

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**. The Oregon Health Authority is a hybrid covered 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 de-identified data ("Data") to Data Recipient. Data Recipient will use the Data for the purposes set forth in Data Recipient's Data Request Pre-Application and Statement of Work, a copy of which is attached hereto as Appendix A, and incorporated herein by this reference.

### AUTHORITY

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

**WHEREAS**, under HIPAA, OHA is permitted to disclose or make Data available to Data Recipient in accordance with 45 CFR 164.502(d).

**WHEREAS**, Data Recipient wishes to receive certain Data maintained by OHA in the APAC database;

**WHEREAS**, OHA is committed to compliance with the Health Insurance Portability and Accountability Act of 1996 ("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 laws, 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. SCOPE AND DATA SET**

1. Subject to the terms of this Agreement, OHA will disclose the Data, as further described in Appendix B, to Data Recipient.
2. Data Recipient is authorized to use the Data only for the purposes specified in Appendix A.

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

1. Data Recipient shall not use or disclose the Data other than as permitted by this Agreement or as otherwise required by law.
2. Data Recipient shall use appropriate safeguards to prevent the use or disclosure of the Data other than as provided for in this Agreement.
3. Data Recipient shall report to OHA any use or disclosure of the Data not provided for by this Agreement of which Data Recipient becomes aware.
4. Data Recipient shall ensure that any agents, including a subcontractor, to whom the Data Recipient provides the Data agrees to the same restrictions and conditions that apply to the Data Recipient with respect to the Data.
5. Data Recipient shall not attempt to re-identify the Data or attempt to contact subjects represented in the Data.
6. Data Recipient shall not link the Data with individually-identifiable data from any other source, nor may the Data be re-transferred or re-disseminated in a format that could possibly lead to the identification of an individual.
7. Data Recipient shall comply with all state and federal laws applicable to the Data disclosed under this Agreement.
8. Data Recipient is solely responsible for the analysis of the Data and communication of results. When publishing or communicating results of any analysis, Data Recipient shall provide a notation indicating that the Oregon Health Authority is not responsible for the analysis or interpretation and that the Data Recipient does not represent the State of Oregon.
9. Data Recipient will indemnify, defend and hold harmless OHA, and OHA's directors, officers, agents and employees ("Indemnitees") 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.

### **C. TERM AND TERMINATION**

1. The provisions of this Agreement shall be effective upon execution and shall remain in effect until the Agreement is terminated in accordance with this section.
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 a cure is not possible, terminate this Agreement immediately upon notice to Data Recipient.
3. Either party may terminate this Agreement with 30 days written notice to the other party, or at such other time as may be mutually agreed.

### **D. MISCELLANEOUS**

1. Survival. The obligations of Data Recipient under Section B of this Agreement shall survive termination of this Agreement.
2. Contract Interpretation. Any ambiguity in this Agreement shall be resolved so as not to cause OHA to violate any applicable privacy, security, or other laws.
3. Waiver. 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 in one instance shall not be construed as a waiver of any other term or provision, or the same provision in any other instance.
4. Authority. The persons signing below have the right and authority to execute this Agreement and no further approvals are necessary to enter into this Agreement.

5. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Oregon.
6. Ownership of Data. OHA retains all ownership rights to the Data referred to in this Agreement. Nothing herein shall be construed as providing Data Recipient with any right, title, or interest in any of the Data furnished by OHA.
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, PhD  
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)

**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 OFFICE OF HEALTH ANALYTICS:**

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

Print Name: Amy Clary, PhD

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

**APPENDIX A: Data Request Pre-Application**

Example

**APPENDIX B: Approved Data Files**

Example