# WA-APCD Data Use Agreement

This “Data Use Agreement" ("DUA"), effective Click here to enter a date. (“Effective Date”) is by and between the Oregon Health & Science University, Center for Health Systems Effectiveness, in the capacity of the Washington All-Payer Claims Database (“WA-APCD”) Lead Organization (hereinafter, “the LO”), and the data recipient [Click here to enter text] (hereinafter, the “Recipient”) hereunder. This DUA defines the terms and conditions under which access to and use of the WA-APCD data is authorized.

This DUA addresses the conditions under which the LO will disclose and the Recipient may obtain, use, reuse, and disclose the WA-APCD data file(s) or data output specified in this DUA and/or any derivative file(s) (collectively, the “Data” or “WA-APCD Data”). This DUA pertains to all Data Release Application(s) (hereinafter, “Data Application”) under which the LO releases WA-APCD Data to the Recipient. Each Data Application approved by the LO will be noted and attached hereto as Exhibit A, A-1, A-2, and so on.

This DUA applies to data disclosed between the Effective Date Click here to enter a date. and “Completion Date” Click here to enter a date. unless the DUA is terminated earlier (Exhibit E) or extended (Exhibit F) by mutual written agreement of the parties.

# Section 1. Attachments and Exhibits

The parties mutually agree that the following specified Attachments and Exhibits are part of this DUA:

[ ]  Attachment 1: Data Use Agreement Amendment(s) (if Applicable)

[ ]  Attachment 2: List of Approved Data Elements

[ ]  Attachment 3: List of Authorized Data Users

[ ]  Exhibit A: Approved WA-APCD Data Application(s)

[ ]  Exhibit B: Approved Data Management Plan (if Applicable)

[ ]  Exhibit C: Recipient Attestation of WA-APCD Rules and Policies

[ ]  Exhibit D: Recipient Confidentiality Agreement(s)

[ ]  Exhibit E: Certificate of Project Completion and Data Destruction

[ ]  Exhibit F: Certificate of Continued Need and Compliance

[ ]  Exhibit G: WA-APCD Data Access Fee Schedule

[ ]  Exhibit H: Recipient Data Output

[ ]  Exhibit I: Analytic Enclave User Authentication Agreement

[ ]  Exhibit J: Analytic Enclave Data Downloads

[ ]  Other: Click here to enter text.

**Covered Project(s).** This DUA governs data release for the following project(s) entitled:

Click here to enter text.

**Identified in the Data Application(s) approved by the LO and incorporated into this DUA as Exhibit A.**

The Recipient represents that the facts and statements made in each Data Application, Data Management Plan, and other documents submitted to the LO in support of each Data Application are complete and accurate. The Recipient affirms that the requested Data under each Data Application is the minimum necessary to complete the Project set forth in that Data Application.

**Requested Data Elements.** This DUA governs access to the WA-APCD Data specified in Attachment 2.

**Authorized Data Users.** An “Authorized Data User” refers to the Recipient, Recipient employees, and Additional Organization (any Recipient contractors or agents or other third party) employees who are entrusted to access and use the Data and whose signed Confidentiality Agreement is on file with the Lead Organization. Authorized Data Users are listed in Attachment 3 of this DUA. Recipient shall ensure that all Authorized Data Users execute a Confidentiality Agreement prior to accessing WA-APCD Data. These executed Confidentiality Agreements (Exhibit D) are incorporated in this DUA.

Recipient shall ensure that all Authorized Data Users comply with the same restrictions and conditions that apply to the Recipient under this DUA and agree to follow the data privacy, security, and protection requirements, prior to being granted access to the Data. The Recipient will notify the LO when an individual leaves or joins the Project. The Recipient must obtain written approval from the LO to add an Authorized Data User prior to granting such individual access to the Data. New Authorized Data Users must sign a Confidentiality Agreement (Exhibit D), a copy of which must be delivered to the LO in advance of accessing the Data.

