

Portal Access Agreement

Exhibit B: RECIPROCAL BUSINESS ASSOCIATE AND DATA USE AGREEMENT BETWEEN THE PARTICIPATING PROVIDER ORGANIZATION AND QUALITY CORP

THIS RECIPROCAL BUSINESS ASSOCIATE AND DATA USE AGREEMENT (this “Agreement”) is by and between _____ as a participating provider organization (“Participating Provider Organization”) and Oregon Health Care Quality Corporation (“Quality Corp”) (individually, a “Party” and, collectively, the Parties”).

RECITALS

A. Quality Corp is the sponsoring organization for the Oregon Healthcare Quality Reporting System (“OHQRS”). The purpose of OHQRS is to improve the quality of health care and treatment of members and patients of the participating health plans and health care providers, respectively, (collectively “Data Suppliers”) 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, the treatment and health care operations of the Data Suppliers. OHQRS supports health care providers including clinics, medical groups, hospitals and other providers with consolidated information about their patients to facilitate treatment decisions and OHQRS performance measures to facilitate quality improvement activities. OHQRS also provides public performance reports and custom analytics of health care quality, resource use, efficiency, effectiveness and cost for Oregon.

B. The Participating Provider Organization is a Covered Entity in accordance with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 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. The Participating Provider Organization and Quality Corp have entered into a Portal Access Agreement that enables medical groups, physicians, hospitals and other service providers to access data about their patients consolidated from multiple health plans and other Data Suppliers under the OHQRS.

D. In furtherance of these goals, Quality Corp contracts with one or more data services vendor(s) (each a “Data Services Vendor”) to receive, aggregate, and analyze specified data supplied by participating health plans, providers and other data suppliers (collectively, “Data Suppliers”). Data Suppliers provide data to Quality Corp under the terms of Business Associate and Data Use Agreements between each Data Supplier and Quality Corp.

E. The purpose of this Agreement is to facilitate the reciprocal exchange of data, including Protected Health Information (“PHI”) as that term is defined in 45 CFR 160.103, between the

Participating Provider Organization and Quality Corp regarding the patients of the Participating Provider Organization for the purposes of validating and improving the accuracy of the OHQRS data and information in order to facilitating treatment decision making and facilitate quality improvement activities.

F. Under this Agreement, Quality Corp will be providing access to PHI related to patients of the Participating Provider Organization and the Participating Provider Organization may be providing PHI related to patients of the Participating Provider Organization's patients to Quality Corp. For purposes of the Agreement the party providing PHI to the other Party is identified as the "PHI Source." The Party receiving the PHI from the PHI Source is the "Business Associate."

AGREEMENT

In consideration of the Recitals, this Agreement, the Parties 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:

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

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

2.1 The Business Associate agrees to not use or disclose PHI other than as permitted or required to perform the services ("Services") described in the Portal Access Agreement and/or this Agreement, as requested by the PHI Source, or as required by law.

2.2 The Business Associate 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 Portal Access 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 PHI Source.

2.3 The Business Associate agrees to report to the PHI Source any use or disclosure of PHI not provided for by this Agreement within five (5) days of becoming aware of such use or disclosure, including breaches of unsecured PHI as required by 45 CFR 164.410.

2.4 The Business Associate agrees to report to the PHI Source any Breach of Unsecured Protected Health Information, as defined in 45 CFR 164.402. Following the initial notification of any such Breach, the Business Associate shall provide a report to the PHI Source 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 the Business Associate; (b) a description of the PHI affected, including the names of any Individuals whose PHI has been or is reasonably believed to have been accessed, acquired or disclosed and the types of PHI involved (such as full name, social security number, date of birth, home address, account numbers, etc.); and (c) a brief description of what the Business Associate has done to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches. The

Business Associate also shall provide to the PHI Source any other available information the PHI Source is required to include in its notification to affected Individual(s).

2.5 The Business Associate 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 Protected Health Information or any Security Incident resulting in potential harm.

