



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

Dear: INSERT ORGANIZATION NAME

Enclosed please find the New York State Department of Health (DOH), Office of Health Insurance Programs (OHIP), Medicaid Confidential Data (MCD) Data Use Agreement (DUA).

The purpose of the DUA is to assure DOH that a Requesting Organization (Requestor) will maintain the security of MCD that DOH releases to the Requestor.

An additional purpose of the DUA is to establish a legally binding agreement between the Requestor and DOH by defining the terms and conditions of the MCD release, should DOH accept the Requestor's Agreement. *The sensitivity of MCD cannot be over-emphasized. MCD includes all personal information about Medicaid recipients, including Protected Health Information (PHI).*

Furthermore, if the Requestor plans to hire subcontractors to work with MCD, the Requestor must complete and submit a DUA Addendum along with the Business Associate Agreement (BAA) to DOH. DOH must acknowledge security requirements imposed by the Requestor on subcontractors/business associates which should take into account the risk presented by the type and volume of the data being shared by the Requestor with the subcontractors/business associate in the DUA Addendum and BAA before the subcontractor/business associate may access MCD.

The Requestor is responsible for complying with all federal and state laws and regulations regarding the privacy, protection, and security of MCD. The Requestor shall ensure that any BAA with the subcontractor/business associate reasonably protects the Requestor from liability in the event of a breach attributable to the subcontractor/business associate.

Please fill out this DUA in its entirety and be sure to attach all required supporting documentation. Send completed scanned applications to:

Email:
doh.sm.Medicaid.Data.Exchange@health.ny.gov
Security and Privacy Bureau
Division of Operations and Systems
Office of Health Insurance Programs
New York State Department of Health

Please contact the email address above if there are any additional questions about this agreement or Medicaid's data security requirements.

Section 1: Requestor Information

- I. This Agreement is by and between the New York State Department of Health (DOH), and **INSERT ORGANIZATION NAME**, being signed for by, **INSERT NAME OF INDIVIDUAL AUTHORIZED TO BIND THE ORGANIZATION**, an authorized individual of the Organization, hereinafter termed "Requestor".
- II. Provide the name, title and contact information of the individual authorized to legally bind your company, agency or entity to the terms of this Agreement. The person who is named in this section must sign all sections of the Data Use Agreement (DUA), except for the Custodian section which must be signed by the Custodian(s).

Authorized Individual:	Click or tap here to enter text.
Title:	Click or tap here to enter text.
Organization:	Click or tap here to enter text.
Address:	Click or tap here to enter text.
Telephone:	Click or tap here to enter text.
Email Address:	Click or tap here to enter text.
Contract or Grant Number:	Click or tap here to enter text.
Entity Type:	<input type="checkbox"/> Qualified Entity (QE) <input type="checkbox"/> Health Home (HH) <input type="checkbox"/> Performing Provider System (PPS) <input type="checkbox"/> Value Based Payment (VBP) Participant <input type="checkbox"/> Managed Care Organization/Plan (MCO/MCP) <input type="checkbox"/> State Entity: Click or tap here to enter text. <input type="checkbox"/> Other: Click or tap here to enter text.

- III. DOH agrees to provide the Requestor with MCD from the DOH Medicaid Data Warehouse (MDW) or other recognized DOH data source. In exchange, the Requestor agrees to use the MCD only for purposes that support the Requestor's project, research or study referenced in this Agreement, which DOH has determined assists in the administration, monitoring, management and improvement of the State Medicaid program or the services provided to beneficiaries. The Requestor agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality, integrity and availability of the MCD by complying with the terms of this Agreement, State and Federal law, the Health Insurance Portability and Accountability Act (HIPAA) and NYS Information Security Policy P03-002. In addition, the Requestor should adhere to guidance set forth by the National Institute of Standards and Technology in NIST 800-53 Rev. 4. Security requirements imposed by the Requestor on any subcontractors/business associates should take into account the risk presented by the type and volume of the data being shared by the Requestor with the subcontractor/business associate. If it is necessary for Requestor's purpose to contract with downstream entities, and reasonable security assurances from the downstream's business associate agreements are impracticable, Requestor or any subcontractor/business associate may exercise the option to contract

with a third-party security platform provider to host the data for access when the risk presented by the type and volume of data being shared justifies such a platform.

- IV. This Agreement contains the terms and conditions under which DOH will disclose, and the Requestor will obtain, use, reuse, disclose and destroy the DOH MCD data file(s) specified in Section 3: Data Description. This provision also applies to all derivative or commingled file(s) that contain direct individual identifiers or elements that can be used to identify specific individuals when used in concert with other information. This Agreement supersedes all agreements by and between the parties with respect to the use of MCD from the files specified in Section 3 and preempts and overrides any previous instructions, directions, agreements, or other prior communication from the DOH or any of its components with respect to the data specified herein.

Section 2: Purpose

- I. In consideration for accepting the data file(s), the Requestor represents that such data file(s) will be used solely for the purpose(s) listed below. Requestor agrees not to disclose, use or reuse MCD for any purpose, other than as described herein, without an executed and accepted DUA Addendum by and between Requestor and DOH. The Requestor affirms that the data requested by the Requestor is the minimum necessary to achieve the purposes stated in this section. The Requestor agrees that, within the Requestor's Organization and the organizations of its business associates, access to the data covered by this Agreement shall be limited to the minimum amount of data and minimum number of individuals necessary to achieve the purpose stated in this section.
- II. In this section, Requestor should describe the purpose of the project, as well as how MCD will be used to assist DOH in the administration, monitoring, management and improvement of the New York State Medicaid program or the services provided to beneficiaries. The description of the project should clearly state the purpose of the initiative.

[Click or tap here to enter text.](#)

Section 3: Data Description

- I. The following DOH data file(s) or data elements, not to exceed the minimum necessary standard, are requested under this Agreement:
- A. Specify the individual Medicaid record level data elements needed for this request:
[Click or tap here to enter text.](#)
- B. Specify the dates of the data requested:
[Click or tap here to enter text.](#)
- C. Specify the frequency and schedule of data release:
[Click or tap here to enter text.](#)

Section 4: Custodian

- I. The parties mutually agree that the following named individual(s) is (are) designated as Custodian(s) of the file(s) on behalf of the Requesting Organization and will be the person(s) responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The Custodian(s) agrees to notify DOH within fifteen (15) days of any

change of custodianship. The parties mutually agree that DOH may disapprove a custodian or may require the appointment of a new custodian at any time. The Custodian(s) hereby acknowledges his/her appointment as Custodian(s) of the aforesaid file(s) and agrees to comply with all of the provisions of this Agreement on behalf of the Organization. Should there be a third-party contractor in possession of MCD on Requestor's behalf, they, too, must designate a Custodian and submit the Custodian to DOH for acceptance.

- II. Custodian(s), also known as Gatekeepers, shall be responsible for providing access to, and accurately documenting, certain information related to workforce members who access MCD on behalf of the requesting entity. Custodians must accurately record all entity staffing changes, and provide a quarterly report ("Quarterly Names Update") to the Security and Privacy Bureau containing the first and last names, and employment start and end dates of all affected employees.
- III. Custodians must also provide this report upon written request from DOH. This quarterly report must always be accompanied by a notarized DUA Addendum. In addition to the Quarterly Names Update, Custodians must notify the Security and Privacy Bureau, within 24 hours, any time an employee or subcontractor joins or leaves the Requesting Organization. All Custodian changes also require the submission of a notarized DUA Addendum to DOH.
- IV. Requestor or Custodian shall provide all policies and procedures related to workforce system access management including provisioning, modifying, and terminating users who access any system that stores, processes, analyzes or transmits MCD on behalf of the Requesting Organization.
- V. Lead Custodian:

Lead Custodian:	Click or tap here to enter text.
Title:	Click or tap here to enter text.
Organization:	Click or tap here to enter text.
Address:	Click or tap here to enter text.
Telephone:	Click or tap here to enter text.
Email Address:	Click or tap here to enter text.
Date of Signature	Click or tap to enter a date.
Signature:	

- VI. Alternate Custodian:

Alternate Custodian:	Click or tap here to enter text.
Title:	Click or tap here to enter text.
Organization:	Click or tap here to enter text.
Address:	Click or tap here to enter text.
Telephone:	Click or tap here to enter text.
Email Address:	Click or tap here to enter text.
Date of Signature	Click or tap to enter a date.
Signature:	

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Section 5: Security

- I. The below security provisions apply to the Requestor only. Any security requirements between the Requestor and any subcontractor/business associate should be based on risk and the type and volume of data being shared.
- II. The Requestor warrants that it shall employ appropriate administrative, technical, and physical safeguards to protect the confidentiality and security of data provided under this DUA. The safeguards employed shall provide a level and scope of security that is not less than the level and scope of security requirements established by Federal and New York State policies. Further, the Requestor agrees that the data must not be physically moved, transmitted, or disclosed in any way from or by the site indicated in Section 6: Data Storage and Access without written approval from DOH.
- III. DOH shall, at its sole discretion, require Requestor to complete and submit Moderate-Plus System Security Plan (SSP) Workbooks, a System Security Plan Controls Attestation, or establish a Restricted Access Model (RAM) Environment for any system(s) that will store, process or permit access to MCD. DOH shall evaluate Requestor’s DUA submission, determine the most appropriate solution for securing MCD, and provide Requestor with necessary materials to fulfill this requirement.

Section 6: Data Storage and Access

- I. When Requestor and Custodian take possession of MCD, it shall be stored in the location specified below. The data cannot be transferred by any means to another environment without a DUA Addendum to this Agreement that has been accepted by DOH.

Type of Storage Environment:	<input type="checkbox"/> Restricted Access Model <input type="checkbox"/> Production <input type="checkbox"/> DOH System Access: Click or tap here to enter text. <input type="checkbox"/> Other: Click or tap here to enter text.
Title of Location:	Click or tap here to enter text.
Company Housing Data:	Click or tap here to enter text.
Address of Location:	Click or tap here to enter text.

Section 7: End Date and Destruction of Data

- I. The parties mutually agree that the aforesaid files(s) (and/or any derivative file(s)), including those files that directly identify individuals, may only be retained by the Requestor until [Insert End Date of Contract, Grant or Per Sponsor](#), hereinafter known as the “End Date.” The DUA may only be extended past the End Date if a written DUA Addendum is accepted by DOH

prior to the DUA expiration date. Extensions of the DUA will be tied to: A) end dates of contracts with DOH; B) end dates for Centers for Medicare and Medicaid Services (CMS) grants; or C) per OHIP sponsor determination.

- II. If the purpose described in Section 2: Purpose is completed prior to the End Date, the Requestor agrees to notify DOH within 30 days of completion. Upon such notice or the End Date, whichever occurs sooner, the Requestor agrees to destroy all data provided under this DUA, unless DOH grants an exception. If DOH grants the exception, the MCD must be protected until it has been destroyed. The Requestor agrees to destroy all MCD and submit a Data Destruction Affidavit to DOH within 30 days of the project completion. The Requestor agrees not to retain any DOH MCD files or any parts thereof, unless authorized in writing by DOH. DOH does not have to notify Requestor of the End Date for this provision to apply. Either party may terminate this DUA at any time, for any reason, upon 30 days written notice to the other party. Upon notice of termination by Requestor, DOH will stop releasing data file(s) to the Requestor and the Requestor must destroy all data file(s) Requestor has already received. If a Data Consuming Entity (DCE) goes out of business it shall destroy all MCD it has received from DOH and submit a Data Destruction Affidavit to DOH within 30 days.
- III. In the event that the destruction of the data is not feasible the Requestor must provide explanation and notification to DOH and receive DOH approval to deviate from the data destruction requirements set forth above.

Section 8: Offshore Prohibition

The Requestor further agrees that any MCD provided under this Agreement shall not be accessed by employees, agents, representatives, or contractors/business associates who are located outside of the United States and its territories (offshore). Further, the Requestor agrees that MCD shall not be received, stored, processed, or disposed via information technology systems which are located offshore.

Section 9: Unauthorized Use or Disclosure, Breach and Incident Response

- I. The Requestor agrees that if DOH determines or believes that the Requestor has used, reused or disclosed MCD in a way other than as explicitly authorized by this Agreement, DOH may, at its sole discretion, require the Requestor to:
 - A. Promptly investigate and report to DOH the Requestor's determinations regarding any alleged or actual unauthorized use, reuse or disclosure;
 - B. Promptly resolve any problems identified by the investigation;
 - C. If requested by DOH, submit a formal response to an allegation of unauthorized use, reuse or disclosure;
 - D. If requested by DOH, submit a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures; and
 - E. If requested by DOH, destroy all data files received from DOH and submit a Data Destruction Affidavit. The Requestor understands that upon DOH's determination or reasonable belief that unauthorized uses, reuses or disclosures have taken place, DOH may suspend further release of MCD to the Requestor, indefinitely. The Requestor agrees to report any breach of personally identifiable information (PII) or Protected Health Information (PHI) from the DOH data file(s), loss of MCD or disclosure to any unauthorized persons to the DOH by e-mail notification at doh.sm.Medicaid.Data.Exchange@health.ny.gov within one hour of discovery, and to cooperate fully in the security incident investigation and review process. While DOH retains all ownership rights to the data file(s), as outlined above, the Requestor shall bear the cost and liability for any breaches of PII or PHI from the data file(s)

while they are entrusted to the Requestor. Furthermore, if DOH determines that the risk of harm requires notification of affected individual persons of the security breach and/or other remedies, the Requestor agrees to carry out these notifications without any cost to DOH.

- II. If Requestor determines that an incident has occurred in one of Requestor's systems, Requestor must notify DOH. An incident is defined as violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices. DOH may require Requestor to complete a risk analysis, risk assessment and an organizational attestation affirming that Requestor has identified and remediated the root cause of the malicious software outbreak, cyberattack, or other information security incident and that Requestor's systems and networks have been remediated and have returned to normal operation. Requestor understands that access to DOH systems will not be granted until the organizational attestation is completed and accepted by DOH. Requestor acknowledges that Requestor's organization may be liable if ransomware or malware spreads to DOH systems from Requestor's systems.
- III. Prior to the start of forensic activities related to significant information security incidents, the organization should determine how it will collect and preserve evidence in a way that supports its use in future legal or internal disciplinary proceedings. The organization should make all such forensic decisions in accordance with its policies and advice from legal counsel. In such situations, the organization should follow a clearly defined chain of custody to avoid allegations of mishandling or tampering with evidence. The organization should keep a log of every person who had physical custody of the evidence, and document the date and time of the actions that they performed. The organization should make a forensic copy of the evidence and verify the integrity of both the original and the copied evidence. The organization should assure that the original evidence is stored securely and perform all forensic examination and analysis using only the copied evidence. If it is unclear whether or not evidence preservation is required, the evidence should be preserved. All forensic examination, such as that described above, must account for the disposition and impact on all DOH data as well as all systems that store, process, analyze, or transmit DOH data in the report provided to DOH.

Section 10: HIPAA Business Associate Agreement

Complete and return Attachment A: HIPAA Business Associate Agreement along with the DUA application.

Section 11: Sharing Data with Third Parties

- I. Requestor agrees not to share MCD obtained from DOH with other parties unless DOH has accepted a DUA Addendum and a copy of the Business Associate Agreement (BAA) executed between Requestor and the third-party Business Associate with DOH. Any BAA submitted for DOH acknowledgement as part of a DUA addendum must contain at minimum the confidentiality language found in part III.
- II. Security requirements imposed by the Requestor on any subcontractors/business associates should take into account the risk presented by the type and volume of the data being shared by the Requestor with the subcontractor/business associate. If it is necessary for Requestor's purpose to contract with downstream entities, and reasonable security assurances from downstream's business associate agreements are impracticable, Requestor or any subcontractor/business associate may exercise the option to contract with a third-party security platform provider to host the data for access when the risk presented by the type and volume of data being shared justifies such a platform.
- III. Confidentiality Language for Third Parties.

