

# Clinical Quality Metrics Registry (CQMR) Organizational Participation Agreement

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## Clinical Quality Metrics Registry Participation Agreement

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

The purpose of the Clinical Quality Metrics Registry (CQMR) is to support more efficient and robust healthcare quality measurement and improvement activities by collecting, aggregating, displaying, filtering, and exporting Clinical Quality Measure Data for Quality Reporting Programs. HIPAA Covered Entities and their Business Associates may use the CQMR consistently with that purpose and applicable laws and regulations.

The initial focus of the CQMR is to support Oregon's Medicaid program and providers serving Oregon Medicaid members. Over time, OHA may change the Quality Reporting Programs supported by the CQMR or add functionality to the CQMR System and Services, in accordance with the CQMR Policies and Procedures.

Participating Entity intends to use the CQMR for quality assessment and improvement or other healthcare operations activities. OHA agrees to allow Participating Entity to use the CQMR in accordance with the terms and conditions of this Agreement.

Accordingly, OHA and Participating Entity agree as follows.

### I. DEFINITIONS

This section defines some of the terms used in this Agreement. Other terms used in this Agreement are defined in Exhibit B, CQMR Policies and Procedures.

1. "**Business Associate**" means any person that meets the definition of business associate for a Covered Entity under 45 CFR § 160.103, who, other than as a member of the Covered Entity's workforce, creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity for a function or activity regulated by HIPAA.
2. "**Clinical Quality Measure**" or "**CQM**" means measures of healthcare quality that use data from sources such as healthcare providers' electronic health records (EHRs) and other health information technology systems. Such measures also may be referred to as "electronic Clinical Quality Measures" or "eQMs."
3. "**Covered Entity**" means a covered entity under HIPAA, as defined in 45 CFR Part 160.103, and includes a health care provider that transmits any health information in electronic form in connection with a transaction covered by HIPAA, a health care clearinghouse, or a health plan as that term is defined at 45 CFR Part 160.103.

4. **"CQMR System"** or "System" means the technology provided by vendors under contract with OHA to enable the CQMR Service.
5. **"Documentation"** means all materials, technical manuals, operator and user manuals, implementation guides, diagrams, file descriptions, and other written information made generally available by OHA and its Vendors to users of the CQMR, including all updates there to, that describe the functions, operational characteristics, and specifications and use of the CQMR.
6. **"Party"** means either OHA or Participating Entity, collectively referred to as the "Parties."
7. **"Permitted Use"** has the meaning set forth in the CQMR Policies and Procedures.
8. **"Policies and Procedures"** or **"CQMR Policies and Procedures"** means OHA's written policies and procedures pertaining to the use of the CQMR System.
9. **"Protected Health Information"** or **"PHI"**, as defined under 45 CFR 160.103, is individually identifiable health information, including demographic information collected from an individual, maintained or transmitted by a covered entity in any form or medium, including electronically, and: (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment information or billing records pertaining to the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes electronic PHI.
10. **"Service"** means the services and functionality provided by the CQMR System allowing Participating Entity to report, view, filter, and export CQM Data in accordance with this Agreement, including the CQMR Policies and Procedures. The Service may include enhancements, such as patient matching or patient-health plan attribution functionality, to improve the usefulness of the System.
11. **"Software"** means any software provided in or as an element of the CQMR System for the Participating Entity's use of the CQMR System, including any upgrades of or modifications to such software, or new versions of such software.
12. **"Unauthorized Users"** means individuals, including employees, contractors or agents of Participating Entity, and any individual who uses

equipment within Participating Entity's control, who accesses the CQMR by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, without authority.

## II. GENERAL ADMINISTRATION

1. **New Participating Entities.** OHA will execute a participation agreement substantially in the form of this Participation Agreement with each participating entity before the participating entity may use the CQMR. OHA requires that each participating entity (i) require that its Authorized Users comply with the Authorized User Agreement to use the System and (ii) be responsible for the actions and omissions of its Authorized Users.
2. **Provision of System Equipment and Software.** Participating Entity shall have the software and other infrastructure necessary to make use of the service provided by 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 they are properly configured to access the System, including but not limited to the base workstation operating system, web browser, and internet connectivity.
3. **CQMR Services Provided to Participating Entity.** Participating Entity may use the CQMR to report, view, filter, or export CQM Data to conduct quality assessment and improvement activities, activities related to improving health or reducing health care costs, case management and care coordination, and other activities permissible under HIPAA for healthcare operations and under other applicable laws and regulations.
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 notify Participating Entity if material terms of this Agreement or the MiHIN Terms of Service are updated 30 calendar days prior to such an update being effective. Continued use by Participating Entity of the System after the 30 day period constitutes acceptance of the updated terms.