2.6 The Business Associate agrees to ensure that any agent or subcontractor that creates, receives, maintains, or transmits PHI agrees to the same restrictions, conditions, and requirements that apply through this Agreement to the Business Associate with respect to such PHI and agrees to implement reasonable and appropriate safeguards to protect such PHI. Where Quality Corp is acting as the Business Associate, Quality Corp agrees to limit the use of subcontractors, including the Data Services Vendor, providing services under this Agreement to business entities within the United States. However, the Data Services Vendor may utilize its wholly owned and controlled subsidiaries located outside the United States to provide supporting services and functions as long as such subsidiaries fully comply with the provisions of HIPAA in the same manner as the Data Services Vendor.

2.7 The Business Associate 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 PHI Source's and Business Associate's compliance with this Agreement and HIPAA.

2.8 The Business Associate's reasonable written request, the PHI Source agrees to provide (a) access to PHI maintained in a Designated Record Set to assist the Data Supplier in meeting its obligations under 45 CFR Part 164, (b) make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Data Supplier pursuant to 45 CFR 164.526, (c) make available the information required to provide an accounting of disclosures of PHI made by the Business Associate as necessary to permit the PHI Source to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

3. Permitted Uses and Disclosures

3.1 The Business Associate may only use or disclose PHI only as necessary to perform its obligations to support the OHQRS initiative, including the provision of the Portal Access Agreement and this Agreement.

3.2 The Business Associate its subcontractors or its agents may use and disclose PHI for the Business Associate's proper management and administration or to carry out the Business Associate's legal responsibilities, provided the disclosures are required by law, or provided that, with respect to any disclosures: (a) the Business Associate 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 the Business Associate and/or its agent of any instances of which it is aware in which the confidentiality of PHI has been breached. Business Associate and its agents also may make disclosures that are required by Law. The Business Associate shall notify the PHI Source of any breach within five (5) business days of becoming aware of such breach.

3.3 Quality Corp, acting as a Business Associate may perform Data Aggregation (as defined in 45 CFR 164.501) of PHI and other information provided by Participating Provider Organization

with similar information from other entities and Data Suppliers in order to provide the Services including preparation of data analyses, performance metrics and reports related to Health Care Operations (as defined in 45 CFR 164.501) including quality improvement activities and Treatment (as defined in 45 CFR 164.501) of patients of Participating Provider Organization. Quality Corp as a Business Associate may create Limited Data Sets for the purpose of providing the Services.

3.4 Participating Provider Organization, acting as a Business Associate may use PHI and other information for its patients accessed under the Portal Access agreement and this Agreement for the purposes of Health Care Operations including quality improvement activities and Treatment of patients of Participating Provider Organization including the integration of such information into patient records in accord with the policies and procedures of the Participating Provider Organization.

4. Obligations of the PHI Source. To the extent that a Party is acting as the PHI Source, the PHI Source agrees as follows:

4.1 The PHI Source shall not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA if done by the PHI Source.

4.2 The PHI Source shall provide the Business Associate with only that PHI which is minimally necessary for the Business Associate to provide the Services.

5. Term and Termination

5.1 Term. This Agreement shall be effective as of the Effective Date of the Portal Access Agreement and shall terminate when all PHI provided by the PHI Source under the Portal Access Agreement and this Agreement is destroyed or returned to the PHI Source. If the Business Associate, its subcontractors or agents determine that it is infeasible to return or destroy such 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.

5.2.1 The PHI Source shall have the right to terminate its entire relationship with the Business Associate immediately in the event that the Business Associate fails to comply with the provisions of this Agreement.

5.2.2 Upon the PHI Source's knowledge of a material breach by the Business Associate, including its subcontractors or agents, the Business Associate shall, at the PHI Source's option (a) provide an opportunity for the Business Associate, its subcontractors and agents to cure the breach or end the violation and may terminate this Agreement with the Business Associate if the Business Associate, its subcontractors and agents do not cure the breach or end the violation within the time specified by the PHI Source, which shall not be less than thirty (30) days; (b) immediately terminate this Agreement with the Business Associate 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. Upon termination of this Agreement for any purpose, the Business Associate, with respect to PHI received from PHI Source, or created, maintained, or received by the Business Associate on behalf of the PHI Source, shall:

5.3.1 Retain PHI utilized in accord with the permitted uses and disclosures specified in Sections 3.3 and 3.4.

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

5.3.3 Return to the PHI Source or destroy the remaining PHI that the Business Associate or any subcontractors still maintain in any form;

5.3.4 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 the Business Associate or any subcontractors retain the PHI;

5.3.5 Not use or disclose the PHI retained other than for the purposes for which such PHI was retained and subject to the same conditions in Section 3 related to the permitted uses and disclosures by the Business Associate which applied prior to termination; and

5.3.6 Return to Data Supplier or destroy the PHI retained by the Business Associate or subcontractors when it is no longer needed by the Business Associate or any subcontractors for its proper management and administration or to carry out its legal responsibilities.