- A. The Federal Center for Medicare and Medicaid Services (CMS) requires that all contracts and/or agreements executed between the Department of Health and any second party that will receive MCD must include contract language that will bind such parties to ensure that contractor(s)/business associates abide by the regulations and laws that govern the protection of individual, Medicaid confidential level data. This notification requires that you include the following language in this contract and all future contracts that will govern the receipt and release of such confidential data:
1. Medicaid Confidential Data/Protected Health Information includes all information about a recipient or applicant, including enrollment information, eligibility data and protected health information.
 2. You must comply with the following state and federal laws and regulations:
 - a. Section 367-b(4) of the NY Social Services Law
 - b. New York State Social Services Law Section 369(4)
 - c. Article 27-F of the New York Public Health Law and 18 NYCRR 360-8.1
 - d. Social Security Act, 42 USC 1396a(a)(7)
 - e. Federal regulations at 42 CFR 431.302 and 42 CFR Part 2
 - f. The Health Insurance Portability and Accountability Act (HIPAA) and HITECH, at 45 CFR Parts 160 and 164
 - g. NYS Mental Hygiene Law Section 33.13
 - h. NY Civil Rights Law 79-L
- B. Please note that MCD released to you may contain AIDS/HIV related confidential information as defined in Section 2780(7) of the New York Public Health Law. As required by New York Public Health Law Section 2782(5)(a), the following notice is provided to you: "This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient authorization for the release for further disclosure."
- C. Alcohol and Substance Abuse Related Confidentiality Restrictions: Alcohol and substance abuse information is confidential pursuant to 42 CFR Part 2. General authorizations are ineffective to obtain the release of such data. The federal regulations provide for a specific release for such data.
- D. You agree to ensure that you and any agent, including a subcontractor/business associate, to whom you provide Medicaid Confidential Data or Protected Health Information (MCD/PHI), agrees to the same restrictions and conditions that apply throughout this Agreement. Further, you agree to state in any such agreement, contract or document that the party to whom you are providing the MCD/PHI may be required to provide their Business Associate Agreements to DOH and may be required to receive acknowledgment or written agreement from DOH prior to redisclosing the MCD. You agree to include the notices preceding, as well as references to statutory and regulatory citations set forth above, in any agreement, contract or document that you enter into that involves MCD/PHI.
- E. Any agreement, contract or document with a subcontractor/business associate must contain all of the above provisions pertaining to confidentiality. It must contain the HIV/AIDS notice as well as a statement that the subcontractor/business associate may not use or disclose the MCD without the prior written approval of DOH.

Section 12: Publications

The Requestor agrees not to disclose direct findings, listings, or information derived from the file(s) specified in Section 3, with or without direct identifiers, without the express written consent of DOH, if such findings, listings, or information can, by themselves or in combination with other data, be used to deduce an individual's identity. The Requestor further understands and acknowledges that any publications derived from MCD must be reviewed and approved by the DOH prior to publication or public release. The term publication is defined to include, but is not limited to: written abstracts, articles and papers; presentations at conferences, board meetings, or advisory committee meetings, task forces, or collaborative groups; minutes of meetings, charts, graphs, data sheets, and slides; posting of information on a website, or social media such as Facebook, LinkedIn, Twitter; or email. DOH Office of Health Insurance Programs (OHIP) requires at least forty-five (45) business days to review and approve proposed publications. Any research publication shall include the following disclaimer: "Disclaimer: The views and opinions expressed in this article are those of the author(s) and do not necessarily reflect the official policy or position of the New York State Department of Health. Examples of analysis performed within this article are only examples. They should not be utilized in real-world analytic products."

Section 13: Attestation and Execution

- I. By signing this Agreement, the Requestor and Custodian agree to abide by all provisions set out in this Agreement and acknowledges that violation of the terms of this Agreement may have potential civil, criminal or administrative penalties.
- II. By signing this Agreement, the Requestor agrees to grant access to MCD at any time to authorized representatives of DOH at the site indicated in Requestor's SSPs or RAM documentation for inspecting and confirming compliance with the terms of this Agreement.
- III. By signing this Agreement, the undersigned individual hereby attests that he or she is authorized to enter this Agreement and legally bind the organization and agrees to all the terms specified herein.
- IV. By signing this Agreement, the Requestor agrees that this Agreement shall be deemed executory to the extent of the resources available to DOH Medicaid program and no liability on account thereof shall be incurred by the DOH Medicaid beyond the resources available thereof.
- V. The parties mutually agree that DOH retains all ownership rights to the data file(s) referred to in this Agreement, and that the Requestor does not obtain any right, title, or interest in any of the MCD furnished by DOH. DOH reserves the right to require Requestor to destroy all MCD received from DOH any time and for any reason. If DOH exercises this right and requires Requestor to destroy all MCD received from DOH, a Data Destruction Affidavit form must be completed and returned to DOH.
- VI. By signing this Agreement, the Requestor agrees to be responsible for the use of MCD. Requestor will also be responsible for the establishment and maintenance of security, to prevent unauthorized use of MCD. The Requestor represents and warrants that such data will not be disclosed, released, revealed or showed, or access granted to any person other than those listed on the Names List provided to DOH. Any improper use or disclosure of MCD must be reported to the Security and Privacy Bureau. Requestor agrees to establish and ensure that its contractors, subcontractors and business associates, if any, establish appropriate administrative, technical and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use of or access to the data. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the

