



Improving care through shared technology
QualityHealthNetwork.org

Thank you for your interest in joining the robust network of healthcare providers in western Colorado who are using Quality Health Network's (QHN) health information exchange (HIE). The HIE provides you instant access to patients' results and access to the Patient Summary (data repository) to help improve patient care and care coordination.

Get started by completing the below steps:

- Complete the attached Electronic Commerce Agreement (ecommerce agreement) and return it via email, or fax, to your QHN Clinical Account Manager.
 - ♦ Please note the field indicated as "Participant" should be completed with the legal name of the Covered Entity, which may be an individual practitioner, LLC, provider group, hospital, reference lab or other healthcare entity.
 - ♦ Please complete all the blue highlighted fields indicated on the form, print and sign the signature field on page 1 of the Agreement, **AND** the signature field on page 1 of the Addendum.

Once the ecommerce agreement is completed, and signed by both parties, please complete the forms in the new **QHN New User Packet** for each individual that will be accessing the QHN HIE.

The QHN Clinical Account Managers are here to assist you in the HIE connectivity process. They may be reached at 970.248.0033, or at the email addresses noted below.

Sherri Corey: scorey@qualityhealthnetwork.org

Annie Schudy: aschudy@qualityhealthwork.org

Cherie Schmitz, Administrative Assistant: cschmitz@qualityhealthnetwork.org

QHN office hours: M - F, 7:30 a.m. - 5 p.m.

Fax number: 970.248.0043

ELECTRONIC COMMERCE AGREEMENT
("Agreement")

(herein "PARTICIPANT")
Address of Participant:

Tax I.D. No.: _____

"QHN" QUALITY HEALTH NETWORK, a
Colorado nonprofit corporation

Address of QHN:

744 Horizon Court, Suite 210
Grand Junction, CO 81506
(970) 248-0033

dthompson@qualityhealthnetwork.org

RECITALS

- A. QHN provides a QHN System, as hereinafter defined, to improve the quality of health care in the community and to enhance health care providers' ability to exchange electronic data. QHN may also provide other products or services from time to time.
- B. Participant is a health care provider or health plan which QHN has agreed to accept for enrollment. Participant desires to Use the QHN System provided by QHN for purposes of promoting the improvement of health care treatment, payment and operations.
- C. In order to send or receive data through the QHN System, Participant must first make various covenants, warranties and representations to QHN, as hereinafter set forth, concerning the Use of the QHN System and related tools and services. In providing the QHN System and related tools and services to Participant, QHN must first make various covenants, warranties, and representations to Participant as hereinafter set forth.
- D. The relationship between QHN and Participant created under the terms of this Agreement results in QHN's classification as a "Business Associate" under HIPAA. The HIPAA regulations require Participant to enter agreements that include certain mandated provisions, which are included as part of this Agreement, with all vendors and contractors that are classified as "Business Associates."

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual promises set forth below, the parties agree as follows:

- A. Services. QHN will manage and administer the QHN System and its Use. So long as this Agreement is in effect and Participant and Participant Users comply with all terms of this Agreement, QHN will provide Participant and Participant Users access to Use the QHN System. QHN and Participant agree to all Terms and Conditions, attached.
- B. Fees. Participant agrees to pay QHN the amounts referenced on attached Exhibit B, along with applicable taxes, associated with various Uses of the QHN System as required by the Order and Invoice. Any amounts not paid when due shall bear interest at the rate of eighteen percent (18%) per annum. Participant agrees that payment amounts and the interest rate are subject to change upon sixty (60) days written notice to Participant from QHN, subject to Participant's right to terminate the Agreement as provided herein. QHN may refuse Participant and Participant Users access to Uses of the QHN System if payment is not timely made by Participant.

This Agreement is dated and shall be effective on the date set forth below by QHN as the effective date.

**QUALITY HEALTH NETWORK, a Colorado
nonprofit corporation**

By _____

Name/Title: _____
(print/type name of signatory and title)

Effective Date _____

(print/type name of Participant)

By  _____

Name/Title: _____
(print/type name of signatory and title)

TERMS AND CONDITIONS:

1. Definitions. Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. 160.103 and 164.501. All terms defined in this Agreement shall have a meaning consistent with terms defined in 45 C.F.R. 160.103 and 164.501. Capitalized terms in this Agreement are defined as follows:

1.1. “Board of Directors” shall mean the Board of Directors of QHN.

1.2. “Breach” shall have the meaning given to such term in Section 13400 of HITECH and 45 C.F.R. 164.402.

1.3. “Business Associate” shall mean with respect to a Covered Entity, a person who is defined in 45 C.F.R. 160.103.

1.4. “Covered Entity” shall have the meaning of the term “Covered Entity” as defined in 45 C.F.R. 160.103.

1.5. “De-identification” shall mean to remove, encode, encrypt, or otherwise eliminate or conceal data which identifies an Individual, or modifies information so that there is no reasonable basis to believe that the information can be used to identify an Individual. De-identification includes, without limitation, any process meeting the requirements for De-identification set forth in 45 C.F.R. § 164.514, as such provision is currently drafted and as it may be subsequently updated, amended, or revised.

1.6. “Designated Record Set” means Protected Health Information maintained by or for Participant that is: (1) the medical records and billing records about Individuals maintained by or for a covered health care provider; (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (3) used, in whole or in part, by or for Participant to make decisions about Individuals.

1.7. “Disclose,” “Disclosing,” or “Disclosure” means the release, transfer, provision of access to, or divulging in any

manner of information outside the entity holding the information.

1.8. “DURSA” shall mean the Data Use and Reciprocal Support Agreement between QHN and eHealth Exchange.

1.9. “eHealth Exchange” shall mean the public-private partnership which was formerly known as the Nationwide Health Information Network “(NwHIN”).

1.10. “HITECH” means the Health Information Technology for Economic and Clinical Health Act in the American Recovery and Reinvestment Act of 2009, including any implementing regulations.

1.11. “Individual” means a natural person who is the subject of PHI.

1.12. “Information Privacy and Protection Laws” mean (i) the Health Insurance Portability and Accountability Act of 1996, as amended and including any implementing regulations (“HIPAA”); (ii) HITECH; (iii) the Gramm-Leach-Bliley Act, as amended and including any implementing regulations; (iv) any statute, regulation, administrative or judicial ruling requiring a party to protect the privacy or security of information pertaining to the health or medical status or condition of an Individual, and/or the payment for health or medical care for an Individual; (v) any statute, regulation, administrative or judicial ruling requiring a party to protect the privacy of information pertaining to the financial or credit status or condition of an individual; (vi) any statute, regulation, administrative or judicial ruling requiring a party to protect information pertaining to individuals based upon the individuals’ status as consumers; and (vii) any other statute, regulation, administrative or judicial ruling requiring a party to protect the confidentiality, privacy and/or security of information pertaining to individuals; all to the extent that such Information Privacy and Protection Laws have been enacted, promulgated, issued or published by any federal or state governmental authority with jurisdiction

over a Covered Entity, a Business Associate, an individual, Participant or QHN.

1.13. “Message Content” shall mean that information which is requested or sent by a participant with QHN to another user of the QHN System through the eHealth Exchange, including but not limited to, PHI, individually identifiable information, de-identified data, pseudonymized data, metadata, digital certificates issued by eHealth Exchange to any participant of eHealth Exchange, and schema.

1.14. “Network Account” shall mean the right given to Participant to access and Use the QHN System by Participant and Participant Users.

1.15. “Participant User” shall mean any person accepted by QHN and who is authorized to use the QHN System through Participant’s right of Use set forth in this Agreement. Participant shall designate Participant Users.

1.16. “Permitted Purposes” shall mean any reason for exchanging Message Content through the eHealth Exchange which is expressly allowed by the terms of the DURSA.

1.17. “Protected Health Information,” or “PHI,” shall have the meaning as the term “protected health information” in 45 C.F.R. 160.103 and 164.501.

1.18. “QHN System” shall mean the technology tools, services and systems QHN provides and/ or maintains.

1.19. “QHN’s Standards” shall mean those standards, policies and procedures adopted by the Board of Directors and subject to revision, modification or change by the Board of Directors, which address requirements and standards with regard to Use of the QHN System. QHN’s Standards may include, but are not limited to: activity on the QHN System, operating rules, definitions and specifications of format, content, and transmission of electronic data, support descriptions and details of connecting to the QHN System.

1.20. “Receive,” “Receiving,” and “Receipt” means (i) to take physical delivery of media containing information, or (ii) in the case of electronic delivery, for information to come into existence in a party’s information processing system in a form capable of being processed by or perceived from a system of that type by the Receiving party if the Receiving party has designated that system or address as a place for Receipt of information to a Disclosing party and the Disclosing party does not know that the information cannot be accessed from the particular system.

1.21. “Security Rule” means the Security Standards for Protection of Electronic Protected Health Information at 45 C.F.R. Part 164, Subpart C.

1.22. “Third Party” means any individual, person, or organization not a party to this Agreement.

1.23. “Transaction” means the Transmission of information between parties to this Agreement.

1.24. “Transmit,” “Transmitted,” or “Transmission” means the transfer of information by one party to another, regardless of the method or technology used to transfer the information.

1.25. “Use” shall mean the sharing, employment, application, utilization, examination, analysis, De-identification, or commingling with other information, of information by a party that holds that information.

2. Duties and Obligations of QHN.

2.1. Use of QHN System. QHN will provide Participant and Participant Users products and services and access to the Uses of the QHN System described on Exhibit B provided such Use is consistent with QHN’s Standards. Participant authorizes QHN to Use data within the QHN System for quality improvement programs, practice management, research and such other Uses as may be allowed by applicable law provided that such Use is

consistent with QHN's Standards and requirements of applicable law, including, but not limited to the Information Privacy and Protection Laws. Participant authorizes QHN to facilitate establishment of care coordination teams, and Use and Disclose PHI to facilitate care coordination by and among such care coordination teams as allowed by applicable Information Privacy and Protections Laws. Care coordination teams may be composed of Covered Entities and social welfare/human service organizations that provide services to Individuals. Social welfare/human service organizations that provide services to Individuals may be added to such Individual's care coordination team by virtue of having executed and complying with an appropriate agreement with QHN.

2.2. Data Storage and Distribution. Data within the QHN System will be available to Participant Users pursuant to QHN's Standards and subject to compliance with applicable laws.

2.3. Data Backup. QHN shall make available requisite disk space for the storage of software and data as may be required for QHN, as a Business Associate, to comply with applicable law, but in any event there shall be available sufficient disk space to permit Participants to retain an estimated five (5) years of clinical data, under normal use. If QHN and Participant dispute whether Participant's use is "normal use" the parties shall resolve such disputes in accordance with paragraph 5 of this Agreement. Backups will be regularly performed and stored in a secured off-site location.

2.4. Inquiries from Individuals. Should QHN receive from an Individual a request for data specific to such Individual, which data the Individual believes is contained in the QHN System, QHN shall redirect the Individual to the health care provider from whom the Individual received the services which the data references. QHN will not provide medical record data or other information stored within the QHN System to such Individuals other than as required by law.

2.5. Right to Audit. QHN shall have the right to audit Participant's and Participant Users' Use of the QHN System to ascertain compliance with QHN's Standards and applicable law with regard to Use of the QHN System. The results of such audits may be shared with Participant and the QHN Board of Directors.

2.6. Right to Impose Sanctions. QHN shall have the right to impose sanctions on Participant and a Participant User as described in QHN's Standards should Participant or Participant User's Use of the QHN System be in violation of the terms of this Agreement or QHN's Standards.

2.7. Liability Insurance. QHN shall purchase and/or maintain general liability insurance or a self-insurance plan which provides coverage to QHN of not less than one million dollars (\$1,000,000) per incident per year.

2.8. Indemnity. QHN agrees to indemnify Participant from any and all claims, demands, actions, and causes of action asserted by a third party against Participant which may result or arise out of any actions or omissions of QHN or any of QHN's agents, employees, or representatives due to QHN's failure to comply with privacy or security obligations under this Agreement or imposed by law or QHN's failure to comply with the terms of this Agreement. This indemnity shall include the payment to Participant for attorney's fees, court costs and expert witness fees Participant incurs in defending itself from any such claims, demands, actions or cause of action. For this indemnity obligation to apply, Participant shall (a) provide QHN notice in writing upon the discovery of the claim, (b) fully cooperate with QHN in the defense of the claim, and (c) not settle the claim without the prior written consent of QHN, which consent shall not be unreasonably withheld. If there is a Breach by QHN and/or QHN's agents or subcontractors in the course of QHN providing services to Participant and Participant is required by law to notify the involved Individual(s) of whom such Breach

pertains and/or any governmental entity as may be required by law, QHN shall pay all Participant's reasonable notification costs and, as mutually agreed by the parties, reasonable costs associated with mitigating any harmful effects of such Breach. For purposes of this paragraph, a QHN agent or subcontractor shall mean those persons or entities that have a contract with QHN to provide QHN with products or services. QHN's liability under this paragraph shall not exceed one million dollars (\$1,000,000).

2.9. **DISCLAIMER.** QHN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE QHN SYSTEM, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF NONINFRINGEMENT, OR THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE REGARDLESS OF THE SERVICES OR RESOURCES PROVIDED BY IT. QHN DISCLAIMS ANY LIABILITY FOR THE FAILURE OF PERSON WHO USES THE QHN SYSTEM TO COMPLY WITH QHN'S STANDARDS OR APPLICABLE LAW OR THE CONTENT OR USE OF THE QHN SYSTEM BY ANY SUCH PERSON. QHN DOES NOT WARRANT UNINTERRUPTED OR ERROR FREE OPERATION OF THE QHN SYSTEM OR THE COMPATIBILITY OF THE QHN SYSTEM WITH ANY PARTICULAR HARDWARE, SOFTWARE OR INTER-CONNECTIVITY WITH OTHER NETWORKS OR SERVICES.

2.10. **LIMITATION OF LIABILITY.** EXCEPT FOR QHN'S LIABILITY OBLIGATIONS AS EXPRESSLY SET FORTH IN THE INDEMNITY PARAGRAPH OF THIS AGREEMENT, REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE, THE MAXIMUM LIABILITY OF QHN UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY

PARTICIPANT TO QHN TO OBTAIN SERVICES UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE THE LIABILITY AROSE. IN NO EVENT SHALL QHN BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES INCLUDING WITHOUT LIMITATION, LOST DATA OR LOST PROFITS.

3. Duties and Obligations of Participant.

3.1. Assistance and Cooperation with QHN in Providing Products and Services. Participant, at its sole cost and expense, shall cooperate and work in good faith with QHN to assist QHN in working with Participant to provide the products and services described in Exhibit B.

3.2. Complying with QHN's Standards In Use of QHN System. In Using the QHN System, Participant shall Use the QHN System in a manner consistent with and shall comply with QHN's Standards and applicable law. Participant specifically agrees to comply with and to be subject to QHN's Standards. QHN's Standards are subject to amendment, revision and modification by QHN solely in its discretion. Changes to QHN's Standards may reflect changes in applicable law or the need to adopt new technologies, systems, or desired functionality or changes in QHN's operational policies. Participant is encouraged to provide input to QHN's Standards and to propose changes. Copies of all QHN's Standards may be reviewed upon request.

3.3. eHealth Exchange / DURSA Compliance. Participant specifically agrees to: (i) reasonably cooperate with QHN on issues related to the DURSA; (ii) submit messages through the eHealth Exchange only for Permitted Purposes; (iii) use Message Content in accordance with the terms and conditions of the DURSA; and (iv) shall, to the extent required by the DURSA, exchange Message Content for Treatment with any other eHealth Exchange participant.

3.4. Participant Responsibility for Data. QHN provides tools for Participant Users to use the QHN System but does not act in any other way for Participant or any other person or entity that Uses the QHN System. Participant's decision to place certain data in and Use the QHN System is based on Participant's sole discretion. By placing an Individual's PHI in the QHN System, Participant is certifying to QHN that such PHI can be Disclosed to and Used by Covered Entities for purposes of treatment, payment and healthcare operations. Except as may otherwise be agreed to by QHN in writing, Participant shall not at any time place any record in the QHN System if that record is subject to disclosure restrictions under 42 U.S.C. 290dd which concerns substance abuse records. To the maximum extent permitted by applicable law, as between Participant and QHN, Participant is solely responsible for establishing the connection to the QHN System, the proper transmission and receipt of data, for implementing sufficient safeguards and procedures to satisfy particular requirements for access, security, privacy and accuracy of data placed in or transmitted by Participant in Using the QHN System. If a Participant User works at multiple practice locations, the Participant User is responsible for ensuring that any PHI routed between locations for the Participant User will be maintained and Used in compliance with Information Privacy and Protection Laws at each location. Backup of data located on Participant's own computer components is Participant's responsibility; QHN will backup data on the QHN System as described in paragraph 2.3 of this Agreement. In some instances QHN may interpret data, provide data analytics or provide other data that may be Used by Participant or Participant Users. QHN disclaims any warranty or representation as to the accuracy or completeness of this data and any other data in the QHN System. Participant and Participant Users are responsible for verifying the accuracy and completeness of data Used. QHN is not responsible for the contents of data that Participant or any other person or entity places in or obtains from the QHN System. Participant and Participant Users

hereby release QHN from any claims whatsoever as to the completeness or accuracy of data in the QHN System.

