

AGREEMENT
NEBRASKA DEPARTMENT of HEALTH & HUMAN SERVICES
and
LANCASTER COUNTY HEALTH DEPARTMENT
LINCOLN, NEBRASKA

This document (**hereinafter, the Agreement**) is entered into by and between the Department of Health and Human Services of the State of Nebraska (**hereafter Department**) and Lancaster County Health Department 3140 N Street, Lincoln, Nebraska 68510 (**hereafter, the User**).

WHEREAS, the HIPPA Privacy Rule, Sections 164.502(a)(1)(vi) and 164.512(b)(1)(i) of the privacy regulations, allow for permitted disclosures of protected health information for public health activities. Section 164.512(b)(1)(i) specifically references “vital events”.

WHEREAS, in the state of Nebraska, all Hospitals are required under NEB. Rev. STAT. §71-601 to 71-649 (2005), to report vital events to the Vital Records Office of the Department of Health and Human Services specifically exempting the application of any HIPPA business associate requirements.

WHEREAS, the Vital Records Office does not meet the definition of a business associate as that term is defined in the HIPPA regulations at Section 160.103(1).

WHEREAS, the Vital Records Office does not perform services for the User nor does it provide “legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services” to or for the User as a covered entity.

NOW THEREFORE, the parties agree as follows:

1. SCOPE OF SERVICES

The Department agrees to provide the User with access to the Electronic Registration System – Nebraska Version ERS II (hereafter ERS II) program.

1.1 Department Duties: the Department agrees to provide the following services:

- 1.1a Provide access to the ERS II for completing birth data and transmitting such data to the Department as required under NEB. Rev. STAT. §71-604 (2005).
- 1.1b The Department shall arrange for or provide training to the User’s employees on how to operate the ERS II.
- 1.1c The Department shall provide ERS II program modifications, updates, and enhancements as available. Department shall arrange for maintenance on ERS II supplier for the User of the ERS II program software. This maintenance will include access to telephone support and technical support from the Department’s Help Desk. The User shall be responsible for any telephone charges while using this support.
- 1.1d The Department may provide seminars or training meetings on the use of ERS II from time to time, which may be made available to the User’s employees.

2. USER OBLIGATION

The User agrees to provide all equipment necessary for accessing, transmitting, and printing information from the ERS II.

2.1 In consideration of the services provided by the Department, the User agrees to the following:

- 2.1a The User shall provide all necessary computer equipment and internet access as necessary to utilize and operate the ERS II. The User shall allow the Department to access its equipment in order to install the ERS II program/Citrix client and periodically inspect operation of the ERS II program.
- 2.1b The User agrees that such data shall not be used by anyone other than User and/or its staff as set out by State law. The User shall electronically transmit the birth data to the Department, as required by state law.
- 2.1c The User agrees that the data generated, or provided, or obtained from the ERS II shall not be released or published in any manner, which would identify or disclose the individual as set out by state law.

- 2.1d The User shall not utilize the ERS II program for any commercial purpose, nor shall the User lease, sell, distribute, or reveal the contents of the ERS II program to anyone without the written consent of the Department.
- 2.1e The User shall not alter, modify, or change in any way the ERS II program or materials without the written consent of the Department.
- 2.1f The User shall submit electronic data through the ERS II system. The User shall check electronic data for any irregularities or mistakes prior to transmitting data.
- 2.1g The User must register its employees with the Department and receive an assigned unique Citrix/Metaframe User ID and default password. The User shall follow the Departments strong PASSWORD requirements and security protocols as outlined in the training provided by the Department.
- 2.1h The User shall ensure employees, who terminate form employment or transferred to other responsibilities, will no longer have access to the ERS II program. The User is required to promptly notify the Department's Vital Records Unit when it needs an employee's User ID Terminated. The User shall ensure that no employee utilizes the User ID for a terminated or transferred employee. Sharing User IDs is a policy violation and may result in the termination of access to the Vital Records ERS II system.

3. ADDITIONAL TERMS

- 3.1 Term. The term of this Agreement shall be for a period commencing on October 1, 2009 and ending September 30, 2011.
- 3.2 Termination. This Agreement may be terminated at any time upon the mutual written consent of the parties or by either party, with or without cause, upon ten (10) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the User. If termination occurs, the User agrees to delete the ERS II program from its computer(s) and ensure that none of its employees accesses the ERS II Program thereafter.
- 3.3 Notices. All notices given under the terms of this Agreement shall be sent by United States certified mail, postage prepaid, to the respective party at the address set forth on the signature page hereof, or to such other addresses, as the parties shall designate in writing from time to time.
- 3.4 Amendments. In the event that any changes to the ERS II System or Department forms are necessary, the changes must follow statutory changes and/or rules and regulations of the Department. This Agreement may not be modified except by amendment made in writing and signed by either parties or their duly authorized representatives.
- 3.5 Severability. If any terms or conditions of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. determined to be illegal or unenforceable, the remainder of such Agreement shall continue in full force and effect.
- 3.6 Integration. The written Contract represents the entire agreement of the parties and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Contract.
- 3.7 Assignment. This Agreement is exclusive to the User and the User agrees not to assign or transfer any interest, rights, or duties under the Agreement to any person, firm, or corporation without prior written consent of the Department. In the absence of such written consent, any assignment or attempted assign shall constitute a material breach of this Agreement.

- 3.8 Confidentiality. All information designated by the Department on vital event records as being for health data and statistical research shall be considered confidential under NEB. Rev. STAT. §71-602.01 (2005). The User shall provide for the protection and security of the content of the information, the destruction of the information when applicable, and the appropriate use of the information. The release of such information pursuant to this section shall not make otherwise confidential information a public record.
- 3.9 Incorporated. All references in this Agreement to laws, rules, regulations, guidelines, directives, and attachments which set forth standards and procedures to be followed by the User in discharging its obligations under this Agreement shall be deemed incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text, herein.
- 3.10 Integration. This Agreement represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Agreement.
- 3.11 Governing Law. This Agreement shall be subject to, governed by, and construed according to the laws of the State of Nebraska, without regard to principles of conflict of laws.
- 3.12 Breach. Should the User breach this Agreement, the Department may, at its discretion, terminate this Agreement immediately upon written notice to the User. This provision shall not preclude the pursuit of other remedies for breach of contract as allowed by law. The waiver by the Department of a breach of any provision of this Agreement by the User shall not operate or be construed as a waiver of any subsequent breach by the User. No waiver shall be valid unless in writing and signed by the Director of the Department.

Executed by the parties or their duly authorized representatives on the dates indicated herein below:

FOR THE LANCASTER COUNTY HEALTH DEPARTMENT:

Chris Beutler, Mayor of Lincoln
for the Lincoln-Lancaster County Health Department
555 South 10th Street
Lincoln, NE 68508
(402)441-7511

FOR THE DEPARTMENT:



Stanley S. Cooper, Service Administrator
Vital Statistics Section
Nebraska Health and Human Services System
PO Box 95065
Lincoln, NE 68509-5065
(402) 471-0915

Date: 9/03/09