

**TEXAS STATEWIDE DATA EXCHANGE COMPACT  
AMONG  
PARTICIPATING AGENCIES OF THE STATE OF TEXAS**

This Texas Statewide Data Exchange Compact (TSDEC) is effective on the date the participating state agency signs this TSDEC. Any specific scope or exchange of information relating to a subset of participating state agencies under the terms of this TSDEC are identified in Attachment 1 to this TSDEC, "Scope of Information Exchange."

**ARTICLE 1. PURPOSE**

The purpose of this TSDEC is to:

- (1) facilitate disclosure of or access to confidential information to receiving agency; and
- (2) to describe each participating state agency's rights and obligations with respect to the confidential information and the limited purposes for which receiving agency may use or have access to confidential information.

**ARTICLE 2. AUTHORITY**

The participating state agencies enter into this TSDEC under the authority of the Texas Government Code Chapter 771 (Interagency Cooperation Act), the Texas Government Code § 2054.0286 (Statewide Data Coordinator), as well as the specific authority of each participating state agency. Under the Public Information Act the exchange of information between state agencies does not change the original classification of the data, including information classified as confidential by law.

**ARTICLE 3. DEFINITIONS**

These definitions as well as those found in 1 Tex. Admin. Code Chapter 202 (Information Security Standards), which incorporates the DIR Control Standards Catalog, will apply to this TSDEC. Other terms will be defined based on their plain meaning or other statutory definitions.

**"Authorized Purpose"** means the specific purpose or purposes described in Attachment 1, Scope of Information Exchange of this TSDEC for the specific participating state agencies to fulfill the obligations under the Scope of Information Exchange or any other purpose expressly authorized in writing in advance.

**"Authorized User"** means a person:

- (1) Who is authorized to create, receive, maintain, have access to, process, view, handle, examine, interpret, or analyze confidential information pursuant to this TSDEC;
- (2) For whom a specific participating state agency requesting information represents has a demonstrable need to create, receive, maintain, use, disclose, or have access to the confidential information;
- (3) Who has agreed in writing to be bound by a participating state agency's requirements regarding disclosure and use of confidential information as required by this TSDEC; and
- (4) Who has completed training in privacy, security, and breach response and who has agreed to be bound by the terms of this TSDEC.

**"Metadata"** means data that describes or gives information about other data.

**"Record"** means a collection of information or facts registered on paper or electronic media as a means to preserve knowledge.

#### **ARTICLE 4. SCOPE OF INFORMATION EXCHANGE**

Specifics regarding the scope of information being disclosed, released, or exchanged are in Attachment 1, Scope of Information Exchange.

#### **ARTICLE 5. DUTIES OF A DISCLOSING AGENCY**

5.1 Disclosing agency will transmit confidential information as specified in the Scope of Information Exchange in a secure manner to receiving agency.

5.2 Disclosing agency will comply with all laws and regulations applicable to the type of confidential information.

#### **ARTICLE 6. DUTIES OF A RECEIVING AGENCY**

6.1 Receiving agency will exercise reasonable care to protect confidential information from being used in a manner other than the Authorized Purpose or by other than an Authorized User. Receiving agency will only disclose confidential information to Authorized Users to the extent necessary to accomplish the Authorized Purpose and as permitted by law. Receiving agency will establish, implement, and maintain administrative, physical, and technical safeguards to preserve and maintain the confidentiality, integrity, and availability of the confidential information.

6.2 Receiving agency will maintain updated privacy, security, and breach response policies and procedures as required by law or internal policies.

6.3 Receiving agency will not disclose confidential information to any person other than an Authorized User.

6.4 Receiving agency will establish, implement, and maintain corrective actions against any member of its workforce or subcontractor who fails to comply with this TSDEC.

6.5 Receiving agency will be directly responsible for the compliance of its subcontractors with this TSDEC and any enforcement of this TSDEC with respect to its subcontractors.

6.6 Receiving agency will promptly notify disclosing agency of any requests for amendments to confidential information, access to confidential information by the individual subject of the confidential information, or record of disclosures of confidential information.

6.7 Receiving agency will maintain an accounting of all disclosures of confidential information.

6.8 Upon termination of the Scope of Information Exchange, receiving agency will return or destroy confidential information received from disclosing agency to the extent reasonably feasible and permitted by law. If receiving agency is required by law or litigation hold to retain confidential information beyond the termination of the Scope of Information Exchange, receiving agency will continue to safeguard the confidential information in accordance with this TSDEC.

6.9 If receiving agency transmits or stores confidential information via electronic means, receiving agency will utilize secure file transfer protocol or encryption in motion and at rest and other applicable security controls in accordance with the most current version of the National Institute of Standards in Technology, Special Publication 800-53, or other equally protective security controls.

6.10 Receiving agency will designate a privacy official and a security official, who may be the same individual, authorized to act on behalf of the receiving agency with respect to implementing the

privacy and security requirements in this TSDEC. Receiving agency will provide contact information for these officials to disclosing agency.

6.11 Receiving agency will timely cooperate with any request for information, documentation, audit, inspection, or investigation by any applicable regulatory authority or as required by disclosing agency to comply with its regulatory requirements.

6.12 Receiving agency will comply with all laws and regulations applicable to the type of confidential information.

## **ARTICLE 7. NOTICES**

7.1 Notice will be given to the parties specified in the Scope of Information Exchange by email.

## **ARTICLE 8. SECURITY INCIDENT AND BREACH RESPONSE, REPORTING, AND CORRECTIVE ACTION**

8.1 The participating state agencies will comply with the Incident and Breach reporting, notification, and corrective action requirements in accordance with applicable laws in Article 9 or to specific requirements specified in Attachment 1, Scope of Information Exchange. Participating state agencies must report a Breach to the Texas Department of Information Resources (DIR).

8.2 For the purposes of the TSDEC, the following definitions apply unless otherwise agreed upon by parties to a specific Scope of Information Exchange.

**“Incident”** means an attempted or successful unauthorized access, use, disclosure, exposure, modification, destruction, release, theft, or loss of sensitive, protected, or confidential information or interference with systems operations in an information system.

**“Breach”** means an impermissible use or disclosure of electronic or non-electronic sensitive personal information (SPI) by an unauthorized person or for an unauthorized purpose that compromises the security or privacy of confidential information such that the use or disclosure poses a significant risk of reputational harm, theft of financial information, identity theft, or medical identity theft.

## **ARTICLE 9. APPLICABLE LAWS FOR CONFIDENTIAL INFORMATION**

- Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (42 U.S.C. § 1320d, et seq.) and corresponding regulations in 45 C.F.R. Parts 160 and 164, including all subsequent amendments and guidance issued
- Social Security Act, including Section 1137 (42 U.S.C. §§1320b-7), Title XVI of the Act, (42 U.S.C. 1396(a)(7)) and the corresponding regulations, including 42 C.F.R. § 431.300, et seq.
- Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a, and the corresponding regulations and guidance
- Internal Revenue Code, Title 26 of the United States Code and corresponding regulations and publications adopted, including IRS Publication 1075
- Office of Management and Budget Memorandum M-17-12 and corresponding laws and guidance referenced
- Family Educational Records Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99
- Texas Business and Commerce Code Chapters 501 and 521

- Texas Government Code § 2054.1125 and corresponding rules, including 1 Texas Administrative Code § 202
- Texas Health and Safety Code, Chapters 33, 81, 181, 611
- Texas Family Code Chapter 262
- Texas Human Resources Code §§ 12.003 and 21.012
- Any other laws specifically stated in Attachment 1, Scope of Information Exchange

## **ARTICLE 10. GENERAL PROVISIONS**

### **10.1 Ownership of Confidential information**

Disclosing agency is the owner of the information shared under this agreement. Any receiving agency who receives a request for public information related to such shared information must timely notify the disclosing agency.

### **10.2 Certification**

The participating state agencies certify that:

- (1) The services or resources specified in this TSDEC are necessary and authorized for activities that are properly within the statutory functions and programs for each of the participating agencies;
- (2) The proposed arrangements serve the interest of efficient and economical administration of state government; and
- (3) The services or resources agreed upon are not required by Article XVI, Section 21 of the Texas Constitution to be provided under a contract awarded to the lowest responsible bidder.

10.3 Terms of Agreement

This agreement continues as long as the participating state agencies have the requisite authority to enter into this agreement or until this agreement is terminated by all participating state agencies. A participating state agency may terminate its participation in the TSDEC with 30 days' notice to all participating state agencies and the designated DIR TSDEC Administrator.

- (1) DIR will manage the TSDEC and any amendments. This TSDEC may not be amended without written agreement from all participants in the TSDEC.
- (2) Participating state agencies will manage the content of Attachment 1, Scope of Information Exchange.

By their signatures, the authorized representatives of the participating state agencies bind their respective agencies to the terms set forth in this TSDEC.

**TEXAS DEPARTMENT OF INSURANCE**

**DIR**

BY:                     /Signature on File/                      
NAME:                     Nancy Clark                      
TITLE:                     CHIEF OF STAFF                      
DATE:                     2/7/2020                    

BY:                     /Signature on File/                      
NAME:                     Ed Kelly                      
TITLE:                     Chief Data Officer                      
DATE:                     3/10/2020 | 1:16 PM CDT