

**OREGON MATERNAL DATA CENTER  
HOSPITAL PARTICIPATION AGREEMENT**

This Maternal Data Center Participation Agreement (the “**Participation Agreement**”) is entered into as of \_\_\_\_\_ (the “**Effective Date**”) by and between \_\_\_\_\_, (the “**Participant**”), and the Oregon Health Care Quality Corporation, an Oregon non-profit, 501(c)(3) tax-exempt corporation (“**QCorp**”), (individually, a “**Party**” and, collectively, the “**Parties**”).

**RECITALS**

WHEREAS, QCorp is sponsoring the Oregon Maternal Data Center program (the “**Oregon-MDC Program**”). The purpose of the Oregon-MDC Program is to serve as a hospital quality improvement program for perinatal care in Oregon. The interest in developing the Oregon MDC Program has evolved from a broad based community collaboration of multiple stakeholders and organizations through the Oregon Perinatal Collaborative.

WHEREAS, QCorp is a broad-based, independent, neutral, trusted nonprofit organization dedicated to improving the quality and affordability of health care in Oregon through engagement with health plans, medical groups, hospitals, public sector health care representatives, purchasers, health care providers, employers and consumers in reporting on quality and resource use performance within the Oregon delivery system. Since 2006, has utilized the Oregon Healthcare Quality Reporting System (“OHQRS”) to support these efforts. QCorp is established as a collaborative for sharing information and best practices, and a mechanism for improving health care through community-based activities including the OHQRS. The primary purpose of OHQRS is to improve the quality of health care and treatment of patients and members of the participating health care providers and health plans, respectively, in Oregon. OHQRS is an evolving initiative based on the commitment of participating health plans, medical groups, hospitals, and other health care providers that are willing to merge, aggregate, and analyze their claims, encounter, and clinical data and other information. OHQRS collects, validates, analyzes, and aggregates data to generate Performance Measure Results to be used for, among other things, health care operations of the participating organizations. OHQRS provides clinics, medical groups, hospitals and other providers of services with actionable and consolidated information about their patients to facilitate treatment decisions, health care operations and quality improvement activities.

WHEREAS, California Maternal Quality Care Collaborative / California Perinatal Quality Care Collaborative within the School of Medicine at Stanford University (“**CMQCC**”) has developed and operates a sophisticated data management, analytics and reporting program for tracking, measuring, monitoring and assessing perinatal/maternity services programs through CMQCC’s California Maternal Data Center. CMQCC was founded in 2006 with the mission to end preventable morbidity, mortality and racial disparities in California maternity care based on transforming data and statistics into actionable information, facilitating communications and collaboration among all maternity stakeholders, and defining and disseminating clinical best practices and quality improvement principles and techniques.

WHEREAS, In order to leverage CMQCC’s reporting, analytic and reporting services, QCorp has entered into a services agreement with CMQCC to act as a Business Associate and Subcontractor to QCorp to provide, subject to certain terms and conditions, proprietary CMQCC data management services, tools, analytics and reporting to support the Oregon-MDC data center (the “**Oregon-MDC**”) and the Oregon-MDC web application (the “**Oregon-MDC Web Tool**”).

WHEREAS, Participant desires to participate in the Oregon-MDC Program and agrees to adhere to the principles outlined below.

WHEREAS, QCorp and Participant desire to enter into this Participation Agreement setting forth the terms relating to the Participant's participation in the Oregon-MDC Program including the use of the CMQCC subcontracted services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

## **AGREEMENT**

1. Oregon-MDC Participants. Hospitals with Labor and Delivery Units are eligible to participate in the Oregon-MDC Program. All potential Oregon-MDC Program participants must enter into a participation agreement substantially the same as this Participation Agreement in order to participate in the Oregon-MDC Program.
2. Purpose and Goals of the Oregon-MDC Program. The Participant acknowledges that the purpose of the Oregon-MDC Program is to improve the quality and outcomes of perinatal health care in Oregon as part of QCorp's OHQRS services and its purposes of supporting and facilitating treatment decisions, health care operations and quality improvement activities. The Oregon MDC Program includes:
  - a) Development of a responsive perinatal data system for Oregon.
  - b) Improvement in the accuracy of the data collected for documenting and reporting on maternal and infant health and the provision of maternity care services.
3. Participant Obligations. Participant agrees to:
  - a) Collect, concurrently with delivery of care to patients, health care process and outcomes data regarding maternal and infant health and the provision of maternity care services, and provide such data in a timely and accurate manner. Specifically, Participant agrees to disclose to the Oregon-MDC the data elements ("**Participant Data**") identified in Attachment A, which constitute a Limited Data Set, as defined in 45 C.F.R. § 164.514(e)(2).
  - b) Provide only Participant Data, as specified above, removing all individual patient identifiers,<sup>1</sup> except for a single hospital-assigned unique patient identifier (e.g. Abstract Record Number, Medical Record Number or Hospital Visit Number) (the "**Record Identifier(s)**") that will be submitted to the Oregon-MDC by Participant simultaneously with the Participant Data, but which will be encrypted immediately and, in any event, prior to QCorp or its subcontractor CMQCC having any access to the Participant Data. The Participant Data and related Record Identifiers, constitute Protected Health Information, as defined in 45 C.F.R. § 160.103.
  - c) Disclose Participant Data and Record Identifiers on a monthly basis, as requested by QCorp, to the Oregon-MDC no later than forty five (45) days after the end of any such reporting period. Participant may also submit Participant Data and Record Identifiers for prior reporting periods dating back to January 1, 2011 for purposes of historical benchmarking. Participant Data and Record Identifiers are to be submitted through the Oregon-MDC Web Tool as specified in instructions provided. In the event

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<sup>1</sup> For purposes of this Participation Agreement and consistent with 45 CFR 164.514(e)(2), individual patient identifiers are defined as the following identifiers of the individual(s) who is the subject of the PHI, or of relatives, employers or household members of the individual(s): names; postal address information, other than town or city, State, and zip code; telephone numbers; fax numbers; electronic mail addresses; Social Security Numbers; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; Web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

errors are noted in the data or updated data becomes available, Participant may re-submit such data to the Oregon-MDC.