#### **IV. LICENSE GRANT AND RESTRICTIONS; DATA USE ACKNOWLEDGEMENT**

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 CQMR Services in accordance with this Agreement, including the CQMR 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 CQMR to send, receive, find, and use CQM Data only for the purposes set forth in the terms and conditions of this Agreement and the CQMR Policies and Procedures. This license does not grant any rights to obtaining future upgrades, updates, enhancements, or supplements of the CQMR. If upgrades, updates, enhancements, or supplements of the CQMR 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.** 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.
4. **Acknowledgment of Data Use.** Participating Entity acknowledges that OHA will use CQM Data and other Participating Entity information as described in the Policies and Procedures. This includes OHA incorporating non-protected, otherwise publicly available information about Participating Entity and its Authorized Users, such as information that a clinic participates in a particular Quality Reporting Program or information that a physician practices at a particular clinic, in OHA's Provider Directory (<https://www.oregon.gov/oha/HPA/OHIT/Pages/PD-Overview.aspx>).

## V. PARTICIPATING ENTITY RESPONSIBILITIES

1. **Use of the CQMR.** Participating Entity represents that it either (i) is a Covered Entity or (ii) is a Business Associate of a Covered Entity and will use the CQMR System to perform functions or activities on behalf of the Covered Entity.
2. Participating Entity will:
  - a. use the CQMR in good faith, in accordance with applicable laws and the CQMR Policies and Procedures;
  - b. facilitate Authorized Users' access to the CQMR as set forth in the Policies and Procedures and promptly revoke access when an Authorized User should no longer have access to the CQMR; and
  - c. be responsible for maintaining in full working condition, at its own expense, its technical interfaces in its (or its agents') possession, if applicable.
3. **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 CQMR System.
4. **Accurate Participating Entity Information.** Participating Entity will 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.

5. **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 CQMR System 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.
6. **Authorized User Training.** Participating Entity shall ensure its Authorized Users receive periodic training on the privacy and security obligations relating to the System, and use the CQMR System in accordance with the Policies and Procedures, regarding, without limitation: (i) proper use of the System, (ii) proper use of any data obtained using the System, and (iii) compliance with HIPAA and other applicable laws. As a condition of use of the System, the System will require each Authorized User of Participating Entity to agree electronically to an Authorized User Agreement. The form of the Authorized User Agreement is as attached as Exhibit A to this Agreement, and may be updated from time to time. Whenever the Authorized User Agreement is updated, the System will require the Authorized User to agree to the revised terms as a condition of use.
7. **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 CQMR System and will be responsible for facilitating other Authorized Users' access to the System.
8. **Participating Entity User Access.** A Participating Entity shall not permit access to the System by its employees, consultants, staff, and agents unless and until such users have signed an Authorized User Agreement.
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 through Participating Entity (including Authorized Users and Unauthorized users). The acts and omissions of Participating Entity, and 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 the 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 maintain a secure environment to connect to the System and Services that is compliant with HIPAA and all applicable laws and regulations and the CQMR Policies and Procedures, and that supports compliance with HIPAA by employees, consultants, staff, agents and all other individuals who access the System through Participating Entity. Participating Entity shall at all times 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 CQMR. Without limitation of the foregoing, Participating Entity shall use at least reasonable efforts to ensure that its connection to and use of the CQMR, including the medium containing any data or other information provided to the CQMR, 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 CQMR 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 CQMR 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.
12. **Safeguards.** Participating Entity shall implement and use appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of PHI other than as permitted by this Participation Agreement; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of CQM Data that includes Protected Health Information.



13. **Compliance in Using, Disclosing and Obtaining Information.** Participating Entity is responsible for obtaining any required authorization or consent from any individual whose PHI it sends, receives, finds or uses through the Services. In the event Participating Entity sends or receives CQM Data that Participating Entity is not authorized to send or receive, Participating Entity will immediately inform OHA, delete such CQM Data, and require its Authorized Users to do so.
14. **Business Associates.** Participating Entity is responsible for establishing and maintaining an appropriate Business Associate Agreement with any person that acts as Participating Entity's Business Associate in connection with Participating Entity's use of the CQMR System. This includes any use by Participating Entity of the CQMR System for any non-Medicaid PHI. For the convenience of any participating entity that determines it needs to enter into a BAA with the CQMR System vendor, MiHIN's form BAA is an exhibit to the MiHIN Terms of Service, which are Attachment 1 to this Agreement.
15. **Patient Care.** Participating Entity is solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management for its respective patients and members resulting from, or in any way related to, the use of the CQMR or the CQM Data made available thereby. OHA and its Vendors do not assume any role in the care of any patient.
16. **CQM Data.**
  - a. **Responsibility for CQM Data.** Participating Entity is responsible for (i) the performance of its information technology systems; and (ii) all of its use of the CQMR and the CQM Data obtained through the CQMR, including any of its Authorized Users, employees, consultants, staff and agents in reliance on CQM Data obtained through the CQMR. The CQMR is not a substitute for any obligation that Participating Entity may have under applicable law to maintain patient medical records or health plan records, and Participating Entity is responsible for compliance with any such requirements.
  - b. **No Limitations on Participating Entity's Use of Its Own Data.** Nothing in this Agreement is intended or will be deemed to in any way limit Participating Entity's use of its own CQM Data outside of the System.

## **VI. OHA RESPONSIBILITIES**

1. **Agreements.** OHA will require each participating entity to enter into a Participation Agreement with OHA to use the CQMR. OHA will require each

Authorized 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 entities of any material change to the Policies and Procedures not less than thirty (30) calendar days prior to any such change, unless a shorter timeline is required by circumstances outside OHA's control. Continued use of the CQMR System by Participating Entity after the effective date of the modified Policies and Procedures will constitute acceptance by Participating Entity of the modified 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 issued for use of the CQMR 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 CQMR 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 Confidential 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 VI 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 Agreement is intended or will be deemed to waive any applicable privilege(s) with respect to such information.

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

1. **Availability of the System and CQM 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 CQM 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, 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, 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 OR ANY INFORMATION CONTAINED THEREIN OR OTHERWISE PROVIDED PURSUANT TO THIS AGREEMENT. OHA MAKES NO WARRANTIES THAT THE SYSTEM, THE SOFTWARE, OR THE DOCUMENTATION 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 POSSIBLITY 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 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 CQM Data in the CQMR originates from Participating Entities and 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 CQM Data or other 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 CQM Data, or (b) for any action or inaction of any other participating entity.

## **IX. TERM AND TERMINATION**

1. **Term.** This Agreement will commence on the Effective Date and be in effect until terminated in accordance with the provisions of this Agreement.
2. **Termination.** This Agreement may terminate 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 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 CQM Data. OHA may elect to suspend Participating Entity's access to the System in lieu of termination..
- 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 CQMR.
- 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 CQMR 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 CQMR.

3. **Return or Destruction of Protected Health Information.** Promptly (but in any event not later than thirty (30) calendar 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 PHI obtained from the CQMR System that is not incorporated into Participating Entity's own PHI consistent with applicable laws and this Agreement. Participating Entity's senior information officer or equivalent thereof shall certify such removal to OHA in writing. Participating Entity shall maintain protections required by law or this Agreement for any retained CQMR Data for so long as Participating Entity (including through any third party) retains the CQMR Data.
4. **Survival.** The Parties' respective rights and obligations with respect to the following survive termination of this Agreement:
  - a. the provisions of the following Articles and Sections: Article VII (Confidential Information); Article VII (Limitation on Liability); Article X, Sections 11 (Indemnification; Contribution) and 12 (Equitable Remedies); 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 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 is 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.CQMR@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 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 actor 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 the CQMR System or CQM 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 ("Indemnitee") 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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims. This Section survives expiration or termination of this Agreement.
- iv. **Sovereign Immunity**
  - i. 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.

- ii. 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 12, Participating Entity may defend a claim with counsel of its own choosing.
12. **Equitable Remedies.** In the event of a breach, or threatened breach, (i) by either Party of any of its obligations under Article VI above, (ii) by Participating Entity of its obligations under Article IV above, or (iii) by OHA of its obligations under Article V 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.
13. **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.

14. **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.
15. **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.
16. **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.
17. **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.
18. **Complete Agreement.** This Agreement consists of these terms and conditions, Exhibit A, Authorized User Agreement, and Exhibit B, CQMR Policies and Procedures, and is the complete agreement between the parties regarding its subject matter. This 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.

\_\_\_\_\_  
Organization Name

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

\_\_\_\_\_  
Printed Name of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Oregon Health Authority (OHA):

\_\_\_\_\_  
Printed Name of Authorized Signatory for OHA

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Date

# **Exhibit A: Authorized User Agreement**

## **AUTHORIZED USER AGREEMENT**

### **Terms of Access to Oregon Clinical Quality Metrics Registry (CQMR)**

The terms and conditions of this Authorized User Agreement (User Agreement) govern your use of the Clinical Quality Metrics Registry (CQMR). CQMR means the online service and system provided by the Oregon Health Authority (OHA) for the collection, analysis, display, and export of CQMR data for healthcare quality assessment and quality improvement activities. OHA vendors provide critical elements of the CQMR system. Access to the CQMR is granted to organizations, also 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 the Authorized User are entering into this User Agreement with OHA. By signing this User Agreement, or accessing and using the CQMR Services, 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 CQMR Services.**

1. **Identification as an Authorized User.** You have been identified by your Participating Entity organization (the hospital, clinic, physician's office, health plan, health information exchange, or registry with whom you are affiliated, hereinafter "Organization") as needing access to the CQMR. Your organization has provided you with a copy of the CQMR 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 protected health information and other Clinical Quality Measure Data (CQM Data) accessed via the CQMR.
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 CQMR. 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 CQMR. You agree that you have reviewed this training material.
  - 3.2. **Policies and Procedures.** Your Organization has been provided the CQMR Policies and Procedures for the use of the CQMR. You agree that you have reviewed the policies and procedures, and you agree to comply with them.
  - 3.3. **Privacy and Security Obligations.** You agree that your Organization has provided you with training regarding privacy and security obligations under



HIPAA and other applicable laws, that you have completed the training, will participate in future periodic training, and understand your duties regarding privacy and security of CQMR Data.

4. **User Name and Password.** You are being provided with access to the CQMR 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 CQMR 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. **CQMR Use Certifications.** You hereby certify:
    - 5.1. You will log out of the CQMR before leaving your workstation to prevent others from accessing the CQMR.
    - 5.2. You will not fax/print/email/download/copy/photograph or otherwise provide PHI or other CQM Data to any third parties except in accordance with CQMR Policies and Procedures and applicable law. You will not make unauthorized copies of any PHI or other CQM Data.
    - 5.3. You will not save PHI or other CQM Data to portable media devices (such as CDs, USB drives, or handheld devices) except in accordance with the CQMR Policies and Procedures and applicable law.
    - 5.4. You will not use the CQMR or access or view any PHI or other CQM Data except as required for your role with your Organization.
    - 5.5. You will maintain the confidentiality of all information in accordance with state and federal laws governing the privacy and security of health information, including HIPAA, and in accordance with your Organization's privacy and security policies and procedures, as well as the CQMR Policies and Procedures. This includes but is not limited to obtaining any necessary patient consent or authorizations for disclosing PHI.
    - 5.6. You will not access the CQMR via public-use workstations or devices. Public-use workstations and devices are those where general public access is allowed. HIPAA administrative, technical and physical security requirements cannot be applied and controlled on such devices.
  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 CQMR 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 CQMR and compliance with the terms of this User Agreement.
  8. **Suspension and Termination.** Your Organization or OHA may suspend your access to the CQMR or terminate this User Agreement at any time.
- THIS IS A BINDING AGREEMENT. By indicating that you agree on the CQMR website, you agree to comply with all terms and conditions of this User Agreement and the CQMR Policies and Procedures.

## **Exhibit B: Clinical Quality Metrics Registry (CQMR) Policies and Procedures**

### **Section 1: Who Must Comply with the Policies and Procedures**

These Policies and Procedures represent an important safeguard for protecting information from various internal and external risks, including unauthorized access.

1. All Participating Entities that have signed an organizational Participation Agreement (“Agreement”) and wish to use the Clinical Quality Metrics Registry (CQMR) must comply with these Policies and Procedures. A Participating Entity’s failure to comply with these Policies and Procedures constitutes a breach of the Agreement and may result in termination of the Agreement, denial of access to the System, or other sanctions as may be designated in the Agreement and in these Policies and Procedures.
2. All Authorized Users must comply with the provisions of these Policies and Procedures that are applicable to Authorized Users. An Authorized User’s failure to comply with the provisions of these Policies and Procedures applicable to Authorized Users constitutes a breach of the Authorized User Agreement and may result in termination of the Authorized User Agreement, denial of access to the System by the Authorized User, or other sanctions as may be designated in the Authorized User Agreement and in these Policies and Procedures.

### **Section 2: Definitions**

1. **“Adverse Security Event”** means the unauthorized acquisition, access, disclosure, or use of unencrypted CQM Data by anyone who is not an Authorized User or by an Authorized User in any manner that is not permitted under this Agreement.
2. **“Authorized User”** means an individual or a Participating Entity using the CQMR System in a manner consistent with Permitted Uses.
3. **“Clinical Quality Measure Data”** or **“CQM Data”** means reported data elements such as numerators, denominators, exceptions, exclusions, and supplemental data, such as patient race, ethnicity, and payer, as contained in the measure specifications. Depending on the requirements of the Quality Reporting Program, CQM Data can be reported as in the aggregate (for example, totals for a provider or clinic for each data element in a CQM) or at the individual patient level.

As used in this Agreement, CQM Data also may include additional data that is used to enrich the CQM Data reported by healthcare providers. Such data may include, for example, health plan enrollment data, which can be used to attribute patient data to health plans who are authorized

to reimburse for patient care, so that when healthcare providers report CQM Data at the individual patient level, the CQMR System can filter the CQM Data by health plan.

4. **“Clinical Quality Metrics Registry”** or **“CQMR”** means the Service and System provided by OHA for the collection, analysis, display, and export of CQM Data. The Service will support reporting to Quality Reporting Programs as identified by OHA in the CQMR Policies and Procedures. OHA has contracted with Vendors for the provision of the CQMR Service and System.
5. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”) and its implementing Privacy Rule and Security Rule, 45 CFR Parts 160 and 164, each as may be amended from time to time.
6. **“Participating Entity”** means a HIPAA Covered Entity or Business Associate that meets the requirements for use of the CQMR as set forth in the Policies and Procedures and is a signatory to this Participation Agreement. Participating Entities may include healthcare providers; health plans, including Coordinated Care Organizations (CCOs); and health care providers’ or health plans’ Business Associates, such as a health information exchange (HIE) or a quality registry.
7. **“Quality Reporting Programs”** means programs that are intended to assess healthcare quality, whether as the program’s primary focus or a component of a larger program. Examples of Quality Reporting Programs include Oregon’s Coordinated Care Organization (CCO) incentive measures, Oregon’s Medicaid Electronic Health Record (EHR) Incentive Program, the Centers for Medicare & Medicaid Services (CMS) Merit-based Incentive Payment System (MIPS), and Comprehensive Primary Care Plus (CPC+).

### **Section 3: Quality Reporting Programs**

OHA is implementing the CQMR to support reporting of clinical quality measures used in Quality Reporting Programs. Intended initial uses are to support Coordinated Care Organization (CCO) incentive measures, Oregon’s Medicaid Electronic Health Record (EHR) Incentive Program, and Comprehensive Primary Care Plus (CPC+) in Oregon. The CQMR also may be used to support the Merit-based Incentive Payment System (MIPS) for Participating Entities that also participate in CCO incentive measures, Oregon’s Medicaid EHR Incentive Program, or CPC+.

OHA intends to make the CQMR available to support additional Quality Reporting Programs. OHA's intention is to support quality improvement efforts and decrease administrative burdens of quality reporting by:

- enabling Oregon health care providers to report clinical quality measures data to the CQMR,
- collecting supplemental data from health plans and potentially additional sources over time to enrich the clinical quality measure data set,
- providing functionality to filter the reported clinical quality measure data by fields such as payer and practice location, as needed for quality reporting and quality improvement activities,
- offering the ability to send reports meet quality reporting obligations, for example, submitting data to the Quality Payment Program (QPP) portal to satisfy certain Centers for Medicare and Medicaid Services (CMS) reporting requirements for programs such as the Merit-based Incentive Payment System (MIPS) and Comprehensive Primary Care Plus (CPC+).

Additional programs may be supported at OHA's discretion. OHA may consider factors such as alignment of clinical quality measures and reporting parameters in additional programs; availability of funding to support any needed development or operational costs; any approvals needed from CMS as a consequence of federal financial participation in the CQMR or other necessary approvals; consistency with the purposes of the CQMR; and timing considerations for implementation. If OHA changes programs supported by the CQMR, OHA will provide notice by amending these Policies and Procedures using the process set forth in Section 10 below.

1. OHA will use the CQMR System to support its Quality Reporting Program needs, such as calculating measure performance and determining eligibility for incentive payments. OHA also may use CQM Data on Medicaid members for quality assessment and analytics.
2. Providers may use the CQMR System to meet reporting obligations for Quality Reporting Programs and to analyze and export their CQM Data through dashboard and report functions, such as filtering functions to roll up and drill down on data elements.
  - a. Oregon Medicaid providers who participate in Oregon's Medicaid EHR Incentive Program or CCO incentive measure reporting may send CQM Data to the CQMR to meet program requirements.
  - b. Oregon providers who participate in CPC+ may send CQM Data to the CQMR to meet CMS's, OHA's, or other payers' CPC+ CQM reporting requirements.
  - c. Oregon providers participating in CCO incentive measure reporting, Oregon's Medicaid EHR Incentive Program, or CPC+ may send CQM

Data to the CQMR to be submitted to CMS to meet MIPS reporting requirements.

3. CCOs and other health plans/ payers may use the CQMR System for quality assessment and improvement activities and to analyze and export CQM Data about their members through dashboard and report functions, such as filtering functions to roll up and drill down on data elements.
  - a. Functionality may be offered to allow CCOs and other payers participating in CPC+ to send member enrollment data to the CQMR to help enable accurate attribution of patients to their respective payers.
  - b. A CCO may access the CQMR for purposes related to CCO incentive measure reporting, including submitting data proposals, submitting CQM Data on behalf of providers in the CCO's network, and accessing CQM Data submitted by the CCO's network of providers as part of the CCO's data submission.
4. If a Participating Entity chooses to have CQM Data sent to the Centers for Medicare and Medicaid Services (CMS) or to another recipient to meet quality reporting requirements, then the Participating Entity agrees to comply with applicable program requirements of CMS or the other recipient. For example, if a Participating Entity chooses to have the CQMR System send CQM Data to CMS to meet Merit-based Incentive Payment System (MIPS) reporting requirements, the Participating Entity agrees to provide documentation that the Participating Entity has authorized the CQMR vendor to submit data on its behalf and to cooperate with data validation audits as requested.

#### **Section 4: Permitted Uses**

1. The CQMR System and Services may be used consistently with healthcare operations purposes under HIPAA. Parties may access and use the CQMR and CQM Data only as permissible under HIPAA and other applicable laws and regulations.
2. OHA may use CQM Data for operations of its Quality Reporting Programs, such as Oregon's Medicaid EHR Incentive Program and CCO incentive measures, including, but not limited to, calculation of performance, eligibility for incentives, and public reports.
3. Participating Entity may use the CQMR System and Services to meet additional reporting requirements under Quality Reporting Programs that are supported by the CQMR. For example, if the Merit-based Incentive Payment System (MIPS) is a Quality Reporting Program supported by the CQMR, then a Participating Entity could choose to have its CQM Data sent by the CQMR Vendor to the Centers for Medicare & Medicaid Services (CMS) to meet the Participating Entity's MIPS reporting requirements.

4. Parties may use CQM Data and may combine CQM Data with other data sets, such as claims and administrative data, for quality assessment and improvement activities, including quality comparisons and analytics.
5. CQM Data may be used for research purposes, provided that Participating Entity engages in applicable request and review processes and Participating Entity's use of CQM Data complies with HIPAA and any other applicable laws and regulations.
6. CQM Data may be archived for audit, trending, and quality control purposes.
7. CQM Data may be enriched by OHA vendors for the purposes of standardizing data and enhancing its usability, for example, by supporting patient matching and attribution.
8. OHA and its vendor may extract non-protected, otherwise publicly available information from the CQMR System about Participating Entity and its Authorized Users' affiliations – for example, information that a clinic participates in a particular Quality Reporting Program or information that a physician practices at a particular clinic – and may incorporate that information into Oregon's statewide provider directory.

## **Section 5: Authentication**

1. **Purpose.** Authentication is the process of verifying the identity of a Participating Entity, and verifying that its designated Administrator(s) is who he or she claims to be. This is accomplished by Participating Entity and the Administrator(s) providing proof of identity.
2. **Policies and Procedures.** OHA's vendor, OneHealthPort, is responsible for authorizing and authenticating a Participating Entity and its designated Administrator(s). The process of authorizing and authenticating includes verifying the identity of Participating Entity, its Administrator(s), and his/her affiliation with Participating Entity based on the information provided to OneHealthPort.

## **Section 6: Training**

Authorized Users must be trained on how to use the CQMR System properly and their duty to understand and comply with their responsibilities under the Authorized User Agreement, these Policies and Procedures and applicable laws.

1. OHA will provide training materials to Participating Entity on the technical aspects on how to use the System. Participating Entity shall ensure that its Authorized Users review the training materials provided before they begin to use the System.

2. Participating Entity shall ensure that its Authorized Users review and execute Authorized User Agreement, and review these Policies and Procedures before they begin to use the System.
3. Participating Entity shall ensure that its Authorized Users are trained, prior to commencing use of the System and periodically thereafter, on their obligations regarding privacy and security under HIPAA and other applicable laws.

## **Section 7: Access**

1. **Purpose.** Access controls govern when and how Authorized Users may access the CQMR System and CQM Data. Participating Entity shall implement the minimum controls set forth in this section, and ensure that: (1) only Authorized Users access information via the System; and (2) they do so only in accordance with the requirements (specified herein) that limit their access to specified information. These access policies are designed to minimize any risk of unauthorized access and ensure that the CQMR and CQM Data are used for permissible purposes.
2. **Process.** Each Participating Entity must enter into a Participation Agreement prior to being granted access to and use of the System.
  - a. **Authorized Users.** Participating Entity is responsible for facilitating its Authorized Users' access to the System.
    - Participating Entity will identify individuals within its organization that need access to the System to carry out their professional responsibilities. This may include, but is not limited to, health care providers, employees, staff, contractors, or agents of an organization.
    - Participating Entity will identify an individual as the Organization's Administrator ("Administrator") who will be responsible for granting access to all other Authorized Users, and ensuring that Authorized Users agree to terms in the Authorized User Agreement and take the steps necessary to obtain a user name and password. Authorized Users will be informed of the Administrator as the point of contact for all questions, training, and to whom reports of any potential unauthorized access shall 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/>.
    - Participating Entity shall maintain all records of access and training for the duration of this Agreement and for seven (7) years following termination. Records include but are not limited

to names of Authorized Users, dates when access was granted, dates when training was completed, details if user has violated their Agreement, dates if access is terminated and reason for termination, and dates if access is reinstated.

3. **Termination of Access and Other Sanctions.** Participating Entity shall ensure that an Authorized User's access to the System is terminated in the following situations and in accordance with the processes described:
  - a. Promptly, and in any event within one business day of termination of a Participating Entity's Participation Agreement with OHA;
  - b. Immediately following an Authorized User's failure to comply with the Authorized User Agreement, including an Adverse Security Event; or
  - c. Immediately, and in any event within one business day, of termination of an Authorized User's employment or affiliation with the Participating Entity.
  - d. Participating Entity shall notify OHA immediately upon termination of an Authorized User's access to the System due to an Adverse Security Event.

## **Section 8: Audit**

1. This section relates to OHA's ability to audit Participating Entities' use of CQMR System and Services. In addition, Quality Reporting Programs may have additional audit standards, such as standards related to data quality and completeness. Nothing in these Policies and Procedures is intended to alter or displace any audit provisions established by the Quality Reporting Programs.
2. **Purpose.** Audits are useful oversight tools for recording and examining access to information through the CQMR System (e.g., who accessed what data and when) and are necessary for verifying compliance with access controls, developed to prevent/limit inappropriate access to information. Participating Entity shall follow the minimum requirements for audits set forth in this Section regarding access to CQM Data via the System.
3. **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 and proper use of the System in accordance with this Agreement and these Policies and Procedures.
4. **Conduct of Audits.** Audits will take place during normal business hours and at agreed upon times, and will be limited to such records, personnel and other resources of Participating Entity as are necessary to determine proper use of the System, compliance with this Agreement, including the



Policies and Procedures, and compliance with applicable state and federal requirements. Each party will bear its own expenses relating to such audits. OHA will conduct any audit in a manner designed to reasonably minimize interference with Participating Entity's day-to-day operations.

## **Section 9: Adverse Security Events**

This section sets forth minimum standards that must be followed in the event of a Adverse Security Event. These standards are designed to promote accountability, assure all parties' commitment to privacy and security, and mitigate any harms.

1. **Notification.** As soon as reasonably practicable, but no later than five (5) business days after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on the CQMR System or another entity or individual, Participating Entity shall notify in writing OHA and all participating entities that are likely impacted by the Adverse Security Event. Participating Entity shall supplement the information contained in the notification as additional information becomes available, and shall cooperate with OHA, other government oversight entities, OHA vendors, and other participating entities. The notification must not include any PHI. The notification should include sufficient information for OHA and affected participating entities to understand the nature of the Adverse Security Event. For instance, such notification could include, to the extent available at the time of the notification, the following information:
  - a. One or two sentence description of the Adverse Security Event.
  - b. Description of the roles of the people involved in the Adverse Security Event (e.g. employees, Authorized Users, service providers, unauthorized persons, etc.).
  - c. The type of data involved in the Adverse Security Event.
  - d. Participating entity or entities likely impacted by the Adverse Security Event.
  - e. Number of individuals or records impacted/estimated to be impacted by the Adverse Security Event.
  - f. Actions taken by the Participating Entity to mitigate any unauthorized access to, use or disclosure of PHI as a result of the Adverse Security Event.
  - g. Current status of the Adverse Security Event (whether the event is under investigation or resolved).
  - h. Corrective action taken and steps planned to be taken to prevent any similar Adverse Security Event.

2. **Use of Summaries.** If, on the basis of the notification, OHA determines that (i) other participating entities that have not been notified of the Adverse Security Event would benefit from a summary of the notification or (ii) a summary of the notification to the other participating entities would enhance privacy and security practices, then OHA may provide, in a timely manner, a summary to additional participating entities. Such a summary will not identify any of the participating entities or individuals involved in the Adverse Security Event.
3. Nothing in these Policies and Procedures supersedes an obligation (if any) under applicable law.
4. Compliance with these Policies and Procedures does not relieve Participating Entity of any other security incident or Adverse Security Event reporting requirements under applicable law including, but not limited to, HIPAA or laws related to consumers.
5. **Responsibilities of OHA.** In the event that OHA becomes aware of any Adverse Security Event, OHA will:
  - a. Notify any Participating Entities whose data is affected by the Adverse Security Event.
  - b. In the most expedient time possible and without unreasonable delay, investigate (or require the applicable Participating Entity to investigate) the scope and magnitude of such actual or suspected Adverse Security Event, and identify the root cause of the Adverse Security Event.
  - c. Mitigate (or require the applicable Participating Entity to mitigate) to the extent practicable, any harmful effect of such Adverse Security Event that is known to OHA or the applicable Participating Entity. Mitigation efforts will correspond with and be dependent upon internal risk analyses.
  - d. Notify the affected Participating Entity(ies) and any applicable regulatory agencies as required by and in accordance with applicable federal, state and local laws and regulations.
6. **Responsibility of Authorized User.** In the event that an Authorized User becomes aware of any Adverse Security Event, the Authorized User shall immediately notify the Organization Administrator of the Authorized User's Participating Entity.

## **Section 10: Process for Amending the Policies and Procedures**

OHA may implement new Policies and Procedures, or amend, or repeal and replace any existing Policies and Procedures, at any time by providing Participating Entity with notice of the change at least thirty (30) calendar days prior to the effective

date of the change. Within fifteen (15) calendar days of receiving notice of the change, a Participating Entity 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 (7) calendar days of receiving the request unless OHA determines, in its sole discretion, that a longer response period is necessary. Continued use of the System by Participating Entity after the effective date of a change of the Policies and Procedures constitutes acceptance of such Policies and Procedures.

Participating Entity shall inform its Authorized Users of changes to the Policies and Procedures. An Authorized User has the responsibility to review changes to the Policies and Procedures upon receiving notice of the change from Participating Entity. Continued use of the System by an Authorized User 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.