHDO, as set forth in 90-590 C.M.R. Chapter 100, in addition to any other criminal or civil penalties that may apply.
- E. Any ambiguity in this Agreement shall be resolved to permit MHDO to protect the privacy, security, and integrity of the MHDO Data.
- F. No provision of this Agreement may be waived or modified except by an agreement in writing signed by all parties. A waiver or modification of any term or provision shall not be construed as a waiver or modification of any other term or provision.
- G. The persons signing below have the right and authority to execute this Agreement and no further approvals are necessary to create a binding agreement.
- H. The MHDO and the Data Applicant and Data Recipient agree that any violation of this Agreement may cause irreparable harm to the MHDO. So, in addition to any other remedies available to the MHDO, MHDO may seek a court order such as an injunction to ensure compliance with this Agreement and that a bond or other security shall not be required, nor any actual damages demonstrated.
- I. 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, the terms of this Agreement shall govern. No provision of any other agreement or understanding between the parties, or between any party and any subcontractor, limiting the liability of the Data Applicant or Data Recipient to MHDO shall apply to the breach of any covenant in this Agreement by the Data Applicant or Data Recipient. By signing this Agreement, the Data Applicant and Data Recipient agree to abide by all provisions set out in this Agreement and acknowledge having received notice of potential criminal or administrative penalties for violation of the terms of the Agreement.

On behalf of the Data Applicant and Data Recipient the undersigned individuals hereby attest that they are authorized to legally bind the Data Applicant and Data Recipient to the

terms of this Agreement and agree to all the terms specified herein. IN WITNESS WHEREOF, the parties have executed this Agreement effective upon the Date set forth below that MHDO approves the agreement.

The Data Applicant agrees to notify MHDO within 24 hours of any termination of Data Recipient. The MHDO Data may only be transferred to a new Data Recipient with the approval of the MHDO, and after the new Data Recipient signs an MHDO DUA.

The MHDO DUA must be signed and returned within 30 days of receipt or the MHDO data request will become invalid.

**APPROVED AND AGREED TO BY:**

**NAME**

("Data Applicant")

Signature:
Print Name:
Title:
Name of Organization:
Date:

**NAME**

("Data Recipient")

Signature:
Print Name:
Title:
Name of Organization:
Date:

**APPROVED AND AGREED TO BY MHDO:**

Signature:
Print Name: Karynlee Harrington
Title: Executive Director
Date:

**ATTACHMENT A**

Approved MHDO Data Request Form **DATA REQUEST #**



## ATTACHMENT B

MHDO Media Sanitation Policy:

Refer to [NIST SPECIAL PUBLICATION 800-88](#) or any updates, GUIDELINES FOR MEDIA SANITIZATION

## ATTACHMENT C

### CERTIFICATION OF MHDO DATA DESTRUCTION

Please submit this form through the MHDO Data Request Portal within 5 business days of the data destruction date.

#### Section 1:

<b>This form is to be completed by Data Applicant/Recipient.</b>	
Data Applicant Name:	Data Applicant Organization:
Data Recipient Name (if different from applicant):	Data Recipient Organization (if different from applicant):
Project Title:	
MHDO Data Request Number:	Data Destruction Date (as listed on application):

#### Section 2:

List the MHDO file types and associated years that have been destroyed:	
Data Files _____ _____ _____	Date of data destruction: _____ _____ _____
Method of destruction: <input type="checkbox"/> Overwriting <input type="checkbox"/> Pulping <input type="checkbox"/> Pulverizing <input type="checkbox"/> Reformatting <input type="checkbox"/> Shredding <input type="checkbox"/> Other: _____	
<input type="checkbox"/> <b>Yes, I affirm that proper disposal methods have been followed and all MHDO data and backups have been destroyed, including any and all copies of the data on any portable media. Furthermore, no MHDO data has been retained by the Receiving Organization or by any subcontracted entities.</b>	
<input type="checkbox"/> <b>No, I attest we have not destroyed the MHDO data. Justification for the retention of the MHDO Data:</b> _____ _____	
New Date of Destruction: ____/____/____	
Data Applicant Signature:	Date:
Data Recipient Signature:	Date:

**ATTACHMENT D**

**REQUEST FOR MHDO DUA EXTENSION**

Please submit this form through the MHDO Data Request Portal.

MHDO DUAs are effective for up to one year. On an annual basis, the Data Applicant must extend the DUA or close the DUA if the project is no longer active. If the project is closed, please complete and submit Attachment C. DUAs can only be extended within 30 business days of the expiration data.

<b>This form is to be completed by Data Applicant</b>	
MHDO Data Request Number:	Original DUA Signature Date:
<p>I, as the Data Applicant, request that the MHDO extend the term of the DUA for the data request number listed on this form for an additional year.</p> <p>I affirm that this data is still being used as originally requested, and as described in Attachment A of the signed MHDO DUA.</p> <p>In accordance with the terms and conditions of the MHDO DUA, I understand that the data for this DUA may not be used in any form, or for any additional work, outside the scope of this DUA without the expressed written consent of MHDO.</p> <p>I have reviewed the contact information for the Data Applicant and all Data Recipients in the data request portal application and submitted necessary updates to MHDO.</p>	
Data Applicant Name:	Data Applicant Organization:
Data Applicant Signature	Date

<b>MHDO Extension Approval</b>	
<p><input type="checkbox"/> <b>YES</b>, I approve the extension of this DUA for up to one year.</p> <p style="text-align: center;"><b>New MHDO DUA termination date</b> ____/____/____</p> <p><input type="checkbox"/> <b>NO</b>, I do not approve the extension of this DUA. The Data Applicant/Recipient must destroy any MHDO received and complete and submit Attachment C.</p>	
MHDO Executive Director:	
Signature:	Date