

# Data Use Agreement

This Data Use Agreement (the “**Agreement**”), dated **DATE** (the “**Effective Date**”) is entered into by and between the Association of Women’s Health, Obstetric & Neonatal Nurses (“**AWHONN**” or “**Data Recipient**”), with its principal place of business at 1800 M Street NW, Suite 740 South, Washington, DC 20036, and **PARTY** with its principal place of business at **ADDRESS** (“**Covered Entity**”) (“AWHONN” and “Covered Entity” are each a “**Party**” and are together the “**Parties**”).

## WHEREAS:

AWHONN is a 501(c)(3) nonprofit organization with a mission to empower and support nurses caring for women, newborns, and their families through research, education, and advocacy;

Covered Entity desires to support AWHONN’s mission by providing a Limited Data Set (as defined by the Health Insurance Portability and Accountability Act of 1996, or “**HIPAA**”) to AWHONN for the purposes of research, clinical benchmarking, and health care quality improvement; and

The Parties agree that the purpose of this Agreement is to define the framework whereby Covered Entity will share Limited Data Set Information with AWHONN and to support the nursing profession and outcomes through AWHONN’s findings and insights.

## NOW THEREFORE:

In consideration of the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Regulations (as defined below).

- i. HIPAA Regulations is defined as the regulations promulgated under HIPAA by the United States Department of Health and Human Services, and as amended by the Privacy and Security Provisions set forth in Section 13400 of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), including, but not limited to, regulations 45 CFR Part 160 and 45 CFR Part 164. HIPAA Regulations include incorporation of the Privacy Rule, as defined under 45 CFR 164 Subpart E (Privacy of Individually Identifiable Health Information) (the “**Privacy Rule**”).
- ii. Disclosure or disclose is defined in 45 CFR 160.103 as "the release, transfer, provision of, access to, or divulging in any other manner of information outside the

entity holding the information."

- iii. Individual(s) is defined in 45 CFR 160.103 as "the person who is the subject of protected health information."
- iv. Covered entity is defined as "a health plan, a health care clearinghouse, or a healthcare provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations 45 CFR 160.103." The specific Covered Entity for this agreement is as previously defined.
- v. Limited Data Set is defined as "protected health information that excludes direct identifiers," as promulgated in 45 CFR 164.514(e), with such identifiers listed in Section 3 (Limited Data Set) below.
- vi. Limited Data Set Information is all information in the Limited Data Set exchanged between the Parties.
- vii. Protected Health Information or PHI is defined in 45 CFR 160.103 as "individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium" [excluding education and employment records]."
- viii. Required by Law is defined in 45 CFR 164.103 as "a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law".
- ix. Use is defined in 45 CFR 160.103 as "with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information."

## **2. Purpose and Scope**

The purpose of this Agreement is to permit Covered Entity to disclose, and AWHONN to receive, a Limited Data Set for the following purposes of research, public health, and health care operations:

- Clinical benchmarking
- Quality improvement
- Research
- Hospital operations consultation

AWHONN will request a Limited Data Set regarding hospital demographic data, hospital outcome data, individual nursing data, and patient data, with such data defined in Section 3.1 (Definition) below.

## **3. Limited Data Set**

### **3.1. Definition**

As defined under 45 CFR 164.514(e), the Limited Data Set exchanged under this Agreement excludes the following categories of data:

#### Excluded Data

- i. Names;
- ii. Postal address information, other than town or city, State, and zip code;
- iii. Telephone numbers;
- iv. Fax numbers;
- v. Electronic mail addresses;
- vi. Social security numbers;
- vii. Medical record numbers;
- viii. Health plan beneficiary numbers;
- ix. Account numbers;
- x. Certificate/license numbers;
- xi. Vehicle identifiers and serial numbers, including license plate numbers;
- xii. Device identifiers and serial numbers;
- xiii. Web Universal Resource Locators (URLs);
- xiv. Internet Protocol (IP) address numbers;
- xv. Biometric identifiers, including finger and voice prints; and
- xvi. Full face photographic images and any comparable images.

