

**AGREEMENT FOR USE OF CENTER FOR HEALTH INFORMATION AND ANALYSIS (CHIA) DATA  
CONTAINING PROTECTED HEALTH INFORMATION**

This Data Use Agreement (“Agreement”), dated as of \_\_\_\_\_ (“Effective Date”), is executed by and between the Center for Health Information and Analysis (“CHIA”) and \_\_\_\_\_ (“Recipient”).

This Agreement addresses the conditions under which CHIA will release and the Recipient will obtain, use, reuse and disclose data released by CHIA to Recipient, including but not limited to, any derivative file(s) created by the Recipient, copies of CHIA data, subsets of CHIA data, and additional years or release versions of CHIA data (“Data”). This Agreement pertains to all Data Application(s) under which CHIA releases Data to Recipient. Each Data Application approved by CHIA will be noted in an amendment to this Agreement and attached hereto as **Exhibit A, A-1, A-2**, and so on.

This Agreement supersedes any and all verbal or written agreements between the parties with respect to the use of any Data in the possession of Recipient and preempts and overrides any instructions, directions, agreements, or other understanding between the parties with respect to the Data, including prior Data Use Agreements entered into by the parties. See **Attachment 1** for a list of prior Data Use Agreements superseded by this Agreement.

The following specified Attachments and Exhibits are incorporated herein:

- Attachment 1: Prior Data Use Agreements
- Exhibit A: Data Application(s)
- Exhibit B: Certificate of Continued Need and Compliance
- Exhibit C: Confidentiality Agreement
- Exhibit D: Certificate of Project Completion and Data Destruction

**I. Approved Data Applications and Projects; Permitted Uses**

1. Each Data Application shall set forth a specific project for which the Data will be used, and that project’s purpose and objective (“Project”). The Recipient represents that the facts and statements made in each Data Application, any study or research protocol or project plan, Data Management Plan(s), and other documents submitted to CHIA in support of each Data Application are complete and accurate. The Recipient affirms that the requested Data under

each Data Application is the minimum necessary to complete the Project set forth in that Data Application.

2. The Data released under a Data Application may only be used solely for the Project set forth in that Data Application, and, unless approved by CHIA under an amendment hereto, for no other Project or use. The Recipient shall not disclose, use or reuse, sell, rent, lease, loan, or otherwise grant access to the Data except as specified in this Agreement or as CHIA may authorize in writing or as otherwise required by law. The Recipient shall not use the Data to attempt to identify individuals. The Recipient shall not disclose to anyone who is not an authorized user of the Data any direct findings, listings, or information derived from the Data, with or without direct identifiers, if such findings, listings, or information can, by themselves or in combination with other data, be used to deduce an individual's identity.

3. Absent express written authorization from CHIA the Recipient shall not attempt to link records included in the Data to any other information, including but not limited to, linkage to other CHIA data file(s). An approved Data Application that includes the linkage of specific elements or files constitutes express authorization from CHIA to link files as described in that Data Application and for the Project set forth in that Data Application only.

4. Recipients may be approved under a Data Application to receive prospective years or release versions of Data. If so approved, the Recipient shall submit a completed Certificate of Continued Need and Compliance, attached hereto as **Exhibit B**, prior to receipt of such years or release versions of Data. The Recipient acknowledges that prospective years or release versions of Data are for use, reuse, and disclosure solely under the Data Application and for the Project set forth in that Data Application. Such Data will be provided by CHIA as available. The Data might not be provided in the same format, with the same Data elements, or during the same timeframe as previous years or release versions of such Data, or at all.

## **II. Data Privacy and Security Obligations**

1. The Recipient shall ensure the integrity, security, and confidentiality of the Data and shall comply with the terms of this Agreement, its Exhibits, the Data Management Plan(s), M.G.L. chapters 93H and 93I and, as applicable, the privacy and security standards set forth in the federal Privacy Act and the Health Insurance Portability and Accountability Act. The Recipient shall permit appropriate disclosure and use of the Data only as permitted by law and by this Agreement and shall not use the Data to attempt to identify individuals.

