Data Exchange Agreement

between

The New York State Department of Health

and

The **Other Jurisdiction [insert name of Jurisdiction]** Department of Health

for

Immunization Information Data Exchange

The following document is a modified version of the original AIRA Interstate Organizational Agreement that has been approved by the NYS Department of Health's Division of Legal Affairs and has been shared with the City of New York and the states of Pennsylvania and New Jersey for their review. It is the intent of all 4 parties to enter into this agreement as a group.

Introduction

Background

Many States and territories across the United States have developed an Immunization Information System ("IIS") to collect immunization records for their residents. An IIS is a vital public health tool for monitoring immunization rates and status, and it enables health care providers to access a database of immunization histories for their respective patients.

In 2006, New York State established the New York State Immunization Information System ("NYSIIS") pursuant to Public Health Law ("PHL") § 2168. PHL § 2168 directs the New York State Department of Health to establish a statewide, automated and electronic immunization registry that will (a) collect reports of immunizations; (b) establish the public health infrastructure necessary to obtain, collect, preserve, and disclose information relating to vaccine preventable disease as it may promote the health and well-being of all children in the state; and (c) make the immunization status of children available to the individual to whom any immunization records relate, a parent, guardian, or other person in a custodial relation to a child, local health districts, local social services districts responsible for the care and custody of children, health care providers and their designees, schools, and third party payers. NYSIIS holds records of immunizations administered in New York State outside of the five boroughs of New York City. The New York City Department of Health and Mental Hygiene ("NYCDOHMH") maintains a separate citywide immunization information system, called the Citywide Immunization Registry ("CIR"), that collects records of immunizations administered within the five boroughs of New York City. Under PHL § 2168, NYCDOHMH must provide NYSIIS with access to information contained in the CIR.

Other Jurisdiction [insert name of Jurisdiction] has established an immunization information system under [insert law]. Similarly to New York, the purpose of Other Jurisdiction's [insert name of Jurisdiction] immunization information system is to [insert purpose]. Other Jurisdiction's [insert name of Jurisdiction] system is called the [insert name of Other Jurisdiction IIS].

This agreement is designed to facilitate secure, electronic exchange of IIS records between and among New York State, including New York City, and Other Jurisdiction [insert name of Jurisdiction].

Rationale

Residents of New York and Other Jurisdiction [insert name of Jurisdiction] travel between these jurisdictions for health care services, including the administration of immunizations.

Currently, if a resident of New York State receives an immunization in Other Jurisdiction [insert name of Jurisdiction], Other Jurisdiction's [insert name of Jurisdiction] IIS will capture this information, but this information is not shared with New York. Likewise, if a resident of Other Jurisdiction [insert name of Jurisdiction] receives an immunization in New York State, New York's IIS will capture the information, but this information is not shared with Other Jurisdiction [insert name of Jurisdiction]. As a result, public health officials from New York Jurisdiction and Other Jurisdiction [insert name of Jurisdiction] cannot completely monitor the immunization status of residents who receive health care in both jurisdictions.

Project Benefits

New York State and Other Jurisdiction [insert name of Jurisdiction] seek to enable secure, electronic exchange of IIS records. Such an exchange will allow New York State and Other Jurisdiction [insert name of Jurisdiction] to further immunization-related outreach, reduce the incident of illness, disability and death caused by vaccine preventable diseases, quality improvement and accountability, research, epidemiological studies and disease control, including, but not limited to:

- Measuring immunizations more accurately;
- Reducing inefficiencies and costs associated with duplicate vaccines;
- Providing valuable information during a public health alert;
- Limiting resource expenditures by instituting electronic processes for data exchange;
- Enhancing each IIS by learning the unique features of counterparts in other jurisdictions; and
- Benefiting consumers/patients by making patient immunization records electronically accessible.

AGREEMENT

This Data Exchange Agreement ("Agreement") is made effective this _____ day of _____, 20__ (the "Effective Date") by and between the New York State Department of Health ("NYSDOH") and the Other Jurisdiction [insert name of Jurisdiction] Department of Health **("**Other Jurisdiction DOH**"):**

WITNESSETH:

WHEREAS, the NYSDOH and the Other Jurisdiction DOH have established secure, electronic Immunization Information Systems; and

WHEREAS, the NYSDOH and the Other Jurisdiction DOH seek to exchange the immunization information captured on their respective IIS; and

WHEREAS, the NYSDOH and the Other Jurisdiction DOH recognize that the exchange of data must comply with federal and state laws; and

WHEREAS, the NYSDOH and the Other Jurisdiction DOH desire to maintain the privacy and security of their immunization information and IISs;

NOW, THEREFORE, the undersigned NYSDOH and the Other Jurisdiction DOH agree as follows:

1.0 Definitions

a. "Authorized User" **shall mean** the NYSDOH and the Other Jurisdiction DOH's **employees, agents, assigns, representatives, independent contractors, or other persons or entities authorized to access, use or disclose information from each other's IIS.**

b. "Authorized User Agreement" **shall mean the confidentiality agreement** the NYSDOH and the Other Jurisdiction DOH will **require an Authorized Representative of each IIS's Authorized Users to sign before accessing immunization information.**

c. "Data" **is a collection of numbers, characters, images or other outputs from devices to convert physical quantities into symbols or images. Data includes numbers, words, or images typically accepted as they stand. Data is typically further processed by a human or entered into a computer (input), stored and processed there, or transmitted (output) to another human, computer or other system to create information.**

d. "Public health" **shall mean program(s) that promote, maintain, and conserve the public's health by providing health services to individuals or by conducting research, investigations, examinations, training, and demonstrations. Public health services include, but are not limited to, the control of communicable diseases, immunization, and maternal and child health programs.**

e. "Immunization Information" **shall mean the immunization information collected by NYSDOH or Other Jurisdiction's IIS.**

f. "Significant Breach" **shall mean a successful unauthorized access, use, disclosure, modification, or destruction of immunization information, or interference with NYSDOH or the Other Jurisdiction DOH's System, of which the NYSDOH or the Other Jurisdiction DOH has knowledge or should have knowledge.**

g. "State" and "jurisdiction" **shall mean any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any geographical territory or possession subject to the legislative authority of the United States.**

h. "System" **shall mean the software, portal, platform, or other electronic medium controlled or utilized by the NYSDOH and the Other Jurisdiction DOH through which or by which the NYSDOH and the Other Jurisdiction DOH maintain and exchange information under this Agreement. For purposes of this definition, it shall not matter whether the NYSDOH or the Other Jurisdiction DOH controls or utilizes the software, portal, platform or other medium through ownership, lease, license, or otherwise.**

2.0 Purpose and Scope

The NYSDOH and the Other Jurisdiction DOH agree to permit access to the immunization information contained on each other's IIS.

This Agreement governs how immunization information will be used and disclosed by and between the NYSDOH and the Other Jurisdiction DOH.

It is the intent of the NYSDOH and the Other Jurisdiction DOH to protect the confidentiality and security of immunization information subject to this Agreement, in accordance with applicable state and federal law.

3.0 Use of and Access to Immunization Information

a. Permitted Uses and Disclosures. **The NYSDOH and the Other Jurisdiction DOH may use immunization information for purposes of outreach, quality improvement and accountability, research, epidemiological studies and disease control. The NYSDOH and the Other Jurisdiction DOH agree not to use or further disclose immunization information for any other purpose except as provided for in this Agreement.**

b. Authorized Users. **The NYSDOH and the Other Jurisdiction DOH shall only allow access and use of immunization information to Authorized Users. The NYSDOH and the Other Jurisdiction DOH shall, upon reasonable request, provide the names and roles of those persons designated as Authorized Users for purposes of this Agreement. The NYSDOH and the Other Jurisdiction DOH shall use reasonable care in selecting such individuals and shall place appropriate privacy and security restrictions on their Authorized Users. The NYSDOH and the Other Jurisdiction DOH shall apply appropriate sanctions against any Authorized User who fails to comply with the requirements of this Agreement. The NYSDOH and the Other Jurisdiction DOH shall immediately remove an Authorized User's access to immunization information if the Authorized User no longer qualifies as an Authorized User. Before allowing use or disclosure of immunization information, the NYSDOH and the Other Jurisdiction DOH shall require their**

Authorized Users to execute their respective IIS's Authorized User Agreement, as set forth in Attachment A.

c. Access to Immunization Information

i. **The NYSDOH and the Other Jurisdiction DOH will provide immunization information dating as far back as the information is generally accessible in electronic format and is maintained on each System. The NYSDOH and the Other Jurisdiction DOH are not responsible for the absence of any information in a record. The NYSDOH and the Other Jurisdiction DOH acknowledge that the immunization information provided is drawn from numerous sources and may not include a complete record.**

ii. **The NYSDOH and the Other Jurisdiction DOH shall provide immunization information on a mutually agreed upon schedule. NYSDOH and the Other Jurisdiction DOH will generate files from their respective IIS containing immunization records for residents of the other jurisdiction. Once the NYSDOH or the Other Jurisdiction receives their respective files, they may download the information to their own IIS. The data transfer specifications, including the specific data elements to be exchanged and the data file format are set forth in Attachments B (FlatFile 1.4.2) and C (HL7 2.4.)**

iii. **If the NYSDOH or the Other Jurisdiction DOH becomes aware of any material inaccuracies in its own immunization information or System, it agrees to communicate such inaccuracy to the other party as soon as reasonably possible.**

d. Ownership. **If immunization information has been added to a System, it may be thereafter integrated into the recipient's database. However, this Agreement does not grant the NYSDOH or the Other Jurisdiction DOH any rights in the System, or any of the technology used to create, operate, enhance or maintain the System, of the other party.**

