

LONG-TERM CARE DATA COOPERATIVE PORTAL - TERMS OF USE

This Terms of Use is a legally binding contract between You (defined below) and AHCA/NCAL Solutions, LLC and the Long-Term Care Data Cooperative (“AHCA,” “we,” or “us”) regarding Your use of the Long-Term Care Data Cooperative Portal made available and operated by our subcontractor, Exponent, Inc. (the “Service”).

PLEASE READ THE FOLLOWING TERMS CAREFULLY. BY USING THE SERVICE, CLICKING “I ACCEPT,” OR BY CREATING AN ACCOUNT TO USE THE SERVICE, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING ANY OTHER DOCUMENTS MENTIONED HEREIN (TOGETHER, THESE “Terms”). If You are not eligible, or do not agree to these Terms, then You do not have our permission to use the Service.

DATA USE AGREEMENT

In addition to these Terms, Your access and use of the data made available through the Service is governed by a Data Use Agreement between Your Organization and AHCA (the “DUA”). You agree to comply with the DUA and are permitted to use the Service to process data strictly in accordance with the DUA. In the event of a conflict or inconsistency between these Terms and the DUA, the DUA shall govern and control to the extent that the DUA applies to the subject matter.

For the purposes of these Terms, AHCA, its affiliates and subsidiaries, and its and their officers, directors, employees, consultants, representatives, licensors (including, without limitation, Exponent, Inc.), and agents are together, the “AHCA Group.”

OTHER TERMS

- 1. Binding on Your Organization.** WHEN YOU ACCEPT THESE TERMS, YOU AGREE TO IT ON YOUR INDIVIDUAL BEHALF AND ON BEHALF OF THE ORGANIZATION (AND ITS AFFILIATES) BY WHICH YOU ARE EMPLOYED OR ENGAGED AND FOR WHOSE BENEFIT YOU ARE USING THE SERVICE (the “Organization”). In these Terms, “You” shall mean the person using the Service and the Organization on whose behalf the person is using the Service.
- 2. Eligibility.** By agreeing to these Terms, You represent and warrant to us that: (a) You are authorized by the Organization to agree to the Terms on its behalf; (b) You are of legal age to enter into a binding agreement; (c) You have not previously been suspended or removed from the Service; (d) Your registration and Your use of the Service is in compliance with all applicable laws and regulations; and (e) You have read and agree to our Long-Term Care Data Cooperative Portal Privacy Policy, as further described in Section 14 below.
- 3. The Service Overview.** To the fullest extent permitted by law, You assume all risk and we are not responsible for any harm to You or others that may occur from Your use of the Service or the data made available through the Service. You may not access or use the Service or the data made available through the Service for any other purpose than as permitted by us under these Terms and the applicable DUA. You may access the Service only if authorized by Your Organization that partnered with AHCA to use the Service pursuant to a DUA. Your access is subject to the discretion and control of Your Organization as well as us under these Terms.

4. **Your Responsibilities.** For the avoidance of doubt, You are responsible and liable for all non-compliance with these Terms by You and any and all acts and omissions by You and Your account in connection with the Service; the content and data transmitted to or from the Service by You, or Your account; and for the effects of any breach of security in connection with the activity of Your accounts in connection with the Service. You are solely responsible for obtaining, installing, maintaining and operating all necessary software, hardware, and other equipment to use and access the Service. Your responsibility shall also include using up-to-date web browsers, antivirus, anti-spyware, and internet security software. Neither the AHCA Group (as defined herein) nor licensees or licensors shall bear any responsibility or liability for interruption or non-performance of the Service or for loss and theft of personal data which results in connection with the aforementioned factors. You are solely responsible for any information, images, videos, or other content or materials You upload to or transmit through the Service ("Communications Data").
5. **Accounts and Registration.** To access most features of the Service, You must register for an account. When You register for an account, You may be required to provide us with some information about Yourself, such as Your email address. You agree that the profile information You provide to us is accurate and that You will keep it accurate and up-to-date at all times. You understand and agree that as part of the registration process we may use this information to verify Your eligibility to use the Service. When You register, You will be asked to provide a password. You are solely responsible for maintaining the confidentiality of Your account and password and You accept responsibility for all activities that occur under Your account. If You have reason to believe that Your account is no longer secure, then You must immediately notify us at LTCDCsecurity@ahca.org.
6. **Payment.** The Service is currently made available to You subject to any payments terms in the DUA or other related agreements.
7. **Licenses.**
 - a. **Limited License.** Subject to Your ongoing compliance with these Terms, we grant You a limited, non-exclusive, non-transferable, non-sublicensable, revocable right to access and use the Service solely for lawful business purposes, as permitted by these Terms.
 - b. **License Restrictions.** Except and solely to the extent permitted by applicable law notwithstanding these restrictions, You may not at any time, directly or indirectly and may not permit any other person or entity to: (i) reproduce, distribute, publicly display, or publicly perform the Service or any part thereof; (ii) reverse engineer, decompile, or make modifications to the Service or any part thereof; or (iii) interfere with or circumvent any feature of the Service or any part thereof, including any security or access control mechanism. If You are prohibited under applicable law from using the Service, You may not use it.
 - c. **Reservation of Rights.** The AHCA Group reserves all rights not expressly granted to You in these Terms. Except for the limited rights and licenses expressly granted under these Terms, nothing in these Terms grants, by implication, waiver, estoppel, or otherwise, to You or any third party any intellectual property rights or other right, title, or interest in or to the our intellectual property.

- d. **Open-Source Software.** The Service may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute such components ("Open Source Components"). Although the Service is provided to You subject to these Terms, nothing in these Terms will be deemed to prevent, restrict, or otherwise prevent or restrict You from obtaining such Open Source Components under the applicable third-party licenses or to limit Your use of such Open Source Components thereunder.
- e. **Consent to Communications and Monitoring of Use of the Service.** By providing us with Your contact information and using the Service, You agree to receive e-mail communications and SMS and other text messages from or on behalf of us in connection with the Service at the email address and telephone number You provided. These messages may be for informational purposes, such as to provide You with the information You requested, to seek Feedback from You regarding the Service, or to send messages relating to: login and password information for usage of account, notifications and reminders, and updates to services and terms of service.

If You wish to opt out of marketing emails from us, You can unsubscribe by following the unsubscribe options in the marketing email itself. You understand and agree that You may continue to receive communications while we process Your opt-out request, and You may also receive a communication confirming the receipt of Your opt-out request.

- 8. **Notifications and Automatic Alerts.** Under some circumstances, we may present You with notifications, prompts with links to additional information, or suggested actions based on our analysis of Your Communications Data and other information You have provided to us. AHCA Group makes no representations or warranties about the accuracy, reliability, completeness, or timeliness of any notifications. You accept that any reliance on these notifications will be at Your own risk, and AHCA Group disclaims all liability arising from Your use of them or reliance upon them. You agree that we may send notifications to Your mobile device for Service-related or marketing purposes, if they are enabled, provided that we do so in accordance with the Long-Term Care Data Cooperative Portal Privacy Policy.
- 9. **Prohibited Conduct.** By using the Service You agree to comply with the Acceptable Use Policy which can be found [here](#). You warrant and represent You and Your affiliates, employees, representatives and agents will not introduce any "viruses", "worms", "Trojan horses" or other unintended malicious or destructive code or programs into the Service.
- 10. **Security of Your Account.** When You have registered an account, You are responsible for keeping the identifiers, passwords, and other access information associated with that account secret. As soon as You know or have reason to suspect that the identifiers, passwords, or other access information are no longer secret, or that the account is being abused or security has been compromised, You must notify us immediately at LTCDsecurity@ahca.org and take all necessary steps to prevent unauthorized access including changing relevant identifiers, passwords, and other access information and taking other security measures.

You are not permitted to:

- provide information to us during account registration that is not accurate, complete and up-to-date;
- create more than one account for the same individual user; or
- share an account.

11. **Third-Party Services and Linked Websites.** Websites and services provided by third parties (including those to which the Service may contain a link) are not under our control, and we are not responsible for any third party services or content. We do not endorse any information on linked sites or any associated organization, product or services.

12. **Information on the Service.** All information contained on the Service is for personal use only and may not be sold, redistributed or used for any commercial purpose.

13. **Termination of Use; Discontinuation and Modification of the Service.** You may terminate Your account at any time by following the prompts in the Service or by contacting customer service at LTCDataCooperative@AHCA.org. If You violate any provision of these Terms (including payment obligations, if any), Your permission from us to use the Service will terminate automatically. In addition, we may in our sole discretion terminate Your user account on the Service or suspend or terminate Your access to the Service at any time if You violate any provision of these Terms, if we no longer provide any part of the Service, or for another reason, with or without notice. We also reserve the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to You. To the fullest extent permitted under applicable law, we will have no liability whatsoever on account of any change to the Service or any suspension or termination of Your access to or use of the Service. Upon the termination of Your account, we have no obligation (but may) to retain any information submitted through the account using the Service.

14. **Privacy Policy; Additional Terms**

a. **Privacy Policy.** Please read the Long-Term Care Data Cooperative Portal Privacy Policy carefully, which can be found [here](#), for information relating to our collection, use, storage and disclosure of Your personal information. You explicitly consent to the collection, hosting, use, disclosure and other processing or handling of Your personal information (including sharing data with third party providers) as described in the Long-Term Care Data Cooperative Portal Privacy Policy.

b. **Additional Terms.** In addition to the other agreements and policies referenced herein, You acknowledge that Your use of the Service is subject to all additional terms, policies, rules, or guidelines to the extent applicable to the Service or certain features of the Service that we may post on or link to from the Service from time-to-time (the “Additional Terms”), such as end-user license agreements for any downloadable software applications, our informed consent forms, if applicable, or rules that are applicable to a particular feature or content on the Service, subject to Section 15. All Additional Terms are incorporated by this reference into, and made a part of, these Terms (as applicable).

15. **Modification of these Terms.** We reserve the right, at our discretion, to change these Terms at any time. The updated Terms will be published on the Service. If a change to these Terms modifies

Your rights and obligations, we may notify You of the modified Terms by email to the address You have provided in Your user profile. Modifications are effective upon publication. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

16. **Ownership; Proprietary Rights.** As between You and us, we own the Service. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, videos, content, information, and all other elements of, collected by, or made available through the Service ("Materials") provided by the AHCA Group whether registered or unregistered, or pending application for registration in any other jurisdiction are protected by intellectual property and other laws. All Materials included in the Service are the property of the AHCA Group. Except as expressly authorized by us, You may not make use of the Materials. The AHCA Group reserves all rights to the Materials not granted expressly in these Terms. Nothing in these Terms is intended to transfer of intellectual property rights to You. You further undertake and agree not to assert any rights of title of such intellectual property rights whether in law or equity in any jurisdiction.
17. **Usage Data.**
 - a. **Usage Data.** We shall have the right to monitor and collect usage data about Your use of the Service and the data made available through the Service and we may use such usage data to provide and improve the Service, the Materials, data, content, our other products and services, and to help ensure compliance with these Terms. You acknowledge and agree that as between You and us, all such usage data is owned exclusively by us.
18. **Subcontractors.** You hereby consent to our engagement of third parties (including our affiliates and Exponent, Inc.) to perform, provide, or support the performance or provision of, all or any portion of the Service.
19. **Feedback.** If You choose to provide input or suggestions regarding Your experience with the Service or its products or services ("Feedback"), then You hereby grant us an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit such Feedback in any manner and for any purpose, including to improve the Service and create and improve other products and services.
20. **Indemnity.** To the fullest extent permitted under applicable law, You will defend, indemnify, and hold harmless any and all of the AHCA Group from and against any and all damages, liabilities, losses, fines, awards, penalties, obligations, judgments, and costs and expenses (including reasonable attorneys' fees) ("Losses") related to a third party (including a governmental authority) claim, demand, allegation, suit, proceeding, investigation, or other cause of action ("Claim") relating to or arising out of, in whole or in part, (a) Your access to, use of, or alleged use of, the Service; (b) Your breach of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) Your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; (d) any dispute or issue between You and any third party; (e) fraud, intentional misconduct, criminal acts, or negligence committed by You; or (f) any and all allegations made by Your personnel, affiliates, and/or subcontractors against us in connection with the Service. To the fullest extent permitted under applicable law, we reserve the right, at our

own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by You (without limiting Your indemnification obligations with respect to that matter), and in that case, You agree to cooperate with our defense of that claim.

21. **Disclaimers; No Warranties.** THE SERVICE AND ALL MATERIALS, DATA, AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS, WITH ALL FAULTS AND WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE AHCA GROUP DISCLAIMS, AND YOU HEREBY EXPRESSLY WAIVE, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO THE SERVICE AND ALL MATERIALS, DATA, AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE; AND (C) ANY WARRANTY AS TO WHETHER THE MATERIALS, COMMUNICATIONS DATA, OR OTHER INFORMATION AVAILABLE THROUGH OR TRANSMITTED BY THE SERVICE IS TRUE, COMPLETE OR ACCURATE. THE AHCA GROUP DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS, DATA, OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE AHCA GROUP OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE AHCA GROUP OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. YOU ASSUME ALL RISK FOR ANY HARM OR DAMAGE THAT MAY RESULT TO YOU FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALING WITH ANY OTHER SERVICE USER, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE, AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES, AT YOUR OWN DISCRETION AND RISK, AND THAT YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SERVICE), OR THE LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF THAT MATERIAL OR CONTENT.

THE ABOVE PARAGRAPHS APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW. SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES, IN PARTICULAR A DISCLAIMER OF WARRANTIES PROVIDED OR IMPLIED BY LAW, AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

22. **Limitation of Liability.** IN NO EVENT WILL ANY OF THE AHCA GROUP BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, LOST DATA, REVENUES, OR PROFITS, GOODWILL, REPUTATION, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE THE SERVICE OR ANY MATERIALS, PRODUCTS, OR CONTENT AVAILABLE ON OR THROUGH THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY MEMBER OF THE AHCA GROUP HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

THE AGGREGATE LIABILITY OF THE AHCA GROUP TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR DATA MADE AVAILABLE THROUGH THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE FEES PAID TO ACCESS THE SERVICE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. FURTHERMORE, NOTHING IN THESE TERMS SHALL OPERATE TO LIMIT OR EXCLUDE ANY LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED BY LAW.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 23 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

23. **Force Majeure.** To the fullest extent permitted under applicable law, the AHCA Group will be excused from performance under these Terms and shall not be liable for any period that it is prevented from or delayed in performing any obligations pursuant to these Terms, in whole or in part, as a result of a Force Majeure Event. For purposes of this section, “Force Majeure Event” means an event or series of events caused by or resulting from any of the following: (a) weather conditions or other elements of nature or acts of God; (b) acts of war, acts of terrorism, insurrection, riots, civil disorders or rebellion; (c) quarantines or embargoes, (d) labor strikes; (e) telecommunications, network, computer, server or Internet disruption or downtime; (f) unauthorized access to any of the AHCA Group’s information technology systems by third parties; or (g) other causes beyond our reasonable control.
24. **Governing Law and Venue.** These Terms and Your use of the Service are governed by the laws of the New York without regard to conflict of laws principles. If a lawsuit or court proceeding is permitted under these Terms, then You and we agree to submit to the exclusive jurisdiction of the state courts and federal courts located within the state of New York, for the purpose of litigating any dispute, and You hereby consent to the personal jurisdiction and venue thereof. We operate the Service from our offices in the United States, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
25. **General.** These Terms, together with the Additional Terms, and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between You and us regarding Your use of the Service. You may not assign or transfer these Terms or Your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest

extent possible, and the remaining parts will remain in full force and effect. Upon termination of these Terms, the DUA Sections 1-5, 7(b), 7(c), 7(e), 8-30, along with the Acceptable Use Policy, Long-Term Care Data Cooperative Portal Privacy Policy, and all other accompanying agreements, will survive.

26. **No Class Actions or Jury Trial.** Dispute resolution under these Terms shall follow the terms set forth in the DUA. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, YOU AND THE AHCA GROUP AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, YOU AND AHCA GROUP ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY.
27. **Claims.** To the fullest extent permitted under applicable law, no action arising out of, in connection with, or relating to these Terms shall be brought by You more than one (1) year after the accrual of the cause of action. This period shall not be extended for any reason, except by the written consent of both parties. All statutes or provisions of law which would toll or otherwise affect the running of the period of limitation are hereby waived and no such statute or provision of law shall operate to extend the period limited in this paragraph, to the fullest extent permitted under applicable law.
28. **Consent to Electronic Communications.** By using the Service, You consent to receiving certain electronic communications from us. You agree that any notices, agreements, disclosures, or other communications that we send to You electronically will satisfy any legal communication requirements, including that those communications be in writing.
29. **Contact Information.** The Service is offered by us. You may contact us by emailing or writing to us as noted below:

Long-Term Care Data Cooperative
1201 L Street, N.W.
Washington, D.C. 20005
Email: LTCDDataCooperative@AHCA.org