2. The Recipient shall establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the Data and to prevent unauthorized use or access to the Data. Recipient shall at all times during the term of this Agreement abide by the Data Management Plan(s) approved by CHIA, attached to each Data Application. The Recipient

acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the Data is prohibited. The Data may not be physically moved, transmitted or disclosed in any way from or by the site approved by CHIA without prior written approval from CHIA unless such movement, transmission or disclosure is required by a law, in which case Recipient shall promptly notify CHIA and, as required, amend the Data Management Plan.

3. The Recipient agrees that any use of the Data in the creation of any document (manuscript, table, chart, study, report, etc.) that is shared with anyone who is not an authorized user of the Data shall adhere to CHIA's current cell size suppression policy. **This policy stipulates that no cell (e.g., admittances, discharges, patients, services) less than 11 may be displayed.** Also, no use of percentages or other mathematical formulas may be used if they result in the disclosure of a cell less than 11. Reports and analytics must use complementary cell suppression techniques to ensure that cells with fewer than eleven observations cannot be identified by manipulating data in adjacent rows, columns or other manipulations of the report.

4. If the Recipient receives CHIA's approval to disclose the Data to an agent, contractor, or other third party, the Recipient shall require such agent, contractor, or other third party receiving the Data to agree, in writing, to adhere to the same terms and conditions with respect to the use (the approved Project), disclosure, maintenance, destruction, privacy and security of the Data that apply to the Recipient under this Agreement and Data Management Plan.

5. Within the Recipient organization and the organizations of its agents, access to the Data shall be limited to the minimum amount of data and minimum number of individuals necessary to complete the Project for which the Data was released (i.e., individual's access to the Data will be on a need-to-know basis). The Recipient shall ensure that all individuals, including employees, agents, or contractors, who will use or access the Data sign CHIA's Confidentiality Agreement, attached hereto as **Exhibit C**. The Recipient shall keep such Confidentiality Agreements and an access log on file and shall make such Confidentiality Agreements and access log available to CHIA anytime upon request by CHIA. The access log shall contain a list of names of all individuals who use and/or access the Data, the Project and Data Application under which the individual has access to the Data, the date on which such individuals signed a Confidentiality Agreement and when access to and/or use of Data was granted and, if applicable, terminated.

### **III. Inspections**

The Recipient shall grant reasonable access to its facilities, personnel and the Data, and to any non-Recipient site where the Data is held, to authorized representatives of CHIA for the

purpose of confirming compliance with the terms of this Agreement. Recipient shall promptly respond to any request by CHIA to verify Recipient's compliance with the terms of this Agreement, as well as compliance of any agent, contractor or third party to whom the Recipient disclosed CHIA Data.

#### **IV. Reporting and Treatment of Subpoenas and Unauthorized Uses, Disclosures or Security Incidents**

1. The Recipient shall not disclose, use or reuse, sell, rent, lease, loan, or otherwise grant access to the Data except as specified in this Agreement or as CHIA may authorize in writing or as otherwise required by law, in which case Recipient shall promptly notify CHIA. In the event the Data is subpoenaed or becomes the subject of a court or administrative order or other legal process, the Recipient shall consult with CHIA prior to responding to any such request or demand and provide CHIA with reasonable opportunity to assert to the requestor, court, or administrative agency any objections to disclosure as may be legally available to CHIA. Until CHIA responds to the Recipient's notice of legal process given in accordance with this provision, the Recipient shall assert objections to disclosure of such records and data on grounds as may be legally available to the Recipient.