- d) Permit Participant Data to be aggregated with other participant data and with statewide data files, which QCorp and CMQCC have secured permission to utilize within the Oregon-MDC for analytical and reporting purposes.
- e) Permit Participant Data to be de-identified, in accordance with the requirements of HIPAA's de-identification standard safe harbor method set forth in 45 C.F.R. § 164.514(b)(2) ("**De-Identified Data**") and authorize CMQCC to transfer De-Identified Data to QCorp as provided in this Agreement.
- f) Permit Participant Data to be analyzed by CMQCC in order to generate the metrics ("**Metrics**") identified in Attachment B. Such Metrics may be modified or added to only upon the mutual written agreement of the Parties.
- g) Comply with the terms and conditions of the Business Associate and Data Use Agreement attached hereto as Attachment C.
- h) Ensure that any Participant Data or Record Identifiers uploaded to and accessed through the Oregon-MDC Web Tool are handled in the same manner as Participant would handle any Protected Health Information held by covered entity.
- i) Be solely responsible for decisions with respect to use and disclosure of the Participant Data and Record Identifiers anytime before such Participant Data or Record Identifiers are submitted to the Oregon-MDC, and for transmission of any Participant Data and Record Identifiers to the Oregon-MDC, including any determination as to whether patient authorization is required for transmission of such Participant Data and Record Identifiers to the Oregon-MDC.
- j) Remain at all times the sole keeper of any key for decrypting coded information uploaded to the Oregon-MDC, including the Record Identifiers and the Participant Authorized Users' access codes.
- k) Designate a contact person for the Oregon-MDC Program in Section 10 below who will serve as a liaison between the Participant, QCorp, and CMQCC for quality improvement and/or data collection activities.
- l) Appoint appropriate personnel (e.g., physicians, other clinicians, medical records staff or data managers) to serve as authorized users on behalf of Participant ("**Participant Authorized Users**").
- m) Ensure that Participant Authorized Users receive the training made available by QCorp or subcontractor CMQCC (either by webinar or by written materials) related to proper collection and submission of Participant Data, analyses and use of report information to improve care.
- n) Ensure that the Participant Authorized Users responsible for maintenance, collection and submission of Participant Data assure a minimum standard of data quality, possibly using form evaluation tests that QCorp or subcontractor CMQCC may provide to Participant.
- o) Authorize Participant's Participant-level Metrics to be shared pursuant to the terms of Section 6, Release of Information.
- p) Ensure that other Oregon-MDC Program participants' Metrics shared with Participant which are not otherwise publically-available are kept strictly confidential and not further disclosed by Participant.

4. QCorp Obligations. QCorp agrees to:

- a) Provide oversight and administration of the Oregon MDC Program, administer and meet all obligations described in the Oregon Maternal Data Center Service Agreement and Subcontractor Business Associate and Data Use Agreement to which QCorp and CMQCC are parties.
  - b) Use and disclose the Participant Data and Record Identifiers only in accordance with the terms and conditions of the Business Associate and Data Use Agreement attached hereto as Attachment C.
  - c) Be responsible for maintaining and updating the Participant Data elements and Metrics for the Oregon-MDC Program and for communicating the data specifications for the Participant Data to Participant.
  - d) With the exception of CMQCC staff, be solely responsible for authorizing QCorp program staff, or any other individuals (“**QCorp Authorized Users**”), to access the Metrics, benchmarks, Participant participation information, and submission tracking information within the Oregon-MDC Web Tool.
  - e) Rely upon Oregon Perinatal Collaborative, which is comprised of hospital and other representatives, or an appointed subgroup thereof, to determine indicators suitable for public release as specified in Section 6.
  - f) Provide consultation and/or training to Participant regarding obstetrical and neo-natal best practices.
5. CMQCC Obligations. Under the services agreement between QCorp and CMQCC, CMQCC is obligated to:
- a) Meet all obligations described in the Oregon Maternal Data Center Service Agreement and Subcontractor Business Associate and Data Use Agreement to which QCorp and CMQCC are parties.
  - b) Provide Participant with access to the Oregon-MDC Web Tool for uploading of the Participant Data and Record Identifiers as well as for data entry of specific data elements.
  - c) Encrypt all Record Identifiers in Participant-uploaded data such that only Participant Authorized Users will be able to view any such Record Identifiers.
  - d) Aggregate and analyze Participant Data to generate the Metrics and applicable benchmarks established by QCorp on behalf of the Oregon Perinatal Collaborative.
  - e) Permit Participant and QCorp to view and download all Metrics and applicable benchmarks.
  - f) Permit Participant to view and download information regarding all numerator cases for each of the Metrics listed in Attachment B for all time periods for which Participant has submitted the data required to calculate those Metrics.
  - g) Provide Participant-specific reports via the Oregon-MDC Web Tool, which will include Participant-specific information based upon the Participant Data, confidentially to Participant, so that Participant may evaluate certain quality and other indicators for purposes of quality improvement and benchmarking by Participant.
  - h) Provide QCorp with Limited Data Set and/or De-Identified Data based on Participant Data on a quarterly basis, in accordance with the requirements of HIPAA and applicable CMQCC policies for purposes related to Oregon-MDC Program.
  - i) Use and disclose the Participant Data and Record Identifiers only in accordance with the terms and conditions of the Subcontractor Business Associate and Data Use Agreement between QCorp and

CMQCC, which is consistent with the provisions of the Business Associate and Data Use Agreement between Participant and QCorp as reflected in Attachment C.

- j) Only release information publicly in accordance with Section 6 of this Participation Agreement and at the direction of QCorp on behalf of the Oregon Perinatal Collaborative.
  - k) Provide Participant training and technical support related to the Oregon-MDC Program services provided by CMQCC and use of the Oregon-MDC Web Tool, including uploading Participant Data.
  - l) Host quarterly user group meetings which Oregon-MDC Program participants may voluntarily choose to attend.
6. Release of Information. The purpose of the Oregon-MDC Program is to improve the care for and outcomes of pregnant women and their newborns. In order to fulfill this purpose, the parties recognize the importance of sharing valuable information generated through the Oregon-MDC among Oregon-MDC Program participants, publically, and with researchers. QCorp will use the established Oregon Perinatal Collaborative process to decide which Metrics shown in Attachment B will be unblinded and made available among Participants and which will be made unblinded and made available to the public. Oregon Perinatal Collaborative, which is comprised of QCorp, hospital and other members, regularly reviews measures used to assess perinatal services and recommends how Metrics should be reported to focus Collaborative priorities for quality improvement efforts.

