

**BIOSENSE INFORMATION SHARING AND DATA USE AGREEMENT
BETWEEN IDAHO DEPARTMENT OF HEALTH AND WELFARE AND HOSPITALS
Version 9/1/2016**

I.

THE PARTIES AND THE SUBJECT MATTER OF THE AGREEMENT

This **INFORMATION SHARING AND DATA USE AGREEMENT** (the “Agreement”) is entered into as of _____, (the “Effective Date”), by and between **the Idaho Department of Health and Welfare (DHW), acting through its Division of Public Health, located at 450 W State Street, Boise, Idaho 83702**, and

[A HOSPITAL WITHIN IDAHO], located at

(the “Hospital”), concerning the provision by the Hospital of data, as defined below, to be submitted to the BioSense Platform of the National Syndromic Surveillance Program (as defined below) pursuant to the terms of this Agreement.

II.

RECITALS

A. Background

1. Syndromic surveillance is a process that uses individual health and health-related data and population health indicators that are available before confirmed diagnoses or laboratory confirmation to monitor the health status of a community, identify outbreaks or health events, and provide information for public health decision-making and enhanced responses to events of public health significance.

2. As of November 2011, the BioSense Program of the Centers for Disease Control and Prevention had developed a distributed computing environment and tools with state and local control (“BioSense 2.0”). The BioSense Program has since evolved into the National Syndromic Surveillance Program (“NSSP”), a collaboration which includes public health agencies and healthcare organizations, a stakeholder governance process, and a cloud-based syndromic surveillance computing platform (“BioSense platform”) that hosts data submitted from the jurisdiction and computing applications which include analytic tools and services. Governance of BioSense 2.0 is facilitated by the Association of State and Territorial Epidemiologists (“ASTHO”) in coordination with the Centers for Disease Control (“CDC”), the Council of State and Territorial Epidemiologists (“CSTE”), the National Association of County and City Health Officials (“NACCHO”), and the International Society for Disease Surveillance (“ISDS”), collectively referred to as the “Governance Group”. ASTHO has

contracted with a vendor to provide the cloud-based environment (“Vendor”) for the BioSense platform in a process that is compliant with the Federal Information Security Management Act (“FISMA”). ASTHO, through the Vendor, offers the BioSense platform to DHW for receiving, storing, and managing data for syndromic surveillance. The BioSense platform provides DHW with the ability to control the contribution of and access to data that support syndromic surveillance activities.

3. The BioSense platform provides a secure space in which DHW shall have access and exclusive control over any complete line-level data it submits or are submitted on its behalf, subject to applicable law, with the exception of access for operational support as described in section IV.B.e. below. DHW has the ability to permit data submitters, such as Hospital, within Idaho, to send health-related data for syndromic surveillance (collectively, “Public Health Data Providers” or “PHDPs”) directly to its secure space on the BioSense platform. Sharing of views of data shall be in accordance with guidance developed by DHW in consultation with the Idaho Hospital Association (see Idaho BioSense Platform Terms of Use posted at PublicHealthMU.dhw.idaho.gov). The Terms of Use may change, in which case Hospital will be notified by DHW.

4. Data Received by the BioSense platform will be aggregated automatically to U.S. Department of Health and Human Services (HHS) Regional level and national levels for viewing by authorized users of the BioSense platform. In addition, in order to evaluate unusual clusters or patterns that indicate an event of potential public health concern, authorized users will have limited views of selected individual patient record level data elements such as HHS region, gender, age-group, syndrome, and sub-syndrome. Such views will exclude data elements that identify hospitals, zip codes, counties, states, and individually identifiable information such as birthdate. These surveillance activities include routine analysis of regional and national level trends, evaluation of multi-regional events, and special surveillance during events of public health interest at national and regional levels.

