Optum COVID-19 Data Dashboard License Agreement

PLEASE READ THIS AGREEMENT CAREFULLY.

By indicating your acceptance below or by accessing or using the Optum COVID-19 Data Dashboard Software (the “Software”) and the de-identified patient data contained therein (the “Data”) on the COVID-19 Data Dashboard website (the "Website"), YOU INDICATE YOUR ACCEPTANCE OF ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT (the "Agreement"). If you do not agree with these terms, decline where instructed and you will not be able to access or use the Software or Data. OptumInsight Life Sciences, Inc. is referred to herein as “Optum.” You are referred to herein as “Client”.

1. LICENSE. Optum grants to Client a nonexclusive, nontransferable license to access and use the Data and Software from locations within the United States for Client's internal, lawful, business use and subject to the Prohibited Uses in Section 13 of this Agreement. Client acquires no right to the Software or to the information and Data contained in the Software, except the right to use such information and Data solely for Client's own internal business purposes, in accordance with this Agreement. Client shall have no right to allow any person or entity that is not an employee of Client to access the Software or Data, directly or indirectly in any way, and Client must ensure that anyone with access to the Software or Data through Client will comply with the provisions of this Agreement.

2. CONTACT. By accepting the terms in this Agreement, Client consents to receiving contact from an Optum representative for marketing purposes.

3. ACCESS. Client is authorized to access and use the Software and the Data contained therein from one computer, terminal, or mobile device at any given time. Client may not sublicense, assign, or transfer this license, the Software, the Data, or the output produced by the Data and Software to any third party. Client may NOT use the Data or the Software on any public computer based medical information system, or in any public electronic bulletin board, or translate, decompile, reverse engineer, or disassemble the Software, or create any derivative work based on the Software, Data, or the accompanying documentation.

4. USER ID AND SECURITY. After Client's registration, Optum shall provide Client with an initial User ID to access the Data and Software on the Website. Client agrees to maintain strict security procedures to prevent unauthorized use or disclosure of Client's User ID and to protect the Website from improper access. Client's User ID is personal to Client only.

5. DISCLAIMER. To the extent that the Data and Software contain information Optum has received from third parties, Optum makes no warranty as to the accuracy of the information contained in the Data. Optum does not warrant that the Software will meet Client's requirements or that the operation of the Website will be uninterrupted or without error. THE DATA AND SOFTWARE IS PROVIDED AS-IS AND OPTUM DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO THE SOFTWARE, DATA, AND THE WEBSITE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF DAMAGES. Optum is not responsible or liable for any actions taken by Client as a result of Client's use of the Software or Data, or for any error, inaccuracy, or omission in any report or analysis Client prepares in connection with or through use of the Software, or for any damage resulting from such use. Optum's liability to the other party for direct damages arising out of this Agreement shall not exceed the amount Client has paid or owes Optum for use of the Data and Software in the year in which the cause of action rose. Under no circumstances will either party or Optum's licensors be responsible under this Agreement for any indirect, incidental, special or consequential damages resulting from either party's performance or failure to perform under this Agreement, including, without limitation, the use of or inability to use the Data or Software, any damage to equipment and any cost of recovering lost data or of reprogramming.

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7. COPYRIGHT AND CONFIDENTIALITY. Client acknowledges that the Software, the Data, the process and technologies included therein, as well as any other information or materials made available to Client by Optum through the Website are valuable assets, trade secrets, and/or copyrighted material of Optum and that Optum retains title to them. Under no circumstances may Client copy the Software, the Data, or the accompanying documentation for the purposes of distribution to others, or may Client remove the copyright notices on the Software, the Data, or the accompanying documentation.

8. TERMINATION. Optum may terminate Client’s access to the Software and Data at any time if OptumInsight reasonably believes that Client is in violation of this Agreement.

9. COOKIES. Optum may employ the use of a “cookie” that collects traffic data.

10. INDEMNIFICATION. Client hereby indemnifies and shall defend and hold harmless Optum, its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys’ fees and expenses, arising out of or in connection with Client’s breach of this Agreement.

11. CPT TERMS. Data obtained from use of the Website may contain Current Procedural Technology Codes (“CPT”) owned by the American Medical Association (“AMA”) and licensed to Optum. The terms of this Section apply only to CPT codes and related content.

   a. Optum’s ability to deliver updated versions of CPT to Client is dependent upon continuing contractual relations with the AMA. CPT is copyright by the AMA and the AMA trademark is owned by the AMA. All notices or proprietary rights, including trademark and copyright in CPT must appear on all permitted back-up or archival copies made by Client. Client may copy information obtained from the Site only for back-up or archival purposes. Client shall ensure that any person or entity that Client authorizes to obtain access to CPT shall comply with the provisions of this Agreement. Client shall not use CPT codes or information contained therein in any public computer-based information system or public electronic bulletin board without secure access. Client shall not create any derivative works based on CPT.

   b. Client shall not publish, distribute via the Internet or other public computer based information system, create derivative works (including translating), transfer, sell, lease, license or otherwise make available to any unauthorized party some or all of the CPT codes.

   c. The AMA provides CPT “AS IS”, without any liability to the AMA, including, without limitation, no liability for consequential or special damages or lost profits for sequence, accuracy or completeness of the CPT data. The AMA does not warrant that CPT will meet Client’s requirements. The AMA disclaims any liability for any consequences due to use, misuse or interpretation of information contained or not contained in CPT.

   CPT coding is commercial technical data and/or computer data bases and/or commercial computer Site documentation, as applicable, which were developed exclusively at private expense by the American Medical Association, 515 N. State Street, Chicago, IL 60610. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer Site documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

12. PROHIBITED USES.

   a. Client shall not re-identify any person reflected in the Software or Data, including without limitation: (i) re-identifying, or attempting to re-identify, or allowing to be re-identified any patient or individual within the Data or Software; (ii) re-identifying, or attempting to re-identify, or allowing to be re-identified any relative, family or household member of any patient or individual reflected in the Data or Software; or (iii) linking any of the facial or direct identifiers set forth in 45 C.F.R. 164.514 to any other information. Client shall not engage in any research, study or any other use of the Data or Software that directly or indirectly involves developing a plan to or actually attempting to re-identify an individual.

   b. Client agrees that it shall not use the information in the Data or Software to contact any patient.

   c. Client shall not: (i) link any Data contained in the Software with other internal or external sources of information including data that Client has separately obtained from Optum or any other source; or (ii) link any of the Data sets provided under this Agreement.

   d. Client shall not publicly disclose or report any insights derived from Client’s use or access to the Data or Software.

   e. Client shall not create derivative works of the Data or Software. Client shall not design or create any software program, database, data or content, in whole or in part, with features or functions similar to the features or functions of the Data or Software.
f. Client shall not incorporate any part of the Data or Software into any product or service.
g. Client shall not display, distribute, share, lease, license, sublicense or otherwise transfer the Data or Software.
h. Client shall not use any part of the Data or Software for an unlawful purpose.

13. ORDER OF PRECEDENCE. Client acknowledges that Client has read this Agreement, understands it and agrees to be bound by its terms and conditions. Client further agrees that this is the complete agreement between Client and Optum and that this Agreement supersedes any proposal or prior agreement, oral or written, and any other communications between Client and Optum relating to the subject matter of this Agreement.

PLEASE INDICATE YOUR ACCEPTANCE OF THE FOREGOING AGREEMENT BY CHECKING THE BOX NEXT TO ‘I AGREE TO THE TERMS AND CONDITIONS.’

☐ I agree to the terms and conditions.

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