Oregon Perinatal Collaborative members consider unblinding measures as between hospitals when:

- They are appropriate for comparisons among hospitals, and
- Hospitals have had the opportunity to validate measure results with internal data

Oregon Perinatal Collaborative members consider publicly reporting measures when they are:

- Already publicly released by QCorp, such as EED
- Publicly released by other organizations, such as Leapfrog, CMS, and the Joint Commission, and
- Nationally endorsed

- a) The parties agree that QCorp shall be entitled to use and disclose, as between Oregon-MDC Program participants, Participant-level Metrics which identify the Participant by name, but only for purposes approved in advance by the Oregon Perinatal Collaborative, or an appointed subgroup thereof, and according to the principles listed above.
- b) The parties agree that QCorp shall be entitled to use, publish and/or publically release, including to certain state and federal agencies in furtherance of quality improvement reporting efforts, Participant-level Metrics which identify the Participant by name, but only for purposes approved in advance by the Oregon Perinatal Collaborative, or an appointed subgroup thereof, and according to the principles listed above:
- c) The parties further agree that QCorp may, from time to time, allow researchers unaffiliated with QCorp to apply to use, for research purposes, sets of data, which may be based in part upon the Participant Data, but which data, if released to such unaffiliated researchers, shall be de-identified in accordance with the requirements of HIPAA's de-identification standard safe harbor method set forth in 45 C.F.R. § 164.514(b)(2). Any such release of information to researchers unaffiliated with QCorp shall be subject to prior review and approval by QCorp or a panel which QCorp creates for the specific purpose of reviewing and approving such requests.
- d) If Participant provides explicit advance authorization in writing to CMQCC, the parties also agree that CMQCC shall have the right to release Participant-specific information to certain performance reporting

organizations/programs selected by Participant, for example, the Center for Medicare Services Inpatient Quality Reporting Program.

7. Term; Termination.

- a) The initial term of this Participation Agreement (“**Initial Term**”) shall be for a period of three (3) years beginning on the Effective Date, unless sooner terminated as provided herein. At the end of the Initial Term and each Renewal Term (as hereinafter defined), if any, this Participation Agreement shall be automatically renewed for an additional term of one (1) year (each a “**Renewal Term**”), unless Participant or QCorp provides written notice of non-renewal not less than thirty (30) days prior to the end of the applicable Initial Term or Renewal Term.
- b) Participant or QCorp may terminate this Participation Agreement without cause upon thirty (30) days’ written notice to the other Parties. Any Party may terminate this Participation Agreement upon breach by the other Party of any material provision of this Participation Agreement, provided such breach continues for five (5) days after receipt by the breaching Party of written notice of such breach from a non-breaching Party and the non-breaching Party has not given written authorization for a longer time to cure such breach. This Participation Agreement may be terminated immediately upon the occurrence of any of the following events:
  - (1) Any Party closes or discontinues operations to such an extent that program activities cannot be carried out adequately.
  - (2) Participant loses either its license to operate as a hospital under Oregon or applicable state law or its Medicare certification.
  - (3) Participant Data held by QCorp or subcontractor CMQCC is used or disclosed in a manner contrary to the provisions of the this Agreement including the Business Associate and Data Use Agreement attached hereto as Attachment C, or compliance with HIPAA including a Breach as defined by 45 CFR 164.502.

8. Fees and Payment.

In consideration of the services provided under this Agreement, Participant agrees to make payment to QCorp as follows:

- a) Fee schedule: The first year annual Participant fee shall be as follows:
  - Full enrollment in the Oregon-MDC Program for Hospitals with 1,100 or more annual deliveries: \$10,000.
  - Full enrollment in the Oregon-MDC Program Hospitals with 500 to 1,099 annual deliveries: \$7,000.
  - Full enrollment for the Oregon MDC Program for hospitals with less than 500 annual deliveries and Critical Access Hospitals: \$3,000.

Subsequent yearly Participant fees shall be determined by QCorp.

- b) Invoicing: QCorp shall issue an invoice for Participant’s entire yearly fee one time per year to the following Participant address:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Organization/Department: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Upon receipt of the invoice, Participant shall submit payment for the entire amount to QCorp within thirty (30) days. Checks should be made payable to “Oregon Health Care Quality Corporation” and submitted to:

Oregon Health Care Quality Corporation  
520 SW 6<sup>th</sup> Avenue, Suite 830  
Portland, OR 97204

Questions concerning invoicing or payment can be directed to:

Mary Scott, Director of Finance and Operations  
mary.scott@q-corp.org  
(503) 241-3571 or direct: (503) 972-0863  
Facsimile: (503) 972-0822

9. Ownership Rights.

- a) Protected Health Information. Participant Data and Record Identifiers submitted to the Oregon-MDC, shall be the exclusive property of Participant. Participant shall retain all right, title, and interest in and to the Participant Data and Record Identifiers, subject to the rights, if any, of the patients of Participant in such information, and subject to the rights granted to QCorp and its subcontractor CMQCC in this Agreement and the Business Associate and Data Use Agreement attached hereto as Attachment C.
- b) Data Aggregation and De-Identification. During the term of this Agreement, Participant hereby grants to QCorp and its subcontractor CMQCC a non-exclusive, perpetual, irrevocable, royalty free, fully paid license to use, reproduce, aggregate, and modify Participant Data and Record Identifiers to (i) create Aggregated Data, including Limited Data Sets, and (ii) create De-Identified Data, solely for the purposes of supporting the Oregon-MDC Program, pursuant to the terms and conditions of this Agreement, the Business Associate and Data Use Agreement attached hereto as Attachment C, and subject to HIPAA’s requirements.
- c) Limited Data Sets. Participant hereby grants to QCorp and its subcontractor CMQCC a non-exclusive, perpetual, irrevocable, royalty free, fully paid license to use, reproduce, aggregate, and modify Limited Data Sets created from Participant Data and Record Identifiers solely for the purposes of supporting the Oregon-MDC Program, pursuant to the terms and conditions of this Agreement, the Business Associate and Data Use Agreement attached hereto as Attachment C, and subject to HIPAA’s requirements.
- d) De-Identified Data and Metrics. Participant hereby grants to QCorp and its subcontractor CMQCC a non-exclusive, perpetual, irrevocable, royalty free, fully paid license, , to use, reproduce, aggregate, and modify De-Identified Data created from Participant Data and Record Identifiers solely for the purposes of supporting the Oregon-MDC Program purposes, pursuant to the terms and conditions of this Agreement, the Business Associate and Data Use Agreement attached hereto as Attachment C, and subject to HIPAA’s requirements. Further, all right, title and interest in the Metrics, and all intellectual property rights therein, belong to and are retained solely by QCorp and CMQCC.

10. Confidentiality. This Agreement may involve each Party accessing technical or planning information or data which is confidential or proprietary to the other Party or to the QCorp’s subcontractor CMQCC for services covered under this Agreement. Each Party agrees to treat as confidential and of a proprietary nature, and to use only for the benefit of the Parties and QCorp’s subcontractor CMQCC in conjunction with its performance of this Agreement, all information submitted to or acquired by the Parties under this Agreement. The Parties further agrees that such information or data will not be disclosed to third Parties at

any time without the prior written consent of the other Party, unless, at the time of disclosure such data is in the public domain, or was known to the other Party prior to performing its Services hereunder, or was obtained by the Party from a third Party.

11. Participant Contact Person for Reports. Participant requests that all communications and reports relating to Participant Data submitted by Participant should be made to the following Participant contact person:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Limitation of Liability. Participant understands and agrees that QCorp and its subcontractor CMQCC shall have no liability for any problems relating to the electronic transmission of data or reports, whether due to problems with QCorp or its subcontractor CMQCC's servers, the Participant's service provider, the Participant's use of a third Party to submit data, or otherwise.

13. No Warranties; No Guarantee. QCorp and its subcontractor CMQCC provides Participant the services and rights granted in this Agreement AS IS and WITH ALL FAULTS. QCorp and its subcontractor CMQCC makes no representations and extends no warranties of any kind, either expressed or implied. Among other things, QCorp and its subcontractor CMQCC disclaims any express or implied warranty (a) of merchantability, of fitness for a particular purpose, (b) of non-infringement, or (c) arising out of any course of dealing.

14. Insurance. Prior to execution of the Agreement and annually thereafter during the Term, Participant may request that QCorp furnish to Participant a certificate of insurance naming Participant and its employees, directors and officers as additional insureds on all coverages other than the Workers' Compensation and Employer's Liability policies. QCorp shall have all of its insurers waive their subrogation rights against Participant and that waiver shall be noted on the certificate of insurance. QCorp's insurance shall be primary and non-contributory coverage and the policies shall not contain any intra-insured exclusions as between insured persons or organizations. The limits of coverage shall not be construed as a limitation of any potential liability to Participant, and failure to request evidence of this insurance shall not be construed as a waiver of QCorp's obligation to provide the insurance coverage specified. In the event of any material change or cancellation of the required coverages, QCorp will provide Participant with at least thirty (30) days' prior written notice.

15. Indemnification

- a) QCorp Indemnification. QCorp will indemnify, defend, and hold harmless Participant and its respective trustees, directors, employees, agents, subcontractors, and members ("Participant Indemnitees") from any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the Participant or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with this Agreement or the Services provided under this Agreement, except to the extent that the liability is due to the gross negligence and willful misconduct of Participant. Participant will promptly notify QCorp of any claim and will cooperate with QCorp in the defense of the claim.
- b) Participant Indemnification. Participant will indemnify, defend, and hold harmless QCorp and its respective trustees, directors, employees, agents, subcontractors, and members ("QCorp Indemnitees") from any liability, damage, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon the QCorp Indemnitees or any one of them in connection with any claims, suits, actions, demands, or judgments arising out of or connected with this Agreement or the Services provided under this Agreement, except to the extent that the liability is due to the gross negligence and willful misconduct of QCorp. QCorp



will promptly notify Participant of any claim and will cooperate with Participant in the defense of the claim.

c) Survival. The provisions of this Section 15 will survive termination of this Agreement.

16. Compliance with Law. The Parties agree to comply with all applicable federal and state laws including without limitation any applicable laws with respect to use, disclosure, re-use or re-disclosure of individually identifiable health information.
17. Medicare/Medicaid Participation. QCorp hereby represents and warrants that neither QCorp nor its principals (if applicable) are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in any federally funded health care program, including Medicare and Medicaid. QCorp hereby agrees to immediately notify Participant of any threatened, proposed, or actual debarment, suspension or exclusion from any federally funded health care program, including Medicare and Medicaid. In the event that QCorp is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any federally funded health care program during the term of the Agreement, or if at any time after the effective date of the Agreement it is determined that QCorp is in breach of this Section, the Agreement shall, as of the effective date of such action or breach, automatically terminate. QCorp further understands that Participant periodically checks contracted individuals and entities against the Office of Inspector General (OIG) and General Service Administration (GSA) databases of Excluded Individuals and Entities and will notify QCorp if it discovers a match. Participant will take reasonable measures to verify that the match is the same individual or entity before taking any action to terminate any underlying agreement(s).
18. Force Majeure. No Party is liable for any failure to perform as required by this Agreement if the failure to perform is caused by circumstances reasonably beyond the Party's control, such as labor disturbances or labor disputes of any kind, accidents, failure of any governmental approval required for full performance, civil disorders or commotions, acts of aggression, acts of God, energy or other conservation measures, explosions, failure of utilities, mechanical breakdowns, material shortages, pandemics, disease, theft, or other occurrences.
19. Dispute Resolution. If any dispute arises between the Parties in connection with payments due under this Agreement and it cannot be resolved by mutual agreement after meetings between the Parties, it will be finally settled under the JAMS Comprehensive Arbitration Rules and Procedures, by one or more arbitrators appointed in accordance with the Rules. Arbitration will be held in some mutually agreeable location.
20. Independent Contractors. None of the provisions of this Participation Agreement are intended to create any relationship between the Parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Participation Agreement. Nothing in this Participation Agreement shall constitute or be construed as constituting or intending to create an agency, partnership, joint venture, or employer/employee relationship between QCorp, its subcontractor CMQCC, and the Participant. None of the Parties, nor any of their respective officers, directors, employees, or agents, shall have the authority to bind the other or shall be deemed or construed to be the agent, employee or representative of the other. Neither the Parties, nor any of their employees or agents, shall have any claim under this Participation Agreement or otherwise against the other Parties for workers' compensation or any employee benefits of any kind.
21. Notices. Any notice, request or other communication to be given by any Party hereunder shall be sufficient if in writing and sent by registered or certified mail, postage prepaid, or by telegram, telex, or facsimile transmission, addressed to the other Party at the addresses and/or facsimile numbers set forth below Agreement (or to such other address as either Party may notify the other in writing).

If to Participant, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to QCorp, to:

Mylia Christensen, Executive Director  
Oregon Health Care Quality Corporation  
520 SW 6<sup>th</sup> Avenue, Suite 830  
Portland, OR 97204  
mylia.christensen@q-corp.org  
Facsimile: (503) 972-0822

Any such notice, request, or communication shall be effective on the date actually delivered or received by the addressee, as evidenced by an affidavit of service, return receipt, or similar evidence.