B. WHEREAS, DHW is utilizing the BioSense platform to facilitate the sharing of certain health-related data for syndromic surveillance and to assist in the possible detection, confirmation, situation awareness, monitoring of, and response to public health threats; and

C. WHEREAS, Hospital intends to contribute data to the BioSense platform for public health and surveillance purposes as described herein, subject to the terms and conditions of this Agreement, and

D. WHEREAS, within the BioSense platform: (1) DHW will have control over access to a secure space where only DHW-approved users will be able to view and

analyze patient-level data and Protected Health Information (PHI) or Individually Identifiable Health Information (IIHI); and (2) views of Data Received by the BioSense platform aggregated to U.S. Department of Health and Human Services (HHS) Region and national levels, as well as limited views of non-identifiable patient record level data elements may be accessed by any authorized user of Data available through the BioSense platform, and

E. NOW THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

III.

DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

A. BioSense platform is defined as the cloud-based syndromic surveillance computing platform that hosts tools used to receive, process, store, maintain, analyze, and display data received for the advancement of the National Syndromic Surveillance Program as described in Section II of this Agreement.

B. National Syndromic Surveillance Program (NSSP) (formerly known as the BioSense Program) is defined as the federal program under the CDC that supports the use of syndromic surveillance for improved nationwide all-hazard situational awareness for public health decision making and enhanced responses to hazardous events and outbreaks.

C. Data is defined as the public health-related information gathered by the Hospital or gathered by an individual user on behalf of the Hospital that becomes part of the Data Received by the BioSense platform.

D. Data Received by the BioSense platform is defined as an organized collection of syndromic surveillance data submitted or contributed to NSSP by the Jurisdiction, by any Users, and any Data Providers within the jurisdiction that have entered into an agreement that complies with the Data Use Agreement signed between the DHW and ASTHO.

D. Distributed computing environment is defined as the software technology for managing computing and data exchange in a system of distributed computers, and the use the system to solve computational problems by one or more computers that communicate with each other by message passing.

E. 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.

F. Meaningful Use regulations are defined by the Centers for Medicare and 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 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 modifications published in the Federal Register.

G. Party is defined as Hospital or DHW; **Parties** means Hospital and DHW.

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

I. User means any authorized user of data available through the BioSense platform. All Users of data submitted by the Hospital that is not aggregated into the HHS Regional or national views must be approved by DHW. All users must agree to the CDC BioSense Platform Code of Conduct (see DHW webpage, "Meaningful Use of Electronic Health Records and Idaho Public Health" at PublicHealthMU.dhw.idaho.gov. CDC may change the Code of Conduct, in which case Hospital will be notified by DHW.

IV.

DATA SHARING, ACCESS, AND USE UNDER THIS AGREEMENT

A. Data Sharing. The BioSense platform is designed to promote the contribution of health and health-related data for syndromic surveillance by data providers and the appropriate sharing of aggregated and limited record-level data in HHS Regional and national views. While DHW, Hospital, and other users are not required to share data with the exception of HHS Regional and national views described in IV.B.1.f. below, they are encouraged to do so. The Governance Group may consider and make recommendations for data sharing, which may include recommendations for types of data (e.g., minimum data sets), seasonal data collections, and similar contributions that would enhance the value of the BioSense platform to all users. DHW is not, however, required to implement recommendations of the Governance Group.

B. Data Access and Use. Hospital agrees to submit data to the BioSense platform in accordance with the terms and conditions herein. Hospital shall not take any actions inconsistent with this Agreement; Hospital shall not submit data to the BioSense platform that it is not authorized to submit; and Hospital submission of data will comply with applicable federal, state, and local laws. Any violation of the aforementioned terms and conditions by Hospital may result in suspension or termination of Hospital's access to and/or use of the BioSense platform.

1. Hospital acknowledges and agrees that as part of syndromic surveillance using the BioSense platform, the Data may be used and/or disclosed for the following purposes:

a. **Use by Hospital.** For use by DHW-approved and Hospital-approved Hospital user for access to only Hospital data in the secure space.

b. **Use by DHW or Public Health Districts (PHDs).** For use by DHW or PHDs for continued maintenance and control of data, and to manage data and information for internal uses. For public health and surveillance purposes, DHW and PHDs may share visualizations and analyses of data at a level determined by DHW. DHW acknowledges such use, access, and publication shall be among jurisdictions, provided, however, that such use, access, and sharing of data shall be determined solely by DHW in accordance with policies developed by DHW in consultation with the Idaho Hospital Association (see Idaho BioSense Platform Terms of Use posted at PublicHealthMU.dhw.idaho.gov). The Terms of Use may change, in which case Hospital will be notified.

