

State of Oregon # \_\_\_\_\_  
External # \_\_\_\_\_

## STATE OF OREGON DATA USE AGREEMENT

This Data Use Agreement ("Agreement") is made and entered into by and between \_\_\_\_\_ hereinafter referred to as Data Recipient, and the State of Oregon acting through its **Oregon Health Authority (OHA) Office of Health Analytics**, an agency of the State of Oregon, a hybrid entity under the Health Insurance Portability and Accountability Act ("HIPAA").

### PURPOSE

This Agreement sets forth the terms and conditions pursuant to which OHA will disclose certain limited data sets to Data Recipient. Data Recipient will use the Data for the purposes set forth below, and as further described in Appendix A, a copy of which is attached hereto and incorporated herein by this reference.

The purpose of this request for a limited data set is for:

- Research
- Health Care Operations
- Public Health

### AUTHORITY

**WHEREAS**, OHA collects certain health care related data for use in its All Payer All Claims ("APAC") database;

**WHEREAS**, under HIPAA and applicable state law, OHA is permitted to disclose or make Data available to Data Recipient in accordance with 45 CFR 164.514(e), ORS 442.466 and OAR 409-025-0160.

**WHEREAS**, Data Recipient is permitted to receive Data in accordance with 45 CFR 164.514(e), ORS 442.466 and OAR 409-025-0160

**WHEREAS**, OHA is committed to compliance with the HIPAA and regulations promulgated thereunder and other applicable law; and the Health Information Technology for Economic and Clinical Health ("HITECH"); and

**WHEREAS**, the purpose of this Agreement is to satisfy the obligations of OHA under HIPAA, HITECH and other applicable law and to ensure the integrity and confidentiality of Data disclosed or made available to Data Recipient.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**A. DEFINITIONS**

Breach means the acquisition, access, use, or disclosure of Data in a manner not permitted by this Agreement which compromises the security or privacy of the Data.

Data means Protected Health Information (PHI) and Electronic Protected Health Information (EPHI) that is authorized to be disclosed and used pursuant to this Agreement.

Electronic Protected Health Information has the same meaning as the term "electronic protected health information" in 45 CFR 160.103.

Network and Information System means the State of Oregon's computer infrastructure, which provides personal communications, client records and other sensitive information assets, regional, wide area and local area networks, and the internetworking of various types of networks on behalf of the Authority.

Protected Health Information has the same meaning as the term "protected health information" in 45 CFR 160.103.

Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Data or interference with system operations in an information system.

**B. SCOPE AND DATA SET**

1. The Office of Health Analytics will disclose the Data described in Appendix B to Data Recipient.
2. The Office of Health Analytics will extract the requested Data in quarterly data files. Each file will be encrypted with a 23-character pass phrase using AES256 encryption. The encrypted files will be transmitted to Data Recipient by secure file transfer protocol.
3. Data Recipient is authorized to use the Data as specified in Appendix A, with such use limited to furtherance of the purposes specified in Appendix A. No third parties are permitted to access the Data unless otherwise expressly provided in Appendix A.

### **C. OBLIGATIONS AND ACTIVITIES OF DATA RECIPIENT**

1. Data Recipient agrees not to use or disclose the Data for any purpose other than as set forth in Section B and not in any manner that would violate 45 CFR Part 160, 162 and 164.
2. Data Recipient agrees to implement administrative, physical and technical safeguards to protect the security and confidentiality, integrity and availability of the Data that Data Recipient receives or has access to in accordance with this Agreement. At a minimum, Data Recipient will maintain Data in a secured server and only permit the Data to be accessed by employees, subcontractors, or grantees who have signed confidentiality agreements, agreed in writing to restrictions and conditions as specified in paragraph 4 of this Section, and have a need to know the information maintained in the Data for the purposes set forth in Section B.
3. If Data Recipient(s) require access to or use of any OHA Network and Information System for which OHA imposes security requirements, in order to obtain Data as permitted in this Agreement, Data Recipient must complete OHA form 785, submit the form to OHA, and obtain express permission from OHA to access or use an OHA Network and Information System, prior to being permitted to access or use such System. The Data Recipient shall prevent any unauthorized access to the OHA Network and Information Systems for which it has been granted access.
4. The Data Recipient shall ensure the level of security and privacy protection required in accordance with this Agreement is documented in a security risk management plan. The Data Recipient shall make its security risk management plan available to OHA for review upon request, in accordance with HIPAA.
5. Data Recipient agrees to report to OHA any Breach or use or disclosure of the Data not permitted by this Agreement of which it becomes aware, including without limitation, any disclosure of Data to an unauthorized subcontractor, any security incident, or any breach within forty eight (48) hours of its discovery by Data Recipient.
6. Data Recipient agrees to ensure that any agent, including a subcontractor or grantee, to which it provides the Data agrees in writing to the same restrictions and conditions that apply throughout this Agreement to the Data Recipient with respect to such information.
7. Data Recipient shall ensure that each employee, agent or contractor accessing Data or providing services hereunder or under the Contract, must sign Appendix C indicating their understanding of the nature of the Data and the terms of this Agreement.
8. Data Recipient shall not attempt to identify or contact any specific individual whose record is included in the limited data set files(s). Unless noted in the application, and approved by OHA, Data Recipient shall not attempt to link