- 22. Entire Agreement. This Participation Agreement contains the entire agreement of the Parties with respect to the subject matter hereof. It may not be changed orally, but only by an agreement in writing, signed by the Party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.
- 23. Effect on Prior Agreements. This Participation Agreement supersedes all prior agreements, written or oral, and constitutes the entire Participation Agreement between the Participant and QCorp regarding the subject matter hereof.
- 24. Severability. If any provision of this Participation Agreement is declared invalid or unenforceable, such provision shall be limited and construed so as to make it enforceable or, if such limitation or construction is not possible, such provision shall be deemed stricken from this Participation Agreement. In such event, all other provisions not stricken from this Participation Agreement shall remain in full force and effect, unless such enforcement would be inconsistent with the purposes of this Participation Agreement.
- 25. Binding Effect. This Agreement shall be binding on and inure to the benefit of the heirs, legal representatives, successors, and assigns of the Parties; it being understood, however, that the rights hereunder are personal to the Parties, and neither Party may assign its interest in or obligations under this Agreement without the prior written consent of the other Party.
- 26. Electronic Signatures. The Parties to this Agreement agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The Parties further waive any right to challenge the admissibility or authenticity of this Agreement in a court of law based solely on the absence of an original signature.
- 27. Counterparts; Facsimiles. This Participation Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile or .pdf copies hereof shall be deemed to be originals.

*[Remainder of Page Intentionally Left Blank – Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Participation Agreement as of the Participation Agreement Effective Date.

**PARTICIPANT**

**OREGON HEALTH CARE  
QUALITY CORPORATION**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Name: Mylia Christensen

Title: \_\_\_\_\_

Title: Executive Director

## **Attachment A**

### **Data Elements**

#### **Participant Data**

- Hospital Identifiers and Type
- Patient Zip Code
- Patient Date of Birth
- Admission and Discharge Information, including dates, hours, admission type and discharge disposition
- Other codes used to identify conditions or events relating to the admission, as long as such data are not individual patient identifiers
- Revenue Codes, Service Units and Charges
- Payer information
- Diagnosis and Procedure Codes
- Dates of Service
- Provider Identifiers
- Race/Ethnicity
- Gestational Age
- Parity
- ICU Days
- Blood Product Units Transfused
- Newborn birth weight
- Apgar score (5 minutes and/or 10 minutes)
- Other clinical data as may be requested from time to time, as long as such data are not individual patient identifiers
- Other indicators of sample status for performance reporting agencies

#### **Record Identifier**

- Patient Control Number, Patient Visit/Account Number, or Medical Record Number  
(*to be encrypted upon receipt at Oregon-MDC*)

## Attachment B

### Hospital Account Metrics

	Measure	Hospital-Level Rates	Patient Level Drill Down	Provider Level Rates	Averages-System, Nursery, Delivery Volume and/or Region <sup>1</sup>	By Payer	Benchmarks-OMDC <sup>1</sup>	Averages-OMDC, WSHA-MDC, and California Statewide <sup>2</sup>
Clinical Quality	Elective Delivery <39 Weeks (PC-01, CMS IQR, HEN, LF)	✓	✓	✓	✓	✓	✓	✓
	Episiotomy Rate (NQF, LF)	✓	✓	✓	✓	✓	✓	✓
	Cesarean Section—Nulliparous, Term, Singleton, Vertex (PC-02, LF, RM)	✓	✓	✓	✓	✓	✓	✓
	Cesarean Section—Nulliparous, Term, Singleton, Vertex, Age Adj.	✓						
	Cesarean Section—Term, Singleton, Vertex (AHRQ IQI 21)	✓	✓		✓	✓	✓	✓
	Cesarean Section—Primary (AHRQ IQI 33, RM)	✓	✓	✓	✓	✓	✓	✓
	Cesarean Section-Primary (Standard)	✓	✓	✓	✓	✓	✓	✓
	Cesarean Rate—Total	✓	✓	✓	✓	✓	✓	✓
	NTSV CS-No Labor			✓				
	Induction Rate	✓	✓	✓	✓	✓	✓	✓
	Failed Induction Rate	✓	✓	✓	✓	✓	✓	✓
	Appropriate DVT Prophylaxis in Women Undergoing C-Section (LF)	✓	✓		✓	✓	✓	✓
	Operative Vaginal Delivery (RM)	✓	✓	✓	✓	✓	✓	✓
	3rd/4th Laceration-Cesarean Delivery (AHRQ EXP-2)	✓	✓		✓	✓	✓	✓
	3rd/4th Laceration-Vaginal Delivery w/ Instrument (AHRQ PSI 18)	✓	✓	✓ <sup>4</sup>	✓	✓	✓	✓
	3rd/4th Laceration-Vaginal Delivery w/o Instrument (AHRQ PSI 19)	✓	✓		✓	✓	✓	✓
	Vaginal Birth After Cesarean (VBAC), (AHRQ IQI 34 and IQI 22)	✓	✓	✓ <sup>5</sup>	✓	✓	✓	✓
	Newborn Bilirubin Screening Prior to Discharge (LF)	✓	✓		✓	✓	✓	✓
	5 Minute APGAR <7 Among All Deliveries >39 weeks	✓	✓		✓	✓	✓	✓
	5 Minute APGAR <7 in Early Term Newborns	✓	✓		✓	✓	✓	✓
	Birth Trauma - Injury to Neonate (AHRQ PSI 17)	✓	✓		✓	✓	✓	✓
	Unexpected Newborn Complications (NQF, RM)	✓	✓		✓	✓	✓	✓
	Antenatal Steroids (PC-03, LF)	✓	✓		✓	✓	✓	✓
	VLBW (<1500g) NOT delivered at a Level III NICU (NQF)	✓	✓		✓	✓	✓	✓
	Exclusive Breastfeeding (PC-05)	✓	✓		✓	✓	✓	✓
	Severe Morbidity with Pre-Eclampsia	✓	✓		✓	✓	✓	✓
	OB-Hemorrhage Risk Assessment on Admission	✓	✓		✓	✓	✓	✓
	OB-Hemorrhage: Total Transfusions (HEN, RM)	✓	✓		✓	✓	✓	✓
	OB-Hemorrhage: Massive Transfusions (HEN, RM)	✓	✓		✓	✓	✓	✓
	Timely Treatment for Severe HTN (HEN)	✓	✓		✓	✓	✓	✓
ICU Days with Pre-eclampsia (HEN)	✓	✓		✓	✓	✓	✓	
ICU Admissions with Pre-eclampsia (HEN)	✓	✓		✓	✓	✓	✓	
Data Quality <sup>3</sup>	Missing / Inconsistent Birth Weight (among <2500 g)	✓	✓		✓	✓	✓	✓
	Missing Birth Weight in Newborn Clinical Files	✓	✓		✓	✓	✓	✓
	Missing / Inconsistent GA (< 37weeks)	✓	✓		✓	✓	✓	✓
	Missing GA in Maternal Clinical Files	✓	✓		✓	✓	✓	✓
	Missing Parity in Maternal Clinical Files	✓	✓		✓	✓	✓	✓
	Missing Delivery Provider	✓	✓		✓	✓	✓	✓
	Unlinked Mothers	✓	✓		✓	✓	✓	✓
	Missing 5 Minute APGAR	✓	✓		✓	✓	✓	✓