4.0 Jurisdiction Requirements

The NYSDOH and the Other Jurisdiction DOH, whether providing, receiving or using information hereunder, shall:

a. **provide all Authorized Users with appropriate education and training on the requirements of this Agreement;**

b. **require that a representative of each IIS's Authorized Users execute the other IIS's Authorized User Agreement prior to accessing immunization information; and**

c. upon reasonable request, provide copies of privacy and security policies and procedures to the other, and demonstrate compliance with the minimum functional standards as defined by the National Vaccine Advisory Committee (NVAC) and any amendments or revisions thereto. The current standards are attached hereto as Attachment D.

5.0 Privacy and Security Safeguards

a. **The NYSDOH and the Other Jurisdiction DOH will protect the confidentiality, integrity and availability of immunization information and prevent the use or disclosure of any immunization information received from or on behalf of the involved parties other than as permitted or required by Federal or State law. To that end, the NYSDOH and the Other Jurisdiction DOH shall: (i) provide for identification and authentication of Authorized Users; (ii) provide access authorization; (iii) guard against unauthorized access to immunization information; and (iv) provide security audit controls and documentation.**

b. **The NYSDOH and the Other Jurisdiction DOH may deny access to immunization information to any Authorized User they have reason to believe accessed, used or disclosed immunization information, other than as permitted under this Agreement.**

c. **The NYSDOH and the Other Jurisdiction DOH must comply with the privacy and security provisions established within their own jurisdiction, and the minimum functional standards as defined by NVAC and any amendments or revisions thereto, and are not required to adhere to the law or regulations of the Other Jurisdiction.**

6.0 Term and Termination

a. Term. **This Agreement shall commence as of the Effective Date, and shall continue in full force and effect for as long as the NYSDOH and the Other Jurisdiction DOH elect. The NYSDOH and the Other Jurisdiction DOH may terminate participation in this Agreement without cause by providing thirty (30) calendar days written notice to the other Party.**

b. Immediate Termination. **The NYSDOH and the Other Jurisdiction DOH shall have the right to immediately terminate this Agreement to comply with any legal order, ruling, opinion, procedure, policy, or other guidance issued, or proposed to be issued, by any federal or state agency, or to comply with any law, regulation, or any requirement of accreditation, tax-exemption, federally-funded health care program participation or licensure which (i) invalidates or is inconsistent with the provisions of this Agreement; (ii) would cause NYSDOH or Other Jurisdiction DOH to be in violation of the law; or (iii) jeopardizes the good standing status of licensure, accreditation or participation in any federally funded healthcare program, including without limitation the Medicare and Medicaid programs.**

c. Termination With Cause. **Notwithstanding any other provision of this Agreement, the NYSDOH and the Other Jurisdiction DOH may terminate participation in this Agreement if the other party has materially violated its responsibilities under this Agreement, unless the breaching party provides assurances deemed satisfactory by the non-breaching party within fourteen (14) calendar days of receiving notice of such material violation that: (i) reasonable steps are being taken to effect a cure; (ii) such cure will be completed no later than thirty (30) calendar days from notice of such material violation; and (iii) the breaching party has taken reasonable steps to prevent the recurrence of such material violation.**

d. Termination of Access to Immunization Information. **The NYSDOH and the Other Jurisdiction DOH reserve the right to terminate immediately the other party's access to additional immunization information at any time if that party has suffered a Significant Breach of the security of its System or the other party has violated any of the terms of this Agreement, including without limitation accessing any information that the NYSDOH or the Other Jurisdiction DOH would not otherwise be authorized to receive pursuant to this Agreement, improperly disclosing immunization information or failing to abide by appropriate policies and procedures.**

e. Effect of Termination. **Following the termination of this Agreement, any and all immunization information shared up to the effective date of termination shall continue to be subject to the provisions of this Agreement, including, without limitation, provisions regarding privacy and security.**

7.0 Warranties and Limitation of Liability

a. **The NYSDOH and the Other Jurisdiction DOH do not warrant that the performance or delivery of the System conveying the immunization information will be uninterrupted or error-free. The NYSDOH and the Other Jurisdiction DOH shall not be liable for any consequential, incidental, indirect, punitive, or special damages suffered by each other or any other third party. The NYSDOH and the Other Jurisdiction DOH shall not be liable for any damages suffered by the other arising out of or related to acts or omissions in accessing, disclosing or using immunization information.**

b. **Without limiting any other provision of the Agreement, the Other Jurisdiction DOH and/or their Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management resulting from or in any way related to the use of the immunization information. The NYSDOH and the Other Jurisdiction DOH, shall not have any recourse against, and each shall waive any claims against, each other for any loss, damage, claim, or cost relating to or resulting from use or misuse of immunization information.**

