



BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “BAA”) is entered into between the National Committee for Quality Assurance (“NCQA”) and the individual or entity whose signature appears below as evidence of agreement to these the terms hereinafter referred to as “Covered Entity.” This BAA and any agreement for accreditation, certification or recognition entered into by Covered Entity and NCQA establish the terms of the relationship between NCQA and Covered Entity.

WHEREAS, Covered Entity desires to input data into data collection tools stored and maintained by NCQA for purposed of Covered Entity’s health care quality self assessment against NCQA’s standards and requirements and which data may include certain Protected Health Information (as defined in 45 C.F.R. Section 160.103) that is subject to protection under the federal privacy regulations (the “Privacy Regulations”) and the federal security regulations (the “Security Regulations”) established at 45 C.F.R. Parts 160 and 164, as amended from time to time, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations (“ARRA”), and this BAA shall apply to that PHI;

WHEREAS, Covered Entity may have entered into, may subsequently enter into, or may enter into simultaneously with this BAA, an agreement with NCQA to seek accreditation, certification or recognition (hereinafter any such agreement will be referred to as a “Contract”) and this BAA shall be applicable to any such Contract entered into by Covered Entity and NCQA, and NCQA acts as a Business Associate of Covered Entity, as defined under the Privacy and Security Regulations;

WHEREAS, the Purpose of this BAA is to satisfy certain standards and requirements of the Privacy and Security Regulations, 45 C.F.R. Parts 160 and 164, and ARRA, as the same may be amended from time to time.

In consideration of the mutual promises below, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. GENERAL PROVISIONS

Section 1. **Definitions.** Unless otherwise specified in the Contract or this BAA, all capitalized terms used herein and not otherwise defined shall have the meanings established by 45 C.F.R. Parts 160 and 164, and/or ARRA, as amended from time to time. “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. Section 160.103, limited to the information received from or created or received on behalf of Covered Entity. “Electronic PHI” shall mean Electronic Protected Health Information, as defined in 45 C.F.R. Section 160.103, limited to the information received from or created or received on behalf of Covered Entity. References in the Contract or this BAA to a section or subsection of title 42 of the United States Code are references to provisions of ARRA, and any reference to provisions of ARRA in the

Contract or this BAA shall be deemed a reference to that provision and its existing and future implementing regulations, when and as each is effective. "Compliance Date" shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA.

Section 2. **Effect.** This BAA shall apply to any PHI subject to the Contract and to any PHI provided by Covered Entity in the process of using data collection tools stored and maintained by NCQA for purposed of Covered Entity's health care quality self assessment against NCQA's standards and requirements. Any provision of the Contract, including all exhibits or other attachments thereto and all documents incorporated therein by reference, that is directly contradictory to one or more terms of this BAA ("Contradictory Term"), shall be superseded by the terms of this BAA to the extent and only to the extent of the contradiction and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this BAA.

II. RESPONSIBILITIES OF NCQA

Section 1. **Use and Disclosure of Protected Health Information.** Except as otherwise specified herein, (1) if NCQA and Covered Entity have not entered into a Contract, NCQA will not access, use or disclose the PHI entered into a NCQA data collection tool by Covered Entity for any purpose other than the provision of that functionality, such as routine server maintenance, as otherwise necessary to fulfill its obligations under this BAA, or as Required By Law, (2) if NCQA and Covered Entity have entered or enter into a Contract, NCQA may make any and all uses and disclosures of PHI necessary to perform its obligations under the Contract and this BAA, and (3) in any event, NCQA may:

(a) use and/or disclose PHI only as permitted or required by the Contract, this BAA, or as Required By Law, and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e);

(b) use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of NCQA;

(c) disclose PHI in its possession to a third party for the purpose of NCQA's proper management and administration or to fulfill any legal responsibilities of NCQA, provided however, that the disclosures are required by law or NCQA has received from the third party written assurances that (i) the information will be held confidentially and be used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party, and (ii) the third party will notify NCQA (and, in accordance with Article II, Section 3 of this BAA, NCQA shall notify Covered Entity) of any instances of which it becomes aware in which the confidentiality of the information has been breached;

(d) use and/or disclose PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity and other Covered Entities, in accordance with the Privacy Regulations, for Covered Entities that have authorized NCQA to perform such Data Aggregation services;

(e) create a Limited Data Set and use and disclose such Limited Data Set pursuant to the Data Use Agreement as set forth in Article VII of this BAA; and

(f) on behalf of Covered Entity, de-identify any and all PHI obtained by NCQA under this BAA and/or the Contract, and use and/or disclose such de-identified data on NCQA's own behalf, all in accordance with the de-identification requirements of the Privacy Regulations.

NCQA shall use and/or disclose the minimum amount of PHI necessary with regard to its use and/or disclosure of PHI under this Section 1, provided, that NCQA shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date. All other uses and disclosures of PHI not authorized by this BAA or the Contract are prohibited.

Section 2. Appropriate Safeguards. NCQA will use appropriate administrative, technical and physical safeguards to prevent the use or disclosure of PHI, other than as provided for by the Contract, this BAA or as required by law. As of the Compliance Date of 42 U.S.C. § 17931, NCQA will comply with the Security Rule requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316, including implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. NCQA will also keep current and document such security measures in written policies, procedures or guidelines, and make its policies and procedures, and documentation required by the Security Rule relating to such safeguards, available to the Secretary of the Department of Health and Human Services ("HHS") for purposes of determining Covered Entity's compliance with the Security Regulations.

Section 3. Reporting of Improper Use or Disclosure of PHI. NCQA will, within ten (10) business days of becoming aware of any use or disclosure of PHI not permitted or required by the Contract or this BAA or of any Security Incident with respect to Electronic PHI of which it becomes aware, report such use, disclosure or Security Incident to Covered Entity. NCQA agrees to mitigate, to the extent practicable, any harmful effect that is known to NCQA of a use or disclosure of PHI by NCQA in violation of the requirements of this BAA. NCQA further agrees to report without unreasonable delay and in no case later than thirty (30) calendar days after discovery, any Breach of any Unsecured PHI in accordance with the security breach notification requirements set forth in 42 U.S.C. § 17932 as of its Compliance Date.

Section 4. Subcontractors and Agents. NCQA agrees that any time PHI is provided or made available to its subcontractors or agents, NCQA will enter into an agreement with the subcontractor or agent that contains the same conditions and restrictions on the use and disclosure of PHI as contained in the Contract and this BAA, and will ensure that all of its subcontractors and agents to whom it provides Electronic PHI agree to implement reasonable and appropriate safeguards to protect such Electronic PHI.

Section 5. Right of Access, Amendment and Accounting of Disclosures. With respect to the PHI in NCQA's possession, NCQA agrees to the following:

(a) within fifteen (15) calendar days of receiving a written request from Covered Entity, NCQA will make available to Covered Entity information necessary for Covered Entity to make an Accounting of Disclosures of PHI about an Individual in accordance with the Privacy Regulations as set forth in 45 C.F.R. Section 164.528 and, as of its Compliance Date, in accordance with the requirements for Accounting for Disclosures made through an Electronic Health Record in 42 U.S.C. 17935(c), and when directed by Covered Entity, NCQA shall make that accounting directly to the Individual

(b) NCQA shall record the following information regarding each disclosure of PHI subject to an Accounting of Disclosures pursuant to 45 C.F.R. Section 164.528:

(1) date of disclosure; (2) name of entity or person who received the PHI and, if known, the address of such entity or person; (3) a brief description of the PHI; and (4) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or a copy of a written request for disclosure. For multiple such disclosures of PHI to the same person or entity for a single purpose, NCQA shall provide Covered Entity, pursuant to Article II, Section 5(a) of this BAA, (1) the information set forth in Article II, Section 5(b) of this BAA regarding the first disclosure; (2) the frequency, periodicity or number of disclosures made during the accounting period; and (3) the date of the last such disclosure during the accounting period.

As of the Compliance Date, NCQA shall also record any required information regarding each disclosure of PHI through an Electronic Health Record subject to an Accounting of Disclosures pursuant to 42 U.S.C. 17935(c).

(c) within ten (10) calendar days of receiving a written request from Covered Entity, make available PHI necessary for Covered Entity to respond to individuals' requests for access to PHI about them in the event that the PHI in NCQA's possession constitutes a Designated Record Set in accordance with the Privacy Regulations at 45 C.F.R. Section 164.524;

(d) In the event that NCQA, on behalf of Covered Entity, in connection with the Contract uses or maintains an Electronic Health Record of information of or about an Individual, then NCQA shall provide an electronic copy (at the request of Covered Entity, and in the time and manner designated by Covered Entity) of the PHI, to Covered Entity, so that Covered Entity may comply with an Individual's request in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date.

(e) within fifteen (15) calendar days of receiving a written request from Covered Entity, incorporate any Amendments or corrections to the PHI in accordance with the Privacy Regulations at 45 C.F.R. Section 164.526 in the event that the PHI in NCQA's possession constitutes a Designated Record Set;

- (f) make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary of the Department of Health and Human Services (“HHS”) for purposes of determining Covered Entity’s compliance with the Privacy Regulations; and
- (g) forward to Covered Entity within five (5) business days of receiving any requests an Individual makes of NCQA pursuant to 45 C.F.R. Sections 164.524, or 164.526, so that Covered Entity may respond to such requests. NCQA shall not respond directly to those Individual requests.

Section 6. **Exchange of PHI and Communications.** NCQA agrees to the following:

- (a) NCQA shall not directly or indirectly receive remuneration in exchange for any PHI in compliance with 42 U.S.C. § 17935(d) as of its Compliance Date;
- (b) NCQA shall not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date;
- (c) NCQA shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date.

III. OBLIGATIONS OF COVERED ENTITY

Section 1. **Limitations on Protected Health Information.** Covered Entity agrees that it will not furnish to NCQA any PHI that is subject to any restrictions on the use and/or disclosure of PHI as provided for in 45 C.F.R. Section 164.522 that will affect NCQA’s use or disclosure of the PHI under this BAA; provided that with respect to restrictions that Covered Entity is required to agree to under 42 U.S.C. § 17935(a) as of its Compliance Date, Covered Entity shall provide NCQA with clear written notice of those restrictions and the PHI to which they pertain.

Section 2. **Consent and Authorization.** Covered Entity agrees to obtain any consent, authorization or permission that may be required by the Privacy Regulations or applicable state and federal laws and/or regulations prior to furnishing NCQA the PHI pertaining to an Individual for the purposes set forth in this BAA.

Section 3. **Compliance with HIPAA and ARRA.** Covered Entity in performing its obligations and exercising its rights under this Agreement shall use and disclose Protected Health Information in compliance with the Privacy Rule, Security Rule and ARRA.

Section 4. **Covered Entity Requests.** Covered Entity shall not request or require Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule, Security Rule or ARRA if done by Covered Entity, provided that Business Associate may use or disclose PHI as set forth in Section 1. (d), (e) & (f) of Article II of this BAA.

IV. TERMINATION OF AGREEMENT

Section 1. Termination of Agreement by Covered Entity. Upon Covered Entity's knowledge of a breach of a material term of this BAA by NCQA, Covered Entity shall provide NCQA with written notice of that breach in sufficient detail to enable NCQA to understand the specific nature of that breach and afford NCQA the opportunity to cure the breach; provided, however, that if NCQA fails to cure the breach within a reasonable time specified by Covered Entity, Covered Entity may terminate this BAA or, if termination is not feasible, report the breach to HHS. Upon termination of this BAA under this Section, NCQA will comply with the return or destruction provisions of Article IV, Section 3 below, and Covered Entity may terminate the Contract, unless the Parties mutually agree that NCQA may review Covered Entity pursuant to the Contract using only a Limited Data Set, pursuant to the Data Use Agreement in Article VII of this BAA, or with information that has been de-identified in accordance with the Privacy Regulations. If after termination of this BAA pursuant to this Section the parties agree that NCQA will continue its review of Covered Entity under the Contract using a Limited Data Set or de-identified information, the Contract shall continue in effect and the terms of this BAA that apply to such review of Covered Entity pursuant to the Contract shall survive to the extent necessary for NCQA to conduct the Survey of Covered Entity.

Section 2. Termination of Agreement by NCQA. In accordance with 42 U.S.C. § 17934(b) as of its Compliance Date, upon NCQA's knowledge of a breach of a material term of this BAA by Covered Entity, NCQA shall provide Covered Entity with written notice of that breach in sufficient detail to enable Covered Entity to understand the specific nature of that breach and afford Covered Entity the opportunity to cure the breach; provided, however, that if Covered Entity fails to cure the breach within a reasonable time specified by NCQA, NCQA may terminate this BAA as well as terminate the Contract or, if termination is not feasible, report the breach to HHS.

Section 3. Return or Destruction of PHI. Within thirty (30) calendar days after termination or expiration of the Contract or this BAA, NCQA agrees to either return to Covered Entity or destroy all PHI received from the Covered Entity or created or received by NCQA on behalf of the Covered Entity and which NCQA still maintains in any form, including such information in possession of NCQA's subcontractors. NCQA agrees not to retain any copies of such PHI. If return or destruction of the PHI is not feasible, NCQA agrees to extend the protections, limitations and restrictions of this BAA to NCQA's use and disclosure of PHI retained after termination and to limit any further uses or disclosures to the purposes that make return or destruction infeasible. Any de-identified information retained by NCQA shall not be reidentified except for a purpose permitted under this BAA.

V. INDEMNIFICATION

Section 1. Mutual Indemnification. Each party will indemnify, hold harmless and defend the other party to this BAA from and against any and all claims, losses, liabilities, costs and other expenses, including reasonable attorney's fees, incurred as a result of, or arising directly out of or in connection with: (i) any misrepresentation or non-fulfillment of any undertaking on the part of the party pursuant to this BAA; and (ii) any claims, demands, awards,

judgments, actions and proceedings made by any person or organization arising out of or connected with the party's performance under this BAA, provided however, a party's liability hereunder shall be limited to recovery of actual compensatory damages in an amount not to exceed amounts paid to NCQA under the Contract. In no event will a party be responsible for any damages, caused by the failure of the other party to perform its responsibilities or other consequential, special, incidental, indirect, exemplary, or punitive damages, even if such party has been advised of the possibility of such damages.

VI. LIMITATION OF LIABILITY

Section 1. **DAMAGES.** NO PARTY SHALL BE LIABLE TO ANOTHER PARTY HERETO FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE RELATING TO OR ARISING FROM THE PERFORMANCE OR BREACH OF OBLIGATIONS SET FORTH IN THIS BAA, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

VII. DATA USE AGREEMENT

Section 1. **Preparation of the Limited Data Set.** In accordance with Article II, Section 1(e) of this BAA, if the parties have entered into a Contract, NCQA may, on behalf of Covered Entity, prepare a Limited Data Set ("LDS") in accordance with the Privacy Regulations and the Business Associate requirements set forth in this BAA.

Section 2. **Minimum Necessary Data Fields in the LDS.** In preparing the LDS, NCQA will include the data fields which are the minimum necessary to accomplish the purposes set forth in Section 4 of this Article VII.

Section 3. **Responsibilities of NCQA.** NCQA agrees to:

- (a) not use or further disclose the LDS other than as permitted by this Article VII or as otherwise required by law;
- (b) use appropriate safeguards to prevent use or disclosure of the LDS other than as provided for by this Article VII or required by law;
- (c) within ten (10) business days of becoming aware of any use or disclosure of the LDS that is not permitted by this Article VII or required by law, report such use or disclosure to the Covered Entity. NCQA agrees to mitigate, to the extent practicable, any harmful effect that is known to NCQA of a use or disclosure of the LDS by NCQA in violation of the requirements of this Article VII;

- (d) require any agents or subcontractors that receive or have access to the LDS to agree to the same restrictions and conditions on the use and/or disclosure of the LDS that apply to NCQA under this Article VII; and
- (e) not identify the information in the LDS or contact the individuals whose PHI is in the LDS, except where such contact is based on information derived entirely from a source other than the LDS.

Section 4. **Permitted Uses and Disclosures of the LDS.** NCQA may use and/or disclose the LDS for its Research and Public Health activities and the Health Care Operations of the Covered Entity.

VIII. MISCELLANEOUS

Section 1. **Choice of Law and Jurisdiction.** The law of the District of Columbia shall govern this BAA. The parties agree that any dispute arising under this BAA shall only be resolved in a court of competent jurisdiction in the District of Columbia.

Section 2. **Change in Law.** The parties agree to negotiate to amend this BAA (a) as necessary to comply with any amendment to any provision of HIPAA or its implementing regulations, ARRA, or to comply with any other applicable laws or regulations, or amendments thereto, and/or (b) in the event any such law or regulation or amendment thereto materially alters either party or both parties' obligations under this BAA. The parties agree to negotiate in good faith mutually acceptable and appropriate amendment(s) to this BAA to give effect to such revised obligations. If the parties are unable to agree to mutually acceptable amendment(s) within sixty (60) calendar days of the relevant change in law or regulations, either party may terminate this BAA and the Contract consistent with the terms of this BAA and the Contract. Notwithstanding the preceding sentence, the parties agree that this BAA is written to encompass ARRA and its implementing regulations.

Section 3. **Third Party Beneficiaries.** Nothing in this BAA shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

Section 4. **Survival.** Article I; Article II; Article IV, Section 3; and Articles V, VI, and VIII of this BAA shall survive termination of this BAA and continue indefinitely solely with respect to PHI NCQA retains in accordance with Article IV, Section 3. Article VII shall survive the termination of this BAA with regard to any LDS that NCQA possesses. The last sentence of Article IV Section 1 shall survive termination of this BAA with regard to any de-identified information NCQA creates using Covered Entity's PHI.

Section 5. **Notice.** Any notice, consent, request or waiver, or other communications to be given hereunder by either party shall be given in writing and will be deemed to have been given when delivered personally or by registered mail, postage prepaid and return receipt requested or by email with a confirming copy placed in the United States mail addressed as

provided below or to such other address as either party may designate by written notice to the other.

If to NCQA:

National Committee for Quality Assurance
1100 13th Street, NW, Suite 1000
Washington, DC 20005
Attention: Vice President of Product Delivery
Email: Mudd@ncqa.org

Copy to:

National Committee for Quality Assurance
1100 13th Street, NW, Suite 1000
Washington, DC 20005
Attention: Office of General Counsel
Email: Donohue@ncqa.org

If to Covered Entity:

Name of Individual/Entity: _____

Address: _____

City/State/Zip: _____

Email: _____

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date of the contract.

Covered Entity

Name of Covered Entity _____

By: _____

Print Name: _____

Title: _____

Date: _____

National Committee for Quality Assurance

By: _____

Print Name: Kathleen C. Mudd

Title: Vice President, Product Delivery

Date: _____