3.5. Contact Information. Participant agrees to notify QHN in writing as soon as possible as to any change in status of a Participant User. Participant is responsible to provide QHN with the most current name and contact information for Participant and all Participant Users.

3.6. Training of Staff. Compliance with applicable federal and state laws, rules and regulations concerning adequate training of staff is the sole responsibility of the Participant.

3.7. Resources. Except as otherwise provided by Exhibit B, Participant, at Participant's own expense, shall provide and maintain necessary hardware, software, equipment and services necessary to Use the QHN System. In addition to the services described in Exhibit B, QHN may provide services as ancillary services, but such services would be performed under the terms of a separate addendum or agreement (an "Order" as defined in Exhibit B) between QHN and Participant. Support services which may be available under the terms of a separate addendum or agreement include: (a) help desk services during business hours and limited holiday and weekend hours, and (b) onsite support services at Participant's location.

3.8. Responsibility for Network Account. Participant shall be solely responsible for all Use of its Network Account, for payment of charges incurred for such Use, and for violations of the terms of this Agreement by anyone using the Network Account.

3.9. Warranties with Use. By its Use of the QHN System, Participant warrants (1) that Participant's and Participant Users' Use is in compliance with the terms of this Agreement, and (2) that Participant's and Participant Users' Use is in compliance with applicable law.

3.10. Liability Insurance. Participant shall purchase and/or maintain general liability insurance or a self-insurance plan which

provides coverage to Participant of not less than one million dollars (\$1,000,000) per incident per year.

3.11. Indemnity. Participant agrees to indemnify QHN and hold QHN harmless from any and all claims, demands, actions, and causes of action asserted by a third party against QHN which may result or arise out of any actions of Participant or any Participant User who becomes an authorized user through this Agreement or any Use through Participant's Network Account. This indemnity shall include the payment to QHN for attorney's fees, court costs and expert witness fees QHN incurs in defending itself from any such claims, demands, actions or cause of action. For this indemnity obligation to apply, QHN shall (a) provide Participant notice in writing upon the discovery of the claim, (b) fully cooperate with Participant in the defense of the claim, and (c) not settle the claim without the prior written consent of Participant, which consent shall not be unreasonably withheld. If there is a Breach by Participant and/or Participant's agents or subcontractors in the course of QHN providing services to Participant and QHN is required by law to notify the involved Individual(s) of whom such Breach pertains and/or any governmental entity as may be required by law, Participant shall pay all QHN's reasonable notification costs and, as mutually agreed by the parties, reasonable costs associated with mitigating any harmful effects of such Breach. For purposes of this paragraph, a Participant agent or subcontractor shall mean those persons or entities that have a contract with Participant to provide Participant with products or services. Participant's liability under this paragraph shall not exceed one million dollars (\$1,000,000).

3.12. Rights in Products. Participant shall not assert and shall not have any ownership rights or other property rights in any of QHN's Standards, the QHN System or any information or materials furnished by QHN to Participant. Participant agrees that the parties from whom QHN licenses the software products and related documentation ("Products") which may be used in the QHN System, own all right,

title and interest in such Products. Participant will not delete or in any manner alter the copyright, trademark or other proprietary rights or notices of the parties from whom QHN licenses the Products or from QHN appearing on the Products as delivered to Participant. Participant will reproduce such notices on all copies it makes of the Products. Participant will treat this Agreement, source codes and other business and technical information relating to the Products and relating to QHN's Standards or the QHN System as confidential information and will not disclose the same except as may be required under applicable law or as may be necessary to perform its duties and obligations under this Agreement.

3.13. QHN Right to Access. Participant shall give QHN access at all reasonable times, with prior notice, to its computer hardware and software used in the operation of the QHN System for purposes of QHN ensuring that the QHN System is operating properly, and for performance of needed maintenance and upgrades.