The Limited Data Set shall include the following categories of data:

#### Permissible Data

- i. Hospital demographic data (e.g., month and year of birth for patients);
- ii. Hospital outcome data (e.g., The Joint Commission measures or HCAHPS data);
- iii. Individual nursing data (e.g., month and year of nursing degree completion);
- iv. Dates of health care provided to an individual (e.g., admission date, discharge date, and service dates);
- v. Geographic information limited to city, state, or ZIP code;
- vi. Survey data (e.g., LABBS, WP-RMC); and
- vii. Other elements permitted under HIPAA Regulations.

AWHONN will not attempt to use the Limited Data Set Information to contact Individuals or attempt to identify Individuals.

### **3.2. Limited Data Set Uses, Disclosures, Consents**

AWHONN may, consistent with this Agreement, use or disclose Limited Data Set Information to a third party for purposes of public health, health care operations or research in accordance with the provisions of the HIPAA Regulations concerning Limited Data Sets, provided that such use or disclosure is (i) limited to the minimum information necessary to accomplish the purpose; and (ii) would not violate the HIPAA Regulations if done by Covered Entity.

AWHONN may publish or present analyses derived from Limited Data Set Information provided that:

- No PHI is disclosed
- Results are presented in aggregate form
- No Individual can reasonably be identified (unless expressly permitted by Covered Entity)

AWHONN's use and disclosure of Limited Data Set Information may include clinical benchmarking, with such benchmarking subject to the disclosure standards set above.

Covered Entity represents and warrants that it has obtained consent to disclose Limited Data Set Information from Individuals for the purpose of external research or has otherwise determined that the disclosure is permitted in accordance with law.

### **3.3. Limited Data Set Access**

On behalf of AWHONN, the following individuals or classes of individuals are permitted to use or receive the Limited Data Set for the purposes described herein:

- Sr. Vice President – Nursing, Research, Education and Practice
- Vice President – Analytics, Operations Policy and Strategic Initiatives
- Director Research and Grants
- Director of Perinatal Programs
- Manager Research and Grants
- Admin of Research and Grants
- Database Vendor Representatives

### **3.4. Limited Data Set Ownership**

Covered Entity shall hold and retain all ownership rights to confidential information, intellectual property – including copyright to all materials – proprietary information, and products created by Covered Entity.

AWHONN shall hold and retain all ownership rights to confidential information, intellectual property – including copyright to all materials – and proprietary information created or provided by AWHONN. Products created by AWHONN, including those described in Section 2 (Purpose and Scope) of this Agreement, shall be owned by AWHONN.

Products jointly created by both Parties shall be jointly owned. The permitted use and any difference in ownership rights of such products shall be discussed and agreed upon prior to the time of joint product creation.

Limited Data Set Information, once exchanged, shall be owned by both Parties in

perpetuity. As it pertains to AWHONN, such ownership rights shall be limited to the permitted uses contained in this Agreement Section 3.2 (Limited Data Set Uses, Disclosures, Consents), with the requirements that Limited Data Set Information be handled with the data security measures and breach requirements enumerated in Section 4 (Obligations of Data Recipient(AWHONN) and Data Security Safeguards).

#### **4. Obligations of Data Recipient (AWHONN) and Data Security Safeguards**

##### **4.1. Use and Disclosure of Limited Data Set Information**

AWHONN agrees not to use or further disclose Limited Data Set Information other than as permitted by the terms of this Agreement, or as otherwise required by law.

##### **4.2. Safeguards; Breach Notifications**

AWHONN agrees to implement appropriate and required safeguards to prevent use and disclosure of the Limited Data Set Information other than for the purposes permitted by the terms of this Agreement. Without limiting the generality of the foregoing, AWHONN agrees to:

- a)** Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Limited Data Set Information it creates, receives, or maintains, or transmits on behalf of Covered Entity;
- b)** Ensure that any agent, including any subcontractor, to whom AWHONN provides Limited Data Set Information agrees to implement reasonable and appropriate safeguards to protect such information; and
- c)** In the event of any Security Incident or Breach of unsecured PHI (a “**PHI data breach**”) of which AWHONN becomes aware, report promptly (and in no case, later than five (5) business days) to the Covered Entity the PHI data breach.

As required by HIPAA Regulations, AWHONN agrees to the following notice requirements in the event of a PHI data breach:

- For a PHI data breach impacting fewer than 500 individuals, AWHONN shall i) maintain a log of the relevant information pertaining to the PHI data breach, and ii) notify the Secretary of U.S. Department of Health and Human Services (“**HSS**”) within sixty (60) days after the end of the calendar year in which the breach was discovered;
- For a PHI data breach impacting 500 or more individuals, AWHONN shall i) notify a prominent media outlet serving the state or jurisdiction in which the breach occurred, and ii) notify the Secretary of HSS without unreasonable delay, and no later than sixty (60) calendar days from the date of the discovery of the breach.

Additionally, in the event of a PHI data breach, AWHONN shall:

- Investigate the incident
- Take steps to mitigate potential harm to Individuals or Covered Entity
- Document corrective actions taken

#### **4.3. Technical Safeguards**

The technical safeguards referenced in 4.2(a) shall include:

- a) Compute: Compute instances are hosted at Amazon Web Services (AWS);
- b) AWS provides robust physical security and SOC 2 compliant hosting;
- c) Database Persistence: Relational database persistence layer is hosted at Amazon Web Services (AWS); the database is encrypted at rest; and
- d) Any other technical safeguards deemed necessary and/or replaced or updated by AWHONN from time-to-time.

### **5. Term and Termination**

#### **5.1. Term**

This Agreement will commence as of the Effective Date and will remain in effect as long as AWHONN retains the information described herein, unless this Agreement is terminated sooner in accordance with Sections 5.2 or 5.3 below.

#### **5.2. Termination for Material Breach**

Any Party may terminate this Agreement based upon a material breach of this Agreement by the other Party, provided that the nonbreaching Party gives the breaching Party thirty (30) days' written notice and the opportunity to cure such breach, and the breach is not cured during the notice period. In the event such material breach is not cured, the non-breaching Party may terminate this Agreement immediately upon the expiration of the notice period. In the event it is not possible to cure such material breach, the non-breaching Party may terminate this Agreement immediately and without any notice.

#### **5.3. Termination Permitted Due to Change in Law.**

Any Party may terminate this Agreement upon a change in an applicable law that causes performance in compliance with this Agreement to violate the law.

#### **5.4. Effects of Termination.**

The Parties acknowledge and agree that the provision of Limited Data Set Information to AWHONN is conditioned upon this Agreement being in full force and effect. Therefore, upon termination of this Agreement, the Parties agree that Covered Entity will refrain from submitting Limited Data Set Information to AWHONN, and AWHONN will refrain from accepting Limited Data Set Information from Covered Entity.

### **6. Limited Data Set Retention**

AWHONN shall retain the Limited Data Set Information for the duration necessary to complete the purposes described in this Agreement. AWHONN's retention, security of, and use of Limited Data Set Information shall be subject to the provisions set forth in this Agreement.

## **7. Confidential Information**

Notwithstanding the provisions pertaining to Limited Data Set Information – which shall be treated in accordance with the provisions set forth in this Agreement – the following terms shall apply to all other information exchanged between the Parties:

### **7.1. Confidential Information**

Each Party (the “**Disclosing Party**”) may from time to time during the term of this Agreement disclose to the other Party (the “**Receiving Party**”) certain information regarding Disclosing Party's business, including, without limitation, technical, marketing, financial, employee, planning, and other confidential or proprietary information (“**Confidential Information**”). Disclosing Party shall mark all Confidential Information in tangible form as “confidential” or “proprietary” or with a similar legend. Disclosing Party shall identify all Confidential Information disclosed orally as confidential at the time of disclosure. Regardless of whether so marked or identified, however, any information that Receiving Party knew or should have known, under the circumstances, was considered confidential or proprietary by Disclosing Party at the time of disclosure to Receiving Party, will be considered Confidential Information of Disclosing Party.

### **7.2. Protection of Confidential Information**

Receiving Party shall not use any Confidential Information of Disclosing Party for any purpose not expressly permitted by this Agreement, and shall disclose the Confidential Information of Disclosing Party only to the employees or contractors of Receiving Party who have a need to know such Confidential Information to perform its obligations under this Agreement and who are under a duty of confidentiality and usage no less restrictive than Receiving Party's duty hereunder. Receiving Party shall protect Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

### **7.3. Exceptions**

- a) “Confidential Information” does not include information that is:
  - i. already lawfully known to Receiving Party at the time of disclosure by Disclosing Party, as evidenced by written records;
  - ii. disclosed to Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; or
  - iii. or has become, through no fault of Receiving Party, generally available to the

public.

- b)** Receiving Party may disclose Confidential Information of Disclosing Party to the extent that such disclosure is:
  - i.** approved in writing by Disclosing Party;
  - ii.** necessary for Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or
  - iii.** required by law or by the order of a court or similar judicial or administrative body, provided that Receiving Party notifies Disclosing Party of such required disclosure promptly and in writing and cooperates with Disclosing Party, at Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

#### **7.4. Return of Confidential Information**

Upon the written request of Disclosing Party or the expiration or termination of this Agreement, whichever comes first, Receiving Party shall:

- a)** return to Disclosing Party, or destroy at Disclosing Party's request, all tangible copies incorporating, in whole or in part, Disclosing Party's Confidential Information;
- b)** erase all electronic copies of such Confidential Information in Receiving Party's possession, custody, or control; and
- c)** upon request, certify to Disclosing Party that it has complied with the requirements of this Section 7.4 (Return of Confidential Information).

### **8. Use of Marks**

#### **8.1. Permissions**

At times, AWHONN may wish to name Covered Entity in its research findings and publications, on its website, and in other channels of advertising related to the purposes for which AWHONN has received the Limited Data Set Information (as defined in Section 2 (Purpose and Scope)). Any such advertising, if consented to by Covered Entity below, will be subject to the Limited Data Set disclosure restrictions stated herein (Section 3.2 Limited Data Set Uses, Disclosures, Consents) and shall be subject to the terms of Sections 8.2 and 8.3 below.

The Parties indicate below whether Covered Entity grants AWHONN permission to use its Marks (as defined and outlined in Section 8.2) for the purposes stated above.

- YES, Covered Entity agrees to grant AWHONN its use of Marks (Sections 8.2 and 8.3 shall apply).
- NO, Covered Entity does not grant AWHONN its use of Marks (Sections 8.2 and 8.3 shall not apply).

#### **8.2. Trademark License**

Subject to the terms and conditions of this Agreement, each Party (each, a

“**Licensor**”) grants to the other Party (each, a “**Licensee**”) a non-exclusive, non-transferable, revocable, royalty-free license to use the trademarks, service marks, and trade names of the Licensor as shared between the Parties (collectively, “**Marks**”) solely in connection with performing the actions outlined in this Agreement, which may include, among other usage, AWHONN’s advertising of Covered Entity on AWHONN’s website and in publication materials.

### **8.3. Limitations and Restrictions; Ownership**

Neither Party grants to the other Party any rights in its Marks other than those expressly granted in Section 8.2 (Trademark License). Licensee acknowledges Licensor’s exclusive ownership of its Marks. Licensee agrees not to take any action inconsistent with such ownership and to cooperate, at Licensor’s request and expense, in any action that Licensor deems necessary or desirable to establish or preserve Licensor’s exclusive rights in and to the Licensor Marks. Licensee shall not adopt, use, or attempt to register any trademarks or trade names that are confusingly similar to Licensor’s Marks or in such a way as to create combination marks with the Licensor’s Marks. At Licensor’s request, Licensee shall modify or discontinue any use of the Licensor’s Marks.

## **9. Indemnification**

Both Parties will indemnify and hold harmless the other Party (the “**Indemnifying Party**” and the “**Indemnified Party**,” respectively) from and against any claim, cause of action, liability, direct losses, damages, costs and expenses (including without limitation reasonable attorney’s fees) suffered by the Indemnified Party arising out of or in connection with any unauthorized use or disclosure of Limited Data Set Information or any other breach of this Agreement by the Indemnifying Party or any of its subcontractors or agents. The Indemnified Party shall provide prompt written notice of the claim to the Indemnifying Party and shall permit the Indemnifying Party to control the defense of any such claim. The Parties’ obligations under this indemnification clause will survive any expiration or termination of this Agreement.

## **10. Limitation of Liability**

### **10.1. Exclusion of Certain Damages**

To the maximum extent permitted by applicable law, in no event will either Party be liable to the other Party for any indirect, incidental, consequential, special, exemplary, or punitive damages, for any loss of profits, revenue, business, goodwill, or data, arising out of or relating to this Agreement or the disclosure or use of Limited Data Set Information, whether in contract, tort (including negligence), strict liability, or otherwise, even if advised of the possibility of such damages.

### **10.2. Cap on Liability**

To the maximum extent permitted by applicable law, each Party’s total aggregate liability arising out of or relating to this Agreement, the Limited Data Set

Information, or the Parties' performance or nonperformance under this Agreement will not exceed the total amounts paid or payable by AWHONN to Covered Entity under this Agreement in the twelve (12) months preceding the event giving rise to the claim.

### **10.3. Limited Carve-Outs**

The limitations in this Section 10 (Limitation of Liability) apply notwithstanding the failure of essential purpose of any limited remedy, and will not apply only to liability arising from a Party's:

- Gross negligence or willful misconduct; or
- Fraud.

### **10.4. No Expanded Liability for HIPAA or Regulatory Exposure**

Without limiting the aforementioned provisions, AWHONN will not be liable for: (A) any civil monetary penalties, regulatory fines, or similar assessments imposed on Covered Entity; (B) Covered Entity's costs of compliance with notice or remediation obligations; or (C) third-party claims against Covered Entity, in each case except to the extent such claims are directly resulting from AWHONN's gross negligence, willful misconduct, or fraud.

### **10.5. Allocation of Risk**

The Parties acknowledge that this Section 10 (Limitation of Liability) reflects a reasonable allocation of risk and that the limitations in this section are an essential basis of the consideration between the Parties in forming this Agreement.

## **11. Survival**

Sections:

- 1 (Definitions);
- 3 (Limited Data Set);
- 4 (Obligations of Data Recipient and Data Security Safeguards);
- 5.4 (Effects of Termination);
- 6.2 (Limited Data Set Destruction);
- 7 (Confidential Information);
- 8 (Use of Marks);
- 9 (Indemnification);
- 10 (Limitation of Liability);
- 11 (Survival);
- 12 (Miscellaneous); and

any sections required for the construction of such provisions will survive any expiration or termination of this Agreement.

## **12. Miscellaneous**

### **12.1. Independent Contractors**

With respect to each other, the Parties are, and at all times shall be, independent contractors in all matters relating to this Agreement. This Agreement will not be construed to create any association, partnership, joint venture, or employment relationship between or among the Parties. Neither Party is an agent, reseller, or franchisee of the other Party for any purpose and neither Party has power or authority to bind or commit the other Party to any obligation in any way. Neither Party nor its employees or agents are employees of the other Party for any purpose within the meaning or application of any federal, state, or local employment laws, unemployment insurance laws, social security laws, workers' compensation laws, or industrial accident laws, or under any other laws or regulations, including laws enacted or enforced outside the U.S., that impute any obligation or liability to the other Party by reason of any employment or similar relationship.