6. Additional Provisions

6.1 Indemnification. Each of the Parties hereto agrees to be liable for its own conduct, including but not limited to breach of this Agreement, and to indemnify the other Party against any and all losses related to the indemnifying Party's breach. In the event that such loss or damage results from the conduct of more than one Party, each Party agrees to be responsible for its own proportionate share of the claimant's damages under the laws of the state of Oregon.

6.2 Insurance. **The** Business Associate shall maintain insurance that the Business Associate deems sufficient to cover the Business Associate's activities on behalf of the PHI Source and under this Agreement, including without limitation, general commercial liability with limits not less than One Million Dollars (\$1,000,000) per occurrence and professional liability or errors and omissions coverage, if applicable, with limits not less than One Million Dollars (\$1,000,000) per claim, and Three Million Dollars (\$3,000,000) in the aggregate as well as statutory workers' compensation insurance. The Business Associate shall provide the PHI Source a certificate of insurance evidencing such coverage upon request. The Business Associate may satisfy the above requirements through a policy of self-insurance.

6.3 Survival. The duties and responsibilities imposed upon the Business Associate herein shall survive the termination or expiration of this Agreement with respect to any PHI that remains in the possession of the Business Associate or any third party who received it from the Business Associate.

6.4 Injunctive Relief. Notwithstanding any other right or remedies provided for in this Agreement, the PHI Source shall have the right to seek injunctive relief to prevent or stop any unauthorized use or disclosure of PHI by the Business Associate or any third party.

6.5 Choice of Law; Jurisdiction. This Agreement shall be governed by the laws of the state of Oregon, and the Business Associate agrees that the courts of the state of Oregon shall have jurisdiction over this matter.

6.6 Superseding Effect. The terms of this Agreement, and the obligations imposed hereunder, shall supersede any terms imposed by any document construed as an agreement between the Parties or inferred by any prior course of dealing between the Parties related to the subject matter herein. Moreover, this Agreement shall be construed in a manner consistent with any applicable interpretation or guidance regarding HIPAA—as now codified or hereinafter amended, issued by the U.S. Department of Health and Human Services or the federal Office for Civil Rights.

6.7 Amendment; Waiver and Renegotiation

6.7.1 This Agreement may be modified only by a written document signed by both Parties. It cannot be modified by course of dealing. Waiver of any one breach of this Agreement shall not constitute waiver of any other breach.

6.7.2 The Parties agree to negotiate in good faith regarding mutually acceptable and appropriate amendments to this Agreement as necessary to comply with or give effect to obligations imposed by any change to HIPAA or its implementing regulations. In the event the Parties are unable to negotiate a mutually acceptable amendment within one hundred eighty (180) days of such a change, either Party may terminate the Business Associate’s provision of services to the PHI Source.

6.8 Notices. Any and all notices required or permitted hereunder shall be sent by certified mail, return receipt requested, or by generally recognized electronic service, to the signatories to this Agreement as shown below their respective signatures.

6.9 Signature Authority. The individuals executing this Agreement represent and warrant to each other that they are competent and capable of entering into a binding contract, and that they are authorized to execute this Agreement on behalf of the Parties.

6.10 No Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer upon any person other than the Parties and their respective successors or assigns any right, remedy, obligation or liability whatsoever, except as expressly set forth herein.

This Agreement is executed as of the date of the last party to sign below.

PARTICIPATING PROVIDER ORGANIZATION	OREGON HEALTH CARE QUALITY CORPORATION
Organization:	
Signatory Name:	Signatory Name:
Title:	Title:
Signature:	Signature:
Date:	Date:
Email:	Email: info@q-corp.org
Address:	Address: 520 SW 6 th Avenue, Suite 830
City, State, Zip:	City, State, Zip: Portland, OR 97204