2. In the event CHIA determines or has a reasonable belief that the Recipient has made or may have made a use, reuse or disclosure of the Data that is not authorized by this Agreement or other written authorization from CHIA, CHIA, at its sole discretion, may require the Recipient to: (a) promptly investigate and report to CHIA the Recipient's determinations regarding any alleged or actual unauthorized use, reuse or disclosure; (b) promptly resolve any issues identified by the investigation; (c) if requested by CHIA, submit a formal response to an allegation of unauthorized use, reuse or disclosure in the time frame specified by CHIA; (d) if requested by CHIA, submit a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures in the time frame specified by CHIA; and (e) if requested by CHIA, return the Data to CHIA or destroy the Data and any copies thereof. As a result of CHIA's determination or reasonable belief that unauthorized uses, reuses or disclosures have taken place, CHIA may in its sole discretion refuse to release further CHIA data to the Recipient.

3. The Recipient shall report loss of the Data or disclosure to any unauthorized persons to CHIA within three business days of such loss or unauthorized disclosure and shall cooperate fully in any CHIA incident response process. While CHIA retains all ownership rights to the Data, the Recipient shall bear the sole cost and liability for any privacy and security breaches related to the Data while the Data are entrusted to the Recipient. Furthermore, if CHIA determines that the risk of harm requires notification to affected individuals of the security breach and/or other

remedies, the Recipient shall be solely liable to carry out these remedies at its sole cost and expense.

#### **V. Data Ownership**

CHIA retains all ownership rights in and to the Data; the Recipient does not obtain any right, title, or interest in or to the Data. The Recipient shall cite the Center for Health Information and Analysis as the source of the Data in any studies, reports or products in which the Data are used.

#### **VI. Data Retention and Destruction**

Except set forth herein, the Data released under a Data Application may be retained by the Recipient until the Project approved under such Data Application is complete (“Project Completion”). The Recipient shall notify CHIA within 30 days of Project Completion. Upon Project Completion, the Recipient shall promptly destroy the Data received under the Data Application, including all copies thereof. The Recipient shall promptly, but no later than 30 days of Project Completion, send written certification of the destruction of the Data to CHIA, using the form attached hereto as **Exhibit D**. The Recipient shall not retain Data received under that Data Application after Project Completion unless authorized in writing by CHIA. The Recipient acknowledges its affirmative obligation to destroy the Data upon Project Completion, and that such obligation is not contingent upon action by CHIA.

#### **VII. Term and Termination of Agreement**

1. The Agreement may be terminated by either party at any time for any reason upon 30 days written notice. Upon notice of termination by Recipient, CHIA will cease releasing Data to the Recipient, and Recipient will within 15 days destroy all Data. Upon notice of termination by CHIA, Recipient will within 15 days of such notice destroy the Data. Upon destruction, Recipient will promptly send a completed Data Destruction Form to CHIA. Further, CHIA may, at any time and in its sole discretion, require the Data in whole or in part to be returned to CHIA. Recipient shall promptly comply with any such instructions from CHIA.

2. This Agreement shall remain in full force and effect at all times while Recipient or its agent maintains any Data. This Agreement will terminate upon CHIA’s receipt of the Data Destruction Forms for all Data in Recipient possession. Articles I, II, III, IV, V, VI, VII, IX, X, and XI shall survive termination of this Agreement.

#### **VIII. Amendment**

The terms of this Agreement can be changed only by written amendment to this Agreement or by the parties adopting a new agreement.

**IX. Violations and Penalties**

A violation of this Agreement or 957 CMR 5.00, may result in penalties and remedies allowed by law, including but not limited to M.G.L. c. 214 § 1B and M.G.L. c. 93A. CHIA may notify state and federal law enforcement officials, as applicable, of any data breaches in connection with any violation of this Agreement. It is the sole responsibility of the Recipient to ensure compliance with all other local, state, and federal laws and regulations.

**X. No Representations or Warranties**

CHIA MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR ENTITY WITH RESPECT TO CHIA DATA, THE SOFTWARE, OR ANY OTHER INFORMATION PROVIDED BY CHIA OR ITS AGENTS WITH RESPECT TO ANY OF THE FOREGOING, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO CHIA DATA, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, CHIA MAKES NO WARRANTY, GUARANTEE OR REPRESENTATION REGARDING THE USE, OR ANY INTENDED, EXPECTED, OR ACTUAL RESULTS OF THE USE, OF CHIA DATA, THE SOFTWARE, OR ANY OTHER INFORMATION PROVIDED BY CHIA IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. CHIA DOES NOT MAKE ANY WARRANTIES THAT CHIA DATA, SOFTWARE, OR ANY OTHER INFORMATION PROVIDED BY CHIA WILL BE ERROR-FREE. CHIA SPECIFICALLY DISCLAIMS ALL EXPRESS WARRANTIES NOT STATED HEREIN AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO CHIA AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION, OR ADDITION TO THE LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT.

CHIA USES AVAILABLE TECHNOLOGY TO MATCH PATIENT IDENTITIES WITH THEIR HEALTH INFORMATION. BECAUSE PATIENT INFORMATION IS MAINTAINED IN MULTIPLE PLACES, NOT ALL OF WHICH ARE ACCESSIBLE TO CHIA, AND BECAUSE NOT ALL PATIENT INFORMATION IS KEPT IN A STANDARD FASHION OR IS REGULARLY UPDATED, IT IS POSSIBLE THAT FALSE MATCHES MAY OCCUR OR THAT THERE MAY BE ERRORS OR OMISSIONS IN THE INFORMATION. CHIA DOES NOT AND CANNOT INDEPENDENTLY VERIFY OR REVIEW THE INFORMATION TRANSMITTED FOR ACCURACY OR COMPLETENESS.

**XI. Data Custodian**

The following named individual is designated as Custodian of the file(s) on behalf of the Recipient and is the person responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement and the approved Data Management Plan to prevent unauthorized use. The Recipient shall notify CHIA within fifteen (15) days of any change of custodianship. CHIA may disapprove the appointment of a custodian or may require the appointment of a new custodian at any time.

The Custodian hereby acknowledges his/her appointment as Custodian of the aforesaid file(s) on behalf of the Recipient, and agrees to comply with all of the provisions of this Agreement on behalf of the Recipient.

Name of Custodian:		Organization:	
Street Address:	City:	State:	Zip Code:
Office Telephone ( <i>Include Area Code</i> ):		E-Mail Address:	
Signature:	Title:	Date:	

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

CENTER FOR HEALTH INFORMATION AND ANALYSIS

Name of CHIA Representative:		Title:	
Street Address: 501 Boylston Street, 5 <sup>th</sup> Floor	City: Boston	State: MA	ZIP Code: 02116
Office Telephone ( <i>Include Area Code</i> ):		E-Mail Address:	
Signature:		Date:	

RECIPIENT

Name of authorized signatory:		Organization:	
Street Address:	City:	State:	Zip Code:
Office Telephone ( <i>Include Area Code</i> ):		E-Mail Address:	
Signature:	Title:	Date:	

**ATTACHMENT 1**  
**PRIOR DATA USE AGREEMENTS SUPERSEDED BY THIS AGREEMENT**



**EXHIBIT A  
DATA APPLICATION(S)**

**A-1**

**EXHIBIT B**  
**CERTIFICATE OF CONTINUED NEED AND COMPLIANCE**  
 (complete and submit to CHIA when requesting new data for approved Project)

The Recipient has been approved under a Data Application entitled, \_\_\_\_\_ to receive additional years or versions of Data. All use of Data shall be governed by that certain Data Use Agreement, dated as of \_\_\_\_\_, by and between CHIA and Recipient (the "Agreement").

Recipient wishes to receive the additional years or release versions of the Data and CHIA is willing to provide such Data under the terms of the Agreement and the terms herein.