	Measure	Hospital-Level Rates	Patient Level Drill Down	Provider Level Rates	Averages-System, Nursery, Delivery Volume and/or Region <sup>1</sup>	By Payer	Benchmarks-OMDC <sup>1</sup>	Averages-OMDC, WSHA-MDC, and California Statewide <sup>2</sup>
Roadmap Measures	C-section rate for inductions of labor in Nulliparous women (RM)	✓	✓		✓	✓	✓	✓
	C-section rate for inductions of labor in Multiparous women (RM)	✓	✓		✓	✓	✓	✓
	Maternal Admission to ICU and ICU days per deliveries >= 20 wks gestation (RM)	✓	✓		✓	✓	✓	✓
	Percent of maternal blood transfusions per 100 deliveries >= 20 weeks gestation (RM)	✓	✓		✓	✓	✓	✓
	Maternal length of stay postpartum (> 4 days for vaginal, >6 days for CS)	✓	✓		✓	✓	✓	✓

Notes:

1: System-level metrics to be included as part of initial implementation; nursery, regional and volume-based metrics will be implemented within 60 day of Q Corp formal request. OMDC Benchmarks will be implemented based on an applicable benchmark established by Q Corp on behalf of the Oregon Perinatal Collaborative for all Oregon-MDC participating hospitals within sixty (60) days of Q Corp communicating the formulas and final decisions regarding such benchmarks to CMQCC.

2: OMDC Averages to be included as part of initial implementation. Other averages contingent on data source availability and relevant approvals; e.g. numerous metrics cannot be calculated from CA Statewide data; WSHA approval required for WSHA-MDC metrics.

3: Listed Data Quality metrics averages and benchmarks only for OMDC participants. Additional data quality metrics may be calculated with additional statewide data sources (e.g. Statewide PDD and Birth Certificate data).

4: Physician Level Rate encompasses all 3<sup>rd</sup>/4<sup>th</sup> degree lacerations; not divided out by whether instrument delivery or not

5: Physician Level Rate is only for AHRQ IQI 34-VBAC All (Not VBAC-Uncomplicated)

## Attachment C

### OREGON MATERNAL DATA CENTER PROGRAM BUSINESS ASSOCIATE AND DATA USE AGREEMENT BETWEEN HOSPITAL PARTICIPANT AND QCORP

THIS BUSINESS ASSOCIATE AND DATA USE AGREEMENT (this “**Agreement**”) is by and between (the “**Participant**”) and Oregon Health Care Quality Corporation (“**QCorp**”) (individually, a “**Party**” and, collectively, the “**Parties**”).

#### RECITALS

A. QCorp is the sponsoring the Oregon Maternal Data Center program (the “**Oregon-MDC Program**”). The purpose of the Oregon-MDC Program is to serve as a hospital quality improvement program for perinatal care in Oregon. The hospital participants (collectively “**Participants**”) are willing to merge, aggregate, and analyze their clinical data and other information. The Oregon-MDC will collect, validate, analyze, and aggregate data to generate performance measure results to be used for, among other things, the treatment and health care operations of the Participants. The Oregon-MDC will support hospitals with consolidated information about their patients to facilitate treatment decisions and performance measures to facilitate quality improvement activities.

B. Participants are Covered Entities in accordance with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and its implementing regulations, including those adopted pursuant to Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, HIPAA, its implementing regulations and HITECH shall be referred to herein as “**HIPAA**”).

C. Participant and QCorp have entered into a Oregon-MDC Participation Agreement (“**Participation Agreement**”). The Participant Data, which constitutes a Limited Data Set, and related Record Identifiers, constitutes Protected Health Information (“**PHI**”). As such, under these arrangements, QCorp is a Business Associate of Participant in accordance with HIPAA.

D. QCorp has entered into a services agreement to provide essential services to support the Oregon MDC Program with the Board of Trustees of the Leland Stanford Junior University, on behalf of the California Maternal Quality Care Collaborative / California Perinatal Quality Care Collaborative within the School of Medicine (“**CMQCC**”) whereby CMQCC is a Subcontractor of QCorp, as that term is defined in HIPAA, and CMQCC and QCorp have entered into a Subcontractor Business Associate and Data Use Agreement.

In consideration of the Recitals, this Agreement, the Participant’s ability to comply with HIPAA and its implementing regulations, and other good and valuable consideration, the delivery and sufficiency of which is acknowledged, the Parties agree as follows:

#### AGREEMENT

1. **Defined Terms.** Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in HIPAA and shall mean the Privacy, Security, Breach Notification and Enforcement Rules under 45 CFR Part 160 and Part 164.

2. **QCorp as a Business Associate.** To the extent that QCorp is acting as a Business Associate of the Participant and is in possession of or has access to PHI, QCorp agrees as follows:

2.1. Uses and Disclosures. QCorp agrees to not use or disclose PHI other than as permitted or required to perform the Services described in the Participant Agreement and/or this Agreement, as requested by the Participant, or as required by law. QCorp further agrees that no Participant PHI in any form whatsoever may be created, received, maintained, accessed or transmitted outside of the United States of America.

2.2. Safeguards. QCorp agrees to use appropriate safeguards to comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided for by this Agreement and/or the Participant Agreement and shall develop, implement, maintain, and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI that it creates, receives, maintains, or transmits on behalf of the Participant.

2.3. Reporting. QCorp agrees to report to the Participant any use or disclosure of PHI not provided for by this Agreement within five (5) days of becoming aware of such use or disclosure, as required by 45 CFR 164.410. In addition, QCorp agrees to report to the Participant any Security Incident or Suspected Security Incident of which QCorp becomes aware promptly upon becoming aware of such. Notwithstanding the foregoing, the Parties acknowledge that attempted unsuccessful breaches which do not rise to the level of a Security Incident or suspected Security Incident are commonplace in the industry. As such, the Parties acknowledge and agree that this section constitutes notice by QCorp to the Participant of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents for which no additional notice to Participant shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on QCorp's or its agent's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above, as long as such Security Incidents do not result in unauthorized access, use or disclosure of the Participant's electronic PHI.

