

**Oregon Healthcare Quality Reporting System  
Quality Corp – Data Services Vendor  
Business Associate and Data Use Agreement**

**BUSINESS ASSOCIATE AND DATA USE AGREEMENT BETWEEN THE  
QUALITY CORP AND DATA SERVICES VENDOR**

THIS BUSINESS ASSOCIATE AND DATA USE AGREEMENT (this “Agreement”) is by and between Oregon Health Care Quality Corp (“Quality Corp”) and \_\_\_\_\_ (“Data Services Vendor”) (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 of the participating health plans and health care providers (collectively “Data Suppliers”) that are willing to merge, aggregate, and analyze their claims, encounter, 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. Participating Data Suppliers 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. Participating Data Suppliers and the Quality Corp have entered into a Data Supplier and Confidentiality Agreement (“Data Supplier Agreement”) as part of their participation in OHQRS. Quality Corp also executed a Business Associate Agreement (BAA) with each Data Supplier regarding the submission and use of Protected Health Information as part of OHQRS. Under these arrangements Quality Corp is a Business Associate of participating Data Suppliers in accordance with HIPAA.

D. To assist the Quality Corp’s performance of its obligations under the Data Supplier Agreement in a manner consistent with federal and state confidentiality requirements, the Quality Corp has entered into a contract with the Data Services Vendor (“Vendor Contract”) for Data Services Vendor to provide certain services to Quality Corp on behalf of the Data Suppliers, including contracted data management and analysis services to support OHQRS including services for (a) consolidating claims and/or encounter data for selected conditions from various health plans and/or providers, related data and information about providers, services and other care delivery characteristics, (b) developing quality measurement data and other results based on national measurement standards, (c) providing interactive web services for participating

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health plans and provider organizations to review their OHQRS data, (d) providing mechanisms for integrating and reporting aggregate performance measures submitted by participating clinics and practices, and (e) generating OHQRS performance reports that can be integrated into the OHQRS public reporting system of quality measures and consumer engagement strategies (the “Services”). These Services involve the receipt, use, or creation of Protected Health Information within the meaning of HIPAA. As such, the Data Services Vendor is a Subcontractor of Quality Corp under HIPAA.

E. As required by HIPAA, Subcontractors of a Business Associate are subject to the same HIPAA requirements as a Business Associate of a Covered Entity. Therefore this Agreement is to establish the relationship between Quality Corp as a Business Associate of various Covered Entities and the Data Services Vendor as a Subcontractor and Business Associate of Quality Corp.

In consideration of the Recitals, this Agreement, the Quality Corp’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. **Data Services Vendor as a Business Associate.** To the extent that Data Services Vendor is acting as a Business Associate of the Quality Corp and is in possession of or has access to Protected Health Information, Data Services Vendor agrees as follows:

2.1 Data Services Vendor agrees to not use or disclose Protected Health Information other than as permitted or required to perform the Services described in the Vendor Contract and/or this Agreement, as requested by the Quality Corp, or as Required by Law.

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

2.3 Data Services Vendor agrees to report to the Quality Corp any use or disclosure of Protected Health Information 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, Data Services Vendor agrees to report to the Quality Corp any Security Incident or Suspected Security Incident of which Data Services Vendor becomes aware promptly upon becoming

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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 Data Services Vendor to the Quality Corp of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents for which no additional notice to Quality Corp shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on Data Services Vendor'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 electronic Protected Health Information of any Covered Entity covered by this Agreement.

2.4 Data Services Vendor agrees to report to the Quality Corp any Breach of Unsecured Protected Health Information, as defined in 45 CFR 164.402. Following the initial notification of any such Breach, Data Services Vendor shall provide a report to Quality Corp 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 Data Services Vendor; (b) a description of the Protected Health Information affected, including the names of any Individuals whose Protected Health Information has been or is reasonably believed to have been accessed, acquired or disclosed and the types of Protected Health Information involved (such as full name, social security number, date of birth, home address, account numbers, etc.); and (c) a brief description of what Data Services Vendor has done to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches. Data Services Vendor also shall provide to Quality Corp any other available information that the affected Covered Entities are required to include in their notification to affected Individual(s).

2.5 Data Services Vendor agrees to mitigate, to the extent possible, any and all harm resulting from a use or disclosure of Protected Health Information not provided for by this Agreement, Breach of Unsecured Protected Health Information or any Security Incident resulting in potential harm.

2.6 Data Services Vendor agrees to ensure that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Data Services Vendor with respect to such Protected Health Information and agrees to implement reasonable and appropriate safeguards to protect such Protected Health Information. Further, Data Services Vendor agrees to limit the use of subcontractors providing services under this Agreement and the Vendor Contract to business entities within the United States. The foregoing does not preclude Data Services Vendor from utilizing its wholly owned and controlled subsidiaries located outside of the United States to provide supporting services and functions for the Data Services Vendor as long as such subsidiaries fully comply with the provisions of HIPAA and this Agreement in the same manner as the Data Services Vendor.

2.7 Data Services Vendor agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information reasonably available to the Secretary of the Department of Health and Human Services and to the Quality Corp for

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purposes of determining Quality Corp's and Data Services Vendor's compliance with this Agreement and HIPAA.

2.8 At the Quality Corp's reasonable written request, Data Services Vendor agrees to provide access to Protected Health Information maintained in a Designated Record Set to assist the Quality Corp and affected Covered Entities in meeting Covered Entities' obligations under 45 CFR164.

2.9 At the Quality Corp's reasonable written request, Data Services Vendor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Quality Corp and affected Covered Entities pursuant to 45 CFR 164.526.

2.10 At the Quality Corp's reasonable written request, Data Services Vendor agrees to make available the information required to provide an accounting of disclosures of Protected Health Information made by Data Services Vendor to Quality Corp as necessary to permit the Quality Corp and affected Covered Entities to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with HIPAA, as set forth in 45 CFR 164.528.

2.11 Data Services Vendor or its agents may use and disclose Protected Health Information for Data Services Vendor's proper management and administration or to carry out the Data Services Vendor's legal responsibilities, provided the disclosures are required by law, or provided that, with respect to any disclosures: (a) Data Services Vendor and/or its agents obtains reasonable assurances from the person to whom Protected Health Information 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 Data Services Vendor and/or its agent of any instances of which it is aware in which the confidentiality of Protected Health Information has been breached. Data Services Vendor and its agents also may make disclosures that are required by Law. Data Services Vendor shall notify Quality Corp of any breach within five (5) business days of becoming aware of such breach.

2.12 Data Services Vendor and its agents may:

2.12.1 Provide Data Aggregation Services as defined in 45 CFR164.501, including the services specified in the Vendor Contract to support the Quality Corp and the OHQRS.

2.12.2 De-identify Protected Health Information 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 Vendor Contract.

2.12.3 Create Limited Data Sets.

2.13 In the event that the Data Services Vendor receives a communication by or on behalf of a patient who is the subject of the Protected Health Information, the Data Services Vendor shall notify the Quality Corp within five (5) business days of receiving such communication.

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2.14 Data Services Vendor agrees to make uses and disclosures and requests for Protected Health Information consistent with the minimum necessary information required to fulfill the purposes of OHQRS and in compliance with Quality Corp’s Fair Information Practices and Data Use Policies as communicated and applicable to Data Services Vendor.

2.15 Data Services Vendor agrees to comply with additional restrictions or requirements on the use or disclosure of Protected Health Information that Quality Corp has agreed to under agreements providing Quality Corp access to Protected Health Information related to Federal and State of Oregon programs including:

2.15.1 Business Associate requirements of the State of Oregon, Oregon Health Authority as specified in OAR 943-014-0400 through OAR 943-014-0465 related to Protected Health Information for programs under the auspices of the Oregon Health Authority.

2.15.2 Program requirements related to Quality Corp’s participation in the Qualified Entity Program of the Centers for Medicare & Medicaid Services (CMS).

2.16 Data Services Vendor agrees to execute reasonable assurances, certifications and agreements necessary to document and carry out the provisions of Section 2.15.

2.17 Upon notification, as specified in Section 4.3, Data Services Vendor agrees to (a) comply with additional restrictions or requirements on the use or disclosure of Protected Health Information that Quality Corp has agreed to under agreements between Quality Corp and participating Covered Entities, or (b) notify Quality Corp of the inability to comply and the obstacles affecting compliance.

2.18 Data Services Vendor agrees to execute reasonable assurances, certifications and agreements necessary to carry out the provisions of Section 2.17.

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

3.1 Not use or further disclose Protected Health Information contained in the Limited Data Set except as necessary to provide the Services or as provided for in this Agreement, which shall be for research, public health, and/or health care operations as is consistent with the purposes of the Vendor Contract 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 Quality Corp or the affected Covered Entity. The Parties agree and acknowledge that nothing in this section limits Data Services Vendor’s ability to aggregate and de-identify the Protected Health Information contained in a Limited Data Set to provide the Services or as provided for in this Agreement.

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

3.3 Report to the Quality Corp any use or disclosure of Protected Health Information contained in the Limited Data Set of which Data Services Vendor 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 Ensure that any agents or subcontractors to whom it provides access to the Limited Data Set agree to the same restrictions and conditions that apply to Data Services Vendor under this Agreement.

3.5 Not re-identify Protected Health Information or contact the Individuals whose information is contained within the Limited Data Set.

**4. The Quality Corp's Obligations.**

4.1 The Quality Corp shall not request Data Services Vendor or its agent to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by the Quality Corp or a Data Supplier as an affected Covered Entity.

4.2 All patient level data provided by the Quality Corp or participating Covered Entities shall be presumed to be Protected Health Information unless designated otherwise by the Quality Corp or the participating Covered Entities.

4.3 Quality Corp shall notify Data Services Vendor of any additional restrictions or requirements on the use or disclosure of Protected Health Information that Quality Corp has agreed to under agreements between Quality Corp and participating Covered Entities or other Data Suppliers to the extent that such restriction may affect Data Services Vendor's use or disclosure of Protected Health Information. Such notices include termination of participation in the OHQRS by Covered Entities or other Data Suppliers that affect the use, disclosure and disposition of Protected Health Information.

4.4 Quality Corp shall notify Data Services Vendor of any notifications that Quality Corp receives from participating Covered Entities that reflect changes in, or revocation of the permission by an individual to use or disclosure of his or her Protected Health Information to the extent that such notifications may affect Data Services Vendor's use or disclosure of Protected Health Information.'

**5. Term and Termination.**

5.1 Term. This Agreement shall be effective as of the Effective Date of the Vendor Contract and shall terminate when all Protected Health Information is destroyed or returned to the Quality Corp or the participating Covered Entities that provided the Protected Health Information. If Data Services Vendor or its agents determine, in accordance with

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subsection 5.3.2 below, that it is infeasible to return or destroy Protected Health Information, the protections of this Agreement with respect to such Protected Health Information shall remain in effect until such Protected Health Information is returned or destroyed.

5.2 Termination. Upon the Quality Corp's knowledge of a material breach by Data Services Vendor or its agents, the Quality Corp shall, at the Quality Corp's option (a) provide an opportunity for Data Services Vendor and its agents to cure the breach or end the violation and may terminate this Agreement with Data Services Vendor if Data Services Vendor and its agents do not cure the breach or end the violation within the time specified by the Quality Corp, which shall not be less than thirty (30) days; (b) immediately terminate this Agreement with Data Service Vendor in the event of a material breach or in the event that cure is not possible; 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 Vendor Contract for any reason, Data Services Vendor and its agents shall (a) return the submitted Protected Health Information to the participating Covered Entities that provided the Protected Health Information or (b) destroy the submitted, created and maintained Protected Health Information if agreed to by the relevant participating Covered Entities and (c) upon the written request of Quality Corp transmit the Protected Health Information received from Covered Entities and other Data Suppliers or created by Data Services Vendor as part of the OHQRS to another Business Associate of Quality Corp supporting the OHQRS.

5.3.2 If Data Services Vendor and Quality Corp on behalf of the participating Covered Entities agree that returning or destroying any or all Protected Health Information is infeasible, Data Services Vendor and/or its agents shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of Protected Health Information to those purposes that make the return or destruction infeasible, for as long as Data Services Vendor or its agents maintain such Protected Health Information. Quality Corp hereby acknowledges and agrees that infeasibility includes Data Services Vendor's or its agents' need to retain information for work product documentation purposes, its legal responsibilities or such other purposes as described in the Vendor Contract.

5.3.3 In the event that Data Services Vendor retains Protected Health Information under Section 5.3.2, the Data Services Vendor shall:

5.3.3.1 Retain only that Protected Health Information which is necessary for Data Services Vendor to continue its proper management and administration or to carry out its legal responsibilities;

5.3.3.2 Return to participating Covered Entities or destroy the remaining Protected Health Information that the Data Services Vendor still maintains 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 Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Data Services Vendor retains the Protected Health Information;

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5.3.3.4 Not use or disclose the Protected Health Information retained by Data Services Vendor other than for the purposes for which such Protected Health Information was retained and subject to the same conditions in Sections 2.11 and 2.12 related to the permitted uses and disclosures by Data Services Vendor which applied prior to termination; and

5.3.3.5 Return to participating Covered Entities or destroy the Protected Health Information retained by Data Services Vendor when it is no longer needed by the Data Services Vendor 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 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.

6.3 Compensation. Parties hereby agree that compensation paid to Data Services Vendor for the services rendered to the Quality Corp under this Agreement shall be paid through the contractual relationship that exists between Quality Corp and the Data Services Vendor. A participating Data Supplier may independently contract with the Data Services Vendor for services involving the specific Data Supplier's submitted information as long as such services are provided separately and independently from QHQRS Services and the Data Supplier's data or information are maintained separately and distinct from OHQRS data and systems.

6.4 Indemnity. Data Services Vendor shall indemnify, defend and hold Quality Corp and participating Data Suppliers (and Quality Corp's and Data Suppliers' 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) Data Services Vendor's breach of this Agreement, (b) any negligent or willful act or omission of Data Services Vendor 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 Data Services Vendor in connection with this Agreement.

6.5 Medicare/Medicaid Participation. Neither Data Services Vendor, 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. Data Services Vendor hereby agrees to promptly notify Quality Corp in the event that Data Services Vendor or any of its principals, employees, or in the case of subcontractors involved in the performance of Services is threatened with, or



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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 Data Services Vendor is in breach of this Section, this Agreement shall, as of the effective date of such action or breach, automatically terminate.

Data Services Vendor:

Oregon Health Care Quality Corp

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_