records included in the files to any other beneficiary-specific source of information.

9. Data Recipient will comply with all applicable laws and regulations regarding privacy and security of information.
10. Data Recipient will indemnify, defend and hold harmless OHA, and OHA's directors, officers, agents and employees ("Indemnitee") from and against any claim, cause of action, liability, damage, cost or expense (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any unauthorized or prohibited use or disclosure including any Security Incident or Breach or any other violation of this Agreement by Data Recipient or any subcontractor or agent of Data Recipient. If Data Recipient is a public entity, Data Recipient's obligation to indemnify, defend and hold harmless OHA, as set forth above, shall be subject to the Oregon Tort Claims Act (ORS 30.260 through 30.300), and:
  - a. If Data Recipient is an agency of the State of Oregon, the limitations of Article XI, § 7 of the Oregon Constitution;
  - b. If Data Recipient is an Oregon county, the limitations of Article XI, § 10 of the Oregon Constitution, or;
  - c. If Data Recipient is neither an agency of the State of Oregon or an Oregon county, then any funding, debt, or other limitations imposed by law on the public body's ability to indemnify, defend or hold harmless OHA as set forth in this Section 9.

OHA will cooperate in the defense of the claim and Data Recipient shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim, and Data Recipient shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, OHA, its officers, employees or agents. The State of Oregon may elect to assume its own defense with an attorney of its own choice and its own expense at any time the State of Oregon determines important governmental interests are at stake.

11. Nothing in this agreement limits the Data Recipient from using and disclosing Data that is de-identified in accordance with OAR 943-014-0070. Data Recipient will not attempt to re-identify any de-identified Data or to contact any individual whose information is contained within the Data.
12. Data Recipient shall use appropriate safeguards to prevent use or disclosure of the Data other than provided for in this Agreement.
13. Data Recipient shall establish privacy and security measures that meet or exceed the standards set in applicable laws, rules, and regulations, including OAR 943-014-0300 through OAR 943-014-0320, and that are applicable to users regarding

the safeguarding, security and privacy of “Client Records,” all “Information Assets,” regardless of the media, and all “Network and Information Systems,” with meanings being set forth in OAR 943-014-0305, as such rule may be revised from time to time.

14. Data Recipient shall comply with relevant OHA administrative policies including the following:
  - (i) OHA-100-001 General Privacy Policy;
  - (ii) OHA-100-002 Individual Privacy: Permissible and Prohibited Use and Information Policy;
  - (iii) OHA-100-003 Accessing Individual Records;
  - (iv) OHA-100-004 Recording and Accounting for Disclosures of Individual Information;
  - (v) OHA-100-008 Using the Minimum Necessary Standard for Individual Information Policy;
  - (vi) OHA-100-009 Administrative, Technical, and Physical Safeguards Policy;
  - (vii) OHA-100-010 Release & Waivers for Use and Disclosure for Research Purposes Policy;
  - (viii) OHA-100-011 De-identification of Client Information and Use of Limited Data Sets Policy;
  - (ix) OHA-100-012 Enforcement, Sanctions and Penalties for Violations of Individual Privacy Policy;
  - (x) OHA-100-013 OHA Business Associate Relationships; and
  - (xi) OHA-100-014 Report and Response to Privacy and Security Incidents

Copies of the above policies may be found at <http://www.dhs.state.or.us/policy/>.

#### **D. TERM AND TERMINATION**

1. The provisions of this Agreement shall be effective upon the last date of execution of the parties and shall continue in effect for a period of two years, unless earlier terminated as provided herein.
2. OHA shall have the right to terminate this Agreement if OHA determines that Data Recipient has violated a material term of this Agreement. If OHA determines that such a violation has occurred, OHA shall either (1) provide Data Recipient with an opportunity to cure the violation within a specified period of time or (2) if OHA reasonably determines that cure is not possible, terminate this Agreement immediately.
3. Either party may terminate this Agreement upon 30 days prior written notice to the other party.

4. In the event of termination of this Agreement, Data Recipient on behalf of itself and its subcontractors and agents shall destroy the Data received from OHA in compliance with the requirements of the Oregon Secretary of State set forth in OAR 166-017-0090.

**E. MISCELLANEOUS**

1. Data Recipient shall, upon request, provide OHA with any reports, manuscripts, presentations or any other product that uses the Data provided under this Agreement. If OHA determines that the aforementioned items include use of data outside the topic and research questions approved in this request, OHA will notify the data requester.
2. The obligations of Data Recipient under Section C of this Agreement shall survive termination or expiration of this Agreement.
3. Any ambiguity in this Agreement shall be resolved to permit OHA to comply with any applicable privacy, security, or other laws.
4. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
5. The individuals signing below have the right and authority to execute this Agreement and no further approvals are necessary to create a binding agreement.
6. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon.
7. Notice. Any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid to OHA or Data Recipient at the address or number set forth below, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five days after mailing. Any communication or notice delivered by email shall be effective when the recipient acknowledges receipt either by sending an email to the email address for the sender stated in this section E.7, or by a notice delivered by another method of providing notice as set forth in this Section E.7. Any communication or notice given by personal delivery shall be effective when actually delivered to the addressee.

Data Recipient:

[insert mailing address]:

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

OHA:  
Amy Clary  
421 SW Oak St., Suite 850, Portland, OR 97204  
(503) 551-6379  
[Amy.Clary@dhsoha.state.or.us](mailto:Amy.Clary@dhsoha.state.or.us)

**F. ADDITIONAL INFORMATION**       No additional information for this request.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date of the last party to sign below.

**APPROVED BY DATA RECIPIENT:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**APPROVED BY OREGON HEALTH AUTHORITY:**

By: \_\_\_\_\_

Print Name: Amy Clary

Title: Research and Data Manager      Date: \_\_\_\_\_

**APPENDIX A: Data Request Application**

Example



**APPENDIX B: Approved Data Elements**

Example

## APPENDIX C: Acknowledgment by Project Staff

Any staff accessing data must read the Data Use Agreement and sign below to document their understanding.

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Name: \_\_\_\_\_ Role on project: \_\_\_\_\_

I hereby acknowledge:

- The Data provided under the Data Use Agreement is provided for the limited purpose of conducting research as described in the application and may not be used or disclosed other than as specified in the data use agreement.
- I will notify the principal investigator of this project if I become aware of any violation by myself or other project staff.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Name: \_\_\_\_\_ Role on project: \_\_\_\_\_

I hereby acknowledge:

- The Data provided under the Data Use Agreement is provided for the limited purpose of conducting research as described in the application and may not be used or disclosed other than as specified in the data use agreement.
- I will notify the principal investigator of this project if I become aware of any violation by myself or other project staff.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Name: \_\_\_\_\_ Role on project: \_\_\_\_\_

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- I will notify the principal investigator of this project if I become aware of any violation by myself or other project staff.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Name: \_\_\_\_\_ Role on project: \_\_\_\_\_

I hereby acknowledge:

- The Data provided under the Data Use Agreement is provided for the limited purpose of conducting research as described in the application and may not be used or disclosed other than as specified in the data use agreement.
- I will notify the principal investigator of this project if I become aware of any violation by myself or other project staff.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Name: \_\_\_\_\_ Role on project: \_\_\_\_\_

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Name: \_\_\_\_\_ Role on project: \_\_\_\_\_

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- I will notify the principal investigator of this project if I become aware of any violation by myself or other project staff.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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