

**State of Oregon
Data Sharing and Use Agreement**

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This Data Exchange and Use Agreement (Agreement) is between the State of Oregon, acting by and through the Oregon Health Authority, Health Policy and Analytics Division, [*] Program and [*] Data Recipient. This Agreement sets forth the terms and conditions under which OHA will disclose certain Data to Data Recipient, how the Data may be used, and how the Data will be protected by Data Recipient.

1. **TERM.** This Agreement is effective on the last date on which all parties have signed (the “Effective Date”). This Agreement expires on [DD/MM/YYYY] unless extended in accordance with Section 14 or terminated earlier in accordance with Section 10, Suspension or Termination.

2. **DEFINITIONS.** The following capitalized terms have the following meanings and apply to this Agreement:

“Access” means the ability or the means necessary for Data Recipient to read, communicate, or otherwise use the Data.

“Breach” means the unauthorized acquisition, access, exposure, use, or disclosure of Data in a manner not in compliance with applicable law, rule, or policy; or data loss, misuse, or compromise.

“Data” means the information that may be Accessed, exchanged, created, transmitted or stored pursuant to this Agreement.

“Incident” means the inadvertent, attempted, or successful unauthorized access, use, disclosure, modification, or destruction of any Data. By way of example, an Incident may be a Breach, the failure to comply with the requirements of this Agreement, or theft of computer equipment that uses or stores Data.

“Protected Health Information” and “Electronic Protected Health Information” have the same meanings as those terms are defined in 45 CFR 160.103.

3. **AUTHORITY.**

OHA’s [PROGRAM] is responsible for and in this role obtains information related to individuals’ health care services delivered through Oregon’s Medical Assistance Programs. OHA’s authority to obtain, use, and analyze the personal, individually identifiable health services data is found in ORS 413.032, ORS 413.175 and OAR 943-014-0060.

3.1. OHA has authority to disclose Data to Data Recipient under OAR 943-014-0060 for the purposes described in this Agreement provided that OHA obtains documentation that a

waiver of an individual's authorization for release of information requirements has been approved by an IRB registered with the Office for Human Research Protection. Documentation required of an IRB when granting approval of a waiver of an individual's authorization for release of information must include all criteria specified in 45 CFR part 164.512(i)(2).

- 3.2. OHA is a hybrid covered entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) and the [PROGRAM] Program is within the OHA's health care component. OHA may disclose Data to Data Recipient pursuant to OAR 943-014-0020(2)(n). [The Data is de-identified in accordance with 45 CFR 164.514(b).] This Agreement does not create a business associate relationship between the parties.

4. DATA AND LICENSE; METHOD OF EXCHANGE.

- 4.1. **Data.** OHA will disclose to Data Recipient the Data described in Appendix B. The Data are classified as Level 3 information under State of Oregon Policy 107-004-050, Information Asset Classification. (Found online at: <https://www.oregon.gov/das/Policies/107-004-050.pdf>.)
- 4.2. **License.** Subject to Data Recipient's compliance with this Agreement, Data Recipient and its authorized users (including any subcontractors and agents) listed in Appendix A are hereby granted a non-exclusive, non-transferrable, non sub-licensable, revocable authorization to Access and use Data only in accordance with this Agreement and applicable laws, rules, and policies. Data Recipient shall not participate in an unauthorized transfer or sale of, create unauthorized derivative works of, or in any way exploit the Data made available through this Agreement.
- 4.3. **Method of Exchange.** OHA will make the Data available to the Data Recipient via the following mode: Secure file transfer.

5. PERMITTED USES AND ACCESS.

- 5.1. **Purpose and Duration.** Data Recipient may use the Data for the following purposes and for the following duration:
- 5.1.1. **Purpose(s):** Purposes stated in research application (DRTS #[####]) approved by the OHA, Data Review Committee on xx/xx/xx.
- 5.1.2. **Duration:** Effective Date through the Term of this Agreement.
- 5.2. **Authorized Access.** The individuals listed in Appendix A, including any employees, agents, and contractors, are authorized to Access the Data. Data Recipient shall not allow Access by any other individual or third party except as authorized by OHA in this Agreement.
- 5.3. **Limitations.** Data Recipient shall not use the Data provided for other than the purposes stated in 5.1. Data Recipient shall not permit unauthorized persons or unauthorized third parties to Access the Data, Data transfer site[, or administrative or user access to Data in Data Recipient's systems].

5.4. Responsible for Compliance. Data Recipient is responsible for the compliance of its employees, agents, and contractors with this Agreement, applicable law, and any third-party agreements to which Access is subject.

6. DATA PRIVACY.

6.1. Generally. Data Recipient shall hold all Data and other information as to personal facts and circumstances obtained by Data Recipient on OHA clients as confidential, using the highest standard of care applicable to the Data, and shall not divulge any identifiable client information except in accordance with this Agreement and applicable law.

6.2. Privacy Protections. Data may include information, such as client information, subject to specific confidentiality protections under state or federal law. Data Recipient shall comply with laws and regulations applicable to the information.

6.3. Public Bodies. OHA acknowledges that if Data Recipient is subject to the Oregon Public Records Law, it shall treat Data as confidential to the extent permitted under the Oregon Public Records Law (ORS Chapter 192).

6.4. Limited Purposes. Data Recipient shall limit the use or disclosure of Data to persons identified in Appendix A.

6.5. Training. Data Recipient's employees, agents, and contractors who are authorized to Access the Data have received training on the privacy and security obligations relating to the Access, including on client records, prior to actual physical or logical Access. Data Recipient shall provide periodic privacy and security training to its employees, agents, and contractors.

6.6. Revocation of Access. Breach, or wrongful use or disclosure of Data by Data Recipient or its employees, agents, or contractors, may cause the immediate revocation of the Access granted through this Agreement in the sole discretion of OHA, OHA may specify a reasonable opportunity for Data Recipient to cure the unauthorized use or disclosure and end the violation, and may terminate the Access if Data Recipient does not do so within the time specified by OHA. Legal action may also be taken for violations of applicable regulations and laws.

7. DATA PUBLICATION OR PUBLIC RELEASE.

7.1. Disclosure. Data Recipient may not disclose any individually identifiable information received pursuant to this Agreement, such as an individual's first or last name, date of birth, or any other identifying information or information that could lead to the identification of an individual, including information that when combined with publicly available information may reasonably be used to identify an individual. This includes disclosure in any draft or final publication permitted under this Agreement. Data must be suppressed according to terms in Appendix C.

7.2. Advance Authorization. Data Recipient must obtain prior written authorization from OHA before releasing to the public any information related to the Data, except where disclosure is compelled by administrative or judicial order, or pursuant to other operation of law.

7.3. Limitations. The use and disclosure of any Data exchanged under this Agreement is strictly limited to the minimum information necessary for the purposes described in this Agreement. **Any presentations (including paper, article, story, abstract, report, poster, or oral presentation) referencing or using the Data exchanged under this Agreement must be submitted to OHA for its advance written consent** (see Appendix C). All presentations must include an acknowledgement of OHA in alignment with Appendix C.

8. DATA SECURITY.

8.1. Compliance with Laws, Regulations, and Policies. Data Recipient and its employees, agents, and contractors shall comply with all applicable state and federal laws and regulations, and State of Oregon policies governing use and disclosure of Data, including as those laws, regulations, and policies are updated from time to time. Applicable laws, regulations, and policies include but are not limited to:

8.1.1. The Oregon Consumer Information Protection Act, ORS 646A.600 through 646A.628, to the extent applicable.

8.1.2. HIPAA and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, to the extent Data Recipient accesses Protected Health Information in connection with this Agreement.

8.2. Privacy and Security Measures. Data Recipient represents and warrants it has established and will maintain privacy and security measures that meet or exceed the standards set in laws, rules, and regulations applicable to the safeguarding, security and privacy of Data regardless of the media. Data Recipient shall monitor, periodically assess, and update its security controls and risk to ensure continued effectiveness of those controls.

8.2.1. Encryption. Data will be encrypted at rest and in transit consistent with NIST 800-53 “Moderate” security controls (National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53) or other agreed upon standard.

8.2.2. No Foreign Transmission or Access. Data Recipient shall not transmit, store, or allow Access from locations outside of the United States or its territories, nor allow use of Data in any country or in any manner prohibited by applicable law, rule, or policy.

8.2.3. Background Checks. Data Recipient has completed any required criminal background checks on its employees, agents, and contractors who have user or administrator-level Access to the Data prior to such Access being granted.

8.3. Prevention of Unauthorized Access. Data Recipient shall prevent any Access to Data that is not authorized in accordance with this Agreement and applicable law, and shall implement and maintain physical, technical, and administrative safeguards to prevent unauthorized access.

8.4. Prohibition on Data Mining. Data Recipient shall not use or permit use of any data mining technology for any non-authorized activity. For purposes of this requirement, “non-authorized activity” means the data mining or processing of data, stored or transmitted for commercial purposes, advertising or advertising-related purposes, or for any other purpose unrelated to or not explicitly authorized in this Agreement.

8.5. Security and Disposal. Data Recipient shall maintain security of equipment and hardware, and ensure the proper handling, storage and disposal of all Data Accessed, obtained, or reproduced through Data Recipient’s Access to prevent unintended destruction, loss, or disclosure. Data Recipient shall ensure proper disposal of Data when authorized use ends, consistent with Data Recipient’s record retention obligations and obligations regarding the privacy and security of the Data under this Agreement and applicable law.

8.6. Records; Audit Rights and Access. Data Recipient shall maintain records in such a manner as to clearly document its compliance with and performance under this Agreement, and provide OHA, the Oregon Secretary of State, the federal government, and their duly authorized representatives access to Data Recipient’s officers, employees, agents, contractors, facilities, and records for OHA to:

8.6.1. Determine Data Recipient’s compliance with this Agreement.

8.6.2. Gather or verify any additional information OHA may require to meet any state or federal laws, rules, or orders regarding Data.

8.6.3. Access to facilities, systems, and records under this section will be granted following reasonable notice to Data Recipient’s Primary Contact. Records include paper or electronic form, system security logs, and related system components and tools (including hardware and software), required to perform examinations and audits, and to make excerpts and transcripts, including for data forensics.

8.7. Incidents and Breaches. Data Recipient shall comply, and shall cause its employees, agents, and contractors to comply, with any requirements for identifying and addressing an Incident or Breach. This requirement applies regardless of whether the Incident or Breach was accidental or otherwise.

9. NOTIFICATIONS.

9.1. Points of Contact. The parties have designated their respective points of contact in Appendix A. The parties will facilitate direct communication between their points of contact. The parties will provide timely written notification to the other of any changes in point of contact information.

9.2. Incident and Breach Notifications. In the event Data Recipient or its subcontractors or agents discover or are notified of an Incident or Breach, including a failure to comply with Data Recipient’s confidentiality obligations, Data Recipient shall notify the OHA point of contact of the Incident or Breach immediately, and in no event more than 24 hours following discovery or notification. If the State of Oregon determines that the Incident or Breach requires notification of its clients or other individuals identifiable in

the impacted Data, or other notification required by law, OHA will have sole control over the notification content, timing, and method subject to Data Recipient's obligations under applicable law.

9.3. Requests for Data. In the event Data Recipient receives a third-party request for Data, including any electronic discovery, litigation hold, or discovery searches, Data Recipient shall first give OHA notice and provide such information as may be reasonably necessary to enable OHA to protect its interests.

9.4. Changes in Law. Each party will provide notice to the other of any change in law, or any other development in law, rule, or policy, which may significantly affect its ability to perform its obligations under this Agreement.

9.5. Communications. Except as otherwise expressly provided in this Agreement, any communications between the parties or notices to be given under this Agreement must be given in writing to Data Recipient's point of contact, and to OHA's point of contact, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Agreement.

9.5.1. Any communication or notice delivered by United States Postal Service, first class mail postage prepaid, will be deemed given five (5) calendar days after mailing.

9.5.2. Any communication or notice delivered by facsimile will be deemed given when the transmitting machine generates receipt of the transmission. To be effective against OHA, such facsimile transmission must be confirmed by telephone notice to the OHA Authorized Representative.

9.5.3. Any communication or notice delivered by email will be deemed given when the recipient responds with a receipt, which may be auto-generated. To be effective against OHA, such email transmission must be confirmed by telephone notice to the OHA point of contact (or delegate).

9.5.4. Any communication or notice by personal delivery will be deemed given when actually received by the appropriate point of contact (or delegate).

10. SUSPENSION OR TERMINATION.

10.1. This Agreement may be terminated upon written agreement of the parties.

10.2. This Agreement may be terminated by either party upon 30 calendar days' written notice to the other party.

10.3. Data exchange, authorized use of Data, and this Agreement may be terminated immediately upon written notice from Data Recipient if the Data is no longer needed by Data Recipient.

10.4. OHA may immediately suspend exchange of Data with Data Recipient, Data Recipient's authorization to use the Data, or both, for Data Recipient's failure to comply with the requirements of this Agreement. OHA may, to the extent it determines it is reasonable and able to do so, provide advance written notice to Data Recipient to cure any deficiency or breach under this Agreement.

10.5. Either party may terminate this Agreement, and OHA may modify Data disclosures and authorized uses, upon written notice if there are changes to or revised interpretations of federal or state laws, rules, or regulations, or if either party has changes in policies that require such change.

11. RETURN OF INFORMATION ASSETS; SANITIZATION. Upon expiration or termination of this Agreement for any reason whatsoever, Data Recipient shall comply with its obligations under this Agreement and applicable law for return of property and sanitization.

11.1. Except as necessary to meet its records maintenance and audit obligations under this Agreement, Data Recipient may not retain any copies of Data. Data Recipient shall notify OHA of any conditions that make returning all Data not feasible. Upon OHA's written acknowledgement that returning all Data is not feasible, Data Recipient shall purge or destroy retained Data in all its forms in accordance with the most current version of NIST SP 800-88 (or other agreed-upon standard) and on request provide OHA with written certification of sanitization.

11.2. Data Recipient shall maintain protections required by law or this Agreement for any retained Data for so long as Data Recipient (including through any third party) retains it.

12. COSTS. Each party will bear its own costs related to the acquisition of all equipment, software, data lines or connections necessary for Access, transmission, and storage of the Data, unless otherwise agreed to in writing between the parties.

13. DOCUMENTS; COMPLETE AGREEMENT. This Agreement consists of these terms and conditions, Appendix A, Appendix B, and Appendix C. This Agreement merges all prior and contemporaneous communications with respect to the matters described in this Agreement. Any ambiguity will be resolved to permit OHA to comply with applicable privacy and security laws and the State of Oregon's policies interpreting those laws. In the event of any conflict between these terms and conditions, Appendix A, Appendix B, and Appendix C, the conflict will be resolved in that order.

14. CHANGES AND AMENDMENTS. Other than as allowed under this section, the parties may amend this Agreement only via a written amendment executed by both parties.

14.1. Point of Contact, Data Recipient Access Control Personnel and Data Recipient Authorized User Changes (Appendix A). Either party may request updates to Appendix A that are, in the sole discretion of the OHA Point of Contact, administrative in nature and do not modify the mode of Access or type of Data by submitting a written request to the other party. Upon written authorization of the OHA Point of Contact and written agreement of the parties, Appendix A will be deemed amended to reflect the updated information.

14.2. Appendix B. Either party may request updates to Appendix B that are, in the sole discretion of the OHA Point of Contact, administrative in nature and do not modify the mode of Access or type or classification of Data by submitting a written request to the other party. Upon written authorization of the OHA Point of Contact and written

agreement of the parties, Appendix B will be deemed amended to reflect the updated information.

15. 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 will not operate as a waiver of any other term or provision.

16. NO THIRD-PARTY BENEFICIARIES. OHA and Data Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms.

17. INDEMNIFICATION; CONTRIBUTION.

17.1. Unless Data Recipient is a government entity specified in another subpart of this Section 17, this Section 17.1 applies:

17.1.1. Indemnification. Data Recipient will indemnify, defend and hold harmless OHA, and OHA's directors, officers, agents and employees 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 of Data, including any Incident or Breach, or any other violation of this Agreement by Data Recipient or any employee, contractor, or agent of Data Recipient.

17.1.2. Defense of Claims. OHA shall reasonably cooperate in good faith, at Data Recipient's reasonable expense, in the defense of the claim, 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. OHA may elect to assume its own defense with an attorney of its own choice and at its own expense any time it determines important governmental interests are at stake. OHA will promptly provide notice to Data Recipient of any claim that may result in an obligation on the part of Data Recipient to defend. Subject to these limitations, Data Recipient may defend a claim with counsel of its own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of OHA, which consent must not be unreasonably withheld.

17.1.3. State Limitations. Agency's liabilities under this Agreement are subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.

17.2. Interagency Agreement. If Data Recipient is an executive department agency of the State of Oregon, as defined in ORS 174.112, OHA and Data Recipient are each insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS Chapter 278, and subject to the Oregon Tort Claims

Act (ORS 30.260 to 30.300). Each party accepts such coverage as adequate insurance of the other party with respect to personal injury and property damage.

17.2.1. Any tort liability claim, suit, or loss resulting from or arising under this Agreement will be allocated, as between the parties, in accordance with law by the Oregon Department of Administrative Services for purposes of the parties' respective loss experience and subsequent allocation of self-insurance assessments under ORS 278.435. Each party shall notify DAS Risk Management and the other party in the event it receives notice of knowledge of any claim arising out of this Agreement.

17.2.2. The parties are each responsible exclusively with respect to their own employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and PERS contributions.

17.3. Contribution - Intergovernmental Agreement. If Data Recipient is an Oregon unit of local government (i.e. city, county, or local service district) as defined in ORS 174.116(1), or Oregon Health and Science University (created as a public corporation under ORS 353.020):

17.3.1. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a party (the "Notified Party") with respect to which the other party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Agreement with respect to the Third Party Claim.

17.3.2. With respect to a Third Party Claim for which OHA is jointly liable with Data Recipient (or would be if joined in the Third Party Claim), OHA shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Data Recipient in such proportion as is appropriate to reflect the relative fault of OHA and Data Recipient in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OHA and Data Recipient will be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OHA's contribution

amount in any instance is capped to the same extent it would have been capped under Oregon law if the State of Oregon had sole liability in the proceeding.

17.3.3. With respect to a Third Party Claim for which Data Recipient is jointly liable with OHA (or would be if joined in the Third Party Claim), Data Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OHA in such proportion as is appropriate to reflect the relative fault of Data Recipient and OHA in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Data Recipient and OHA will be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Data Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

17.3.4. Indemnification by Subcontractors. Data Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Data Recipient's contractor or any of the officers, employees, agents, or contractors of Data Recipient ("Claims"). It is the specific intention of the parties that the Indemnitee will, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

17.4. Indemnification - Intergovernmental Agreement with Tribe. If Data Recipient is a federally recognized Indian tribe organized under a constitution and bylaws ratified by its members and approved by the Assistant Secretary of the Interior of the United States, then:

17.4.1. Data Recipient shall indemnify, defend, save, and hold harmless the State of Oregon, OHA, and its officers and employees from any and all claims, suits, and liabilities arising out of, or relating to the intentional misconduct, or reckless or negligent acts or omissions of Data Recipient or its officers, employees, subcontractors, or agents which may occur in the performance of the Agreement; provided, however, Data Recipient will not be required to indemnify the State of Oregon, OHA, or their officers, employees, or agents for any such liability arising out of the wrongful acts of the State of Oregon, OHA, or their officers, employees or agents.

17.4.2. Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), OHA shall indemnify, within

the limits of and subject to the restrictions in the Tort Claims Act, Data Recipient against liability for personal injury or damage to life or property arising from OHA's negligent activity under the Agreement; provided, however, OHA shall not be required to indemnify Data Recipient for any such liability arising out of the wrongful acts of Data Recipient, its officers, employees or agents.

17.4.3. Indemnification by Contractors. Data Recipient shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Data Recipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the parties that the Indemnitee will, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

17.4.4. Sovereign Immunity

17.4.4.1. State of Oregon. The Oregon legislature has waived the State’s sovereign immunity to suit in State court pursuant to ORS 30.320. No part of this Agreement is a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment of the Constitution of the United States.

17.4.4.2. Limited Tribal Waiver of Immunity. DATA RECIPIENT ADOPTS THIS WAIVER OF SOVEREIGN IMMUNITY OF THE TRIBE FROM SUIT OR ACTION PURSUANT TO ITS TRIBAL CONSTITUTION AND CODE. THIS WAIVER WILL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. Data Recipient hereby waives its immunity to suit in State court for the limited purposes stated in this Agreement. Data Recipient waives and agrees not to assert any doctrine requiring exhaustion of tribal court or administrative remedies prior to any court proceeding.

17.4.5. Defense of Claims. To the extent Data Recipient is required under this Agreement to defend OHA against claims asserted by third parties, OHA shall reasonably cooperate in good faith, at Data Recipient’s reasonable expense, in the defense of the claim and Data Recipient shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim and shall bear all costs of counsel. The Oregon Attorney General’s acceptance of counsel may not be unreasonably withheld, conditioned or delayed. 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. Subject to the limitations of this Section, Data Recipient may defend a claim with counsel of its own choosing.

- 18. ATTORNEYS' FEES.** Neither party to this Agreement is entitled to obtain judgment from the other party for attorneys' fees incurred in any litigation between the parties. Except as specifically described for indemnification or contribution obligations, neither party may obtain judgment from the other party for attorneys' fees incurred in the defense of any claim asserted by a third party.
- 19. GOVERNING LAW; JURISDICTION; VENUE.** This Agreement is to be construed in accordance with and governed by the laws of the State of Oregon. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon; provided, however, if a claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. LICENSOR HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THESE COURTS, WAIVES ANY OBJECTION TO VENUE IN THESE COURTS, AND WAIVES ANY CLAIM THAT THESE COURTS ARE INCONVENIENT FORUMS. In no way may this section or any other term of this Agreement be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.
- 20. BINDING EFFECT.** The persons signing below have the right and authority to execute this Agreement and no further approvals are necessary to create a binding agreement.
- 21. SURVIVAL.** The provisions of this Agreement, including provisions relating to permitted uses and access, privacy, publication or release, security, notifications, sanitization, costs, third party beneficiaries, indemnifications and contribution, attorneys' fees, governing law, jurisdiction, and venue, or which otherwise by their nature survive termination, do so survive. This Agreement applies to any Access or Data use by Data Recipient, its employees, agents, or subcontractors following its termination.

22. SIGNATURES. Data Recipient, by the signature of its authorized representative, hereby acknowledges that they have read this Agreement, understands it, and agrees to be bound by its terms and conditions.

[Name of Data Recipient]:

By: _____

Printed Name: _____

Title: _____ Date: _____

Point of Contact:

Printed Name and Title: _____

Organization Name: _____

Mailing Address: _____

Physical Address: _____

Telephone: _____

Email: _____

STATE OF OREGON ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY:

By: _____

Print Name: _____

Title: _____ Date: _____

Point of Contact:

Printed Name and Title: _____

Organization Name: _____

Mailing Address: _____

Physical Address: _____

OHA DRTS # _____

Telephone: _____

Email: _____

**APPENDIX A: AGREEMENT POINTS OF CONTACT
AND
DATA RECIPIENT ACCESS CONTROL PERSONNEL AND AUTHORIZED USERS**

OHA Point(s) of Contact		
Name	Email Address	Telephone
Data Recipient [*] Point(s) of Contact		
Name	Email Address	Telephone
Data Recipient [*] Access Control Personnel		
Name	Email Address	Telephone
Data Recipient [*] Individuals with Access		
Name	Email Address	Telephone

OHA DRTS # _____

APPENDIX B:
DATA ELEMENTS AND DATA FIELDS

Data Classification (cannot be changed via administrative update under Section 14 of the Agreement: Level 3

APPENDIX C: REPORTING REQUIREMENTS

Required suppression for confidentiality:

Data recipient will follow [Health Analytics Small Numbers Reporting Guidelines](#) (August 2024 version, and any subsequent revisions) for protection of confidentiality. Specifically, for full count data, data may be reported without any label or warning if the denominator ≥ 50 . Data must be suppressed if the denominator < 50 .

Required review of presentations:

Data Recipient shall provide OHA with any presentations (including paper, article, story, abstract, report, poster, or oral presentation) referencing or using the data exchanged under this Agreement prior to use or release. 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 Recipient. OHA requires ten business days to review the documents prior to use or release.

Required acknowledgment statement:

In addition, Data Recipient will include an acknowledgment in the final product(s) produced from the data similar to the following: "This (presentation, paper, press release, memo) uses data provided by the Oregon Health Authority."