

MEMORANDUM OF AGREEMENT AGR2014-012
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DATA USE AGREEMENT

BETWEEN

MARICOPA COUNTY DEPARTMENT OF PUBLIC HEALTH (LPHJ)
AND
ARIZONA DEPARTMENT OF HEALTH SERVICES (ADHS)

1. TERM OF THE AGREEMENT:

The term of this Agreement shall become effective upon signature and shall remain in effect unless terminated, canceled or extended as otherwise provided herein.

2. TERMINATION OR AMENDMENT:

Each party shall have the right to terminate this Agreement by mailing the other party written notice of termination by certified mail, return receipt requested, at least thirty (30) days prior to the termination date. This Agreement may be modified at any time by mutual written Amendment in order to accommodate unforeseen circumstances by the authorized representative of the respective parties. Further, either party may terminate this Agreement immediately in the event the other Party materially breaches its obligations under the Agreement.

3. CONFIDENTIALITY:

- 3.1 Any information that may be exchanged through this Agreement shall not be used for purposes other than those covered in this Agreement without prior approval of all parties to this Agreement;
- 3.2 No personally identifying information that may be exchanged through this Agreement shall be made available for any political or commercial purpose, nor shall such information be used as basis for determining eligibility for care or source of payment for care to any individual;
- 3.3 All data provided by ADHS to the Maricopa County Department of Public Health shall be used by the Maricopa County Department of Public Health only for the official purposes of the Maricopa County Department of Public Health and will be accessible only to duly authorized persons. All authorized persons shall understand and abide by the confidentiality requirements;
- 3.4 The Maricopa County Department of Public Health shall provide the names and addresses of any individuals or entities outside the Maricopa County Department of Public Health who receive the data. The Maricopa County Department of Public Health shall assure ADHS that the individuals or entities outside the Maricopa County Department of Public Health will protect the confidentiality and security of the data and the Maricopa County Department of Public Health shall monitor the individuals or entities outside the Maricopa County Department of Public Health regarding the confidentiality and security of the data;
- 3.5 All Individually Identifiable Health Information and Protected Health Information provided by ADHS to the Maricopa County Department of Public Health that is transmitted in emails shall be encrypted or sent through the SIREN email system; and
- 3.6 All data provided by ADHS to the Maricopa County Department of Public Health shall be stored on a secure server

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4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE:

The Maricopa County Department of Public Health warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Agreement. Maricopa County Department of Public Health warrants that it will cooperate with the Arizona Department of Health Services (ADHS) in the course of performance of the Agreement so that both ADHS and Maricopa County Department of Public Health will be in compliance with HIPAA, including cooperation and coordination with Arizona Department of Administration (ADOA) – Arizona Strategic Enterprise Technology (ASET) Office, the Chief Privacy Officer and HIPAA Coordinator/Security, Privacy and Risk (SPR) and other compliance officials required by HIPAA and its regulations. Maricopa County Department of Public Health will sign any documents that are reasonably necessary to keep ADHS and Maricopa County Department of Public Health in compliance with HIPAA, including, but not limited to, business associate agreements.

If requested by the ADHS Procurement Office, Maricopa County Department of Public Health agrees to sign a "Pledge To Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, user from Maricopa County Department of Public Health agree to attend or participate in HIPAA training offered by ADHS or to provide written verification that the users from Maricopa County Department of Public Health have attended or participated in job related HIPAA training that is: (1) intended to make the user proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the Chief Privacy Officer and HIPAA Coordinator/Security, Privacy and Risk (SPR).

5. APPLICABLE LAW:

Arizona Law. Applicable law of Arizona applies to this Agreement including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona.

6. CONFLICT OF INTEREST:

Pursuant to A.R.S. §38-511, the State, its political subdivisions or any department or agency of either may, within three (3) years after its execution, cancel any Agreement, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. A cancellation made pursuant to this provision shall be effective when both parties to this Agreement receive written notice of the cancellation unless the notice specifies a later time.