d. **Other public health agency uses.** To provide access to visualizations of the data or analyses thereof, to data on residents of their respective jurisdictions, and to data contributed from limited geographic areas of special cross-border public health significance, to local and state public health entities in U.S. Department of Health and Human Services Region X state public health agencies (Oregon, Washington, and Alaska), and Intermountain Syndromic Surveillance Regional Collaborative (Nevada, Utah), once data are being routinely submitted to the BioSense platform, and a data use agreement with DHW has been signed, which includes requirements for obscuring the identity of any individual PHDP, in connection with the conducting of 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 department systems and programs; (3) to provide health-related information for: (a) public health situation awareness, (b) 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.

e. **Improve public health practice.** To improve the use of syndromic surveillance (e.g., share best practices for analyses or

response to events), DHW-authorized users and partners described in “d” above may present or publish on use of data submitted to the BioSense platform providing that data is aggregated and no IHI or information that would identify an individual Hospital is shared.

f. Operational support through CDC and ASTHO.

Designated staff in CDC’s Division of Health Informatics and Surveillance, the CDC Nssp contractor, and an ASTHO contractor, may routine access to the secure individual patient record-level Data Received by the BioSense platform from DHW or Hospital for the purposes of providing operational support: processing data, conducting data quality control activities, creating surveillance categorization algorithms, assuring proper aggregation of data, establishing and supporting mechanisms that allow jurisdictions to set permissions and share data, and ensuring proper operation and functioning of permission tools and data analysis and visualization tools.

g. National and Regional Level syndromic surveillance.

Any authorized user of the BioSense platform may access views of Data Received by the BioSense platform aggregated to U.S. Department of Health and Human Services (HHS) Region regional level (i.e., data from Idaho will be aggregated with data from HHS Region X states, Alaska, Washington, Oregon, and Idaho) and national level for purposes of syndromic surveillance. In addition, authorized users will have limited views of selected individual patient record level data elements; such views will exclude data elements that identify hospitals, zip codes, counties, states and individually identifiable information such as birthdate. See “BioSense Platform Individual Patient Record-Level Data Elements Accessible at National and HHS Regional Levels” posted at PublicHealthMU.dhw.idaho.gov. These elements are subject to change with 120 days prior notice. These surveillance activities include evaluation of unusual clusters or patterns that indicate an event of potential public health concern, routine analysis of regional and national level trends, evaluation of multi-regional events, and special surveillance during events of public health interest at national and regional levels.

2. DHW or PHDs may use and share data contributed to the BioSense platform for the purpose of monitoring and assessing public health activity within Idaho. If DHW or PHDs identify a need to follow-up on data suggestive of an event of potential public health concern, Hospital may be contacted to gather additional information about the related records and possible event.

C. Data Content Restrictions and Requirements. Data shall be transmitted in a manner and in a format compliant with published then-current requirements of the

Meaningful Use regulations and the Idaho BioSense Platform Syndromic Surveillance Implementation Guide, which is compliant with Meaningful Use regulations and BioSense platform records requirements. Such data information requirements shall be available via the DHW Public Health Meaningful Use Reporting website and may be changed from time to time. Hospital agrees that it will comply with all applicable laws and government regulations affecting its use of the BioSense platform, and DHW shall not have any responsibility relating to Hospital, including, without limitation, any responsibility to advise Hospital of Hospital's responsibility in complying with any laws or governmental regulations affecting its use of the BioSense platform.

D. Confidentiality and De-Identification/Encryption of Data

1. Neither PHI nor IIHI will be submitted to the BioSense platform by Hospital unless transmitted to DHW's secure space on the BioSense platform. Designated staff in CDC's Division of Health Informatics and Surveillance (DHIS), the CDC contractor, and an ASTHO contractor, may have routine access to the secure individual patient record-level Data Received by the BioSense platform for the purposes of provided operational support for the NSSP. Operational support includes processing data, conducting data quality control activities, creating surveillance categorization algorithms, assuring proper aggregation of data, establishing and supporting mechanisms that allow jurisdictions to set permissions and share data, and ensuring proper operation and functioning of permission tools and data analysis and visualization tools.

2. Hospital is responsible for de-identifying and/or encrypting all PHI and IIHI prior to submission to the BioSense platform and is responsible for maintaining the security of any encryption techniques used. De-identification and encryptions shall comply with federal and Idaho law, including HIPAA and corresponding regulations. DHW shall have no responsibility for the encryption of PHI or IIHI. DHW shall have no obligation to ensure Hospital maintains compliance with these concepts and principles. Hospital agrees and acknowledges that the data captured by the BioSense platform may include certain hospital, physician, or other health care Hospital identifiers. Hospital agrees that it is Hospital's responsibility to obtain any permission required in order to submit such data to the BioSense platform.

V.

PUBLIC RECORDS LAWS

Hospital acknowledges and understands that the data it submits to the secure space, including data accessed by other users, may be subject to Idaho public records laws. Hospital acknowledges and understands that the aggregated data in regional and national views, including data accessed by other data sources and users, may be subject to federal (e.g., the Freedom of Information Act) public records laws. Hospital is responsible for reviewing and complying with the applicable public records laws when determining the data to be provided.

VI.

DATA RETENTION/ DATA SECURITY

A. Hospital acknowledges and understands that data provided shall be archived, stored, maintained, protected, and disposed of in compliance with federal law and applicable Idaho law, to the extent Idaho law is not superseded by federal law. Data shall be maintained in a distributed computing environment and any and all policies and procedures applicable to the use of such an environment for the BioSense platform shall be in compliance with the Federal Information Security Management Act (“FISMA”).

B. Hospital is responsible for creating, maintaining, and protecting user passwords and other secure measures used for accessing and using the BioSense platform and for establishing its own security protocols and procedures compliant with DHW guidance (see Idaho BioSense Platform User Password and Password Security Guidelines posted at PublicHealthMU.dhw.idaho.gov) in the use of the passwords and administration of the data and any data viewed through the BioSense platform. Hospital is further responsible for ensuring that PHI and IIHI are submitted to the BioSense platform only as permitted in Sections IV.B. and IV.D. of this Agreement. Hospital shall comply with the data sharing requirements contained in the signed DUA between DHW and ASTHO. Hospital shall maintain written policies and procedures for the transmission of the Data to the BioSense platform. Hospital shall be responsible for developing, disseminating, and enforcing policies and procedures relating to any misuse or abuse of its passwords and other measures by the Hospital users and any resulting misuse or abuse of the BioSense platform.

C. The Parties agree to immediately alert the other Party if there is a potential or actual breach of the security of the BioSense platform or the data contained within the BioSense platform, or any actual or potential misappropriation or misuse of data available through the BioSense platform. The Parties further agree to work cooperatively to investigate and comply with any federal and Idaho laws should a breach occur.

VII.

TERM AND TERMINATION

A. The initial term of this Agreement (the “Initial Term”) shall commence on the effective date and shall continue for three (3) years. Unless this Agreement is earlier terminated as set forth herein, this Agreement shall be automatically and successively renewed without further action by either Party for an indefinite number of successive one-year terms (each such additional term a “Renewal Term” and together with the Initial Term, the “Term”).

B. Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party. If this Agreement is so terminated, the Parties shall be liable only for performance rendered in accordance with the terms of this Agreement prior to the effective date of termination. Further, either party may terminate this Agreement immediately in the event the other Party materially breaches its obligations under the Agreement.

C. Promptly upon termination of this Agreement (1) the Hospital shall have the right to cease providing any additional data and/or any updates to previously submitted data and (2) DHW may retain the data that have been previously contributed to the BioSense platform unless otherwise restricted by law. Hospital may request that any previously submitted data be removed from the BioSense platform and that DHW and any other user's access to that specific data be terminated; however, such removal shall be subject to whether the specific data was accessed or used, feasibility of removal, and whether the data is subject to related laws, including any outlined as a part of Section V herein.

VIII.