Name and title of Primary Investigator (Applicant):	
Organization Requesting Data (Recipient):	
Project Title:	
Year or Version of Data Requested:	

The Recipient hereby certifies:

- 1.) The Recipient is in full compliance with the Agreement;
- 2.) The year or release version of Data, identified above, is necessary to complete the Project;
- 3.) No changes have been made to the Project.

The undersigned further acknowledges:

- 1.) Prospective years or release versions of Data will be provided as available: the Data may not be provided in the same format, with the same data elements, or during the same timeframe as previous years or versions of Data, or at all;
- 2.) The additional years or version of Data released under a Data Application may only be used solely for the Project set forth in that Data Application, and, unless approved by CHIA under an amendment hereto, for no other Project or use; and
- 3.) The Recipient must remit any applicable Data fees prior to extraction and release of the Data; Data fees may be subject to change.

Capitalized terms used herein and not defined shall have the same meanings assigned to them in the Agreement. This Certificate is effective as of the date below.

Name of authorized signatory:		Organization:	
Street Address:		City:	State: Zip Code:
Office Telephone (Include Area Code):		E-Mail Address:	
Signature:	Title:	Date:	

**EXHIBIT C  
CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_, hereby acknowledge that, in connection with a request for All-Payer Claims Database data and/or Hospital Discharge Database data under an agreement (the "Agreement") with CHIA, I may acquire or have access to confidential information or individually identifiable information of patients. This information includes, but is not limited to, patient level protected health information (PHI - eligibility, claims, providers), health insurance coverage information, financial institution match information, as well as "personal data" as defined in G.L. c. 66A (collectively, the "Information").

I will comply with all of the terms of the Agreement regarding my access, use, and disclosure of any Information.

I will at all times maintain the confidentiality of the Information. I will not inspect or "browse" the Information for any purpose not approved in the Agreement. I will not access, or attempt to access, my own Information for any purpose. I will not access, or attempt to access, Information relating to any individual or entity with which I have a personal or financial relationship, for any reason. This includes family members, neighbors, relatives, friends, ex-spouses, their employers, or anyone not necessary for the work assigned. I will not, either directly or indirectly, disclose or otherwise make the Information available to any unauthorized person at any time.

I understand that any violations of this Agreement, M.G.L. c. 93H (regarding data breaches), M.G.L.c. 93I (regarding data destruction), and other laws protecting privacy and data security may subject me to criminal or civil liability. I further understand that CHIA may notify state and federal law enforcement officials, as applicable, of any data breaches in connection with any violation of this Agreement.

Name:		Organization:	
Street Address:		City:	State:      Zip Code:
Office Telephone ( <i>Include Area Code</i> ):		E-Mail Address:	
Signature:	Title:	Date:	

**EXHIBIT D**  
**CERTIFICATION OF PROJECT COMPLETION & DATA DESTRUCTION**

CHIA Data must be destroyed so that it cannot be recovered from the electronic storage media. Acceptable methods include the use of file wiping software implementing at a minimum DoD.5200.28-STD (7) disk wiping, and the degaussing of backup tapes. Electronic storage media such as floppy disks, CDs, and DVDs used to store data must be made unusable by physical destruction. All data destruction must comply with the requirements of M.G.L. c. 93I.

The undersigned hereby certifies that the Project entitled:

\_\_\_\_\_ approved under a Data Application approved on \_\_\_\_\_ and subject to the Data Use Agreement dated \_\_\_\_\_ is complete as of this date: \_\_\_\_\_.

The undersigned further certifies as follows (check the appropriate section):

- I/we certify that I/we have destroyed all Data received from CHIA in connection with this Data Application and Project, in all media that was used during the Project. This includes, but is not limited to, Data maintained on hard drives and other storage media.
- I/we certify that I/we will continue to hold Data pending any request for an extended retention date (which request may or may not be granted by CHIA in its discretion.)

Name of Custodian:		Organization:	
Street Address:	City:	State:	Zip Code:
Office Telephone (Include Area Code):		E-Mail Address:	
Signature:	Title:	Date:	