

**MEMORANDUM OF UNDERSTANDING
BETWEEN
DEPARTMENT OF STATE HEALTH SERVICES
AND
Brazoria County Health Department
DSHS CONTRACT NO. HHS001472800005**

This Memorandum of Understanding (MOU) is between the Department of State Health Services (DSHS) and Brazoria County Health Department (“Local Public Health Entity” or “LHE”). DSHS and LHE may be referred to individually as a “Party” and collectively as the “Parties.”

I. PURPOSE

DSHS agrees to provide LHE certain public health data and information, which DSHS maintains, for the purpose of providing essential public health services. This MOU provides the Parties’ roles and responsibilities regarding access and utilization of the data as outlined in each attachment of this MOU.

II. LEGAL AUTHORITY

This MOU is entered into pursuant to Chapter 12 and 1001 of the Texas Health and Safety Code.

DSHS will provide public health data and information to LHE so that the LHE may provide “essential public health services” as defined in Section 121.002 of Texas Health and Safety Code, as follows:

- Monitor the health status of individuals in the community to identify community health problems;
- Diagnose and investigate community health problems and community health hazards;
- Inform, educate, and empower the community with respect to health issues;
- Mobilize community partnerships in identifying and solving community health problems;
- Develop policies and plans that support individual and community efforts to improve health;
- Enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;
- Link individuals who have a need for community and personal health services to appropriate community and private providers;
- Ensure a competent workforce for the provision of essential public health services;
- Research new insights and innovative solutions to community health problems; and
- Evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.

Legal authority for data and information sharing is authorized by and in compliance with 45 CFR Parts 160 and 164. Additional legal authority for data and information sharing for the data sets authorized

to be shared under the MOU is specifically identified in a corresponding attachment to this MOU. DSHS will not share data or information until and unless data sets and elements are identified and incorporated into the MOU.

III. LHE JURISDICTION

The jurisdiction of the LHE under this MOU is Brazoria County, Galveston County, and Fort Bend County.

To receive certain public health data and information for the contiguous jurisdiction(s), if permitted by the Section 1001.089 of the Texas Health and Safety Code, LHE shall submit written request to DSHS for review and approval. If DSHS authorizes the LHE to receive public health data and information for its contiguous jurisdiction(s), then DSHS Contract Representative will send written notice to the LHE specifying the approved contiguous jurisdiction(s) and the data type(s) that DSHS will make available to the LHE. After any testing, as determined appropriate by DSHS, LHE will receive written notice specifying when the public health data and information of the contiguous jurisdiction(s) will be made available.

IV. STATEMENT OF WORK

A. LHE shall:

1. Comply with all DSHS policies and procedures regarding access and utilization of the data and information provided by DSHS.
2. Access and receive the data and information in a secure, confidential manner in compliance with all applicable federal and state laws governing the protection of confidential information.
3. Access, use and disclose the data and information for essential public health services only as set forth in this MOU.
4. Promptly provide written notice to DSHS of any access, use or disclosure of the data and information which violates the terms of this MOU or applicable law.
5. Submit a list of staff names, titles, and email addresses, and the intended uses of the data and information, to request and obtain access. The request must be submitted in writing to the DSHS Representatives identified in this MOU or through the agency's identity and access management system, based upon guidance provided by DSHS for each data set.
6. Complete the data checklist(s) identified as attachments to this MOU, as applicable.
7. Maintain a list of all authorized users with access to DSHS data and information, and upon written request by DSHS, provide the list of authorized users within five (5) business days.
8. Notify the DSHS Representatives identified in this MOU or through the DSHS identity and access management system, based upon guidance provided by DSHS for each data set, of any changes in staff that require removal from the list of authorized users. Such notification must be made in writing or through the DSHS identity and access management system within five (5) business days of any staffing changes.
9. On an annual basis, and as additionally requested by DSHS, certify the list of authorized users in writing to the DSHS Representatives identified in this MOU or through the DSHS identity and access management system, based upon guidance provided by DSHS for each

data set.

