



CENTER FOR IMPROVING
VALUE IN HEALTH CARE

APCD DUA # _____
DATA USE AGREEMENT

AGREEMENT FOR USE OF COLORADO ALL PAYER CLAIMS DATA

This Data Use Agreement (“Agreement” or “DUA”) is made and entered as of _____ (the “Effective Date”) by and between the Center for Improving Value in Health Care (“CIVHC”), in its capacity as the APCD Administrator, and _____, (hereinafter, the “Receiving Organization”).

This Agreement addresses the conditions under which the APCD Administrator will disclose and the Receiving Organization may obtain, use, reuse, and disclose the APCD data file(s) or reports specified in this Agreement and/or any derivative file(s) (collectively, the “Data” or “APCD Data”). This Agreement supersedes any and all agreements between the parties with respect to the use of APCD Data. The terms of this Agreement can be changed only by a written modification to this Agreement or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the Receiving Organization concerning this Agreement, or the Data specified herein, shall not be valid unless issued in writing by the APCD point-of-contact or the APCD signatory to this Agreement.

1. Project and Data Release Application. This Agreement pertains to the following project entitled:

_____ and as described in the Data Release Application (“Application”) approved by the APCD Administrator and incorporated into this Agreement as Exhibit 1.

2. Requested Data Elements or File. This Agreement pertains to access to the data elements specified in Attachment 2 through an electronic interface or to the following specialized data file created in accordance with the specifications contained in the Application:

_____.

3. Permitted Data Uses and Purposes. The Receiving Organization will not use or disclose the Data for any other purpose or in any other way than the purpose and uses described in this Agreement.

4. Safeguards. The Receiving Organization agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of and prevent unauthorized use of or access to the Data. The Receiving Organization acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable, or deducible, information derived from the APCD Data is prohibited. Further,



the Receiving Organization agrees that the Data must not be physically moved, transmitted, or disclosed in any way from or by the site indicated in the Receiving Organization's Data Management Plan without written approval from the APCD Administrator unless such movement, transmission, or disclosure is required by law.

5. **Inspections.** The Receiving Organization agrees to grant access to its personnel, facilities, and the Data to the authorized representatives of the APCD Administrator at the site indicated in the Receiving Organization's Data Management Plan for the purpose of inspecting to confirm compliance with the terms of this Agreement.
6. **Cell Suppression Policy.** The Receiving Organization agrees that any use of APCD Data in the creation of any document (manuscript, table, chart, study, report, etc.) concerning the specified purpose must adhere to APCD cell size suppression policy. This policy stipulates that no cell (*e.g.*, admittances, discharges, patients, services, others) with less than eleven observations may be displayed. Also, no use of percentages or other mathematical formulas may be used if they result in the display of a cell displaying less than eleven observations. Individual level records may not be published in any form, electronic or printed. Reports and analytics must use complementary cell suppression techniques to ensure that cells with fewer than eleven observations cannot be identified by manipulating Data in adjacent rows, columns or other manipulations of the report. Examples of such data elements include, but are not limited to geographic location, age if > 89, sex, diagnosis and procedure, admission/discharge date(s), or date of death.
7. **No Identification of Individuals.** The Receiving Organization will not attempt to identify individuals in the APCD Data. The Receiving Organization agrees that, absent express written authorization from the APCD Administrator, the Receiving Organization shall not attempt to link records included in the APCD Data to any other individually identifiable source of information. A protocol that includes the linkage of specific files that has been approved in accordance with the protocols described in the Application and this Agreement constitutes express authorization from the APCD Administrator to link files as described in the protocol.
8. **Results and Reports.** The Receiving Organization agrees to provide the APCD Administrator with a copy of any results derived from the APCD Data and information regarding the outcome of the project, as it is described in the Application. The Receiving Organization must obtain approval from the APCD Administrator to release any reports or outputs prior to distribution outside the named project team. Distribution includes but is not limited to: peer review, submission to any federal or state agency, presentation of findings, or synopsis of research. The APCD Administrator will review the report within six weeks of receipt to confirm:
 - a. The Receiving Organization's compliance with minimum cell size and complimentary cell suppression rules;



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- b. That the report or output has incorporated appropriate protections to prevent inferential identification; and
- c. That the report or output is consistent with the project description contained in the Receiving Organization's Application, as approved.

9. **Additional Projects.** Use of the same Data for a project other than the one described in this Agreement must be approved through a separate application process. The Receiving Organization understands and agrees that original or derivative Data file(s) cannot be reused or further disclosed without prior written approval from the APCD Administrator.

10. **Exhibits and Attachments.** The parties mutually agree that the following specified Exhibits and Attachments are part of this Agreement:

- Exhibit 1: Approved Application for to the Release and Use of Colorado APCD Data
- Exhibit 2: Receiving Organization's Data Management Plan
- Attachment 1: Specifications for Data Release Application
- Attachment 2: List of Requested Data Elements
- Exhibit 3: Description of Web Based Data Portal
- Exhibit 4: Colorado APCD Data Access Fee Schedule
- Other _____

11. **Reporting and Treatment of Unauthorized Uses or Disclosures of Data.** The Receiving Organization will report any unauthorized use or disclosure of the Data to the APCD Administrator within two days. In the event that the APCD Administrator determines or has a reasonable belief that the Receiving Organization has made or may have made a use, reuse, or disclosure of the APCD Data that is not authorized by this Agreement, or another written authorization from the APCD Administrator, the APCD Administrator may, at its sole discretion, require the Receiving Organization to perform one or more of the following, or such other actions as the APCD Administrator, in its sole discretion, deems appropriate:

- a. promptly investigate and report to the APCD Administrator the Receiving Organization's determinations regarding any alleged or actual unauthorized use, reuse, or disclosure;
- b. promptly resolve any issues or problems identified by the investigation;
- c. submit a formal response to an allegation of unauthorized use, reuse, or disclosure;
- d. submit a corrective action plan with steps designed to prevent any future unauthorized uses, reuses, or disclosures; and
- e. return all Data or destroy the Data it has received under this Agreement.