# Section 2. Permitted Data Uses and Purposes

The Recipient agrees that:

1. The Data are confidential information and the Recipient will maintain Data confidentiality.
2. The Data will be used only for the purpose described in Exhibit H. Recipient must request an amendment to this Agreement for any use that is a material deviation from these Data uses.
3. The Recipient may not use or reuse, disclose, market, release, show, sell, rent, lease, loan or otherwise grant access to the Data or its derivatives except as expressly permitted by the DUA, or as the LO may authorize in writing or as otherwise required by law, in which case Recipient shall promptly notify the LO.
4. Use of the Data, or any derivative thereof, for a project, other than the one described in this DUA and the Data Application, must be approved by the LO through a separate application process.
5. If Recipient is a Federal, state or local government agency, Recipient will not use Data in the purchase or procurement of health benefits for their employees.
6. If Recipient is obtaining the Data for research, Recipient’s use and disclosure will be compliant with both this DUA and the research protocol approved by an institutional review board.
7. Recipient is prohibited from using the Data to decompile or in any way manipulate the Data to re-identify provider fee schedules.

**No Identification or contact of Individuals.** Absent express written authorization from the LO, the Recipient shall not attempt to link records included in the WA-APCD Data to any other information. An approved Data Application that includes the linkage of specific elements or files constitutes express written authorization from the LO to link files as described in that Data Application only. The Recipient shall not use the WA-APCD Data to attempt to deduce an individual’s identity or contact individuals (patients, providers, payers, etc.).

The Recipient shall not disclose to anyone who is not listed as Authorized Data User on this DUA any direct findings, listings, or information derived from the Data, with or without direct identifiers.

# Section 3. Data Analysis and Display

**Cell Suppression Guideline.** The Recipient agrees that any use of WA-APCD Data in the creation of any Data output (manuscript, table, chart, study, report, etc.) that is shared with anyone who is not an Authorized Data User shall adhere to the following minimum thresholds. No cell size less than 11 may be displayed (such as, but not limited to admittances, discharges, patients, services). Also, no use of percentages or other mathematical formulas may be used if they result in the disclosure of a cell less than 11. Data output and analytics must use complementary cell suppression techniques to ensure that cells with fewer than 11 observations cannot be used to identify an individual person by manipulating Data output (e.g., in adjacent rows, columns or other manipulations). Information that could be used alone or in combination with other information to identify an individual shall not be published in any form. The calculation and display of Proprietary Financial Information also must adhere to reporting guidelines in Chapter 82-75 WAC.

**Data Output.** The Recipient warrants that it has provided a list of all intended Data output (e.g. data, reports, manuscripts, or other Project products) that it plans to derive from the WA-APCD Data, and that this list is now attached as Exhibit H. Additionally, Recipient agrees to obtain pre-approval from the LO prior to the disclosure of designated Data output as listed in Exhibit H to anyone other than Authorized Data Users. These cases include but are not limited to: use of direct identifiers, use of proprietary financial information, data reseller/derivative products and uses that involves linking WA APCD Data to any other information. The LO will complete its Data output pre-approval within four weeks of receipt to confirm that:

1. The Recipient organization is compliant with minimum cell size and complementary cell suppression rules;
2. The Data output has incorporated appropriate protections to prevent inferential identification of individuals (patients, providers, payers, etc.);
3. The Data output is consistent with the Project description contained in the Recipient’s Data Application; and
4. All requirements in WAC 82-75-520 have been followed.

# Section 4. Data Privacy and Security Obligations

**Compliance.** With respect to the Data, the Recipient shall comply with the data security and privacy requirements per Chapter 43.371 RCW, Chapter 82-75 WAC and the Washington State Office of the [Chief Information Officer (OCIO) IT Security Standards 141.10](https://ocio.wa.gov/policy/securing-information-technology-assets-standards) and, as applicable, the privacy and security standards set forth in the federal Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA) as a condition of this DUA. The Recipient shall permit disclosure and use of the Data only as permitted by law and by this DUA. The Recipient shall secure and protect the confidentiality of Data in a manner consistent with the above mentioned data security and privacy requirements.

**Access and verification to confirm DUA compliance.** The Recipient shall grant reasonable access to its facilities, personnel and the WA-APCD Data, and to any Additional Organization and personnel where the WA-APCD Data is held, to authorized representatives of the LO and the OFM for the purpose of confirming compliance with the terms of this DUA. The LO may audit compliance with DUAs and Confidentiality Agreements as stated in WAC 82-75-250(3). The Recipient must comply and assist, if requested, in any audit of these agreements. The Recipient shall respond in writing within ten business days to any request by the LO or Office to verify Recipient’s compliance with the terms of this DUA, as well as compliance of any Additional Organization to whom the Recipient disclosed WA-APCD Data.

**Safeguards.** The Recipient shall establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of and prevent unauthorized use of or access to the Data. The Recipient acknowledges that the use of unsecured communications, including the Internet, to transmit individually identifiable, or deducible, information derived from the WA-APCD Data is prohibited.

# Section 5. Ownership, Treatment of Subpoenas and Unauthorized Uses, Disclosures or Security Incidents

**Ownership**. Pursuant to Chapter 43.371 RCW, the State of Washington is the owner of the Data in the WA-APCD. In addition, Chapter 43.371 RCW establishes the Washington State Office of Financial Management (OFM) as the agency for the state of Washington charged with the maintenance, preservation, security and protection of the Data in the WA-APCD. Therefore OFM, acting on behalf of the state of Washington, claims all rights in and to the Data supplied to the WA-APCD. The Recipient does not obtain any right, title, or interest in or to the Data. The Recipient shall cite the WA-APCD as the source of the Data in any studies, reports or products in which the Data are used.

**Treatment of Unauthorized Uses or Disclosures of Data.** In the event that the LO determines or has a reasonable belief that the Recipient has made or may have made a use, reuse, or disclosure of the WA-APCD Data that is not authorized by this DUA, or another written authorization from the LO, the LO may, at its sole discretion, require the Recipient to perform one or more of the following, or such other actions as the LO deems appropriate:

1. Investigate and report, within 5 business days, to the LO the Recipient’s determinations regarding any alleged or actual unauthorized use, reuse, or disclosure;
2. Promptly resolve any issues or problems identified by the investigation;
3. Submit a corrective action plan with steps designed to prevent any future unauthorized uses, reuses, or disclosures in the time frame specified by the LO; and
4. Destroy the WA-APCD Data and any copies thereof consistent with the terms of this DUA.

As a result of the LO’s determination or reasonable belief that unauthorized uses, reuses or disclosures have taken place, the LO may in its sole discretion refuse to release further WA-APCD data to the Recipient and terminate this DUA.

**Data Breach. Reporting of Unauthorized Uses or Disclosures of Data.** The Recipient shall report loss of the Data or access by or disclosure to any unauthorized persons and unauthorized use or reuse of the data to the LO immediately upon discovery of such loss or knowledge of such loss or unauthorized access or disclosure or use or reuse and shall cooperate fully in any LO incident response process. The Recipient shall bear the sole cost and liability for any privacy and security breaches related to the Data while the Data are entrusted to the Recipient or the Data are otherwise the responsibility of the Recipient. Furthermore, if the LO in consultation with OFM determines that the risk of harm requires notification to affected individuals of the data breach and/or other remedies, the Recipient shall be solely liable to carry out these remedies at its sole cost and expense. Recipient’s cost and liability obligation, including but not limited to such costs as described in the Antitrust Compliance and Indemnification section below, shall survive the termination or expiration of this DUA.

**Breach of Agreement.** In addition to other penalties or regulatory actions that may be taken, including denial of future data requests, breach of this DUA or a Confidentiality Agreement (Exhibit D) may result in immediate termination of this DUA. If an individual breaches the Confidentiality Agreement, the LO must review the circumstances and determine if this DUA should be terminated or only the Confidentiality Agreement with the individual who caused the breach should be terminated. If the LO terminates only a Confidentiality Agreement, Recipient shall not provide further access to the Data to such individual(s) and the individual(s) must destroy all WA-APCD Data in his or her possession and provide an attestation of the destruction (Certificate of Project Completion and Data Destruction form) to the LO within ten business days. When this DUA is terminated, the Recipient must destroy all WA-APCD Data in its, his or her possession, and the possession of its employees and Additional Organizations, and provide an attestation of the destruction (Certificate of Project Completion and Data Destruction form) to the LO within ten business days. Failure to destroy the Data or provide attestation of the destruction may result in other penalties or regulatory actions.

**Breach of Agreement – OFM’s Right to Terminate the Agreement.** If, after compliance with the procedures set forth in WAC 82-75-600 through WAC 82-75-660, it is found that this DUA or a Confidentiality Agreement has been breached, OFM may immediately terminate this DUA.

**Antitrust Compliance and Indemnification.** Recipient agrees to treat WA-APCD Data confidentially, as specified in this DUA, and not to use, or enable any other parties to use, the WA-APCD Data for anticompetitive or other unlawful purposes, including but not limited to price-fixing, market or customer allocation, service or Data output restriction, price stabilization, or any other agreement or coordination among parties that in any way restricts or limits competition.

Recipient also agrees to indemnify, defend and hold the LO and OFM harmless for any claims, losses, liabilities, damages, judgments, fees, expenses, awards, penalties (including civil monetary penalties), and costs (including reasonable attorneys’ and court fees and expenses) arising from or relating in any way to the WA-APCD Data, or that in any way involve use of the WA-APCD Data, breach of this DUA by the Recipient, its employees, or Additional Organizations or any breach or alleged breach of WA-APCD Data arising from the Recipient’s, its employees, or Additional Organizations breach, or failure to perform, pursuant to this DUA. Such indemnification shall include, but not be limited to, payment by Recipient of any fines, penalties, or damages of any sort, including but not limited to compensatory, treble, punitive, or any other damages, fines, or penalties assessed against the LO for any antitrust violation arising from or relating in any way or any part to the WA-APCD Data or use of the WA-APCD Data, as well any and all of the LO’s related legal fees, costs, and/or other expenses incurred in or arising from the matter. Recipient’s indemnification obligation shall survive the termination or expiration of this DUA.

The Recipient further agrees that it shall not attempt to identify parties that have been de-identified in the Data output, “reverse engineer,” decompile, or in any other way attempt to discern the identities of the specific parties paying fee schedule allowed amounts contained in the WA-APCD Data, nor shall the Recipient try to translate, convert, adopt, alter, modify, enhance, add to, delete, or tamper with any WA-APCD Data or in any other way attempt to calculate or determine specific parties’ fee schedule allowed amounts from the WA-APCD Data.

**Data Retention and Destruction.** Except set forth herein, the Data released under a Data Application may be retained by the Recipient until the Completion Date. The Recipient shall notify the LO within 10 business days of Project Completion. Upon Project Completion, the Recipient shall promptly destroy the Data received under the Data Application, including all copies thereof and all analytic datasets derived from the original Data. The Recipient shall promptly, but no later than 10 business days after Project Completion, send the written Certificate of Project Completion and Data Destruction Form to the LO, using the form attached hereto as Exhibit E. The Recipient acknowledges its affirmative obligation to destroy the Data upon Project Completion, and that such obligation is not contingent upon action by the LO.

# Section 6. Term and Termination of Agreement

**Term and Termination.** This Agreement shall become effective upon the Execution Date cited in the preamble and shall remain in effect through the Completion Date (“Initial Term”). Not later than 60 days prior to the expiration of the Initial Term, or any Renewal Term, the parties, per mutual consent, will either execute a renewal to this Agreement (Exhibit F) or execute the Certificate of Project Completion and Data Destruction (Exhibit E).

This DUA shall remain in full force and effect at all times while Recipient or Additional Organizations maintains any Data. This DUA will terminate upon the LO’s receipt of the Certificate of Project Completion and Data Destruction Form for all Data in Recipient possession. All provisions of the DUA which reasonably should survive, or by its terms would survive termination will do so.