10. Submit an application for amendment to the DSHS Representatives identified in this MOU to request changes or additional data set variables.
11. Participate in any required DSHS-sponsored training on the access and usage of the data and information.
12. Ensure the data and information provided to LHE under this MOU, including information residing on LHE's back-up systems, remains within the contiguous United States and such data and information shall not be accessed by individuals located outside of the contiguous United States. Furthermore, the data and information may not be received, stored, processed, or destroyed via information technology systems used by LHE that are located outside of the contiguous United States.

B. DSHS will:

1. Review the LHE's written requests for access to specific data and information and provide approval or denial of the request in writing or through the DSHS identity and access management system.
2. Conduct data user testing as determined appropriate by DSHS.
3. Notify the LHE when the data set(s) are available or authorized to be shared with the LHE.
4. After completion of testing protocols (such as user testing) and approval of LHE's submission of the information required under this MOU, make available certain public health data and information via a secure data exchange. Data and information sharing is limited to the data sets identified and submitted by the LHE and approved by DSHS under the MOU.
5. Deliver data and information through use of a secure file transfer protocol site or other method of data transfer with at least that same level of security and/or encryption.
6. Provide each approved LHE user with access credentials including the secure site, username, and password, as appropriate. This information will be provided directly to LHE staff members authorized to access the data and information.
7. Remove user access to the DSHS data and information as requested by LHE within five (5) business days of receipt of the LHE's written notification.
8. At its sole discretion, sponsor trainings and provide technical assistance on accessing the limited data sets through the DSHS databases.

C. The Parties will communicate as necessary to successfully manage this MOU and work in good faith together to fulfill the purpose of this MOU.

V. CONFIDENTIALITY

- A. The Parties are required to comply with all applicable state and federal laws relating to the privacy, security, and confidentiality of the data and information.
- B. LHE shall comply with the HHSC Data Use Agreement ("DUA") which is attached to this MOU as Attachment A.
- C. LHE shall maintain appropriate procedural, administrative, physical, and technical

safeguards to prevent the release or disclosure of any data and information obtained under this MOU to anyone other than individuals who are authorized by law to receive such records or information and who will protect the data and information from re-disclosure as required by law. All data and information shall be maintained in a secure location and in compliance with the DUA.

- D. LHE shall use the data and information obtained under this MOU only for purposes described in this MOU and in accordance with the terms under the MOU. In addition, LHE shall comply with LHE's appropriate review policies.
- E. LHE shall not publish or disclose Confidential Data obtained or accessed under this MOU to a third party.
- F. No Personally Identifiable Information ("PII") and non-public data may be accessed or disclosed by LHE without specific statutory authority and DSHS prior written approval.
- G. Data and information no longer in use by LHE shall be destroyed using software that renders the data unrecoverable. LHE may not destroy data and information via information technology systems that are located outside the contiguous United States. Upon DSHS request, LHE shall provide written verification that the data and information has been destroyed.
- H. LHE shall not attempt to link nor permit others to attempt to link the records of patients or individuals in the data sets with personally identifiable records from any other source.
- I. LHE shall not release nor permit others to release any data or information that identifies individuals, directly or indirectly.
- J. LHE shall not permit others to copy, sell, rent, license, lease, loan, or otherwise grant access to the data and information covered by this MOU to any other person or entity, unless approved in writing by DSHS.
- K. LHE acknowledges that when releasing or disclosing the data set or any part to others in its organization it will retain full responsibility for the privacy and security of the data and information and will prohibit others from further release or disclosure of the data and information.

VI. DESIGNATION OF REPRESENTATIVES

The following will act as the representative authorized to administer activities under this MOU on behalf of its respective Party.

DSHS Contract Management Section (CMS)	DSHS Program	Brazoria County Health Department
Gretchen Wells, CTCM Contract Manager 1100 W 49 th Street, MC 1990 Austin, Texas 78756 (512) 776-2679 Gretchen.Wells@dshs.texas.gov	Jason Lucas Branch Manager PO Box 149347 Mail Code 1898 Austin, TX 78714-9347 (512) 776-6439 HIRBrequests@dshs.texas.gov	Mattalin Vojacek 1524 E. Mulberry, Ste. 185 Angleton, Tx 77515 (979) 864-2154 MattalinV@brazoriacountytx.gov

Either Party may change its designated representative by providing written notice to the other Party.