- Federal Health Insurance Portability and Accountability Act of 1996. There should be no release of MCD unless acknowledgment or written permission is received from DOH.
- VII. Attestation Regarding Privacy/Security of Medicaid Confidential Data: Requestor, contractors and subcontractors/business associates hereby agree to all confidentiality language for Third Party Contractors found in Section 11: Sharing Data with Third Parties of the DUA, and that these citations must be included in all MOU, MOA, Subcontracts or Contracts. Requestor, contractors and subcontractors/business associates hereby acknowledge that all subcontractors/business associates will be listed in a DUA Addendum, and that a BAA will be maintained by the contractor and provided to DOH.
- VIII. Limitations and Liabilities: DOH will not be responsible for any loss due to data exchange.
- IX. Assignment: The Requestor may not assign, transfer, convey, or sublet, directly or indirectly, all or part of its rights or obligations under this Agreement.
- X. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York. If any provision of this Agreement conflicts with any statute or rule of law of the State of New York, or is otherwise unenforceable, such provision shall be deemed null and void only to the extent of such conflict or unenforceability, and shall be deemed separate from, and shall not invalidate, any other provision of this Agreement.
- XI. If Requesting Organization is a Qualified Entity (QE), some of the provisions contained within the DUA may not apply. In these situations, the Statewide Health Information Network for New York (SHIN-NY) regulations will apply. For QEs, MCD may only be used for treatment, quality improvement, to reduce medically adverse events, and to reduce costs through care coordination as authorized by 18 NYCRR 504.9. All QEs must submit proof of Qualified Entity Certification when returning the DUA form to DOH.
- XII. Confidentiality Statement
- A. The Requestor has requested the data outlined in Section 3 (“the data”) to **Insert Purpose Language** per **Insert Contract Number, Grant Number or “Sponsorship”** and **DUA Identification Number** for periods (dates): upon DUA approval and until **Insert End Date**.
- B. Section 1902(a)(7) of the federal Social Security Act and Section 369(4) of the Social Services Law require that MCD be treated as confidential and used or disclosed only for purposes directly connected with the administration of the Medical Assistance program.
- C. The Requestor represents to DOH that the Requestor, its officers, employees, agents or contractors/business associates will adhere to these Medicaid confidentiality standards and provisions of the legal authority cited by Requestor in the Purpose section. The Requestor will provide the following controls to ensure confidentiality of the MCD, as much as practicable:
1. The MCD may only be used for the purpose listed in this Agreement.
 2. Only listed Requestor staff that requires access to MCD to perform functions listed in this Agreement may be given access to the data. Such staff will be instructed by the Requestor in the confidential nature of the data and its proper handling.
 3. The MCD will be stored in locked storage receptacles for physical media or encrypted when in electronic format when the data are not under direct and immediate control of an authorized Requestor staff member engaged in work under this Agreement.
 4. The MCD, including any copies made by the Requestor, will be returned to DOH by the Requestor upon completion of the purpose outlined in the DUA, or with prior written DOH approval, the data may be destroyed by the Requestor after its use and a written confirmation provided by the Requestor to DOH of such destruction.

- XIII. Requestor, its contractors and subcontractors/business associates agree to sign the Federal Health Insurance Portability and Accountability Act/ Business Associate Agreement (HIPAA/BAA). Requestor agrees that all staff identified as having access to the MCD in any BAA, Memorandum of Understanding (MOU), Memorandum of Agreement (MOA), contract or subcontracts must match the list provided to DOH. Requestor agrees that the statement of work to be done in the BAA, MOU, MOA, contract or subcontracts must match the purpose outlined in this DUA. Requestor agrees that the duration of the BAA, MOU, MOA, contract, or subcontracts must match the “start” and “end” date as stated in the DUA. Any description of destruction or return of MCD must match that as stated in the DUA.
- XIV. No individual claim-specific data in any form shall be combined or become a permanent part of another database or information sharing and retrieval system and any use of individual recipient record data beyond this Agreement must have the written approval of DOH.
- XV. Requestor signs this Agreement as a condition for receipt of MCD to ensure maintenance of confidentiality and security of the data pursuant to the laws and provisions outlined within the DUA.

Date: [Click here to enter a date.](#)

Signature of Requestor: _____

Requestor's Name (please print): [Click or tap here to enter text.](#)

Requestor's Title (please print): [Click or tap here to enter text.](#)

Organization: [Click or tap here to enter text.](#)

Address: [Click or tap here to enter text.](#)

NOTARY

State of _____

} ss.:

County of _____

Subscribed and sworn to before me on this _____ day of _____, 20__

Notarization

DOH Acceptance:

2018 v. 1.3 NYSDOH OHIP Data Use Agreement #: [Click or tap here to enter text.](#)

Date: _____

Signature of DOH Representative: _____

Signer's Name (please print): _____

DUA Identification Number: _____

DUA Start Date: _____

DO NOT COPY

Attachment A – HIPAA BUSINESS ASSOCIATE AGREEMENT

- I. As an entity receiving MCD from DOH under this Data Use Agreement (DUA), Requestor becomes a Business Associate of DOH and therefore agrees to the provisions of the BAA outlined below.
- II. Definitions. For purposes of this Agreement:
 - A. “Business Associate” shall mean: **Insert Entity Name**
 - B. “Covered Program” shall mean: New York State Department of Health, Health Insurance Programs
 - C. Other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and implementing regulations, including those at 45 CFR Parts 160 and 164.
- III. Obligations and Activities of Business Associate:
 - A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
 - B. Business Associate agrees to use the appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information (PHI) other than as provided for by this Agreement, and to comply with the security standards for the protection of electronic protected health information in 45 CFR Part 164, Subpart C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
 - C. Business Associate agrees to report to Covered Program as soon as reasonably practicable any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware. Business Associate also agrees to report to Covered Program any Breach of unsecured PHI of which it becomes aware. Such report shall include, to the extent possible:
 1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 2. A description of the types of unsecured PHI that was involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information;
 3. Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 4. A description of what Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 5. Contact procedures for Covered Program to ask questions or learn additional information.
 - D. Business Associate agrees, in accordance with 45 CFR § 164.502(e)(1)(ii), to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
 - E. Business Associate agrees to provide access, at the request of Covered Program, and in the time and manner designated by Covered Program, to PHI in a designated record set, to Covered Program in order for Covered Program to comply with 45 CFR § 164.524.

- F. Business Associate agrees to make any amendment(s) to PHI in a designated record set that Covered Program directs in order for Covered Program to comply with 45 CFR § 164.526.
 - G. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Program to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528; and Business Associate agrees to provide to Covered Program, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to comply with 45 CFR § 164.528.
 - H. Business Associate agrees, to the extent the Business Associate is to carry out Covered Program's obligation under 45 CFR Part 164, Subpart E, to comply with the requirements of 45 CFR Part 164, Subpart E that apply to Covered Program in the performance of such obligation.
 - I. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Program available to Covered Program, or to the Secretary of the Federal Department of Health and Human Services (Secretary), in a time and manner designated by Covered Program or the Secretary, for purposes of the Secretary determining Covered Program's compliance with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- IV. Permitted Uses and Disclosures by Business Associate
- A. Except as otherwise limited in this Agreement, Business Associate may only use or disclose PHI as necessary to perform functions, activities, or services for, or on behalf of, Covered Program as specified in this Agreement.
 - B. Business Associate may use PHI for the proper management and administration of Business Associate.
 - C. Business Associate may disclose PHI as required by law.
- V. Term and Termination
- A. This Agreement shall be effective for the term as specified in the contract between the Covered Entity and Business Associate, after which time all of the PHI provided by the Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program; provided that, if it is impracticable or not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in your contract.
 - B. Termination for Cause. Upon Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for Business Associate to cure the breach and end the violation or may terminate this Agreement if Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or Covered Program may immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
 - C. Effect of Termination.
 - 1. Except as provided in paragraph (C) (2) below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Program, or created or received by Business Associate on behalf of Covered Program. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

2. In the event that returning or destroying the PHI is impracticable or not feasible, Business Associate shall provide to Covered Program notification of the conditions that prevented the return or destruction of the PHI. Upon mutual agreement of Business Associate and Covered Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction impracticable or not feasible, for so long as Business Associate maintains such PHI.

VI. Violations

- A. Any violation of this Agreement may cause irreparable harm to the Covered Program. Therefore, the Covered Program may seek any legal remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- B. Business Associate shall indemnify and hold the Covered Program harmless against all claims and costs resulting from acts/omissions of Business Associate in connection with Business Associate's obligations under this Agreement. Business Associate shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and hold harmless the Covered Program from suits, actions, damages and costs, of every name and description relating to breach notification required by 45 CFR Part 164 Subpart D, or State Technology Law § 208, caused by any intentional act or negligence of Business Associate, its agents, employees, partners or subcontractors, without limitation.

VII. Miscellaneous

- A. Regulatory References. A reference in this Agreement to a section in the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
- B. Amendment. Business Associate and Covered Program agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of HIPAA, HITECH and 45 CFR Parts 160 and 164.
- C. Survival. The respective rights and obligations of Business Associate under (IV) (C) of this Agreement shall survive the termination of this Agreement.
- D. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Program to comply with HIPAA, HITECH and 45 CFR Parts 160 and 164.
- E. HIV/AIDS. If HIV/AIDS information is to be disclosed under this Agreement, Business Associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.
- F. Alcohol and Substance Abuse. If Alcohol and Substance Abuse information is to be disclosed under this Agreement, Business Associate acknowledges that it has been informed of the confidentiality requirements of 42 CFR Part 2.

Business Associate (Subcontractor):

Name: [Insert name of subcontractor, CEO or equivalent](#)

Entity: [Insert Organization](#)

Signature: _____

Date: [Click or tap to enter a date.](#)

Covered Entity

Name: _____

Entity: NYS DOH Office of Health Insurance Programs

Signature: _____

Date: _____

Return to:
Security and Privacy Bureau
Medicaid Data Warehouse
Division of Systems
New York State Department of Health
Office of Health Insurance Programs
(518) 649-4397

Mailing address:
NYSDOH - MISCNY
ESP P1-11S Dock J
Albany NY 12237
medicaid.data.exchange@health.ny.gov

Attachment B - DATA DESTRUCTION AFFIDAVIT FORM

1. My name is, [Click here to enter text.](#)
2. I am employed at [Click here to enter text](#) , which is located at [Click here to enter text.](#)
3. Medicaid Confidential Data (MCD), i.e., [Click here to enter text](#) were obtained from the New York State Department of Health (DOH) pursuant to Data Use Agreement (DUA) Number [Click here to enter text](#) . This DUA was entered into for the following purpose: [Click here to enter text](#)

This project/program was completed on:[Click here to enter a date.](#)

4. I understand that this project/program specifically prohibits the use of the Medicaid data for any purpose, other than the purpose of which was stated in the DUA, without the prior written approval of the New York State Department of Health, Office of Health Insurance Programs. As the project/program has been completed, I understand that the Medicaid data may no longer be used for any purpose whatsoever.

5. Please check one of the following responses regarding the return or disposal of MCD:

<input type="checkbox"/>	Returned.....	Date: Click or tap to enter a date.
<input type="checkbox"/>	Destroyed by shredding.....	Date: Click or tap to enter a date.
<input type="checkbox"/>	Destroyed by crushing.....	Date: Click or tap to enter a date.
<input type="checkbox"/>	Destroyed by forensic cleaning.....	Date: Click or tap to enter a date.

6. The data was destroyed by: [Insert Name of Entity Who Performed Destruction.](#)
7. I understand that there are civil and criminal penalties for violations of the following laws and regulations pertaining to the confidential nature of the Medicaid data:
 - Section 367-b(4) of the NY Social Services Law
 - New York State Social Services Law Section 369(4)
 - Article 27-F of the New York Public Health Law and 18 NYCRR 360-8.1
 - Social Security Act, 42 USC 1396a (a)(7)
 - Federal regulations at 42 CFR 431.302 and 42 CFR Part 2
 - The Health Insurance Portability and Accountability Act (HIPAA) and HITECH, at 45 CFR Parts 160 and 164.
 - NYS Mental Hygiene Law Section 33.13
 - NY Civil Rights Law 79-L
8. I have not retained any MCD disclosed to me under the above-referenced DUA and I understand that any MCD that I might recall from memory remains confidential.

APPLICANT SIGNATURE

Date: _____

NOTARY

State of _____ ss.:

County of _____

Subscribed and sworn before me on this _____ day of 20____

NOTARY PUBLIC SIGNATURE

DO NOT COPY