

TERMS OF SERVICE AGREEMENT

THIS TERMS OF SERVICE AGREEMENT (“Agreement”) is entered into by and between Public Consulting Group, Inc. (“PCG”), a Massachusetts corporation and any person and the Accountable Community of Health (“ACH”) or other entity that such person represents (together, “User”) that reports data to State of Washington and the Washington Health Care Authority (“HCA”) pursuant to the HCA’s Medicaid Transportation Project. Each of PCG and User are referred to as a “Party” and are collectively referred to as the “Parties.”

BY CLICKING THE ACCEPTANCE BUTTON, ACCESSING, OR USING ANY PART OF THE SERVICE, USER EXPRESSLY AGREES TO AND CONSENTS TO BE BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. IF USER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THE BUTTON INDICATING NON-ACCEPTANCE MUST BE SELECTED, PCG WILL PROMPTLY INACTIVATE USER’S ACCOUNT, AND USER SHALL NOT ACCESS OR USE ANY PART OF THIS SERVICE.

1. Service Terms and Limitations.

- A. Description. PCG’s web portal service (“Service”) is proprietary to PCG and is protected by intellectual property laws and treaties. User’s access to the Service is licensed and not sold. Subject to the terms and limitations set forth in this Agreement, PCG agrees to provide User with a personal, non-transferrable, and non-exclusive account to enable User to access and use the Service during the term of this Agreement.
- B. Limitations. User shall not:
- i. Sell, market, rent, sub-license, or license any aspect of the Service or PCG’s intellectual property or otherwise use the Service for any purpose other than as specifically provided in this Agreement;
 - ii. Decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer, or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure, or other elements of the Service in whole or in part, for competitive purposes, or otherwise;
 - iii. Allow access to, provide, divulge, or make available the Service to any person other than those who have licenses to access the Service;
 - iv. Write or develop any derivative works based upon the Service;
 - v. Modify, adapt, translate, or otherwise make any changes to the Service or any part thereof;
 - vi. Use the Service to provide processing services to third parties, or otherwise use the same on a “service bureau” basis;
 - vii. Disclose or publish, without PCG’s prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Service; or
 - viii. Remove from the Service identification, patent, copyright, trademark, or other notices or circumvent or disable any security devices, functionality, or features.
- User obtains no ownership rights or any other rights in PCG’s intellectual property or the Service, other than those specified in this Agreement. User grants PCG a limited license to use User’s transactional and performance data related to User’s use of the Service (e.g., statistical information about the number of claims processed) solely on an aggregated and de-identified basis as part of PCG’s overall statistics for marketing and analytical purposes.
- C. Accessibility. User agrees that from time to time the Service may be inaccessible or inoperable for any reason and without notice, including, without limitation:
- i. Equipment malfunctions;
 - ii. Periodic maintenance procedures or repairs which PCG may undertake from the time to time; or
 - iii. Causes beyond the control of PCG or which are not reasonably foreseeable by PCG.
- D. Equipment and Data. User shall be solely responsible for providing, maintaining, and ensuring compatibility with the Service, all hardware, software, electrical, and other physical requirements for User’s use of the Service, including, without limitation, telecommunications and internet access connections and links, web browsers, or other equipment, programs, and services required to access and use the Service. User shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership of any and all data that User submits to the Service.

2. Limitations.

- A. Security. User shall be solely responsible for the security, confidentiality, and integrity of all messages, content, and other information that User receives, transmits through, or stores on the Service. User shall be solely responsible for any authorized or unauthorized access to User’s account by any person. User agrees to bear all responsibility for the confidentiality of User’s password and all use of the Service with User’s password. PCG shall have no liability for any loss or damage arising from User’s failure to comply with these requirements.
- B. Privacy. When reasonably practicable, PCG will attempt to respect User’s privacy. PCG will not monitor, edit, or disclose any personal information about User or User’s account, including its contents or User’s use of the Service, without User’s prior consent unless PCG has a good faith belief that such action is necessary to:
- i. Comply with legal process or other legal requirements of any governmental authority;
 - ii. Protect and defend the rights or property of PCG;
 - iii. Enforce this Agreement;
 - iv. Protect the interests of users of the Service other than the User or any other person; or
 - v. Operate or conduct maintenance and repair of PCG’s services or equipment, including the Service as authorized by law.

User has no expectation of privacy with respect to the Internet generally. User’s IP address is transmitted and recorded with each of User’s uploads or messages through the Service. PCG reserves the right to provide certain information in aggregate form collected from and related to User to third persons.

3. User Representations. User represents and warrants to PCG that:

- A. To the extent a person, User is (i) over the age of eighteen (18); (ii) is affiliated, whether as an employer, contractor, subcontractor, or agent, with an ACH that reports data to State of Washington and the HCA pursuant to the HCA’s Medicaid Transformation Project; and (iii) has the legal authority to bind the ACH that such User represents;
- B. User has the power and authority to enter into and to perform User’s obligations under this Agreement;
- C. All information provided by User to PCG is truthful, accurate, and complete; provided, further, that User acknowledges that PCG shall accept all information provided by User on an as-is basis and under no circumstances shall PCG be responsible for the truthfulness, accuracy, or completeness of such information provided by User.

- D. User shall comply with all terms and conditions of this Agreement, including, without limitation, the provisions set forth in Section 4; and
- E. User has provided and will provide accurate and complete registration information, including, without limitation, User's legal name, ACH / entity affiliation, address, email address, and telephone number.

Violation of any of these representations is cause for PCG to suspend and/or terminate User's access to the System immediately and without notice.

4. **Acceptable Use.** User is solely responsible for any and all acts and omissions that occur under User's account or password and User agrees not to engage in unacceptable use of the Services, which includes, without limitation, use of the Service to:
- A. Violate any law or regulation, or to facilitate the violation of any law or regulation;
 - B. Disseminate, store, or transmit unsolicited messages, chain letters, or unsolicited commercial email;
 - C. Disseminate or transmit material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening, or abusive;
 - D. Disseminate, store, or transmit files, graphics, software, or other material that actually or potentially infringes the copyright, trademark, patent, trade secret, or other intellectual property right of any person;
 - E. Create a false identity or otherwise attempt to mislead any person as to the identity or origin of any communication;
 - F. Export, re-export, or permit downloading of any message or content in violation of any export or import law, regulation, or restriction of the United States and its agencies or authorities, or without all required approvals, licenses, or exemptions;
 - G. Interfere, disrupt, or attempt to gain unauthorized access to other accounts on the Service or any other computer network;
 - H. Disseminate, store, or transmit viruses, Trojan horses, or any other malicious code or program; or
 - I. Engage in any other activity deemed by PCG to be in conflict with the spirit or intent of this Agreement.

Violation of any of these provisions is cause for PCG to suspend and/or terminate User's access to the System immediately and without notice.

5. **Termination.** This Agreement is effective upon User's acceptance as set forth herein and shall continue in full force until terminated. User may terminate this Agreement for any reason upon thirty (30) days' prior notice to PCG. PCG reserves the right, in its sole direction and without prior notice, at any time and for any reason to:
- A. Remove or disable access to all or any portion of the Service;
 - B. Suspend User's access to or use of all or any portion of the Service; and
- Terminate this Agreement.
6. **Disclaimer of Warranties.** THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. USE OF THE SERVICE IS AT USER'S SOLE RISK. PCG DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES PCG MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICE. USER ACKNOWLEDGES THAT PCG DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING, BUT NOT LIMITED, TO THE INTERNET, AND THAT SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PCG MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE, IN RELATION TO THE SERVICE.
7. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL PCG BE LIABLE TO USER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF PCG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY MATTER ARISING FROM OR RELATING TO THIS AGREEMENT, THE SERVICE, OR THE INTERNET GENERALLY, INCLUDING, WITHOUT LIMITATION, USER'S USE OR INABILITY TO USE THIS SERVICE, ANY CHANGES TO OR INACCESSIBILITY OF THE SERVICE, DELAY, FAILURE, UNAUTHORIZED ACCESS TO OR ALTERATION OF ANY TRANSMISSION OR DATA, ANY MATERIAL OR DATA SENT OR RECEIVED OR NOT SENT OR RECEIVED, ANY TRANSACTION OR AGREEMENT ENTERED INTO THROUGH THE SERVICE, OR ANY DATA OR MATERIAL FROM A THIRD PERSON ACCESSED ON OR THROUGH THE SERVICE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT, OR OTHERWISE. SOME STATES PROHIBIT THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THUS THIS LIMITATION OF LIABILITY MAY NOT APPLY TO USER TO THE EXTENT PROHIBITED OR LIMITED BY APPLICABLE LAW. IF USER IS DISSATISFIED WITH THE SERVICE, USER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR USER TO DISCONTINUE USE OF THE SERVICE AND TERMINATE THIS AGREEMENT IN ACCORDANCE WITH SECTION 6.
8. **Indemnification.** User agrees to indemnify, hold harmless, and defend PCG, its shareholders, directors, officers, employees, and agents from and against any action, cause, claim, damage, debt, demand, or liability, including reasonable costs and attorney's fees, asserted by any person, arising out of or relating to:
- A. This Agreement;
 - B. User's use of the Service, including any data, work, and communications transmitted or received by User; and
 - C. Any unacceptable use of the Service, including, without limitation, any statement, data, or content made, transmitted, or republished by User which is prohibited as unacceptable pursuant to Section 4 above.
9. **Miscellaneous.**
- A. **Assignment.** User may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of Any attempt by User to assign his or her rights or obligations under this Agreement in breach of this Section 9(A) shall be void and of no effect.
 - B. **Governing Law.** This Agreement and the legal relationship between the Parties shall be governed by and constructed in accordance with the laws of the State of Washington, without regard to its conflict of laws principles.
 - C. **Construction.** User hereby waives any rule of construction that requires that ambiguities in this Agreement be construed against the drafter. The headings to the sections of this Agreement are included for convenience only and shall not affect the interpretation of this Agreement.
 - D. **No Waiver.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of this Agreement.
 - E. **Severability.** The invalidity or unenforceability of any provision contained herein shall not affect the validity of any other provisions of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted, or, to the extent permitted by applicable law, such invalid or unenforceable paragraph shall be replaced with another paragraph as similar in terms as may be possible and as may be legal, valid, and enforceable.

- F. Force Majeure. No Party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power, or other acts or causes reasonably beyond the control of that Party. The Party experiencing the force majeure event agrees to give the other Party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.
- G. Independent Contractors. PCG, User, and their respective personnel, are and shall be independent contractors and none by virtue of this Agreement shall have any right, power, or authority to act or create any obligation, express or implied, on behalf of any of the others.
- H. Amendment. PCG shall have the right, at any time and without notice, to add or modify the terms of the Agreement, simply by delivering such amended terms to User by email at the address provided to PCG by User. User's access to or use of the Service after the date such amended terms are delivered to user shall be deemed to constitute acceptance of such terms.