VII. LEGAL NOTICES

Legal notices under this MOU shall be in writing and deemed delivered on the date of delivery if delivered by United States mail, postage paid, certified, return receipt requested; common carrier, overnight, signature required; or hand delivery. Legal Notices must be sent to the appropriate address below:

If to DSHS:

Health and Human Services Commission
Attention: Office of Chief Counsel
4601 W. Guadalupe, MC1100
Austin, Texas 78751

If to Local Health Entity

Brazoria County Health Department
Attn: Mattalin Vojacek
1524 E. Mulberry, Ste. 185
Angleton, Tx 77515

Copy To:

Department of State Health Services
Attn: General Counsel
1100 W. 49th Street, MC1919
Austin, Texas 78756

Copy To:

Brazoria County Health Department
Attn: Mattalin Vojacek
1524 E. Mulberry, Ste. 185
Angleton, Tx 77515

Notice may be given in an alternate manner with written approval from the other Party. Alternate notice shall be deemed effective upon written confirmation of receipt by the Party receiving notice.

Either Party may change its address for receiving legal notice by providing written notice to the other Party.

VIII. GENERAL TERMS AND CONDITIONS

A. Term of MOU

This MOU is effective on the date of the last Party to sign. This MOU will remain in effect for two (2) years from the effective date, unless terminated sooner as provided herein.

B. Termination of the MOU

Termination without Cause. This MOU may be terminated by either Party by providing at least thirty (30) calendar days' advance written notice to the other Party.

Breach and Termination for Cause. DSHS may terminate this MOU immediately, and without prior notice, upon LHE's breach of the terms of this MOU. Such breach may include, but is not limited to, improper disclosure of the data and information or other violation of the privacy, confidentiality and/or security requirements set forth in this MOU.

Effect of Expiration or Termination. DSHS will cease data and information sharing immediately upon the expiration or termination of this MOU. Upon termination or expiration, LHE shall destroy all data and information using software that renders the data and information unrecoverable and provide documentation to DSHS that data and information was destroyed as directed by DSHS. LHE may not destroy data and information via information technology systems that are located outside the contiguous United States.

C. No Cost

This is a no cost agreement. Each Party shall pay the cost of its participation in this MOU without cost or reimbursement by the other Party.

D. DSHS Suspension of Information Sharing under this MOU

DSHS may temporarily suspend the sharing of data and information without advance notice and may restore access at a time, and in a manner, of its sole discretion.

E. Amendment

This MOU may be amended or modified by the consent of both Parties at any time during its term. Amendments to this MOU must be in writing and signed by authorized representatives of DSHS and LHE. No change in, addition to, or waiver of any term or condition of this MOU shall be binding on DSHS unless approved in writing by an authorized representative of DSHS.

F. Change in Laws and Compliance with Laws

The Parties shall comply with all applicable federal and state statutes, rules, and regulations. Any alterations, additions, or deletions to the terms of this MOU which are required by changes in federal or state law or regulations are automatically incorporated into the MOU without written amendment hereto and shall become effective on the date designated by such law or by regulation.

G. Permitting and Licensure

LHE shall obtain and maintain for the duration of this MOU any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to assume the roles and responsibilities contained within this MOU.

H. Assignment

LHE shall not assign its rights under this MOU or delegate the performance of its duties under the MOU without prior written approval from DSHS. Any attempted assignment in violation of this provision is void and without effect.

I. No Partnership or Joint Venture

The Parties agree that nothing in this MOU shall be deemed to create an association, partnership, or joint venture between DSHS and LHE.

J. No Waiver

Failure of either Party to insist on strict compliance with any term or condition of this MOU or to exercise any right or privilege hereunder will not be deemed a waiver of such term, condition, right or privilege later.

K. Severability

If any provision of this MOU is illegal, invalid, void, or unenforceable, the other provisions of this MOU will not be affected. The Parties agree to amend any illegal, invalid, void, or unenforceable provision to the extent necessary to render it valid, legal, and enforceable while preserving the intent of the MOU.

L. Disaster Recovery Plan

Upon request of DSHS, LHE shall provide copies of its most recent business continuity and disaster recovery plans.

M. Dispute Resolution

The Parties agree to use good faith efforts to resolve all questions, difficulties, or disputes of any nature that may arise under or by this MOU. However, nothing in this paragraph shall preclude either Party from pursuing any remedies as may be available under Texas law. Notwithstanding this provision, the Parties acknowledge and agree to use the dispute resolution provisions required under Chapter 2260 of the Texas Government Code, to the extent applicable.

N. Indemnification

LHE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND DSHS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF OR RESULTING FROM ANY ACTS OR OMISSIONS OF LHE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE MOU. THIS CLAUSE IS NOT INTENDED TO AND WILL NOT BE CONSTRUED TO REQUIRE LHE TO INDEMNIFY OR HOLD HARMLESS THE STATE OR DSHS FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF DSHS OR ITS EMPLOYEES. FOR THE AVOIDANCE OF DOUBT, DSHS SHALL NOT INDEMNIFY LHE OR ANY OTHER ENTITY UNDER THE MOU.

O. Force Majeure

Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in this MOU caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing Party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome.

P. Public Information Act

Each Party is responsible for complying with Chapter 552 of the Texas Government Code ("Texas Public Information Act") as interpreted by judicial decisions and opinions of the Attorney General of Texas. Responses to requests for information and open records requests shall be handled in accordance with the provisions of the Texas Public Information Act.

Q. Limitation on Authority

LHE shall have no authority to act for or on behalf of DSHS or the State of Texas except as expressly provided for in this MOU; no other authority, power or use is granted or implied. LHE may not incur any debt, obligation, expense or liability of any kind on behalf of DSHS or the State of Texas.

R. Survival

Expiration or termination of this MOU for any reason does not release LHE from any liability or obligation set forth in this MOU that is expressly stated to survive any such expiration or termination, or that by its nature would be intended to be applicable following any such

expiration or termination, or that is necessary to fulfill the essential purpose of the MOU, including without limitation the provisions regarding confidentiality and rights and remedies upon termination.

S. Sovereign Immunity

This MOU shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to either Party as an agency of the State of Texas or otherwise available to the Party. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to a Party under this MOU or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Neither Party waives any privileges, rights, defenses, or immunities available to it as an agency of the State of Texas, or otherwise available to it, by entering into this MOU or by its conduct prior to or subsequent to entering into this MOU.

T. Agency's Right to Audit

LHE shall make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by LHE pertaining to the MOU for purposes of inspecting, monitoring, auditing, or evaluating by DSHS and the State of Texas.

U. State Auditor's Right to Audit

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the MOU or indirectly through a subcontract under the MOU. The acceptance of funds directly under the MOU or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

V. MOU Attachments

The following documents are attached hereto, incorporated herein, and made a part of this MOU for all purposes:

1. Attachment A: HHS Data Use Agreement—TACCHO Version
2. Attachment B: Access to Public Health Dashboards
3. Attachment C: Access to Vital Event Data
4. Attachment D: Access to Texas Health Care Information Collection Public Use Data File

In the event of conflict, ambiguity, or inconsistency between or among any documents, all DSHS documents take precedence over LHE documents, and the HHS Data Use Agreement

takes precedence over all other MOU documents.

W. Governing Law and Venue

This MOU shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the MOU is fixed in any court of competent jurisdiction of Travis County, Texas.

X. Counterparts and Signatures

The Parties may sign this MOU in counterparts, each of which will be deemed an original, but all of which will together constitute one document. Electronically transmitted signatures will be deemed originals for all purposes related to this MOU.

Y. Entire Agreement

This document constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into this agreement will be harmonized with this agreement to the extent possible.

Z. Signature Authority

By signing below, the Parties agree that they have read the MOU and agree to its terms, and that the persons whose signatures appear below have the authority to execute this MOU on behalf of their respective Party.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE
DSHS Contract No. HHS001472800005

Department of State Health Services

Signature of Authorized Official

Printed Name

Title

Date

Brazoria County Health Department

Signature of Authorized Official

Printed Name

Title

Date