

## DATA USE AGREEMENT FOR NONPUBLIC PATIENT LEVEL DATA – HEALTH AND SAFETY CODE SECTION 128766

The Department of Health Care Access and Information (HCAI) is required to protect patient privacy as stated in Section 128766 of the Health and Safety Code. Any data disclosures pursuant to this Agreement are required to be consistent with the standards and limitations applicable to limited data sets in Code of Federal Regulations, title 45, section 164.514. Any hospital or health department that receives data shall not disclose that data to any person or entity, except as required or permitted by law. In no case shall a hospital, health department, contractor, or subcontractor reidentify or attempt to reidentify any data received.

This Agreement is by and between HCAI and [San Bernardino County Department of Public Health](#), hereinafter termed “Requestor.” The nonpublic patient level data provided by HCAI under this Agreement pursuant to Health and Safety Code section 128766 is described in Requestor’s Limited Data Request, (Data Request), including any identified attachments, Request No. **CS0002741**, dated [8/29/2024](#), for the project titled “[SADE HCAI Data Request](#)” and is hereinafter termed “Data.” This Data Request is hereby incorporated by reference into this Agreement. This Agreement supersedes all prior data use agreements between Requestor and HCAI and Requestor and the Office of Statewide Health Planning and Development (OSHPD), HCAI’s predecessor.

Per this Agreement, the Requestor shall not release, share, or further distribute any Data it receives from HCAI (including any Data containing complete or partial individual patient records).

The Requestor acknowledges and agrees that the nonpublic patient level data is subject to relevant state and federal privacy and security laws with which Requestor must comply.

The parties mutually agree that HCAI retains all ownership rights to the Data, and that the Requestor does not obtain any right, title, or interest in any of the Data.

Requestor will only use or disclose the Data for the specific limited purposes and in the ways described in its approved request. Requestor is bound by all statements made in the approved request. Only those persons/entities identified in the request are permitted to access, receive, or use the Data.

As the recipient of the Data, Requestor agrees that it will:

1. Only use or disclose the Data as stated in its Data Request, or as required by law (e.g., by court order or search warrant);
  - If Requestor wants to add a use, disclosure, or persons/entities to use/receive the Data, Requestor will submit a revised Data Request stating and describing the new use/disclosure and identifying any new persons/entities to receive or use the Data;
2. Use appropriate safeguards to prevent unauthorized use or disclosure of the Data including taking measures commensurate with HCAI’s “[Recommended Practices for Safeguarding Access to Confidential Data](#)” incorporated by reference into this Agreement;
3. Notify HCAI immediately (no later than 24 hours) of the discovery of a security breach impacting the Data, or of any use or disclosure of the Data not stated in its Data Request;

4. Be responsible for all costs incurred by HCAI (data owner) due to any security incident resulting from the Requestor's failure to perform or negligent acts of its personnel, and resulting in an unauthorized disclosure, release, access, review, or destruction, or loss, theft, or misuse of an information asset. If the contractor experiences a loss or breach of data, the Requestor shall immediately report the loss or breach to the data owner. If the data owner determines that notice to the individuals whose data has been lost or breached is appropriate, the Requestor will bear any, and all costs associated with the notice or any mitigation selected by the data owner. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data;
5. Provide HCAI with a Business Associate Agreement that meets the requirements of the Code of Federal Regulations, title 45, Part 160 and Part 164, for any person or entity, other than a member of the Requestor's workforce, that will access PHI received by Requestor, including but not limited to Requestor's contractors, subcontractors, or partners;
6. Provide HCAI with copies of fully executed data sharing agreements, for any person or entity, other than a member of the Requestor's workforce, that will access PHI received by Requestor, including but not limited to Requestor's contractors, subcontractors, or partners. Those agreements shall reference this Agreement between the Requestor and HCAI;
7. Ensure that all of its contractors, subcontractors, or partners to whom Requestor provides any of the Data received from HCAI, agree in writing to comply with all terms of this Agreement, including providing proof to the Requestor of destruction of the Data upon completion of the purpose specified in the approved request or at the end of the retention period, whichever occurs first;
8. Not re-identify or attempt to re-identify the individuals to whom the Data pertains and not to contact any specific individual whose record is included in the Data;
9. Retain the Data for no more than ten years from year Data was collected (e.g., data collected in 2013, reported in 2014, shall be destroyed at the end of 2023) or pursuant to retention periods specifically authorized in the Data Request. Requestor will notify HCAI within 30 days of the completion of the purpose specified in the approved request if the purpose is completed before the end of the retention period. Within 30 days of such notice or the end of the retention period, whichever occurs first, Requestor, and any of its Business Associates, contractors, subcontractors, or partners shall destroy the Data and send written certification of the destruction to HCAI. Requestor and its Business Associates, contractors, subcontractors, or partners shall not use or retain Data or any parts thereof, after the retention period and all data not specifically identified in the Data Request, including data obtained through prior data requests submitted to HCAI and/or OSHPD, shall be destroyed immediately. By signing this agreement, Requestor attests that Requestor is in full compliance with the data destruction requirements as stated in this Agreement.
10. Present in aggregate form, in which there is no reasonable basis to believe that data can be used to identify an individual, the final report findings, listing, or publication derived from the Data in any manner (e.g., via email, website, manuscript, table, chart, study, report, etc.).
  - Requestor must follow the [California Health and Human Services Agency Data De-Identification Guidelines](#) (DDG) to determine whether aggregate data is sufficiently

de-identified for reporting and may not report aggregated data if User did not follow the DDG;

11. Termination for Cause. Upon HCAI's knowledge of a material breach or violation of this Agreement by Requestor, HCAI may provide an opportunity for Requestor to cure the breach or end the violation and may terminate this Agreement if Requestor does not cure the breach or end the violation within the time specified by HCAI. HCAI may terminate this Agreement immediately if Requestor has breached a material term and HCAI determines, in its sole discretion, that cure is not possible or available under the circumstances. Upon termination of this Agreement, Requestor must destroy all the Data provided under this Agreement. The provisions of this Agreement governing the privacy and security of the Data shall remain in effect until all the Data is destroyed and HCAI receives a certificate of destruction from Requestor.

Any violation of this Agreement by Requestor will be subject to appropriate legal action by the State of California. Requestor agrees to indemnify, defend, and hold harmless HCAI from any and all claims and losses accruing to any person, organization, or other legal entity resulting from its violation of this Agreement.

Requestor acknowledges that criminal penalties under the Data Practices Act (California Civil Code section 1798.56) may apply if it is determined that any person willfully requested or obtained the Data under false pretenses.

Further, the Requestor agrees that any material violations of the terms of this Agreement or any of the laws and regulations governing the use of the Data may result in permanent or temporary denial of access to HCAI data for Requestor or any of Requestor's contractors, subcontractors, partners, or other Business Associates.

The undersigned individual hereby attests that they are authorized to enter into this Agreement on behalf of that Requestor and agrees to all the terms specified herein.

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*Signature*  
Sharon Wang

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*Name – Typed or Printed*  
San Bernardino County, Department of Public Health

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*Company/Organization*  
451 E. Vanderbilt Way

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*Address*  
San Bernardino, CA 92415

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*City, State, Zip*

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*Date*  
Health Officer

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*Title*  
Sharon.Wang@dph.sbcounty.gov

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*E-Mail*  
(909) 387-9146

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*Telephone number*