8.0 Agreement's Compliance with Laws and Regulations

The NYSDOH and the Other Jurisdiction DOH in good faith assert and believe that this Agreement complies with all federal, state, and local laws. If any provision of this Agreement is declared void by a court, or rendered invalid by any law or regulation, and if such provision is necessary to effectuate the purposes of this Agreement, the Agreement shall terminate.

9.0 Notices

Any notice required under this Agreement shall be in writing and sent to the address set forth in the signatures area of this agreement or to such other address as the NYSDOH and the Other Jurisdiction DOH shall designate in writing from time to time. Notices to or between the NYSDOH and the Other Jurisdiction DOH shall be deemed to have been delivered: (a) by deposit in the U.S. mail when mailed by first class mail; or (b) by deposit with an established courier service; or (c) when received by the NYSDOH and the Other Jurisdiction DOH, if hand-delivered.

10.0 Subrogation

The NYSDOH shall indemnify and hold Other Jurisdiction DOH harmless from any claims for injuries or damages resulting from NYSDOH's actions or inactions with respect to immunization information.

The Other Jurisdiction DOH shall indemnify and hold NYSDOH harmless from any claims for injuries or damages resulting from Other Jurisdiction DOH's actions or inactions with respect to immunization information.

11.0 Choice of Law

This Agreement shall be governed by the laws of New York State and Other Jurisdiction and any applicable federal laws.

12.0 Amendment

This Agreement may be modified, altered, or amended only by the express written consent of each party.

13.0 Assignment

This Agreement shall be binding on the NYSDOH and the Other Jurisdiction DOH, their successors and permitted assigns. The NYSDOH and the Other Jurisdiction DOH shall not assign or transfer this Agreement or any part thereof, without written notification.

14.0 Waiver

No failure or delay by the NYSDOH and the Other Jurisdiction DOH **in exercising its rights under this Agreement shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.**

15.0 Integration

This Agreement sets forth the entire and only Agreement between the NYSDOH and the Other Jurisdiction DOH relative to the subject matter hereof. Any representation, promise, or condition, whether oral or written, not incorporated herein shall not be binding upon the NYSDOH or the Other Jurisdiction DOH.

16.0 Incorporation by Reference

All attachments to this Agreement are incorporated by reference and made a part of this Agreement as if those attachments were set forth in the text of this Agreement.

17.0 Third Party Beneficiaries

This Agreement does not and will not create in any natural person, corporation, partnership, or other organization any benefits or rights, and this Agreement will be effective only as to the NYSDOH and the Other Jurisdiction DOH

18.0 Force Majeure

Notwithstanding any provision hereof to the contrary, in the event of a disruption, delay or inability to complete the requirements of this Agreement because of natural disasters, acts of terror or other similar events out of the control of the NYSDOH and the Other Jurisdiction DOH, such Party shall not be considered in breach of this Agreement.

19.0 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed an original as against the NYSDOH and the Other Jurisdiction DOH whose signature appears thereon, but all of which taken together will constitute one and the same instrument.

20.0 Authority to Sign

The NYSDOH and the Other Jurisdiction DOH warrant that they have the capacity to enter into and perform the obligations under this Agreement and all activities contemplated herein.

21.0 Survival

The respective rights and obligations of the NYSDOH and the Other Jurisdiction DOH under Sections 3, 4, 5, 6, 7, 10 and 11 of this Agreement shall survive the termination of this Agreement to the extent that such provision contemplates continued application after termination of this Agreement.

IN WITNESS WHEREOF, the NYSDOH and the Other Jurisdiction DOH have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

Signatures:

State/Local Health Jurisdiction/Territory:
_____
Name of Program: _____
Signed by: _____
Print Name and Title: _____
Primary Data Contact (if different): _____
Primary Data Contact Address: _____
_____
Primary Contact E-mail Address: _____
Primary Contact Phone Number: _____
Primary Contact Fax Number: _____
Date: _____

State/Local Health Jurisdiction/Territory:
_____
Name of Program: _____
Signed by: _____
Print Name and Title: _____
Primary Data Contact (if different): _____
Primary Data Contact Address: _____
_____
Primary Contact E-mail Address: _____
Primary Contact Phone Number: _____
Primary Contact Fax Number: _____
Date: _____

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Primary Contact Phone Number: _____
Primary Contact Fax Number: _____
Date: _____