2.4. Breach Notification. QCorp agrees to report to the Participant any Breach of Unsecured PHI, as defined in 45 CFR 164.402. Following the initial notification of any such Breach, QCorp shall provide a report to Participant that includes, to the extent possible: (a) a brief description of what happened, including the date of occurrence and the date of the discovery by QCorp; (b) a description of the PHI affected, including the types of PHI involved; and (c) a brief description of what QCorp has done to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches. QCorp also shall provide to Participant any other available information Participant is required to include in its notification to affected Individual(s).

2.5. Mitigation. QCorp agrees to mitigate, to the extent possible, any and all harm resulting from a use or disclosure of PHI not provided for by this Agreement, Breach of Unsecured PHI or any Security Incident resulting in potential harm.

2.6. Subcontractors. QCorp agrees to ensure that any agent or subcontractor that creates, receives, maintains, or transmits PHI, including specifically CMQCC, agrees in writing to the same restrictions, conditions, and requirements that apply through this Agreement to QCorp with respect to such PHI and agrees to implement reasonable and appropriate safeguards to protect such PHI.

2.7. Books and Records. QCorp agrees to make its internal practices, books, and records relating to the use and disclosure of PHI reasonably available to the Secretary of the Department of Health and Human Services for purposes of determining the Participant's and QCorp's compliance with this Agreement and HIPAA.

2.8. Access to PHI. Because QCorp does not maintain PHI in a Designated Record Set, QCorp is not required to provide Participant or an Individual access to PHI pursuant to 45 CFR 164.524.



2.9. Amendment of PHI. Because QCorp does not maintain PHI in a Designated Record Set, QCorp is not required to provide PHI to Participant or an Individual for amendment or incorporate any such amendments in the PHI pursuant to 45 CFR 164.526.

2.10. Accounting of Disclosures. At the Participant's reasonable written request, QCorp agrees to make available the information required to provide an accounting of disclosures of PHI made by QCorp as necessary to permit the Participant to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

2.11. Privacy Regulations. To the extent QCorp is to carry out one or more of Participant's obligations under Subpart E of the Privacy Rule, QCorp shall comply with the applicable requirements of Subpart E that apply to Participant Covered Entity in the performance of such obligations.

2.12. Minimum Necessary. QCorp agrees to make uses and disclosures and requests for PHI consistent with the minimum necessary information required to fulfill the purposes specified in the Participation Agreement and summarized in the Recitals to support the Oregon-MDC Program and Maternal Data Center activities more generally.

2.13. Restrictions. Upon notification, as specified in Section 4.3, QCorp agrees to (a) comply with additional restrictions or requirements on the use or disclosure of PHI that Participant has agreed to under agreements between Participant and other entities, or (b) notify Participant of the inability to comply and the obstacles affecting compliance. QCorp agrees to execute reasonable assurances, certifications and agreements necessary to carry out the provisions of this Section 2.13.

2.14. Communications. In the event that QCorp receives a communication by or on behalf of a patient who is the subject of the PHI, QCorp shall notify the Participant that submitted the information within ten (10) business days of receiving such communication.

2.15. Management and Administration. QCorp or its agents and subcontractors including CMQCC, may use and disclose PHI for QCorp's proper management and administration or to carry out QCorp's legal responsibilities, provided the disclosures are required by law, or provided that, with respect to any disclosures: (a) QCorp and/or its agents obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (b) the person notifies QCorp and/or its agent of any instances of which it is aware in which the confidentiality of PHI has been breached. QCorp and its agents also may make disclosures that are Required by Law. QCorp shall notify Participant of any breach within five (5) business days of becoming aware of such breach.

2.16. Permitted Uses and Disclosures. QCorp and its agents and subcontractors including CMQCC, may only utilize Participant data and information including, but not limited to, PHI in the performance of the purposes specified in the Participant Agreement and summarized in the Recitals to support the Oregon-MDC Program and Maternal Data Center activities more generally, and as set forth herein. QCorp and its subcontractors, including CMQCC, and its agents may:

2.16.1. Data Aggregation. Provide Data Aggregation Services as defined in 45 CFR 164.501, including the services provided by CMQCC to support QCorp as set forth in the Participant Agreement.

2.16.2. De-Identification. De-identify PHI in accordance with the requirements of HIPAA and maintain, use, and/or disclose such De-Identified Information as is consistent with HIPAA requirements and as provided for in the Participant Agreement.

2.16.3. Limited Data Sets. Create, maintain, use, and/or disclose Limited Data Sets based on Participant Data as set forth in Section 3.

3. **QCorp as a Recipient of Limited Data Sets**. To the extent that QCorp is a recipient of a Limited Data Set in the course of performing the services, QCorp shall:

3.1. Uses and Disclosures. Not use or further disclose PHI contained in the Limited Data Set except as necessary to provide the services or as provided for in this Agreement and the Participant Agreement, which shall be for health care operations as is consistent with the purposes of the Participant Agreement or as otherwise Required By Law, and shall not use or further disclose the Limited Data Set in a manner that would violate HIPAA if done by the Participant. The Parties agree and acknowledge that nothing in this section limits QCorp's ability to aggregate and de-identify the PHI contained in a Limited Data Set to provide the services or as provided for in this Agreement and the Participant Agreement.

3.2. Safeguards. Use appropriate safeguards to prevent the use or disclosure of PHI contained in the Limited Data Set other than as provided for by this Agreement.

3.3. Reporting. Report to the Participant any use or disclosure of PHI contained in the Limited Data Set of which QCorp becomes aware that is not provided for by this Agreement within five (5) business days of becoming aware of such inappropriate use or disclosure.

3.4. Subcontractors. Ensure that any agents or subcontractors, including CMQCC, agree to the same restrictions and conditions that apply to QCorp under this Agreement.

3.5. Re-Identification. Not re-identify PHI or contact the Individuals whose information is contained within the Limited Data Set.

3.6. Data Use Agreements. To the extent applicable, enter into a Data Use Agreement with any Party to whom QCorp discloses data in a Limited Data Set that is consistent with the purposes of the Participant Agreement and terms of this Agreement and Participation Agreement.

4. **The Participant's Obligations**.

4.1. Requests for Uses or Disclosures. The Participant shall not request QCorp, subcontractors including CMQCC, or its agent to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by the Participant.