OWNERSHIP OF DATA

DHW retains ownership of any data contributed to the BioSense platform; but, as indicated in Sections V and VII herein, any data provided may be subject to continued legal requirements, including but not limited to retention and public records laws. As described in Section VII.C., Hospital may request that previously submitted data be removed; however, Hospital has no right to return or destruction of any data contributed to the BioSense platform. Hospital acknowledges that contribution of data to the BioSense platform does not in any way grant Hospital any rights, beyond those provided under this Agreement, to any data that it may access through the BioSense platform or to the BioSense platform itself. Further, DHW acknowledges that Hospital's contribution of data to the BioSense platform does not grant DHW any rights, beyond those provided under this Agreement, to any data the hospital chooses not to submit to the BioSense platform.

IX.

OTHER PROVISIONS

A. Warranties

1. The Hospital represents and warrants it has the authority to enter into this Agreement and to provide the data to the BioSense platform as contemplated by this Agreement for the intended uses as outlined in Section IV.B.

2. Hospital acknowledges and agrees to the following: (a) ASTHO is responsible for the oversight of the BioSense platform; (b) Hospital shall not

submit any data that it is not permitted to disclose; (c) by contributing data to the BioSense platform, Hospital has not breached, and will not breach, any confidentiality agreement or legal duty that Hospital has to any party and, further, no other person or entity has breached a legal duty in submitting the data to the BioSense platform; and (d) Hospital submission of data will comply with applicable federal, state, and local laws. Additionally, if Hospital breaches this section, then DHW shall have a right to terminate this Agreement.

B. Limitation of Liability. DHW makes no representations or warranties as to the accuracy or completeness of the data and disclaims no responsibility for any errors caused by inaccuracies or incompleteness of the data. DHW is only responsible for its own torts. Hospital hereby waives, and covenants not to sue DHW or PHDs for any and all possible claims that it might have against DHW or PHDs arising out of, or resulting from, the operation of the BioSense platform or Program. IN NO EVENT SHALL DHW or PHDs BE LIABLE TO HOSPITAL FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, EVEN IF DHW OR DHW'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

C. Amendment; Waiver. This Agreement, or any term or condition, may be modified only by a written amendment signed by Hospital and DHW. Either party may propose an amendment. Failure or delay on the part of either party to exercise any right, power, privilege or remedy provided under this Agreement shall not constitute a waiver. No provision of this Agreement may be waived by either party except in writing signed by Hospital or DHW.

D. Severability. If any term or condition of this Agreement is held invalid, such invalidity shall not affect the validity of the other terms or conditions of this Agreement, provided, however, that the remaining terms and conditions can still fairly be given effect.

E. Entire Agreement; No Assignment. This Agreement is the complete agreement between the Parties concerning the subject matter hereof, and supersedes any prior oral or written communications between the Parties. This Agreement may be executed in counterparts. This Agreement may only be assigned by a written agreement executed by duly appointed officers of both Parties.

F. Governing Law. United States federal law shall govern the construction, interpretation, and performance of this Agreement; provided, however, the laws of the state of where the data originated shall govern any disputes, claims or issues arising from, relating to or concerning the data, or the contribution of the data to the BioSense platform, except to the extent such state law is limited, or superseded, in whole or in part by applicable United States federal law.

G. Notices. Any notice, demand or other communication required or permitted to be given under the Agreement shall be in writing and shall be deemed delivered to a Party: (1) when delivered by hand or nationally recognized overnight courier; or (2) six (6) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such Party set forth below (or at such other address as the Party may from time to time specify by notice delivered in the foregoing manner):

If to _____
Hospital: _____
Attn: _____

If to Idaho Department of Health and Welfare
DHW: Division of Public Health
450 W. State St. – 4th Flr.
P.O. Box 83720
Boise, Idaho 83720-0036
Attn: Dr. Kathryn Turner

H. Survival. The sections of this Agreement that by their nature are intended to continue in their effect following expiration or termination of this Agreement shall survive any expiration or termination of the Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be effective as of the Effective Date.

DHW :
By: _____
Name: Richard M. Armstrong
Date: _____
Title: Director, Department of Health and Welfare

Hospital:
By: _____
Name: _____
Date: _____
Title: _____