**Amendment.** The terms of this DUA can be changed only by written amendment to this DUA or by the parties adopting a new DUA. The parties agree further that instructions or interpretations issued to the Recipient concerning this DUA, or the Data specified herein, shall not be valid unless issued in writing by the WA-APCD LO. Should any state or federal law or regulation now existing or enacted after the Effective Date of this DUA be amended or interpreted by judicial decision or a regulatory body in such a manner that renders any provision of this DUA in violation of such law or regulation or adversely affects the LO or Recipients’ abilities to perform their obligations under this DUA, the LO or Recipient agree to negotiate in good faith to amend this DUA so as to comply with such law or regulation and to preserve the viability of this DUA. If, after negotiating in good faith, the LO or Recipient are unable to reach agreement as to any necessary amendments, either the LO or Recipient may terminate this DUA without penalty.

**Violations and Penalties.** A violation of this DUA or WAC 82-75-600 to WAC 82-75-665 [Penalties for Inappropriate Disclosures or Uses of Information] may result in penalties and remedies allowed by law, including but not limited to those specified in WAC 82-75-600 to WAC 82-75-665. The LO shall notify state and federal law enforcement officials, as applicable, of any data breaches in connection with any violation of this DUA. It is the sole responsibility of the Recipient to ensure compliance with all other local, state, and federal laws and regulations. Recipient’s obligation under this Section shall survive the termination or expiration of this DUA.

**No Representations or Warranties.** Neither OFM nor the LO makes any representation or warranty to any person or entity with respect to WA-APCD Data, the software, or any other information provided by OFM, the LO or their respective agents with respect to any of the foregoing. OFM and the LO hereby disclaim all implied warranties with respect to WA-APCD Data, including warranties of merchantability and fitness for a particular purpose. Further, neither OFM nor the LO make any warranty, guarantee or representation regarding the use, or any intended, expected, or actual output of the use, of WA-APCD Data, the software, or any other information provided by OFM or the LO in terms of correctness, accuracy, reliability, or otherwise. OFM and the LO specifically disclaim all express warranties not stated herein and all implied warranties, including the implied warranties of merchantability and fitness for a particular purpose. No OFM or LO agent or employee is authorized to make any expansion, modification, or addition to the limitation and exclusion of warranties in this agreement.

The LO uses available technology to match patient identities with their health information. Because patient information is maintained in multiple places, not all of which are accessible to the LO, and because not all patient information is kept in a standard fashion or is regularly updated, it is possible that false matches may occur or that there may be errors or omissions in the information. The LO does not and cannot independently verify or review the information transmitted for accuracy or completeness.

# Section 7. Authority

A person with authority to bind the requesting organization must sign the DUA; or in the case of an individual with no organizational affiliation the individual requesting Data must sign the DUA. Each signatory agrees by signing below that it has authority to sign this DUA on behalf of the party the signatory represents. Each entity agrees to be bound by the terms and conditions of this DUA. The Recipient is responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this DUA to prevent unauthorized use.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this DUA as of the Effective Date.

**The Lead Organization (LO): Center for Health Systems Effectiveness**

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| Print name of LO representative: Click here to enter text. |
| Title of LO representative: Click here to enter text. |
| Street Address: Click here to enter text. |
| City: Click here to enter text. | State: Click here to enter text. | ZIP Code: Click here to enter text. |
| Office Telephone *(Include Area Code)*: Click here to enter text. |
| Signature of LO representative: |
| Signature date: |

**RECIPIENT**

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| --- |
| Print name of authorized signatory: Click here to enter text. |
| Title of representative: Click here to enter text. |
| Organization name: Click here to enter text. |
| Street Address: Click here to enter text. |
| City: Click here to enter text. | State: Click here to enter text. | ZIP Code: Click here to enter text. |
| Office Telephone *(Include Area Code)*: Click here to enter text. |
| E-Mail Address *(if applicable)*: Click here to enter text. |
| Signature of representative: |
| Signature date: |