7. ARBITRATION:

Pursuant to A.R.S. § 12-1518, disputes under this Agreement shall be resolved through the use of arbitration as follows:

7.1 Cases under the Jurisdictional Limit. In all cases filed in superior court in which the court finds or the parties agree that the amount in controversy does not exceed the jurisdictional limit, arbitration shall be used, unless all parties file a written stipulation waiving the arbitration requirement, and the court waives the arbitration requirement on a showing of good cause.

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8. FUNDING:

This Agreement is not an obligation of or a commitment of funds, or a basis for a transfer of funds, but rather a statement of understanding between the Parties concerning the sharing and use of confidential information related to the purposes of this Agreement. Expenditures by each party are subject to that party's budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies of the respective parties.

9. INSURANCE:

The Arizona Department of Health Services is self-insured for liability per A.R.S. §41-621.

10. NON-DISCRIMINATION:

Both parties shall comply with Executive Order 2009-09, which mandates that all persons regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. All parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

11. AMENDMENTS:

Any Amendments to this Agreement must be in writing and signed by both parties.

12. BACKGROUND:

As of November 2011, the BioSense Program developed a distributed computing environment and tools with state and local control ("BioSense 2.0"). Governance is facilitated by The Association of State and Territorial Health Officials ("ASTHO"), in coordination with the Centers for Disease Control and Prevention ("CDC"), Council of State and Territorial Epidemiologists ("CSTE"), National Association of County and City Health Officials ("NACCHO"), and International Society for Disease Surveillance ("ISDS") (collectively, the "Governance Group"). ASTHO contracted with a vendor to act as a data storage company ("Vendor") for BioSense 2.0 certified as described in Section 19 of this Agreement. Through the Vendor, ASTHO offers BioSense 2.0 for receiving and managing public health and surveillance information. BioSense 2.0 provides ADHS with the ability to contribute and access data that supports existing and potential expansion of its public health and surveillance systems.

Each public health jurisdiction participating in BioSense 2.0 must sign a data use agreement with ASTHO. Participating Public Health Agencies are responsible for determining the level of sharing of data submitted from its jurisdiction. ADHS holds a signed data use agreement with ASTHO, under which Local Public Health Jurisdictions (LPHJ) within Arizona shall be able to access BioSense 2.0. Each LPHJ in Arizona that participates in BioSense 2.0 shall maintain a signed data use agreement with ADHS and operate under ADHS's data use agreement with ASTHO.

BioSense 2.0 provides two (2) spaces for the submission of Data. The first space is a secure space in which ADHS has exclusive access and control over any Data it submits (or is submitted on its behalf), to the extent permitted by applicable law. ADHS also has the ability to permit data providers within its jurisdiction to send public health-related data (collectively, "Public Health Data Providers" or "PHDPs") directly to its secure space within BioSense 2.0. This secure space provides an environment capable of receiving the HL7 format desired by ADHS. LPHJs have the ability to access data within the secure space exclusively for residents of their jurisdiction or reported by facilities located within their jurisdiction.

The second space within BioSense 2.0 is a shared space in which ADHS and other Participating Public Health Agencies shall share access to views of aggregated Data with Users.

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13. DEFINITIONS:

"BioSense 2.0" means the cloud-enabled, web-based platform and tools used to store, maintain, process, display, receive, analyze, and destroy Data received for the advancement of the BioSense Program as described in Section 12 of this Agreement.

"BioSense Program" means the program run by the CDC that tracks health problems as they evolve and provides public health officials with data, information and tools they need to better prepare for and coordinate responses to safeguard and improve the health of people in the United States.

"Data" means the public health-related information gathered by or contributed to the Provider or gathered by an individual User on behalf of the Provider that becomes part of the Data Set submitted to BioSense 2.0.

"Data Set" means the Data provided or contributed to BioSense 2.0 by ADHS, LPHJ, Provider, and any Users, within the jurisdiction of ADHS that have entered into an agreement that complies with Section 14B herein.

"Individually Identifiable Health Information" or "IIHI" shall have the same definition as provided by the Health Insurance Portability and Accountability Act ("HIPAA") and corresponding regulations.

"Local Public Health Jurisdiction" is defined as the entity providing Public Health services (as defined by the National Public Health Performance Standards Program's (NPHPSP) ten essential services) within a geographic area within the State of Arizona.

"Meaningful Use regulations" means the regulations as defined by Centers for Medicare & Medicaid Services (42 CFR Parts 412, 413, 422 et al.) Medicare and Medicaid Programs; Electronic Health Record Incentive Program; Final Rules (published on July 28, 2010 in the Federal Register) and subsequent updates and the Office of the National Coordinator for Health Information Technology (45 CFR Part 170) Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology; Final Rule (published on July 28, 2010 in the Federal Register) and subsequent updates.

"Party" means LPHJ or ADHS; **"Parties"** means LPHJ and ADHS.

"Participating Public Health Agency" is defined as a Public Health Agency holding a BioSense 2.0 Data Use Agreement with ASTHO.

"Provider" is defined as the hospital, emergency department, urgent care, medical practitioner or health network responsible for submitting the Data to the BioSense Program.

"Protected Health Information" or "PHI" shall have the same definition as is contained in HIPAA and corresponding regulations.

"Secure Space" or "Data Locker" are defined as a cloud-enabled, web-based platform in which ADHS and LPHJs shall have exclusive access to any Data it submits (or submitted on its behalf), to the extent permitted by applicable law. ADHS and LPHJs shall be able to view and analyze patient-level data and PHI or IIHI.

"Shared Space" or "Visualization Site" are defined as a cloud-enabled, web-based platform wherein ADHS will have the ability and discretion to determine whether, how, with whom, and at what

level to share Arizona's aggregate data, views and maps with other Participating Public Health Agencies, the CDC or other agencies.

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"User" means any authorized user of Data available through BioSense 2.0. All Users must be affiliated with ADHS, a LPHJ or a Provider, except as otherwise provided herein.

14. DATA SHARING. BioSense 2.0 is designed to promote the contribution of public health data by all Users and the appropriate sharing of aggregated Data in the shared space. ADHS, under its agreement with ASTHO, is responsible for determining the level of sharing of Arizona Data within the shared space. The Governance Group may consider and make recommendations for data sharing in the shared space. These could include recommendations for types of data (e.g., minimum data sets), seasonal data collections, and similar contributions that would enhance the value of BioSense 2.0 to all Users.

15. DATA SET ACCESS AND USE. Maricopa County Department of Public Health agrees to participate in the BioSense Program by utilizing BioSense 2.0 in accordance with the terms and conditions herein. The Maricopa County Department of Public Health shall not take any actions that are inconsistent with this Agreement; and Maricopa County Department of Public Health shall comply with applicable federal, state, and local laws. Any violation of the aforementioned terms and conditions by the Maricopa County Department of Public Health may result in suspension or termination of the Maricopa County Department of Public Health's access to and/or use of BioSense 2.0.

15.1 The Maricopa County Department of Public Health acknowledges and agrees that as part of BioSense 2.0, the Data Set may be used and/or disclosed for the following purposes:

15.1.1 Secure Space or Data Locker. To facilitate sharing of confidential views of Data between ADHS and the Maricopa County Department of Public Health only for patients residing within the {County/Reservation} or reported by facilities located within the {County/Reservation}. PHI or IIHI available to the Maricopa County Department of Public Health through the secure space shall not be used or disclosed to any third party in any manner unless approved by ADHS or required by law or by court order. The Parties agree to carefully restrict use and access of Data in the secure space to only those Users designated by the Maricopa County Department of Public Health who are performing duties described in Section 15A(III) below,

15.1.2 Shared Space or Visualization Site. To facilitate the sharing of views of Data, which shall not contain PHI or IIHI, for public health and surveillance purposes. ADHS can share, at minimum, aggregate views of their Data at a level determined by ADHS. ADHS acknowledges such use, access and publication shall be between jurisdictions holding BioSense 2.0 data use agreements with ASTHO (Participating Public Health Agencies), *provided, however*, that such use, access and sharing of its Data shall be determined solely by ADHS. Selected aggregate Data in the shared space may also be available for public use and publication, but only with ADHS's knowledge of such use and publication. To the extent that ADHS does not wish to share its Data Set or have access to other Participating Public Health Agencies' Data Sets, ADHS may still access BioSense 2.0 for purposes of accessing the information technology tools and infrastructure available in BioSense 2.0,

15.1.3 Public Health agency uses. To provide access to the Data Set or analyses thereof to local, state and federal governmental health agencies (including, but not limited to, CDC) or other agencies and entities in connection with conducting their respective public health responsibilities consistent with applicable state and/or federal law for the following purposes: (1) To facilitate the interchange of information that can be used to coordinate responses and monitor events routinely and during a potential health event; (2) For early detection and characterization of events (or health-related threats) by building on state and local health departments' systems and programs; (3) To provide health-related information for: (a) public health situation awareness, (b)

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routine public health practice, and (c) improved health outcomes and public health; and (4) 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, and

- 15.1.4 ASTHO use. To facilitate ASTHO's use of information provided by ADHS and the LPHJs and Providers with which ADHS has data use agreements, only to the extent allowed under the terms of ASTHO's agreement with ADHS and in compliance with applicable federal and state laws. Except as otherwise provided in this Agreement, ASTHO requires all Users of BioSense 2.0 to agree to terms and conditions which specify and require acknowledgement of the uses of BioSense 2.0; however, ASTHO shall not be responsible for the acts or omissions of LPHJs, Providers, or their users;
- 15.2. ADHS and Maricopa County Department of Public Health may use and share Data contributed to BioSense 2.0 for the purpose of monitoring and assessing public health activity within its jurisdiction. Maricopa County Department of Public Health shall not share any Individually Identifiable Health Information or Protected Health Information with outside parties;
- 15.3 As part of access to the shared space in BioSense 2.0 and in accordance with this Agreement, Maricopa County Department of Public Health understands and agrees that CDC will be provided with, at minimum, aggregate level data (city or county or state) for ADHS's jurisdiction. Maricopa County Department of Public Health also understands that CDC may access and review Data contributed to the shared space for use as described in Section 15A(III) above; *provided however*, that such access and review shall be as determined by ADHS to the extent permitted by applicable law. CDC may prepare associated reports and analyses related to public health surveillance. Further, Maricopa County Department of Public Health acknowledges that CDC will work with ADHS and/or LPHJ(s) within Arizona in the development of analytic methods for identification and investigation of public health concerns. Such analysis and development may be shared by the CDC with other governmental agencies as necessary and appropriate; *provided, however*, that ADHS shall, to the extent permitted by applicable law, have the ability to control the distribution of its Data Set and may deny the sharing of the Data Set, and any related analyses, with any governmental agency; and
- 15.4 It is anticipated that the shared space may also have a second component in which the general public would be provided with certain general aggregated access to information as established by ADHS.
16. **DATA SET CONTENT RESTRICTIONS AND REQUIREMENTS.** Data Set information shall be provided by Provider in compliance with the published Data Set requirements of BioSense 2.0, including but not limited to then-current requirements of the Meaningful Use regulations. Such Data Set information requirements shall be published on the BioSense 2.0 website and may be changed from time to time. The Governance Group may make recommendations regarding the types of data to be submitted to the shared space. Additionally, ADHS will publish on its website an AZ specific syndromic surveillance implementation guide based on national guidance, which shall be used by Arizona facilities for implementation of the Meaningful Use syndromic surveillance objective.
17. **CONFIDENTIALITY AND DE-IDENTIFICATION/ENCRYPTION OF DATA.** Neither PHI nor IIHI will be submitted to BioSense 2.0 unless transmitted to ADHS's secure space in BioSense 2.0 by a provider as de-identified and/or encrypted data; neither ASTHO, the CDC, the Vendor nor any other Participating Public Health Agency (other than ADHS's authorized LPHJs) shall have access to such Data in the secure space. The Provider is responsible for maintaining the security of any encryption techniques used. De-identification and encryption shall be done in compliance with federal and state law, including HIPAA and corresponding regulations. Neither ASTHO nor ADHS shall have any responsibility for the encryption of PHI or IIHI. ASTHO will work with the Governance Group to

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facilitate the development of data sharing concepts and principles to which PDHPs, LPHJs, and ADHS must adhere in BioSense 2.0.

18. OPEN RECORDS LAWS. The Data submitted by a Provider, including Data accessed by other Public Health Agencies and Users, including CDC, may be subject to state and federal (e.g., the Freedom of Information Act) open records laws. To the extent a Data Set provided to BioSense 2.0 may be subject to the applicable open records laws for the state of origin of the Data Set, Maricopa County Department of Public Health is responsible for reviewing and complying with the applicable open records laws when determining the Data to be provided in the Data Set

19. DATA RETENTION/ DATA SECURITY

19.1 Data provided as a part of the Data Set shall be archived, stored, maintained, protected, and disposed of in compliance with federal law and the state law determined applicable by ADHS, to the extent state law is not superseded by federal law. The Data Set shall be maintained in a distributed computing environment and any and all policies and procedures applicable to the use of such an environment for BioSense 2.0 shall be in compliance with the Federal Information Security Management Act ("FISMA");

19.2 Maricopa County Department of Public Health is responsible for creating and protecting User passwords and other secure measures used for accessing and using BioSense 2.0 and for establishing its own security protocols and procedures in the use of the passwords and administration of the Data Set and any Data Set viewed through BioSense 2.0. The Maricopa County Department of Public Health shall be responsible and liable for any misuse or abuse of its passwords and other measures and any resulting misuse or abuse of BioSense 2.0; and

19.3 The Parties agree to immediately alert the other Party if there is a potential or actual breach of the security of BioSense 2.0 or any actual or potential misappropriation or misuse of any Data available through BioSense 2.0. The Parties further agree to work cooperatively to investigate and comply with any federal and state laws should a breach occur.

20. OWNERSHIP OF DATA. ADHS retains ownership of any Data Sets contributed to BioSense 2.0 by Arizona Providers and is responsible for managing data sharing with Local Public Health Jurisdictions. ADHS and Maricopa County Department of Public Health may use Data contributed to BioSense 2.0 for the purpose of monitoring and assessing public health activity within its jurisdiction. No Individually Identifiable Health Information or Protected Health Information can be shared by Maricopa County Department of Public Health with outside parties without prior approval by ADHS.

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21. NOTICES, CORRESPONDENCE AND REPORTS:

21.1 Notices, correspondence and reports from the Maricopa County Department of Public Health to ADHS shall be sent to:

Sara Imholte
Arizona Department of Health Services
Office of Infectious Disease Services
Electronic Disease Surveillance Program
150 N. 18th Ave, Suite 140
Phoenix, AZ 85007
Telephone: 602-364-3889
Facsimile: 602-364-3199
Email: sara.imholte@azdhs.gov

21.2 Notices, correspondence and reports from ADHS to the Maricopa County Department of Public Health shall be sent to:

Maricopa County Department of Public Health Office of Epidemiology
Attention: Aurimar Ayala, MPH

Address: 4041 N Central Ave Suite 600

City, State Zip: Phoenix, AZ 85012

Telephone: 602-527-0108 602-372-2665

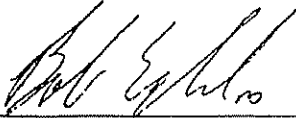
Facsimile: 602-372-2610

Email: aurimarayala@mail.maricopa.gov

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SIGNATURES/APPROVALS:

MARICOPA COUNTY DEPARTMENT OF PUBLIC HEALTH



NAME Dr. Bob England
TITLE Director, Maricopa County Department of Public Health

Date: September 13, 2013

FOR THE ARIZONA DEPARTMENT OF HEALTH SERVICES



Christine Ruth
Chief Procurement Officer

Date: 11.1.13