### **12.2. Assignments**

Neither Party shall assign or transfer, by operation of law or otherwise, any of its rights under this Agreement or delegate any of its duties under this Agreement to any third party without the other Party's prior written consent, which such Party shall not unreasonably withhold. Any attempted assignment or transfer in violation of the foregoing will be null and void *ab initio*.

### **12.3. Compliance with Law**

Both Parties agree to comply with all applicable federal and state laws including HIPAA Regulations, applicable research regulations, and other federal and state data privacy laws, to the extent such laws apply. Each Party will make available information and records documenting such compliance as may be reasonably requested in writing by the other Party to facilitate such Party's compliance, except for records that are confidential and privileged by law.

### **12.4. Governing Law; Arbitration**

To the extent that federal law does not govern this Agreement, this Agreement and all rights, duties, and obligations herein shall be governed in accordance with the laws of the District of Columbia, without regard to its conflict of law principles. Each Party agrees to submit to the jurisdiction of the courts located in the District of Columbia for any actions arising out of this Agreement.

All disputes, controversies or claims between the Parties arising from or in relation to this Agreement, including the formation, interpretation, breach, or termination thereof, including whether the claims asserted are arbitrable, will be referred to arbitration in accordance with the Comprehensive Arbitration Rules of JAMS before a single arbitrator jointly selected by the Parties or, if the Parties are unable to agree, by JAMS. The arbitration hearing(s) will be conducted in the English language and may be conducted remotely via appropriate videoconferencing

technology or in-person in the District of Columbia. The decision of the arbitrator will be final, binding and conclusive upon the Parties. Each Party shall bear its own costs incurred in such arbitration proceeding. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, each Party reserves the right to seek immediate injunctive or other equitable relief in a court of competent jurisdiction as it deems necessary to protect its intellectual property or Confidential Information or otherwise in connection with a breach or anticipatory breach of this Agreement.

#### **12.5. Waivers**

Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing.

#### **12.6. Severability**

If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law. The remaining provisions will continue in full force and effect and the application of such provision will be interpreted so as reasonably to effect the intent of the Parties.

#### **12.7. Construction**

The headings of sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

#### **12.8. Counterparts; Execution**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. In no event will either Party be bound to perform until this Agreement has been executed by a duly authorized official of that Party. Each Party represents and warrants that the person(s) signing this Agreement on such Party’s behalf has been duly authorized and empowered to execute this Agreement in the name and on behalf of such Party. Each Party agrees that the electronic signatures, including by facsimile or email and whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

#### **12.9. Correspondence; Notice**

All notices, consents, and approvals (each a “**Notice**”) under this Agreement must be delivered in writing to the other Party at the address set forth below: (a) by international courier; (b) by email of a PDF document; or (c) by certified or registered airmail, (postage prepaid and return receipt requested). Such Notice will

be deemed effective upon actual receipt if within normal business hours at the place of receipt, otherwise at 9:00 am on the next business day in the place of receipt, or five (5) business days after being deposited in the mail as required above, whichever occurs sooner. Either Party may change its address or other contact information by giving Notice of the new address to the other Party.

**AWHONN**

Benjamin Scheich  
Vice President – Analytics, Operations,  
Policy and Strategic Initiatives  
1800 M Street NW, Suite 740 South  
Washington, DC 20036

email: bscheich@awhonn.org

**Covered Entity**

[CONTACT NAME]

[TITLE]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

email: [EMAIL ADDRESS]

**12.10. Entire Agreement; Amendments**

This Agreement constitutes the entire agreement between the Parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. The Parties may amend this Agreement only by a written document signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**AWHONN**

**Covered Entity**

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

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

Name:

Name:

Title:

Title:

Date:

Date: