

DATA USE AGREEMENT

This Data Use Agreement (“Agreement”) relates to the provision of data by Healthmonix to Customer as described in the Background paragraphs hereof. Hereinafter, Healthmonix and Customer may be referred to, each, as a “Party” and, collectively, as the “Parties”.

BACKGROUND

Healthmonix has been designated a Qualified Entity by the Centers for Medicare & Medicaid Services (“CMS”), enabling its receipt of Medicare claims data used to evaluate provider performance and to determine eligibility for enhanced payments under CMS programs such as the Merit-based Incentive Payment System (“MIPS”) or the Quality Payment Program (“QPP”).

In connection therewith, Healthmonix developed Healthmonix MIPS Cost Analytics™, a proprietary software program and platform to track Medicare Claims data and produce certain claims data reports (the “Platform”).

Customer and Healthmonix have entered an underlying license or services agreement involving use of the Platform (as may be amended, the “Customer Contract”), as a result of which Healthmonix may disclose data that resides in CMS’ Privacy Act System of Records that contains direct individual identifiers or elements that could be used in concert with other information to identify individuals (“Medicare Data”).

The Parties intend for this Agreement to meet those requirements under 42 CFR Part 401 (the “CMS Regulations”) and for this Agreement to set forth each Party’s respective obligations.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information provided for herein, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENT

1. **Definitions.** Each capitalized term appearing in this Agreement not otherwise expressly defined herein shall have the meaning ascribed to it in the CMS Regulations. “Non-Public Analyses” shall mean analyses created in accordance with 42 CFR 401.716. “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and implementing regulations. “Business Associate”, “Covered Entity”, and “Subcontractor” shall have the meanings set forth at 45 CFR 160.103. “PHI” shall have the meaning ascribed to “protected health information” set forth at 45 CFR 160.103. “De-identified” shall mean data that includes PHI that has been de-identified in accordance with 45 CFR 164.514.
2. **Term.** This Agreement shall be effective as of the Effective Date and shall continue in full force indefinitely until terminated upon the earlier of either Party terminating this Agreement pursuant to Section 6 hereof or expiration of the Customer Contract.
3. **Obligations of Customer.**
 - a. **Authorized User.** At all times during the term of this Agreement, Customer shall meet the definition of an Authorized User as defined by 42 CFR 401.703.
 - b. **Non-Public Analyses.** Except as expressly permitted in this Section 3(b), Customer shall not access, use, or disclose any Non-Public Analyses that: (i) contains PHI that has not been De-identified; or (ii) individually identifies a Provider or Supplier. If Customer is a Provider

or Supplier, Customer may access and use Non-Public Analyses that contain PHI if such Non-Public Analyses contain only PHI about individuals with which the Provider or Supplier has a patient relationship as described in the definition of “patient” at 45 CFR 401.703(r). If any Non-Public Analyses individually identifies a Provider or Supplier, Customer may not access or use the Non-Public Analyses unless one of the following conditions is met: (i) the Non-Public Analysis only individually identifies the Customer as the Provider or Supplier; (ii) Healthmonix has verified that every Provider or Supplier identified in the Non-Public Analysis has been afforded the opportunity to appeal or correct errors using the process set forth at 45 CFR 401.717(f); or (iii) Healthmonix has verified that every Provider or Supplier identified in the Non-Public Analysis has provided Healthmonix with written notice that the Non-Public Analysis can be disclosed by Healthmonix without first going through the appeal and error correction process set forth at 45 CFR 401.717(f).

- c. **HIPAA Privacy and Security.** Customer shall ensure adequate privacy and security protection of the Medicare Data, Non-Public Analyses that contains PHI, and any derivative data that contains PHI. At a minimum, such protections shall be at least as protective as what is required under HIPAA. Further, Customer shall not physically move, transmit, or disclose any Medicare Data and Non-Public Analysis from the Platform. This duty survives termination of this Agreement.
 - d. **Permitted Uses and Disclosures.** Subject to the terms of this Agreement and the CMS Regulations, Customer may use or disclose Medicare Data and Non-Public Analyses in a manner that a Covered Entity could use such Medicare Data and Non-Public Analyses, but only if such use or disclosure is consistent with: (i) activities falling under the definition of “health care operations” under paragraph (1) and (2) of 45 CFR 164.501; (ii) activities that qualify as “fraud and abuse detection or compliance activities” under 45 CFR 164.506(c)(4)(ii); (iii) activities that qualify as “treatment” under 45 CFR 164.501; or (iv) a disclosure that qualifies as being “required by law” as defined at 45 CFR 164.103.
 - e. **Prohibited Uses and Disclosures.** Except as expressly permitted in Section 3(c) of this Agreement or permitted under the CMS Regulations, Customer shall not use or disclose Medicare Data or Non-Public Analyses. Except as expressly permitted in Section 5 of this Agreement, Customer is prohibited from re-disclosing Medicare Data and Non-Public Analyses. Without limiting the foregoing, Customer is prohibited from using or disclosing Medicare Data, Non-Public Analyses, and any derivative data for (i) Marketing; (ii) in a manner that would make any Medicare Data or Non-Public Analyses public; (iii) linking Beneficiary De-identified data to any other identifiable source of information or attempting by any other means of re-identifying any individual whose data was included in such Medicare Data or Non-Public Analyses, but has been De-identified; (iv) to harm individuals; or (v) to effectuate or seek an opportunity to effectuate fraud and/or abuse in the health care system.
4. **Breach and Violation Notification.** Customer shall report any breach, loss of, unauthorized access to, or acquisition of (collectively “Breach”) personally identifiable information within the Medicare Data to Healthmonix at security@healthmonix.com within one (1) hour. Customer shall notify Healthmonix of any violation of this Agreement by Customer or any of its Contractors within three (3) days. Customer shall provide full cooperation (and ensure the full cooperation of its Contractors (as hereinafter defined) to Healthmonix in Healthmonix’s efforts to mitigate any harm that may result from such Breaches or violations or to comply with any applicable law. Customer shall bear the cost and liability for any Breach of PHI within the Medicare Data and any Breach of PHI within any Non-Public Analyses or derivative data.

5. **Customer's Re-disclosures.** If Customer is a Provider or Supplier, Customer may re-disclose Medicare Data and Non-Public Analyses in the same manner as and to the extent that a Covered Entity is permitted to disclose PHI under 45 C.F.R. 164.506(c)(4)(i), under 45 C.F.R. 164.506(c)(2), or under 45 C.F.R. 164.502(e)(1). Customer shall remain at all times fully liable for the acts and omissions of any Business Associates or Subcontractors (collectively, "Contractors") to which it discloses Medicare Data and Non-Public Analyses with respect to the privacy and security of such Medicare Data and Non-Public Analyses, and shall prohibit its Contractors from using or disclosing Medicare Data or Non-Public Analyses in any manner or for any purpose prohibited by Section 3(d) of this Agreement. Notwithstanding the foregoing, Customer shall not use (and shall prohibit its Contractors from using) unsecured telecommunications to transmit Medicare Data or Non-Public Analyses.
6. **Termination.**
 - a. **Non-compliance.** If either Party (the "Notifying Party") becomes aware of an activity or practice by the other Party (the "Breaching Party") that constitutes a material breach or material violation of the Breaching Party's obligations under this Agreement, the CMS Regulations or any other applicable privacy or security law, the Notifying Party shall notify the Breaching Party of such breach or violation. Thereafter, the Breaching Party shall have an opportunity to cure such breach or end such violation, as applicable, within a reasonable timeframe as agreed to by the Parties (the "Cure Period"). Following receipt of the aforementioned notice, if the Breaching Party does not take reasonable steps to or otherwise does not successfully cure the breach or end the violation, as applicable, then, following the expiration of the Cure Period, the Notifying Party is permitted to terminate this Agreement. The foregoing is not intended to, and does not, limit any other remedy which may be available to the Notifying Party hereunder or as a matter of law.
 - b. **Effect of Termination.** Upon termination of this Agreement for any reason, Customer shall return to Healthmonix, or destroy, all Medicare Data and/or Non-Public Analyses that Customer or any Contractor still maintains in any form, and shall retain no copies of such data, or if return or destruction of all or any portion of Medicare Data and/or Non-Public Analyses is not feasible as determined by Customer, Customer shall (and shall require its Contractors to) continue to extend the protections of this Agreement to such information, and limit further use or disclosure to those purposes that make the return or destruction of such information infeasible. Any term or provision of this Agreement that, by its nature, is intended to survive the termination of this Agreement, shall survive the termination of this Agreement, including but not limited to Sections 3, 4 and 5.
7. **Audit.** Customer shall make available to Healthmonix all information necessary to demonstrate compliance with this Agreement and allow for and contribute to audits conducted by Healthmonix or Healthmonix's representatives to confirm compliance with the terms of this Agreement.
8. **Miscellaneous.**
 - a. **CMS Rights.** The Parties agree that CMS retains all ownership rights to the Medicare Data and Non-Public Analyses.
 - b. **Insurance.** Each Party represents and warrants that it currently maintains one or more liability insurance policies, with reputable carriers, at commercially reasonable coverage limits, based on the size, operations and business of such Party. Each Party shall maintain such coverage throughout the term of this Agreement.

- c. **Entire Agreement.** This Agreement supersedes all prior or contemporaneous agreements, written, oral or electronic, between Healthmonix and Customer with respect to the subject matter hereof and contains the entire understanding and agreement between the Parties with respect to the subject matter hereof.
- d. **Governing Law.** This Agreement shall be governed by and construed in accordance with the applicable law governing the Services Contract without regard to conflict of laws principles.
- e. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of each Party hereto and their respective heirs, representatives, successors and assigns.
- f. **Modification.** This Agreement shall be amended or superseded only by a written instrument that references this Agreement and is signed by both Parties.
- g. **Provisions Severable.** The provisions of this Agreement are independent of and severable from each other. No provision will be affected or rendered invalid or unenforceable by virtue of the fact that, for any reason, any one or more of any of the provisions of this Agreement may be deemed invalid or unenforceable in whole or in part.
- h. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with, and is consistent with, the CMS Regulations. In the event of any conflict with respect to the subject matter of this Agreement between the provisions of this Agreement and the Services Contract, the provisions of this Agreement shall be controlling and effective to the extent of such conflict. The headings in this Agreement are for convenience of reference only and shall not be used to interpret or construe its provisions.
- i. **Notices.** All notices, demands and other communications to be made by either Party under this Agreement (“Notice”) shall be given in writing and shall be deemed to have been duly given if personally delivered or sent by confirmed facsimile transmission, confirmed (read receipt) email, recognized overnight courier service which provides a receipt against delivery, or certified or registered mail, postage prepaid, return receipt requested, to the other Party at the address provided by such other Party to the first Party from time to time. Notice shall be deemed effective, if personally delivered, when delivered; if sent by confirmed facsimile transmission, when sent; if sent by confirmed email, when read; if sent by overnight delivery, on the first business day after being sent; and if mailed in accordance herewith, at midnight on the third business day after such Notice is deposited with the U.S. Postal Service.
- j. **Limitation on Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY HERETO FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. c