4.2. Patient-Level Data. All patient-level data provided by the Participant shall be presumed to be PHI unless designated otherwise by the Participant.

4.3. Restrictions on Uses or Disclosures. Participant shall notify QCorp of any additional restrictions or requirements on the use or disclosure of PHI that Participant has agreed to abide by under 45 CFR 164.522 to the extent that such restrictions may affect QCorp's use or disclosure of PHI.

4.4. Individual Permission. Participant shall notify QCorp of any notifications that Participant receives from individuals or their representatives that reflect changes in, or revocation of the permission by an individual to use or disclose his or her PHI to the extent that such notification may affect QCorp's use or disclosure of PHI.

5. **Term and Termination**.

5.1. Term. This Agreement shall be effective as of the Effective Date of the Participant Agreement and shall terminate when all PHI is destroyed or returned to the Participant. If QCorp, its subcontractors including CMQCC, or its agents determine, in accordance with subsection 5.3.2 below, that it is infeasible to return or destroy PHI, the protections of this Agreement with respect to such PHI shall remain in effect until such PHI is returned or destroyed.

5.2. Termination. Upon the Participant's knowledge of a material breach by QCorp, subcontractors including CMQCC, or its agents, QCorp shall, at the Participant's option (a) provide an opportunity for QCorp, subcontractors including CMQCC, and its agents to cure the breach or end the violation and may terminate this Agreement with QCorp if QCorp, subcontractors including CMQCC, and its agents do not cure the breach or end the violation within the time specified by the Participant, which shall not be less than thirty (30) days; (b) immediately terminate this Agreement with QCorp in the event of a material breach or in the event that cure is not possible; and/or (c) in the event that termination of this Agreement is infeasible, report the breach to the Secretary of the U.S. Department of Health and Human Services.

5.3. Effect of Termination.

5.3.1. Except as otherwise provided in subsection 5.3.2 below, upon termination of the Participant Agreement for any reason, QCorp, subcontractors including CMQCC, and its agents shall (a) return the submitted PHI or (b) destroy the submitted, created and maintained PHI if agreed to by the Participant.

5.3.2. If QCorp and Participant agree that returning or destroying any or all PHI is infeasible, QCorp, subcontractors including CMQCC, and/or its agents shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for as long as QCorp, subcontractors including CMQCC, or its agents maintain such PHI. The Participant hereby acknowledges and agrees that infeasibility includes QCorp's, subcontractors' including CMQCC, or its agents' need to retain information for work product documentation purposes, its legal responsibilities or such other purposes as described in the Participant Agreement.

5.3.3. In the event that QCorp or any subcontractors including CMQCC, retain PHI under Section 5.3.2, the entities retaining such information shall:

5.3.3.1. Retain only that PHI which is necessary to continue its proper management and administration or to carry out its legal responsibilities;

5.3.3.2. Return to Participant or destroy the remaining PHI that QCorp or any subcontractors, including CMQCC, still maintain in any form;

5.3.3.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as QCorp or any subcontractors, including CMQCC, retain the PHI;

5.3.3.4. Not use or disclose the PHI retained other than for the purposes for which such PHI was retained and subject to the same conditions related to the permitted uses and disclosures by QCorp which applied prior to termination; and

5.3.3.5. Return to Participant or destroy the PHI retained by QCorp or subcontractors including CMQCC when it is no longer needed by QCorp or any subcontractors including CMQCC for its proper management and administration or to carry out its legal responsibilities.

6. **Miscellaneous.**

6.1. Regulatory References. A reference in this Agreement to a HIPAA provision means the section as in effect or as amended and for which compliance is required.

6.2. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

6.3. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as may be necessary for the Parties to comply with the requirements of HIPAA and any other applicable laws. The Parties also agree to take such action to amend this Agreement from time to time as necessary to fulfill the requirements of Sections 2.14 and 2.15 of this Agreement.

6.4. Primacy. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the Parties, this Agreement shall control with respect to the subject matter of this Agreement.

6.5. Notices. Any notices to be given under this Agreement to a Party shall be made via U.S. Mail or express courier to such Party's address set forth below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Participant, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to QCorp, to:

Mylia Christensen, Executive Director  
Oregon Health Care Quality Corporation  
520 SW 6<sup>th</sup> Avenue, Suite 830  
Portland, OR 97204  
mylia.christensen@q-corp.org  
Facsimile: (503) 972-0822

Each Party may change its address and that of its representative for notice by giving notice thereof in the manner provided above in this Section 6.5.

6.6. Independent Contractors. No provision of this Agreement is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between QCorp and Participant other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this Agreement. The Parties have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency and it is not the intention of either QCorp or Participant that QCorp constitute an "agent" under such common law.

6.7. Indemnity. QCorp shall indemnify, defend and hold Participant (and Participant's agents and employees) harmless from all claims, damages, losses and expenses (including attorneys' fees) arising out of or resulting from any claim, action, or other proceeding (including any proceeding by any employees, agents or contractors) that is based upon (a) QCorp's breach of this Agreement, (b) any negligent or willful act or omission of QCorp in connection with this Agreement, or (c) the infringement or misappropriation of any foreign or United States patent, copyright, trade secret, or other proprietary right by QCorp in connection with this Agreement.

6.8. Medicare/Medicaid Participation. Neither QCorp, nor its principals, employees, or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in any federally funded health care program, including Medicare and Medicaid. QCorp hereby agrees to promptly notify Participant in the event that QCorp or any of its principals, employees, or in the case of subcontractors involved in the performance of Services is threatened with, or subject to actual debarment, suspension or exclusion from any federally funded health care program, including Medicare and Medicaid. In the event that any such entity or person is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any federally funded health care program during the term of this Agreement, or if at any time after the effective date of this Agreement it is determined that QCorp is in breach of this Section, this Agreement shall, as of the effective date of such action or breach, automatically terminate.

6.9. Electronic Signatures. The Parties to this Agreement agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The Parties further waive any right to challenge the admissibility or authenticity of this Agreement in a court of law based solely on the absence of an original signature.

6.10. Counterparts; Facsimiles. This Agreement and any amendment to it may be executed in counterparts and all of these counterparts together shall be deemed to constitute one and the same agreement. Facsimile or .pdf copies hereof shall be deemed to be originals.

*[Remainder of Page Intentionally Left Blank – Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Participation Agreement as of the Participation Agreement Effective Date.

**PARTICIPANT**

**OREGON HEALTH CARE  
QUALITY CORPORATION**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_