The Receiving Organization understands that as a result of the APCD Administrator's determination or reasonable belief that unauthorized uses, reuses, or disclosures have



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taken place, the APCD Administrator may refuse to release further APCD Data to the Receiving Organization for a period of time to be determined by the APCD Administrator.

12. Indemnification. Receiving Organization will indemnify, defend, and hold CIVHC harmless from any and all claims, losses, liabilities, damages, judgments, fees, expenses, awards, penalties (including civil monetary penalties), and costs (including reasonable attorneys' and court fees and expenses) arising out of or related to any breach of this Agreement by Receiving Organization, or any breach or alleged breach of APCD Data arising from Receiving Organization's breach, or failure to perform, pursuant to this Agreement. If the APCD Administrator, in its sole discretion, determines that the risk of harm created by such a breach or alleged breach of APCD Data requires notification of affected individuals and/or other remedies, the Receiving Organization agrees to carry out such remedies under the direction of and without cost to the APCD Administrator.

13. Antitrust Compliance and Indemnification. Receiving Organization agrees to treat APCD Data confidentially, as specified in this Agreement, and not to use, or enable any other parties to use, the APCD Data for anticompetitive or other unlawful purposes, including but not limited to price-fixing, market or customer allocation, service or output restriction, price stabilization, or any other agreement or coordination among parties that in any way restricts or limits competition. Receiving Organization also agrees to indemnify and hold CIVHC harmless for any antitrust liability, 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 APCD Data, or that in any way involve use of the APCD Data. Such indemnification shall include, but not be limited to, payment by Receiving Organization 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 CIVHC for any antitrust violation arising from or relating in any way or any part to the APCD Data or use of the APCD Data, as well any and all of CIVHC's related legal fees, costs, and/or other expenses incurred in or arising from the matter.

Receiving Organization further agrees that it shall not attempt to identify parties that have been de-identified in the Reports, "reverse engineer," decompile, or in any other way attempt to discern the identities of the specific parties charging or paying any prices contained in the APCD Data, nor shall Receiving Organization try to translate, convert, adopt, alter, modify, enhance, add to, delete, or tamper with any APCD Data or in any other way attempt to calculate or determine specific parties' prices from the APCD Data.

14. Project Workforce. All of the Receiving Organization's employees, contractors, and clients must adhere to the requirements contained in the Application and this Agreement. Any person or entity that processes or receives the Data and its agents must be obligated, by contract, to adhere to the terms of this DUA and agree to follow the Data privacy, security,



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and protection requirements, prior to being granted access to APCD Data. The following named individuals, and only these individuals, will have access to the APCD Data. The Receiving Organization will notify the APCD Administrator when an individual leaves the project. The Receiving Organization will obtain written approval from the APCD Administrator for any additions to this list, prior to granting such individuals with access to APCD Data.

Name	Role	Organization

15. Data Retention and Destruction. The Receiving Organization agrees to notify the APCD Administrator within 30 days of the completion of the Project Purpose (as specified in Section I of the Application) if the project is completed before the Last Day of the Data Retention Period (as specified in the Project Schedule). Upon such notice or the Last Day of the Data Retention Period, whichever occurs sooner, the Receiving Organization agrees to destroy all APCD Data, in accordance with the methods established by the *“Guidance to Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals,”* as established by the U.S. Department of Health and Human Services (HHS). The Receiving Organization may request an extension of the Data Retention Period by submitting a written request that includes justification to the APCD Administrator.

When retention of the Data is no longer justified and/or required by law, the Receiving Organization agrees to destroy the Data and send a completed “Certification of Project Completion & Destruction or Retention of Data” form (Appendix 1 to this Agreement) to the APCD Administrator within 30 days. The Receiving Organization agrees not to retain any APCD Data, or any parts thereof, or any derivative files that can be used in concert with other information to identify an individual, either directly or indirectly, after the aforementioned file(s) and Data are destroyed unless the APCD Administrator grants written authorization. The Receiving Organization acknowledges that such date for retention of Data is not contingent upon action by the APCD Administrator.

16. Term and Termination. The APCD Administrator or the Receiving Organization may terminate this Agreement at any time for any reason upon 30 days written notice. Upon notice of termination by either party, the APCD Administrator will cease releasing Data to the Receiving Organization under this Agreement and will notify the Receiving Organization



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to destroy all Data. This Agreement will remain effective in its entirety until the completed “Certification of Project Completion & Destruction or Retention of Data” has been received by the APCD Administrator. Sections 11, 12, 13, and 15 of this Agreement shall survive termination of the other provisions of this Agreement.

By signing this Agreement, the Receiving Organization agrees to abide by all provisions set out in this Agreement.

SIGNATURES:

For the APCD:	For the Receiving Organization
Signature	Signature
Name	Name
Title	Title
Date	Date
	Organization
	Telephone
	Email