



# Data Access and Use Procedures

## American Council of Academic Physical Therapy (ACAPT)

### Data Use Agreement

This document describes what data will be shared between ACAPT, the data “Provider”, and the organization/party who will receive the data, the “Recipient”.

This DATA USE AGREEMENT (“Agreement”) is entered into this \_\_\_\_\_ (“Effective Date”) by the American Council of Academic Physical Therapy (“ACAPT”: “Provider”), and \_\_\_\_\_ (“Recipient”), together the “Parties” and each a “Party.” The purpose of this Agreement is to support research that may benefit academic physical therapy.

ACAPT is obligated to its member institutions to collect and store shared data in a secure and confidential format.

Recipient has completed the Data Request and Description of Research document, and has been approved by the ACAPT Data Advisory Committee to receive de-identified data as a “Data Set” derived from the Provider’s data repository. Recipient may use the information in the Data Set solely for the purpose of the research described in Data Request. Any other use or disclosure of the information in the Data Set is unauthorized.

The Provider and the Recipient agree as follows:

1. **Permitted Uses and Disclosures.** The Recipient may use and disclose the Data Set only for the purposes as described above, except as otherwise specified or restricted herein. The Recipient may disclose the Data Set to third parties for the same purposes as authorized herein, so long as:
  - a. the disclosure is required by law or
  - b. the Recipient obtains reasonable assurances from said third party that the Data Set will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed, and the third party will notify the Recipient of any instances of which it is aware in which the confidentiality of



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the Data Set has been breached. Recipient shall be liable for any disclosure by said third party that is contrary to the terms of this Agreement.

All other uses and disclosures not authorized by this Agreement are prohibited.

2. **Obligations of the Recipient.** Recipient will:

- a. Not use or further disclose the Data Set other than as permitted or required herein or as required by law;
- b. Use appropriate safeguards to prevent use or disclosure of the Data Set other than as provided for herein;
- c. Report to Provider any use or disclosure of the Data Set not provided for herein of which it becomes aware;
- d. Ensure that any agents, including a subcontractor, to whom the Recipient provides the Data Set agree to the same restrictions and conditions that apply to the Recipient with respect to the Data Set; and
- e. The Data Set contains only de-identified data. Should the recipient be able to identify academic programs or individuals, the recipient agrees to not disclose or act upon that information in any manner.

3. **Effective Date.** This Agreement shall become effective on the Effective Date and shall continue for so long as the Recipient retains the Data Set, unless sooner terminated as set forth in this Agreement.

4. **Termination.**

- a. Either Party may terminate this Agreement for convenience by giving written notice to the other Party not less than sixty (60) days prior to the effective date of termination.
- b. Provider may immediately terminate this Agreement and/or any related agreements if Provider makes the determination that the Recipient has breached a material term of this Agreement by providing written notice to Recipient of such Termination.
- c. Upon termination for any reason, Recipient shall delete and/or destroy all copies of the Data Set in its possession and provide Provider with written confirmation that the Data Set has been deleted and/or destroyed.
- d. The rights and obligations of the Parties in Section 1, Section 2, Section 5, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

5. **Ownership of Data.**



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- a. Provider is the sole and exclusive owner of all right, title, and interest in and to the Data Set. Nothing in this Agreement shall be construed in any way as restricting Provider's right to full use and enjoyment of Data Set in any manner as determined by in this Agreement, including but not limited to Provider's right to create, reproduce, store, and share with any person or entity, texts, reports, lists, or other compilations of data including the Data Set that are produced, downloaded, or compiled using the Providers database.
- b. During the term of the Agreement, Provider hereby grants to Recipient a limited, non-exclusive, revocable license to use the Data Set solely as described in this Agreement. Recipient shall not use, sell, rent, transfer, distribute, or otherwise disclose or make available Data Set for Recipient's own purposes or for the use or benefit of any person or entity.
- c. If this Agreement contemplates that Recipient shall or may publish materials and information including or based on the Data Set, including but not limited to charts or statistics from the Institutional Profile Survey, all uses of these data shall reference the American Council of Academic Physical Therapy's Center for Excellence (ACAPT, YYYY, [acapt.org](http://acapt.org)) as the source of the data and acknowledge that ACAPT bears no responsibility for non-ACAPT interpretations presented or conclusions reached based on analyses of the data." Recipient should use this citation example: "*ACAPT Institutional Profile Survey, 2022, [acapt.org](http://acapt.org), provided with permission from the American Council of Academic Physical Therapy.*" Failure to comply with this citation requirement constitutes a breach of this Agreement, and, in addition to any remedy available to ACAPT under equity or law, may result in the revocation the Recipient's access to the Data Set and other data in ACAPT control, and revocation of membership in ACAPT.

### **6. Indemnification.**

- a. As used herein, "Claim" includes but is not limited to every phase of any lawsuit, loss, claim, damage or liability for death, illness, or personal injury of any person (including employees of Provider or Recipient), for property damage, and/or for infringement of patents, trade secrets, or other rights of a third party. This indemnity shall not be deemed excess coverage to any insurance or self-insurance Recipient may have covering Claim.
- b. Recipient hereby waives any Claim against Provider, and agrees to indemnify, defend, and hold harmless Provider, and their trustees, directors, employees, agents from any Claim arising out of or connected with this Agreement or the Data Set provided under this Agreement, except to the extent such Claim is due to their gross negligence or willful misconduct. Provider shall promptly notify



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Recipient of any such Claim and shall cooperate with Recipient and its insurance carrier in the defense of the Claim.

7. **No Damages.** The Data Set provided is compiled from the submission of data by participants, over which Provider has no control. Provider shall not be liable for any direct, consequential, or other damages suffered by Recipient or any others person or organization, including but not limited to, damages arising from loss of data, loss of access to Data Set, errors or omissions in Data Set, or from the Recipient's use or application of the Data Set. Recipient acknowledges and agrees that this exclusion and limitation is reasonable considering the nature of the data collection process and the nature and terms of the Parties' relationship.
8. **Notices and Reporting.** Any notices or reporting to be given hereunder to the Recipient or Provider shall be made via U.S. Mail or express courier to such Party's address given below, and/or via scanned and emailed document.

| If to Recipient, to: | If to Provider, to:  |
|----------------------|--|
|                      | American Council of Academic Physical Therapy                |
|                      | 1020 North Fairfax Street                                    |
|                      | Suite 401C   |
|                      | Alexandria, VA 22314-1488                                    |
|                      | Attn: Sandy Brooks   |
|                      | (Tel) 1-800-920-8150   |
|                      | (Email) <a href="mailto:acapt@acapt.org">acapt@acapt.org</a> |

9. **Relationship of Parties.** For the purposes of this Agreement and all services to be provided hereunder, each Party will be, and will be deemed to be, an independent contractor and not an agent or employee of the other Party. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party will have authority to make any statements, representations, or commitments of any kind, or to take any action that is binding on the other Party.
10. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and



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supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

11. **Assignment.** Recipient may not assign this Agreement, any rights hereunder, or any interest herein without the prior written consent of Provider.
12. **Amendment and Modification; Waiver.** This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each of the Parties.
13. **Severability.** Whenever possible, each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any portion of any provision of the Agreement should be found prohibited, void, or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition, voidness, or invalidity without affecting the enforceability of the remainder of such provision or the remaining provisions of this Agreement.
14. **Choice of Law and Jurisdiction.** The Parties agree that the laws of the Commonwealth of Virginia, without regard to its principles for deciding conflicts of law, shall apply to all disputes related in any way to this Agreement. Any controversy, claim or dispute among the Parties arising out of or related to this Agreement which cannot be settled amicably by the Parties hereunder will be brought in a court with subject matter jurisdiction in the City of Alexandria, in the Commonwealth of Virginia. The Parties agree that the courts in the City of Alexandria in the Commonwealth of Virginia shall have personal jurisdiction over each of them for all disputes under the terms of the Agreement.
15. **Headings.** Headings included herein are for convenience only and will not be used to construe this Agreement.
16. **Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one (1) and the same instrument.



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IN WITNESS WHEREOF, each of the undersigned Parties has caused this Agreement to be duly executed in its name and on its behalf.

**Recipient****Provider**

American Council of Academic Physical  
Therapy

Signature:

Signature:

Name:

Name:

Title:

Title:

Date:

Date: