

OHA # \_\_\_\_\_

[Participating Entity] # \_\_\_\_\_

**STATE OF OREGON  
OREGON PROVIDER DIRECTORY PARTICIPATION AGREEMENT**

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## OREGON PROVIDER DIRECTORY PARTICIPATION AGREEMENT

This Participation Agreement (“Agreement”) is entered into between Participating Entity and the State of Oregon acting by and through its Oregon Health Authority (“OHA”).

The Oregon Provider Directory will be a data resource for the purposes of managing participating entities’ internal provider directories and networks and finding contact information such as email addresses or phone numbers for providers to enable health information exchange, and as a source of practice and program information to support the calculation of metrics and outcomes. Data from sources that contribute data to the Oregon Provider Directory are cleaned, matched, and aggregated to create a master record for each listed provider. The provider’s master record represents the most current and accurate data from all sources as determined by the Oregon Provider Directory Program.

Participating Entity desires to participate in the Oregon Provider Directory established by OHA and authorized under Oregon Revised Statute 413.310.

OHA agrees to allow Participating Entity to access the Oregon Provider Directory in accordance with the terms and conditions set forth in this Agreement, including its exhibits and attachments, all of which together constitute a single Agreement.

Participating Entity and OHA are committed to ensuring the integrity and confidentiality of data disclosed or made available in the Oregon Provider Directory.

### I. DEFINITIONS

This document will also refer to definitions in the Oregon Provider Directory Policies and Procedures.

1. **“Documentation”** means all materials, documentation, technical manuals, operator and user manuals, flow diagrams, file descriptions, and other written information made generally available by OHA to users of the Program and System, including all updates thereto, that describe the functions, operational characteristics, and specifications and use of the Oregon Provider Directory.
2. **“Oregon Provider Directory”** means the System and Program provided by OHA for the collection, display, and export of Provider Data.
3. **“Oregon Provider Directory Data” or “Provider Data”** means all data requested, disclosed, stored, or made available. Provider Data includes provider demographics, practice locations, current and historical practice affiliations, health information exchange endpoints, program affiliations,

and contact information that are derived from Data Contributors to be cleaned, matched, scored, and maintained by the Program.

4. **“Oregon Provider Directory Policies and Procedures”** or **“Policies and Procedures”** means OHA’s written policies and procedures pertaining to the use of the Oregon Provider Directory.
5. **“Participating Entity”** means the organization that is signatory to this Agreement, and that meets the requirements for use of the Oregon Provider Directory as set forth in the Policies and Procedures. Participating entities may be healthcare providers; health plans, including Coordinated Care Organizations (CCOs); and health information exchanges.
6. **“Party”** means either OHA or Participating Entity, collectively referred to as the “Parties”.
7. **“Permitted Use”** has the meaning set forth in the Provider Directory Policies and Procedures.
8. **“Program”** means OHA’s Oregon Provider Directory Program, which gathers and provides Provider Data to participating entities for the purposes of supporting health operations, analytics, and information exchange.
9. **“Service”** means the services and functionality provided by the Oregon Provider Directory System allowing Participating Entity to report, view, filter, and export Provider Data in accordance with this Agreement, including the Policies and Procedures. The Service may include enhancements to improve the usefulness of the Oregon Provider Directory System.
10. **“Software”** means any software provided in or as an element of the Oregon Provider Directory System for the Participating Entity’s use of the Oregon Provider Directory System, including any upgrades of or modifications to such software, or new versions of such software.
11. **“System”** or **“Oregon Provider Directory System”** means the online Oregon Provider Directory system that collects, displays, and exports Provider Data.
12. **“Unauthorized Users”** means individuals, who may include employees, contractors or agents of Participating Entity, who use equipment or a network within Participating Entity’s control, who accesses the Oregon Provider Directory without authority, including by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully.

## II. GENERAL ADMINISTRATION

1. **New Participating Entities.** OHA will execute a participation agreement substantially in the form of this Agreement with each organization approved and accepting to participate in the Program. OHA will require each organization to require that its Authorized Users agree to comply with the terms and conditions in the Authorized User Agreement and the Policies and Procedures, and that each organization be responsible for the actions and omissions of its Authorized Users.
2. **Provision of System Equipment and Software.** Participating Entity shall have the software, hardware, and other infrastructure necessary to make use of the System. Participating Entity shall arrange for its own carrier lines, computer terminals or personal computers, or other equipment for accessing the System and ensure that they are properly configured to access the System. This includes but is not limited to the base workstation operating system, web browser, and Internet connectivity.
3. **Services Provided to Participating Entity.** OHA will provide Participating Entity with the authority to access the System and delegate access to Authorized Users for the purposes of managing internal provider directories and networks, finding contact information such as email addresses or phone numbers for providers to enable health information exchange, and utilize practice and program information to support the calculation of metrics and outcomes.
4. **Exchange of Information.** Participating Entity and OHA will provide each other with such technical or other information as such Party may reasonably deem necessary or appropriate to evaluate the utility and usefulness of the System (including evaluation of the System's technical performance and the impact of the use of the System on matters such as quality and safety, finances, and operations).

## III. USE OF SYSTEM

1. Participating Entity and each of its Authorized Users will comply with the license granted in this Agreement and with applicable third-party terms, including as set forth in:
  - a. The OneHealthPort Website Terms and Conditions of Use, found at <http://www.onehealthport.com/sso/register-your-organization>, or as updated by OneHealthPort.
  - b. The MIHIN Terms of Service, attached to this Agreement as a convenience and for reference as Attachment 1.

2. OHA will endeavor to notify Participating Entity in advance of any other third-party terms applicable to the Service.
3. **Changes to Terms.** OHA will provide notice to Participating Entity if material terms of the MIHIN Terms of Service are updated at least 30 calendar days prior to such an update being effective, unless a shorter timeframe is required. Continued use of the System by Participating Entity and its Authorized Users after the 30-day period constitutes acceptance of the updated terms.

#### IV. LICENSE GRANT AND RESTRICTIONS

1. **Grant of Right to Use.** Subject to Participating Entity's compliance with this Agreement, OHA hereby grants to Participating Entity a nonexclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to have access to and use the System in accordance with this Agreement, including the Oregon Provider Directory Policies and Procedures. Nothing in this Agreement is intended to transfer or assign any ownership interest or rights to Participating Entity or Authorized Users. Participating Entity may use the System only for the purposes set forth in the terms and conditions of this Agreement and the Oregon Provider Directory Policies and Procedures. This license does not grant any rights to obtaining future upgrades, updates, enhancements, or supplements of the System. If upgrades, updates, enhancements, or supplements are obtained, however, the use of such upgrades or updates is governed by this Agreement and any amendments to it unless other terms accompany the upgrades, updates or supplements, in which case those terms apply.
2. **Additional Restrictions.** Participating Entity acknowledges and agrees that the Services constitute the trade secrets and confidential information of OHA or its vendors. Participating Entity further acknowledges that the Services may be protected by copyright law and international treaty provisions. Participating Entity shall not permit any person under the control of Participating Entity other than Authorized Users to access and/or use the Services. Participating Entity shall not, nor shall it permit any Authorized User or third party over which it exercises control, to duplicate, modify, adapt, translate, reverse engineer, decompile, disassemble or create a derivative work based on the Services. Participating Entity shall not allow any element of the Services to be copied or incorporated into any other computer program, hardware, firmware or product, except as specifically provided for under these Terms. Participating Entity has no rights to the Services except the limited rights to use the Services expressly granted in the "License Grant and Restrictions" section of this Agreement.

3. **Suspension or Termination.** OHA may immediately suspend or terminate Participating Entity's or any Authorized User's access to the Services on reasonable grounds, including the reasonable belief of fraud or illegal activity by Participating Entity or any Authorized User, or for failure to comply with this Agreement. OHA may, to the extent it determines it is reasonable and able to do so, provide advance notice of suspension or termination to Participating Entity in order to provide an opportunity to cure any deficiency or breach

## V. PARTICIPATING ENTITY RESPONSIBILITIES

1. Participating Entity shall:
  - a. Use the System in good faith, in accordance with the Policies and Procedures;
  - b. Facilitate Authorized Users access to the System as set forth in the Policies and Procedures; and promptly revoke access when an Authorized User should no longer have access to the Oregon Provider Directory;
  - c. Be responsible for the use of the System's Application Programming Interface (API) and any issues resulting from using the API with its own software applications or within its instance of commercial software;
  - d. Maintain in full working condition, at its own expense, its technical interfaces in its (or its agents') control;
  - e. Promptly provide accurate and complete information for inclusion in the Oregon Provider Directory and provide updates or corrections to information if Participating Entity is a Data Contributor. Failure to update incorrect or outdated data that is contributed by Participating Entity or failure to respond to notifications from the Oregon Provider Directory program regarding submissions of incorrect data, may result in suspension or termination of this Agreement.
2. **Compliance with Law and the Policies and Procedures.** Participating Entity shall comply with all laws, the Policies and Procedures, and this Agreement in all its use of and interactions with the System and Provider Data.
3. **Accurate Participating Entity Information.** Participating Entity shall provide OHA with all information reasonably requested and necessary to discharge its duties under this Participation Agreement. Any information provided by Participating Entity must be responsive and accurate,

including any information provided during any registration/enrollment process or by being a Data Contributor.

4. **Compliance Audits.** Participating Entity may be subject to audit by OHA (or a third party engaged by OHA for such purposes) to confirm compliance and proper use of the System and Provider Data in accordance with this Agreement, the Policies and Procedures, and applicable state and federal law. Such audits will take place during normal business hours and at mutually agreeable times and will be limited to such records, personnel and other resources of Participating Entity as are necessary to comply with applicable state or federal requirements, or to determine proper use of the System, or compliance with this Agreement or the Policies and Procedures. Each party will bear its own expenses associated with audits under this Agreement. OHA will perform such audits in a manner designed to reasonably minimize interference with Participating Entity's day-to-day operations.
5. **Authorized User Training and Use.** Participating Entity shall ensure its Authorized Users use the System in accordance with the Policies and Procedures, regarding, without limitation: (i) proper use of the System and (ii) proper use of the Provider Data obtained using the System.
  - a. As a condition of use of the System and Provider Data, each Authorized User must agree to an Authorized User Agreement, which includes the user agreeing that the user has received both technical training materials and the Policies and Procedures. The form of the Authorized User Agreement is attached as Exhibit A to this Agreement, and may be updated from time to time.
  - b. OHA will provide notice of any update to the Authorized User Agreement to Participating Entity at least 30 calendar days prior to such an update being effective, unless in OHA's sole discretion a shorter timeframe is required. Continued use by Participating Entity's Authorized Users of the System or Provider Data after the effective date of the change constitutes acceptance of the updated terms.
6. **Organization Administrator.** Participating Entity will designate an Organization Administrator to serve as its organizational representative for technical and operational responsibilities related to use of the System, and who will be responsible for facilitating other Participating Entity's Authorized Users' access to the System.
7. **Participating Entity User Web Portal Access.** A Participating Entity shall not permit access to the System by its employees, consultants, staff, and agents through the Web Portal unless and until such users have agreed to an Authorized User Agreement. The Web Portal includes a sign in/click through process for this agreement that requires.

- a. OHA will provide notice of any updates to the Authorized User agreement at least 30 calendar days prior to such an update being effective, unless in OHA's sole discretion a shorter timeframe is required. On or before the effective date of the update, the System will require each Authorized Web Portal User to agree to the updated terms as a condition of continued use. Use of the System and Provider Data by Authorized Web Portal Users after the effective date of the change constitutes acceptance of the updated terms.
- 8. Participating Entity System to System Interface Access.** A Participating Entity shall not permit access to the System by its employees, consultants, staff, and agents through a system interconnection unless and until such users have agreed to an Authorized User Agreement substantially in the form of Exhibit A. Participating Entity must retain a record of each Authorized System to System Interface Users' executed Authorized User Agreement and updates in accordance with the record retention requirements of this Agreement.
  - a. OHA will provide Participating Entity with notice of any updates to the Authorized User agreement at least 30 calendar days prior to such an update being effective, unless in OHA's sole discretion a shorter timeframe is required. On or before the effective date of the update, Participating Entity must require each Authorized System to System Interface User to agree to the updated terms as a condition of continued use. Use of the System and Provider Data by Authorized Web Portal Users after the effective date of the change constitutes acceptance of the updated terms.
- 9. Responsibility for Acts and Omissions.** Participating Entity is responsible for its acts and omissions and those of its employees, consultants, staff, agents and all other individuals who access the System and Provider Data through Participating Entity (including Authorized Users and Unauthorized Users). The acts and omissions of Participating Entity, and its employees, consultants, staff, agents, Authorized Users and any Unauthorized Users will be deemed to be the acts and omissions of Participating Entity.
- 10. Adverse Security Event Responsibility.** Subject to the express limitations of liability in this Agreement for government entities, and except to the extent that a claim or loss results from the negligent, reckless or intentional acts or omissions of OHA, Participating Entity shall assume liability for all claims or losses related to an Adverse Security Event caused by the negligent, reckless or intentional acts or omissions of Participating Entity or its employees, contractors, and agents inclusive of Authorized Users and Unauthorized Users.



Except to the extent that a claim or loss results from the negligent, reckless or intentional acts or omissions of Participating Entity, OHA shall assume liability for all claims or losses related to an Adverse Security Event caused by the negligent, reckless or intentional acts or omissions of OHA or its employees or agents, subject to the limits and limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.

11. **Security.** Participating Entity shall comply, and will at all times require that its officers, Authorized Users, employees, staff, consultants and agents comply, with the security standards, practices and procedures established by OHA in connection with Participating Entity's use of the System and Provider Data. Without limitation of the foregoing, Participating Entity shall use at least reasonable efforts to ensure that its connection to and use of the System, including the medium containing any data or other information provided to the System, does not include, and that any method of transmitting such data will not introduce, any program, routine, subroutine, or data (including malicious software or "mal-ware," viruses, worms, and Trojan Horses) that will disrupt the proper operation of the System or any part thereof or any hardware or software used by OHA in connection therewith, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action will cause the System or any part thereof or any hardware, software or data used by OHA or any other participating entities in connection therewith, to be destroyed, damaged, or rendered inoperable.

## VI. OHA RESPONSIBILITIES

1. **Agreements.** OHA will require each Program participating entity to enter into a Participation Agreement with OHA to use the System. OHA will require each Authorized Web Portal User of a Participating Entity to enter into an Authorized User agreement to use the System.
2. **Notification of Changes to the Policies and Procedures.** OHA will notify Participating Entity of any update to the Policies and Procedures in accordance with the provisions in the Policies and Procedures.
3. **Vendor Responsibilities.** OHA will monitor and manage its vendors for compliance with applicable Policies and Procedures and contractual performance.

## VII. CONFIDENTIAL INFORMATION

1. **"Confidential Information"** includes the following information:

- a. Any designs, drawings, procedures, and trade secrets regarding the System, including any Documentation and the technical and design specifications for the System or other intellectual property;
  - b. Non-public financial and administrative information concerning each Party and all other participating entities
  - c. Each Party's and all other participating entities' secret and confidential information, records, and other material regarding its business and operations (including, as applicable, physicians, providers, provider groups, referral sources, members, employees, vendors, products, methods, processes, systems, business or marketing plans, methods and strategies, pricing and costs);
  - d. Any other non-public information designated by either Party in writing as confidential or proprietary;
  - e. (i) Any password or other identifier for use of the Provider Directory System and (ii) other information or data stored on magnetic media or otherwise or communicated orally, and obtained, received, transmitted, processed, stored, archived, or maintained by OHA or its vendor(s) under this Agreement; and
  - f. Information that is provided by Participating Entity in a notification as required by the Oregon Provider Directory Policies and Procedures regarding an Adverse Security Event.
2. "Confidential Information" does not include any information which:
- a. is or becomes known publicly through no fault of the receiving Party;
  - b. is learned by the receiving Party from a third party entitled to disclose it;
  - c. is already known to the receiving Party before receipt from the disclosing Party as shown by the receiving Party's written records; or
  - d. is independently developed by the receiving Party, as shown by the receiving Party's written records.
3. In the performance of their respective responsibilities pursuant to this Agreement, OHA and Participating Entity may come into possession of certain Confidential Information about the other Party. Each Party agrees to use the other Party's Confidential Information only as permitted by this Agreement and to take reasonable and appropriate measures to prevent unauthorized use, reproduction, dissemination, and disclosure of the other Party's Confidential Information during the term of this

Agreement and thereafter. Each Party may disclose the other Party's Confidential Information only to its employees, consultants, staff and agents who require such knowledge in the ordinary course and scope of their employment, association or retention by such Party, and to such other persons who have a need to know such materials and information, in all cases only in connection with the purposes of this Agreement. Confidential Information also may be disclosed (a) to a Party's auditors, attorneys and consultants to the extent necessary in connection with their providing professional services to such Party, and so long as they are under a professional obligation of confidentiality or have signed a confidentiality agreement with such Party, and (b) as required by applicable law, provided that in the event of disclosure required by applicable law pursuant to a court order, subpoena, or other valid legal process (including a public records request made under the Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.311 to 192.478), the disclosing Party will give the other Party reasonable notice to allow the non-disclosing Party an opportunity to object to such disclosure and then may disclose such Confidential Information only to the minimum extent necessary to comply with such court order, subpoena, or legal process (as reasonably determined by the disclosing Party).

4. Notwithstanding anything contrary herein, OHA may share such information with third parties: (a) as it may deem necessary or appropriate to apply for or make reports under (or as otherwise required by) grants or other similar activities for funding OHA's operations or projects; and (b) to current and prospective vendors, as it may deem necessary or appropriate, provided that OHA will use reasonable efforts to require such vendors to protect the confidentiality of such information through a non-disclosure agreement. Nothing in this Article VII or elsewhere in this Agreement is intended or will be deemed to require either Party to disclose any information that is subject to attorney-client or other applicable privilege and nothing in this Participation Agreement is intended or will be deemed to waive any applicable privilege(s) with respect to such information.
5. Participating Entity shall not disclose the information contained within the Oregon Provider Directory to anyone other than Participating Entity's Authorized Users, nor may Participating Entity use or disclose the contents of the Oregon Provider Directory for any other use or purpose other than expressly stated in this Agreement.
6. The Oregon Provider Directory is intended for use only by parties subject to a participation agreement or Extract Agreement. The Oregon Provider Directory seeks to provide the most accurate information on providers in a central location and uncontrolled dissemination of the data can lead to availability of outdated or untrustworthy information. Providers also will be more likely to contribute data to the Oregon Provider Directory if they trust that participating entities will only use the information in

accordance with the Policies and Procedures, including those addressing prohibited uses of the data. Therefore, Participating Entity submits the Oregon Provider Directory information in confidence the Provider Directory. OHA's obligations under this Agreement, including the Policies and Procedures, are subject to the requirements of the Oregon Public Records Act.

## **VIII. WARRANTIES; LIMITATION OF LIABILITY**

- 1. Availability of the System and Provider Data.** Participating Entity acknowledges and agrees that because the System (i) is accessed over the Internet; (ii) relies, in part, on the existence and proper operation of equipment and software that is outside of the control of OHA (including telecommunication lines); and (iii) relies on access to information from, and the provision of information controlled by, third parties. OHA is not responsible for availability of the System or availability or accuracy of Provider Data for reasons outside the control of OHA or its vendors.
- 2. No Warranties.** OHA MAKES NO REPRESENTATIONS OR WARRANTIES TO ANY PERSON OR PARTICIPATING ENTITY WITH RESPECT TO THE SYSTEM, THE SOFTWARE, TRAINING, THE DOCUMENTATION, THE PROVIDER DATA, OR ANY SERVICES PROVIDED BY OHA OR ITS AGENTS WITH RESPECT THERETO, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE SYSTEM, THE SOFTWARE, THE DOCUMENTATION, THE PROVIDER DATA, AND SUCH SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PUPRPOSE. FURTHER, OHA MAKES NO WARRANTY, GUARANTEE, OR REPRESENTATION REGARDING THE USE, OR ANY INTENDED, EXPECTED OR ACTUAL RESULTS OF THE USE OF THE SYSTEM, THE SOFTWARE, THE DOCUMENTATION THE PROVIDER DATA, OR ANY INFORMATION CONTAINED THEREIN OR OTHERWISE PROVIDED PURSUANT TO THIS AGREEMENT. OHA MAKES NO WARRANTIES THAT THE SYSTEM, THE SOFTWARE, THE DOCUMENTATION, OR THE PROVIDER DATA WILL BE ERROR-FREE OR THAT THE OPERATION OF THE SYSTEM OR THE SOFTWARE WILL BE UNINTERRUPTED. NO OHA AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY EXPANSION, MODIFICATION OR ADDITION TO THIS LIMITATION AND EXCLUSION OF WARRANTIES IN THIS AGREEMENT.
- 3. No Consequential or Special Damages.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF EQUIPMENT USE, OR LOSS OF

DATA OR INFORMATION OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4. **Limitation on OHA Liability.** EXCEPT AS IS EXPRESSLY PROVIDED FOR UNDER THIS AGREEMENT, OHA WILL NOT BE LIABLE UNDER THIS AGREEMENT RELATING TO THE SYSTEM, THE SOFTWARE, THE DOCUMENTATION THE PROVIDER DATA, OR THE LICENSE GRANTED HEREUNDER, OR UNDER ANY BREACH OF WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY.
5. **No Obligation to Operate.** Participating Entity acknowledges that OHA may dissolve, discontinue its business, or cease to operate the System at any time, in which case Participating Entity will have no recourse against OHA as a result of such action or inaction. OHA will, when feasible, provide Participating Entity with advance notice of any such dissolution, discontinuation, or cessation of System operations.
6. **Accuracy of Data.** All Provider Data to which access is made through the System that originates from Participating Entity and other Data Contributors is subject to change arising from numerous factors. Without limiting any other provision of this Agreement, OHA and its vendors have no responsibility for or liability related to the accuracy, content, currency, completeness, content, or delivery of any data either provided or used by Participating Entity.
7. **Patient Care, Utilization Management and Quality Management.** Participating Entity and its Authorized Users, employees, consultants, staff and agents are solely responsible for all decisions involving patient care, utilization management, and quality management for its patients. Participating Entity has no recourse against OHA or any other participating entity for any loss, damage, claim or cost relating to or resulting from use of the System or information accessed through the System. Without limitation of the foregoing provisions of this Article VIII, Section 7 or any other provision of this Agreement, OHA has no liability to Participating Entity for (a) the content of any Provider Data, or (b) for any action or inaction of any other Participating Entity.
8. **Equitable Remedies.** In the event of a breach, or threatened breach, (i) by Either Party of any of its obligations under Article VII above, (ii) by Participating Entity of its obligations under Article V above, or (iii) by OHA of its obligations under Article VI above, the damages resulting therein would be difficult to ascertain but would result in irreparable loss to the non-breaching/non-threatening Party. Accordingly, the non-breaching/non-threatening Party will be entitled to seek and obtain equitable relief to prevent such a breach without the necessity of proving actual damages. Such equitable relief is in addition to any other rights or remedies available to such non-breaching/non-threatening Party.

## IX. TERM AND TERMINATION

1. **Term.** This Agreement commences on the date each Party has executed this Agreement, and be in effect until terminated in accordance with the provisions of this Agreement.
2. **Termination.** This Agreement may be terminated as follows:
  - a. **Uncured Breach.** Should either Party default in the performance of any material obligation under this Agreement, or breach any material provision contained in this Agreement, and not cure or substantially cure the default or breach within thirty (30) calendar days after receipt of written notice by the other Party of such default or breach, then in addition to other remedies set forth in this Agreement or allowed by law, this Agreement may be terminated by the non-defaulting/non-breaching Party upon written notice to the defaulting/breaching Party.
  - b. **Termination Without Cause.** OHA and Participating Entity each have the right to terminate this Agreement without cause, upon not less than thirty (30) calendar days prior written notice to the other Party.
  - c. **Security/Privacy Breach.** Either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party materially breaches its obligations under this Participation Agreement and if (i) the security of the System or (ii) the System or any of the computer systems or networks of OHA, Participating Entity or its employees, consultants, staff or agents, has been or is likely to be seriously compromised by such breach, or such breach has been or is likely to result in a serious violation of the legal obligations of either Party to patients with respect to the privacy or confidentiality of Provider Data. OHA may elect to suspend Participating Entity's access to the System in lieu of termination, in accordance with the Policies and Procedures.
  - d. **Cessation of Operation by Participating Entity.** Subject to the restrictions imposed by law, OHA may terminate this Agreement upon giving written notice of termination to Participating Entity in the event (i) Participating Entity ceases its business operations; (ii) voluntary or involuntary proceedings by or against Participating Entity are instituted in bankruptcy or under any insolvency law; (iii) a receiver or custodian is appointed for Participating Entity, or proceedings are instituted by or against Participating Entity for

corporate reorganization or the dissolution of Participating Entity, which proceedings, if involuntary, have been dismissed within sixty (60) calendar days after the date of filing; or (iv) Participating Entity makes an assignment for the benefit of its creditors.

- e. **Cessation of Operation by OHA.** Subject to the restrictions imposed by law, Participating Entity may terminate this Agreement upon giving written notice of termination to OHA in the event OHA ceases operation of the Oregon Provider Directory Program.
  - f. **Non-Appropriation by OHA.** OHA may immediately terminate this Agreement upon written notice if OHA fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by OHA's budget or spending plan and OHA determines, in its assessment and ranking of the policy objectives explicit or implicit in its budget or spending plan, that it is necessary to terminate this Agreement.
  - g. **Failure of Infrastructure by OHA.** OHA may immediately terminate this Agreement upon written notice if anything required for OHA to continue lawful operation of the Oregon Provider Directory Program becomes unavailable. Alternatively, OHA may temporarily suspend the access of Participating Entity until such time as OHA is able to resume lawful operation of the Oregon Provider Directory.
3. **Return or Destruction of Provider Data.** Promptly (but in any event not later than thirty (30) days) after the earlier of termination of this Agreement or discontinuance of use of the System by Participating Entity, Participating Entity shall clear its networks and systems of all Provider Data that is not incorporated into Participating Entity's own local directory consistent with applicable laws and this Agreement. Participating Entity's senior information officer or equivalent thereof shall certify such removal to OHA in writing.
4. **Survival.** The Parties' respective rights and obligations with respect to the following survive any termination of this Agreement: (a) the provisions of the following Articles and Sections: Article VII (Confidential Information); Article VIII, Sections 2, 3, 4, and 8; Article IX, Sections 3 and 4; Article X, Sections 1, 2, 7, and 11; and (b) any other provision herein expressly surviving termination or necessary to interpret the rights and obligations of the Parties in connection with the termination of this Agreement.

## **X. MISCELLANEOUS PROVISIONS**

1. **Venue; Governing Law.** This Participation Agreement is governed by and construed in accordance with the laws of the State of Oregon without

regard to the conflicts of laws and provisions thereof. The sole and exclusive jurisdiction and venue for actions related to the subject matter of this Agreement will be the Circuit Court of the State of Oregon for Marion County. In the event a claim must be brought in federal court, the jurisdiction and venue for such action is the United States District Court for the District of Oregon. For claims against the State of Oregon that must be brought in federal court, this section applies only to the extent Congress has appropriately abrogated the state of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the eleventh Amendment to the Constitution of the United States. PARTICIPATING ENTITY HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE AFOREMENTIONED COURTS.

2. **No Third-Party Beneficiary.** OHA and Participating Entity are the only parties to this Agreement and the only parties entitled to enforce its terms. Nothing in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
3. **Notices.** All notices required or permitted to be given under this Agreement must be in writing, and given (i) by personal delivery; (ii) by prepaid certified or registered U.S. mail; (iii) by reputable commercial overnight courier service with tracking capabilities; (iv) by facsimile; or (v) by email if receipt of email is confirmed by phone within 48 hours.

If to OHA:

Office of Health Information Technology  
500 Summer Street NE, E-52  
Salem, Oregon 97301  
Telephone: 503-373-7859  
Facsimile: 503-378-6705  
Oregon.Provider-Directory@dhsosha.state.or.us

If to Participating Entity: notice will be sent to the contact information Participating Entity provided when signing up for access to the System.

All notices will be deemed given and effective upon receipt, except in the case of registered or certified mail, in which case such notice will be deemed given effective upon the delivery or refusal date specified on the return receipt.

4. **Assignment.** Participating Entity may not assign, transfer, or sublicense



any right, obligation, or benefit under this Agreement without the prior written consent of OHA. Except as otherwise provided herein, this Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

5. **Amendment.** This Agreement may not be changed except by written amendment signed by duly authorized representatives of both Parties.
6. **Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the Parties and supersedes all other prior and contemporaneous agreements, understandings, and commitments between OHA and Participating Entity with respect to the subject matter hereof, except to the extent they are specifically incorporated into this Agreement. Any variance from or addition to the terms and conditions of this Agreement in any present or future order, invoice, or other document delivered from one Party to the other will be of no effect unless agreed to in writing by an authorized representative of each Party.
7. **Severability.** If any term or condition of this Agreement is to any extent held invalid, unenforceable or in violation of any law, the remainder of this Agreement will not be affected, and it remains in full force and effect.
8. **Priority.** In the event of any conflict or inconsistency between a provision in the body of this Agreement and any exhibit hereto, the terms contained in the body of this Agreement will prevail. Any ambiguity in this Agreement will be resolved to permit the State of Oregon to comply with applicable privacy and security laws and the state's policies interpreting those laws.
9. **Force Majeure.** A Party will not be liable for nonperformance or delay in performance (other than of obligations regarding confidentiality) caused by any event beyond the reasonable control of such Party including, but not limited to wars, hostilities, revolutions, riots, civil commotion, national emergency, strikes, lockouts, unavailability of supplies, epidemics, fire, flood, earthquake, force of nature, explosion, embargo, or any other Act of God, internet, electric power or communications outage, or any law, proclamation, regulation, ordinance of any court, government or governmental agency.
10. **Insurance.**
  - a. Participating Entity shall maintain for it and its professional staff at its own expense, insurance coverage in an amount sufficient to cover its obligations hereunder or maintain sufficient self-insurance. Upon request from OHA, Participating Entity shall provide OHA with evidence of such coverage.
  - b. If Participating Entity is a tribe, evidence of insurance

coverage must have an endorsement providing that the insurer may not invoke tribal sovereign immunity up to the limits of the policy in any state or federal court.

## **11. Indemnification; Contribution.**

- a. Indemnification.** Unless Participating Entity is a government entity specified in another subpart of this Section 11, this Section 11.a applies:

Each Party will indemnify and hold harmless the other Party, and their respective directors, officers, trustees, employees, staff, consultants agents, subcontractors, and licensors (hereinafter "Indemnitees") from and against any and all liability (including reasonable attorneys' fees), injury or damage arising from (i) a material breach by the indemnifying Party of its obligations under this Agreement, or (ii) any negligent, reckless, deliberate, illegal or fraudulent act or omission by the indemnifying Party, except to the extent such liability, loss, damage, cost or expense is caused by the breach of this Agreement by the Indemnitees or the negligent, reckless, deliberate, illegal or fraudulent act or omission by any of the Indemnitees or any other individuals who access Provider Data through the indemnified Party or by use of any password, identifier, or log-on received or obtained, directly or indirectly, lawfully or unlawfully from the indemnified Party. OHA's indemnification obligation under this Agreement is subject to the limitations of Article XI, Section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.

- b. Contribution.** If Participating Entity is an Oregon unit of local government as defined in ORS 174.116(1), or Oregon Health and Science University (created as a public corporation under ORS 353.020), this Section 11.b applies:

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this section and a meaningful opportunity for the

Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Agreement with respect to the Third-Party Claim.

- ii. With respect to a Third-Party Claim for which OHA is jointly liable with Participating Entity (or would be if joined in the Third-Party Claim), OHA shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Participating Entity in such proportion as is appropriate to reflect the relative fault of OHA and Participating Entity in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OHA and Participating Entity will be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OHA's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State of Oregon had sole liability in the proceeding.
- iii. With respect to a Third-Party Claim for which Participating Entity is jointly liable with OHA (or would be if joined in the Third-Party Claim), Participating Entity shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OHA in such proportion as is appropriate to reflect the relative fault of Participating Entity and OHA in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Participating Entity and OHA will be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Participating Entity's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- iv. **Indemnification by Subcontractors.** Participating Entity shall take all reasonable steps to require its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Participating Entity's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims. This section survives expiration or termination of this Agreement.
- c. If Participating Entity is a federally recognized Indian tribe organized under a constitution and bylaws ratified by its members and approved by the Assistant Secretary of the Interior of the United States, then this Section 11.c applies:
  - i. Participating Entity shall indemnify, defend, save, and hold harmless the State of Oregon, OHA, and its officers and employees from any and all claims, suits, and liabilities arising out of, or relating to the intentional misconduct, or reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents which may occur in the performance of this Agreement, provided, however, Participating Entity will not be required to indemnify the State of Oregon, OHA, or their officers, employees, or agents for any such liability arising out of the wrongful acts of the State of Oregon, OHA, or their officers, employees or agents.
  - ii. Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), OHA shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act, Participating Entity against liability for personal injury or damage to life or property arising from OHA's negligent activity under this Agreement, provided, however, OHA shall not be required to indemnify Participating Entity for any such liability arising out of the wrongful acts of Contractor, its officers, employees or agents.
  - iii. **Indemnification by Subcontractors.** Participating Entity shall take all reasonable steps to require its contractor(s) that are not

units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Participating Entity's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all Claims. This Section survives expiration or termination of this Agreement.

**iv. Sovereign Immunity.**

1. State of Oregon. The Oregon legislature has waived the State's sovereign immunity to suit in State court pursuant to ORS 30.320. No part of this Agreement is a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment of the Constitution of the United States.
2. Limited Tribal Waiver of Immunity. PARTICIPATING ENTITY ADOPTS THIS WAIVER OF SOVEREIGN IMMUNITY OF THE TRIBE FROM SUIT OR ACTION PURSUANT TO ITS TRIBAL CONSTITUTION AND CODE. THIS WAIVER WILL BE STRICTLY CONSTRUED AND LIMITED TO ITS SPECIFIC TERMS AND THE SPECIFIC WAIVER GRANTED. Participating Entity hereby waives its immunity to suit in State court for the limited purpose of enforcing this Agreement. Participating Entity waives and agrees not to assert any doctrine requiring exhaustion of tribal court or administrative remedies prior to any court proceeding.

- d. Defense of Claims.** To the extent Participating Entity is required under this Agreement to defend OHA against claims asserted by third parties, OHA shall reasonably cooperate in good faith, at Participating Entity's reasonable expense, in the defense of the claim and Participating Entity shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim and shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld, conditioned or delayed. Counsel must accept appointment as a special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, OHA, its

officers, employees or agents. Subject to the limitations of Section 11, Participating Entity may defend a claim with counsel of its own choosing.

- 12. Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein may in no way be held to explain, modify, amplify or aid in the interpretation or construction of meaning of the provisions of this Agreement. All references in this instrument to designated "Articles" and other subdivisions are to the designated Articles and other subdivisions of this Agreement. The words "herein," "hereof" and "here under" and other words of similar import refer to this Agreement as a whole and not to any particular Article or other subdivision.
- 13. Non-Waiver.** No provision of this Agreement may be modified or waived, by course of dealing or otherwise (including any failure or delay by Either Party to exercise or partially exercise any right, power or privilege here under), unless such modification or waiver is set forth in a written document executed by an authorized representative of the Party to be bound thereby.
- 14. Relationship of the Parties.** The Parties are independent contracting entities. Nothing in this Agreement will be construed to create a partnership, agency relationship, or joint venture among the Parties. Neither Party will have any authority to bind or make commitments on behalf of the other Party for any purpose, nor will it hold itself out as having such authority.
- 15. Duly Authorized.** OHA and Participating Entity each represent and warrant to the other that it has full power and authority to enter into and perform this Agreement. Each represents and warrants to the other that its representatives signing this Agreement on its behalf have been properly authorized and empowered to enter into this Agreement.
- 16. Counterparts.** This Agreement will become binding when any one or more counterparts hereof, individually or taken together, bears the signatures each of the Parties here to. This Agreement may be executed in any number of counterparts, each of which will be deemed an original as against the Party whose signature appears thereon, but all of which taken together will constitute but one and the same instrument.
- 17. Complete Agreement.** This Participation Agreement consists of these terms and conditions, Exhibit A, Authorized User Agreement, and Exhibit B, Oregon Provider Directory Policies and Procedures, and is the complete agreement between the parties regarding its subject matter. This Participation Agreement supersedes all prior agreements, commitments,

representations, writings and discussions between the parties, whether written or oral, with respect to its subject matter.

PARTICIPATING ENTITY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT PARTICIPATING ENTITY HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS AND POLICIES AND PROCEDURES.

**Participating Entity**

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Organization Name

---

Tax Identification Number(s) for Organization, as registered in OneHealthPort

---

Printed Name of Authorized Representative

---

Title

---

Signature of Authorized Representative

---

Date

**State of Oregon acting by and through its Oregon Health Authority**

---

Printed Name of Authorized Signatory on behalf of the Oregon Health Authority

---

Signature of Authorized Representative

---

Title

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Date

# **Exhibit A: Authorized User Agreement**

## **Terms of Access to the Oregon Provider Directory**

The terms and conditions of this Authorized User Agreement (“User Agreement”) govern your use of the Oregon Provider Directory System (“System”). You are accessing the System either via a web portal or the System’s interconnection with your organization’s electronic health records system.

The System is provided through the Oregon Health Authority (OHA), and collects, displays, and exports Provider Data. Provider Data includes provider demographics, practice locations, current and historical practice affiliations, health information exchange endpoints, program affiliations, and contact information derived from Data Sources to be cleaned, matched, scored, and maintained by the Oregon Provider Directory Program. Access to the System is granted to organizations called “Participating Entities” that have entered into a Participation Agreement with OHA and to individuals affiliated with these organizations who are identified as “Authorized Users”.

**You as an Authorized User are entering into this User Agreement with OHA. By consenting to this User Agreement, or accessing and using the System or Provider Data, you are accepting, without modification, the terms, conditions, and notices contained in this User Agreement. If you do not accept the terms and conditions of this User Agreement, you must not use or must discontinue use of the System and Provider Data.**

- 1. Identification as an Authorized User.** You have been identified by your organization (the hospital, clinic, physician’s office, health plan or other entity with whom you are affiliated) as needing access to the System. Your organization has provided you with a copy of the Oregon Provider Directory Policies and Procedures (“Policies and Procedures”), which are a critical part of the agreement between OHA and your organization, and this User Agreement between OHA and you. The terms and conditions of this User Agreement reflect your agreement with OHA to maintain the confidentiality, security and integrity of Oregon provider Directory Data (Provider Data) accessed via the System.
- 2. Grant of License.** Subject to your compliance with this User Agreement and the Policies and Procedures, OHA hereby grants you a nonexclusive, nontransferable right to use the System. This right is specific to you. You may not share, sell or sublicense this right with or to anyone else.



**3. Receipt of Materials and Training.**

- 3.1 Technical Training.** Your organization has been provided training material on the technical aspects of using the System. You agree that you have reviewed this training material.
- 3.2 Policies and Procedures.** Your organization has been provided the Policies and Procedures for the use of the System. You agree that you have reviewed the Policies and Procedures, and you agree to comply with them.

**4. User Name and Password.** If you are accessing the System via the Web Portal, you are being provided with access to the System through a user name and password ("Login Credentials"). You are responsible for all activities that occur through your access, including for any acts related to a lost or stolen Login Credentials. You agree to:

- 4.1** Not reveal your Login Credentials to anyone.
- 4.2** Not allow others, including colleagues with whom you work, to access the System using your Login Credentials.
- 4.3** Notify the point of contact designated by your organization immediately if you have reason to believe that your Login Credentials have been compromised.

**5. Use Certifications.** You hereby certify:

- 5.1** You will not provide or use Provider Data for direct marketing, database marketing, or telemarketing activities
- 5.2** You will not use the System or Provider Data to influence or attempt to influence for commercial purposes (through economic incentives or otherwise) any diagnostic or treatment-related decisions of a healthcare provider.
- 5.3** You will not save Provider Data to portable media devices (such as CDs, USB drives, or handheld devices).
- 5.4** You will not use the System or access or view any Provider Data except as required for your job with Participating Entity. You will only access information as necessary to perform your professional obligations.
- 5.5** You will notify your point of contact designated by Participating Entity immediately if you have reason to believe that your Login Credentials have been compromised.
- 5.6** You will maintain the confidentiality of all information in accordance with state and federal laws, and in accordance with Participating Entity's privacy and security policies and procedures as well as the Policies and Procedures.

**6. Consequences of Noncompliance.** Failure to comply with these terms and conditions may result in disciplinary actions against you, which may include without limitation, denial of your privileges to access the System and Provider

Data, and other actions in accordance with your organization's policies and the Policies and Procedures.

- 7. Audit Rights.** OHA and your organization have the right at all times to review and audit your use of the System and Provider Data and compliance with the terms of this User Agreement.
- 8. Suspension and Termination.** Your organization or OHA may suspend your access to the System or Provider Data or terminate this User Agreement at any time.
- 9. Updates to the User Agreement.** OHA will provide notice of any updates to the Authorized User agreement 30 calendar days prior to the update being effective, unless in OHA's sole discretion a shorter timeframe is required.
  - 9.1** If you are an Authorized Web Portal User, on or before the effective date of the update the System will require each Authorized Web Portal User to agree to the updated terms as a condition of continued use.
  - 9.2** If you are an Authorized System to System Interface User, your organization is obligated to document each such user's agreement to the updated terms before the effective date of the update as a condition of continued use.
  - 9.3** You understand and agree that your use of the System and Provider Data by after the effective date of an update to this User Agreement constitutes acceptance of the updated terms.

THIS IS A BINDING AGREEMENT. By indicating that you agree on the Oregon Provider Directory website, or by executing a version of this agreement provided by your organization, you agree to comply with all terms and conditions of this User Agreement and the Oregon Provider Directory Policies and Procedures.

## **Exhibit B: Oregon Provider Directory Policies and Procedures**

### **Section 1: Who Must Comply with the Oregon Provider Directory (OPD) Policies and Procedures**

These Policies and Procedures represent an important safeguard for protecting information from various internal and external risks, including unauthorized access. They are a part of the agreement between OHA and each participating entity and Authorized User. Each participating entity, Authorized User, and Extract Recipient must review and enter into an agreement to comply with these Policies and Procedures prior to being granted access to the System or Provider Data.

1. All participating entities that have signed an organizational participation agreement ("Participation Agreement") and wish to participate in the Oregon Provider Directory must comply with these Policies and Procedures. Participating Entity's failure to comply with these Policies and Procedures constitutes a breach of the Participation Agreement and may result in termination of the Participation Agreement, denial of access to the System, or other sanctions as may be designated in the Participation Agreement and in these Policies and Procedures.
2. All Authorized Web Portal Users of a participating entity, Oregon Health Authority, and the Department of Human Services that have signed an Authorized User Agreement must comply with the provisions of these Policies and Procedures as applicable to Authorized Web Portal Users. An Authorized Web Portal User's failure to comply with applicable provisions of these Policies and Procedures constitutes a breach of the Authorized User Agreement and may result in termination of the Participation Agreement, denial of access to the System by the Authorized Web Portal User, or other sanctions as may be designated in the Authorized User Agreement and in these Policies and Procedures.
3. All Authorized System to System Interface Users of a participating entity, Oregon Health Authority, and the Department of Human Services that access the System must comply with the provisions of these Policies and Procedures applicable to Authorized System to System Interface Users. An Authorized System to System Interface User's failure to comply with applicable provisions of these Policies and Procedures constitutes a breach of the Participation Agreement and may result in termination of the Participation Agreement, denial of access to the System or Provider Data

by the Authorized System to System User, or other sanctions designated in these Policies and Procedures.

4. All Extract Recipients that have received OHA authorization and have signed a data use agreement (“Extract Agreement”) with OHA to use Provider Data for purposes set forth in the Extract Agreement must comply with these Policies and Procedures. An Extract Recipient’s failure to comply with these Policies and Procedures applicable to Extract Recipients constitutes a breach of the Extract Agreement and may result in termination of the Extract Agreement or other sanctions as may be designated in the Extract Agreement and in these Policies and Procedures.

## Section 2: Definitions

13. **“Agreement”** means a Participant Agreement, Authorized Web Portal User Agreement, or Extract Agreement.
14. **“Authorized Provider Data Extract Recipient” or “Extract Recipient”** means those persons or entities that do not have access to the Oregon Provider Directory System but receive OHA-approved limited data extracts that meet criteria for permitted uses of the data.
15. **“Authorized System to System Interface Users”** means those persons who have been authorized by Participating Entity to access the Oregon Provider Directory System via a System to System Interface.
16. **“Authorized Users”** means Authorized System to System Interface Users and Authorized Web Portal Users that may include, but are not limited to, healthcare providers and employees, staff, contractors, or agents of Participating Entity.
17. **“Authorized Web Portal Users”** means those persons who have been authorized by Participating Entity to access the Provider Directory System.
18. **“Breach”** means the acquisition, access, use, or disclosure of Provider Data in a manner not permitted by the Agreement which compromises the security or privacy of Provider Data.
19. **“Data Contributor” or “Data Source”** means a participating entity that contributes data to the Oregon Provider Directory.

## Section 3: Authentication

1. **Purpose.** Authentication is the process of verifying that a Participating Entity, and its designated Organization Administrator who is seeking to access information via the System, is the organization or individual.
2. **Process.** OHA's vendor OneHealthPort, is responsible for authorizing and authenticating a Participating Entity and its designated administrator(s) ("Administrator") who will be responsible for granting and managing access to Authorized Users within its Organization. The process of authorizing and authenticating will include verifying the identity of Participating Entity, its Organization Administrator(s) and the administrator's affiliation with Participating Entity based on the information provided to OneHealthPort.

## Section 4: Access

1. **Purpose.** Access controls govern when and how Authorized Users or a Participating Entity may access the System. These access policies are designed to minimize unauthorized access and ensure that Provider Data are used for authorized purposes. In addition, access to the System and Provider Data is available only to Participating Entities and Extract Recipients that are considered part of the "Medicaid enterprise" (see below). OHA will determine whether the organization is part of the Medicaid enterprise prior to approving access. In the future with approval by Centers for Medicaid and Medicare Services, OHA may allow access to entities that do not qualify as part of the Medicaid enterprise ("Non-Medicaid entities").

This Section 4 describes the entities that are part of the Medicaid enterprise, and the minimum controls that Participating Entity shall implement to ensure that: (1) only Authorized Users access Provider Data via the System or a System to System Interface; and (2) they do so only in accordance with the requirements (specified herein) that limit their access to specified information.

2. **Medicaid Enterprise.** The following entities are considered part of the Medicaid enterprise:
  - Oregon Health Authority (OHA) and Department of Human Services (DHS)

- Entities currently enrolled or contracted with OHA to provide Medicaid services. This includes but is not limited to Coordinated Care Organizations (CCOs) and their affiliated entities, individual practitioners, facilities, and hospitals
- Entities that participate in statewide health information exchange and submit health information exchange endpoints for its providers as a Data Contributor
- Entities that have been pre-approved by OHA to supply Provider Data as a Data Contributor to improve Provider Data quality

Entities that are selected by OHA to participate in soft launch. Soft launch is a period when the OPD is initially deployed to a targeted audience. During soft launch, users assess the value of the OPD and its readiness to be deployed to additional users across the state.

**b. Authorized Users.** Participating Entity is responsible for facilitating its Authorized Users' access to the System through a Web Portal or System to System Interface, and will identify individuals within its organization that need access to carry out their professional responsibilities. This may include, but are not limited to, health care providers, employees, staff, contractors, or agents of an organization.

**c. System Access Specifications.** The Program will provide two methods to access Provider Data in the System:

- **A Web Portal** that may be used to search and access reports for Provider Data accessed within the System.
- **System to System Interfaces** including Application Programming Interfaces (APIs) that may be used by a Participating Entity to access Provider Data within their own software applications or their instance of a commercial product by establishing a connection to the System.

**d. Access via Web Portal User.** Participating Entity will identify an Administrator (or delegate) who will take the steps necessary to obtain a user name and password for each Authorized Web Portal User and will require that Authorized Web Portal Users agree to terms in the Authorized Web Portal User agreement. Authorized Web Portal Users must be informed of the Administrator as the point of contact for all questions, training, and to whom reports of any potential unauthorized access must be made. This contact information must be readily available to all Authorized Users within the organization. OneHealthPort's policies that describe responsibilities of an

Administrator can be found on their website:

<http://www.onehealthport.com/sso/register-your-organization> and  
<http://www.onehealthport.com/sso/frequently-asked-questions>.

- e. **Access via System to System Interface User.** Participating Entity will identify an Administrator who will be responsible for establishing, supporting, managing, and maintaining the interface with the System, granting access to its Authorized System to System Interface Users. Authorized System to System Interface Users must be informed of the Administrator as the point of contact for all questions, training, and to whom reports of any potential unauthorized access must be made. This contact information must be readily available to all Authorized Users within the organization.
- f. **Access Records.** A Participating Entity shall maintain all records of access and training as part of contract compliance documentation for six years. Records include, but are not limited to names of Authorized Users, dates when access was granted, dates when training was completed, details if a user has violated the User Agreement, dates if access is terminated and reason for termination, and dates if access is reinstated.
- g. **Access Limited to Minimum Necessary Information.** Participating Entity shall ensure that reasonable efforts are made to limit the information accessed via the System to the minimum amount necessary to accomplish the intended purpose for which the information is accessed. An Authorized User shall limit access to the System to the minimum amount necessary to accomplish the intended purpose for which the information is accessed.
- h. **Training.** The access controls set forth above will only be effective if Authorized Users understand their responsibilities to comply with these Policies and Procedures.
  - OHA will provide training materials to Participating Entity on the technical aspects on how to use the System and the System to System Interface. Participating Entity shall ensure that its Authorized Users review the training materials provided before they begin to use the System.
  - Participating Entity shall ensure that each of its Authorized Users review and execute an Authorized User Agreement, including review these Policies and Procedures, before they begin to use the System.
  - OHA will provide an implementation guide to Participating Entity that describes the technical details for how to connect to the

System to access Provider Data using a System to System interface.

- i. **Termination of Access and Other Sanctions.** Participating Entity shall ensure that an Authorized User's access to the System and Provider Data is terminated in the following situations:
  - Immediately or as promptly as reasonably practicable but in any event within one business day of termination of a Participating Entity's Agreement with OHA;
  - Immediately following an Authorized User's failure to comply with the Authorized User Agreement; or
  - Immediately or as promptly as reasonably practicable but in any event within one business day of notification of termination of an Authorized User's employment or affiliation with Participating Entity.
  - Participating Entity shall notify OHA immediately upon termination of an Authorized User's access to the System due to an Adverse Security Event.

## Section 5: Audit

1. **Purpose.** Audits are useful oversight tools for recording and examining access to information through the System (e.g., who accessed what data and when) and are necessary for verifying compliance with access controls like those specified in Section 4, and are developed to prevent/limit inappropriate access to information. This Section 5 sets forth minimum requirements that Participating Entity shall follow for audits regarding access to Provider Data via the System.
2. **Compliance Audits.** OHA (or a third party engaged by OHA) may audit Participating Entity on a periodic basis. The purpose of the audits will be to confirm compliance with and proper use of the System and Provider Data in accordance with the Agreement, including the Policies and Procedures.
3. **Conduct of Audits.** Audits will take place during normal business hours and at mutually agreeable times and shall be limited to such records, personnel and other resources of Participating Entity as are necessary to



determine proper use of the System and Provider Data, compliance with the Agreement, or the Oregon Provider Directory Policies and Procedures, or to comply with applicable state or federal requirements. Each Party will bear its own costs relating to audits relating to this Agreement. OHA will conduct audit activities in a manner designed to reasonably minimize interference with Participating Entity's day-to-day operations.

## Section 6: Adverse Security Events

1. **Purpose.** This Section 6 sets forth minimum standards OHA, Participating Entity, Authorized Users, and Extract Recipients shall follow in the event of any actual or suspected Breach, unauthorized use of the System or Provider Data, or other mis-use of the System or Provider Data ("Adverse Security Event"). These standards are designed to promote accountability, assure providers and all parties' about the Program's commitment to privacy and security, and mitigate any harm.
2. **Responsibilities of a Participating Entity or Extract Recipient.** In the event that a Participating Entity or Extract Recipient becomes aware of an Adverse Security Event, a Participating Entity or Extract Recipient shall:
  - a. **Notify OHA.** Notification must be made in the most expedient time possible and without unreasonable delay. Notification will be given by personal delivery, prepaid certified or registered U.S. mail, reputable commercial overnight courier service with tracking capabilities, by facsimile, or by email if receipt of email is confirmed within 48 hours to OHA:  
  
Office of Health information technology  
500 Summer Street NE, E-52  
Salem, OR 97301  
ATTN: Oregon Provider Directory Program  
Facsimile: 503-378-6705  
[Oregon.Provider-Directory@dhs.oha.state.or.us](mailto:Oregon.Provider-Directory@dhs.oha.state.or.us)
  - b. **Investigate the Adverse Security Event.** In the most expedient time possible and without unreasonable delay, investigate the scope and magnitude of the Adverse Security Event, and identify the root cause of the Adverse Security Event.



maintained in the Oregon Provider Directory. Data displayed in the Oregon Provider Directory are gathered from multiple Data Contributors. These data are cleaned, matched, and compiled. The highest quality data elements, as determined by the Program, are then displayed in a Master Record. Data Contributors are responsible for ensuring the data elements they contribute are accurate.

2. **Data Contributor Source Records.** Data Contributors provide data to the Oregon Provider Directory (“Source Records”) in two ways. Source Records remain the intellectual property of the Data Contributor.
  - a. **Data Contribution by Data Entry.** A Data Contributor may enter data using the System’s web portal. Any Authorized User may contribute Source Records by data entry.
  - b. **Data Contribution by File Upload or Interface.** A Data Contributor may submit data on a scheduled basis for a set of providers by establishing file uploads in the web portal or by system to system interfaces.
    - **Data Source Onboarding.** Prior to submitting data to the System, the Program will work with the Data Contributor to review all data submission specifications in the onboarding process which includes the review of data transport options, data that will be included in the submission, the frequency of transmission, and testing. The System will send a confirmation notification for data transmission acceptance/failure.
    - **Data Transport.** Transport mechanisms to submit the data are listed in the data source onboarding form. Refer to the website for the most current version of the document. <website here>
    - **Data Fields.** Data that can be submitted to the Oregon Provider Directory are listed in a data loading specification document. Refer to the program website for the most current version of this document. <website here>
    - **Restricted Data.** In the future, Data Contributors may be able to request to restrict viewing of source data or subset of source data (“Restricted Data”) to certain users or classes of users.
    - **Frequency of Transmission.** Data Contributors select the frequency for their data submissions (e.g., weekly, monthly, or quarterly) and agree to submit on an ongoing basis according to the agreed upon frequency until termination of the Agreement.

3. **Master Records.** Source Records are cleaned, deduplicated, formatted, parsed, selected, matched, and merged to create a single master record ("Master Record") according to a set of business rules. Because Source Records from Data Contributors may conflict, trust preferences in the business rules determine which source record to include in the Master Record. Business rules are reviewed on an ongoing basis by the Program and updated when necessary. Master Records are OHA work product and the intellectual property of OHA.
4. **Data Discrepancy Flagging.** Authorized Users may report data discrepancies in either a Source Record or a Master Record to the Program. Authorized Web Portal Users may report or flag Provider Data discrepancies within the System. Authorized System to System Interface Users may report Provider Data discrepancies by contacting the help desk at [help@Oregon-PD.org](mailto:help@Oregon-PD.org). The Program will research and verify the discrepancies. If the Provider Data is found to be inaccurate, the Program will change the Master Record by adding a program level source record with the correct data, notify the Authorized User who reported the discrepancy, and if provided by a file upload or interface, notify the Data Contributor who provided the data.
5. **Data Stewardship.** The Program will provide data stewardship services over Provider Data quality. Such services consist of automated and manual activities.
  - a. **Automated Data Stewardship** includes data management tasks to clean, deduplicate, format, parse, select, match, and merge data.
  - b. **Manual Data Stewardship** includes performing data management tasks that could not be automated and the following:
    - Conducting randomized sampling of Provider Data
    - Resolving data discrepancy flags submitted by Authorized users
    - Reaching out to Data Contributors when necessary to resolve data file errors or missing file submissions, or other data improvement efforts
    - Reaching out to providers or their designated contacts directly to resolve data validation errors

## Section 8: Data Use Policies

1. **Purpose.** This Section 8 outlines permitted, prohibited, and limited uses for the Provider Data. Data Contributors that provide data to the Oregon

Provider Directory do so with the expectation it will only be used in the manner specified in these Policies and Procedures. Participating Entity, Authorized Users, and Extract Recipients are authorized to access Provider Data only for purposes allowed under these Policies and Procedures.

2. **Permitted Uses.** OHA provides Provider Data for the purposes of participating entities' managing internal provider directories and networks, finding contact information such as Direct secure messaging email addresses or phone numbers for providers to enable health information exchange, and utilizing practice and program information to support the calculation of metrics and outcomes.
3. **Prohibited Uses.** Participating Entity shall not use Provider Data for any purpose not listed in this section or otherwise authorized in advance (e.g., via an Extract Agreement), and shall not make available, transfer, or sell Oregon Provider Directory data or files to a third party, without the express consent of the parties concerned. This includes but is not limited to:
  - a. pop-up ads
  - b. soliciting business
  - c. surveys not pre-authorized in writing by the Program
  - d. spamming messages
  - e. direct marketing, database marketing, or telemarketing activitiesViolation of this section may result in immediate suspension under Section IV.3, or termination under Section IX.2. of the Agreement.
4. **Limited Uses.** At its discretion, OHA may provide limited data sets to Extract Recipients who have received authorization from OHA to receive extracts for authorized research purposes.
  - a. Extract Recipients do not have access to the System and may only use the data for purposes outlined in an agreement with OHA and for no other purposes.
  - b. Extract Recipients are required to submit an application to OHA that includes: information the purpose for the request, how data will be used, if it has been approved by the organization's institutional review board, and the timeline for the project. Refer to the Oregon Provider Directory website at <https://www.oregon.gov/oha/HPA/OHIT/Pages/PD-Overview.aspx> for more information on data requests.
  - c. Data requests are approved by a data review committee established by OHA.

- d. Data elements requested by Extract Recipients may include any element that is included as a viewable field by Authorized Users in the Oregon Provider Directory.
  - e. Extract Recipients are required to sign an agreement which outlines the agreement for the limited use of the data, and the privacy and security requirements for that use.
- 5. **OHA Uses.** OHA and DHS may use Provider Data to evaluate and inform statewide health policy and programs. This includes but is not limited to: reporting on program participation and impacts of programs around the state, publishing reports on health care outcomes and utilization, conducting environmental scans, overseeing public health surveillance and practice, managing OHA and DHS provider directories, finding providers and their practice information, and supporting evaluation, forecasting, and audit functions of OHA and DHS programs.

## Section 9: Notice and Process for Updating the Policies and Procedures

1. **General.** OHA will make available the current versions of the Policies and Procedures on its website at <https://www.oregon.gov/oha/HPA/OHIT/Pages/PD-Overview.aspx>. Interested parties may sign up to receive notices and provide feedback when there are proposed changes to the Policies and Procedures by subscribing to updates here: [https://public.govdelivery.com/accounts/ORDHS/subscriber/new?topic\\_id=ORDHS\\_635](https://public.govdelivery.com/accounts/ORDHS/subscriber/new?topic_id=ORDHS_635). General questions may be directed to the Oregon Provider Directory Program at [Oregon.Provider-Directory@dhs.oha.state.or.us](mailto:Oregon.Provider-Directory@dhs.oha.state.or.us).
2. **Notice of Changes.** OHA may implement any new Policies and Procedures, or amend, or repeal and replace any existing Policies and Procedures, at any time by providing participating entities and Extract Recipients Users with notice of the change via email at least 30 calendar days prior to the effective date of the change, unless in OHA's sole discretion a shorter time frame is required.
  - a. Participating entities and Extract Recipients shall inform their respective Authorized Users of updates to the Policies and Procedures. Authorized Users shall to review updates to the Policies and Procedures following notice of the update(s).
  - b. Within 15 calendar days of receiving notice of the change, a participating entity, Extract Recipient, or Authorized User

may request that OHA delay implementation of the change based on unforeseen complications or other good cause. OHA will respond to a request to delay implementation within seven calendar days of receiving the request. Continued use of the System or Provider Data after the effective date of a change of the Policies and Procedures constitutes acceptance of such Policies and Procedures.

## **Attachment 1: MiHIN Terms of Service**

THIS AGREEMENT IS INCLUDED IN THE PARTICIPATION AGREEMENT AS A CONVENIENCE AND FOR REFERENCE. THIS IS AN AGREEMENT BETWEEN PARTICIPATING ENTITY AND THE MICHIGAN HEALTH INFORMATION NETWORK. OHA IS NOT A PARTY TO THESE TERMS OF ACCESS.