4. Confidentiality and Privacy.

4.1. Permitted Uses and Disclosures of PHI by QHN. The scope of PHI that may be Used, Disclosed, or accessed and/or the functions performed by QHN includes PHI necessary to perform functions permitted or required by this Agreement, or to take other measures to satisfy the Participant's obligations under 45 C.F.R. 164.524, as such measures are described in this Agreement. QHN may, if necessary, Use PHI for the proper management and administration of QHN, or to carry out legal responsibilities of QHN, as may be allowed by the Information Privacy and Protection Laws. QHN may Disclose PHI for the proper management and administration of QHN or to carry out the legal responsibilities of QHN, provided the Disclosures are required by law, or QHN obtains reasonable assurances from the person to whom the information is Disclosed that the information will remain confidential and Used or further Disclosed only as required by law, or for purposes for which it was Disclosed

to the person, and the person notifies QHN of any instances of which it is aware in which the confidentiality of the information has been Breached. QHN may Use and Disclose PHI in providing data aggregation services relating to the health care operations of the Participant. QHN may Use and Disclose PHI as required by law and for public health activities, as provided in 45 C.F.R. 164.512. QHN will not Use, Disclose, or access PHI in violation of any applicable Information Privacy and Protection Laws. QHN further agrees to not Use or further Disclose PHI other than as permitted or required by this Agreement or by law. QHN shall comply with the requirements of HITECH applicable to QHN as a Business Associate. Except as set forth above, QHN may not Use or Disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Participant.

4.2. Access to Records. To the extent QHN has possession of PHI in a Designated Record Set, QHN agrees to provide access, at the request of Participant to PHI in a Designated Record Set to Participant (but not to an Individual) as may be necessary to meet the requirements under 45 CFR 164.524.

4.3. Amendment to Records. QHN agrees to allow Participant (but not an Individual) to make any amendment(s) to PHI in a Designated Record Set in QHN's possession that Participant may be required to make pursuant to 45 CFR 164.526 in the time and manner designated by Participant. Participant shall make such amendments as may be required by applicable law. QHN will assist Participant as required by law with regard to such amendments. QHN is not responsible for making any amendments to medical records, or for the accuracy of any amendments made to medical records.

4.4. Accounting for Disclosure of Records. QHN shall maintain an accounting or record of all Disclosures of PHI it makes only as required by and in accordance with 45 C.F.R. 164.528. Records of Disclosures shall be retained by QHN for a period of time that

complies with HIPAA and other applicable federal or state law requirements pertaining to record retention. The record of the Disclosure shall include the following information: (a) the date of the Disclosure, (b) the name and address of the organization and/or individual receiving the information; (c) a brief description of the information Disclosed; and (d) a copy of all requests for Disclosures. QHN agrees to provide to Participant (but not an Individual), in the time and manner designated by Participant, information collected in accordance with this section, to permit Participant to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

4.5. Mitigation. QHN agrees to mitigate, to the extent practicable, any harmful effect that is known to QHN of a Use or Disclosure of PHI by QHN in violation of the requirements of this Agreement.

4.6. Safeguards and Security Incidents. At all times following the Receipt of PHI, until such time as the PHI is no longer in QHN's possession or subject to its control:

4.6.1. QHN shall implement administrative, physical, and technical safeguards, as required by the Security Rule, that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that it Receives, maintains, or Transmits on behalf of Participant. Such administrative, physical, and technical safeguards shall be implemented in order to prevent any Use or Disclosure of PHI other than those permitted under this Agreement;

4.6.2. QHN shall notify Participant of any Use or Disclosure of PHI not permitted by or contrary to the terms of this Agreement of which QHN becomes aware;

4.6.3. QHN shall notify Participant of any security incident of which it becomes aware;

4.6.4. QHN shall comply with the requirements of the Information Privacy and Protection Laws in order to notify Participant of any Breach of unsecured PHI following the discovery of such Breach. In any event, such notice will be provided without unreasonable delay and in no case later than thirty (30) days after discovery of a Breach of unsecured PHI. Such notice shall include the identification of each Individual whose unsecured protected health information has been, or is reasonably believed by QHN to have been, accessed, acquired or disclosed during such Breach. QHN and Participant will cooperate with each other with regard to reporting of such a Breach if such reporting is required by law.

4.7. Disclosure of PHI to Third Parties. QHN may not Disclose PHI to third parties except under the following conditions:

4.7.1. The Disclosure is of the “minimum necessary” (as that term is defined in HIPAA) information for the purposes of the Disclosure, if such standard is required by applicable law; and

4.7.2. The Disclosure is necessary to accomplish a purpose for which the PHI was Disclosed to the Receiving party and is permitted under applicable Information Privacy and Protection Laws and this Agreement.

For purposes of this Agreement, a Participant or Participant User’s access and Use of the QHN System shall not be considered a Disclosure of PHI by QHN under this Agreement.

4.8. Subcontractors. In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, QHN agrees to ensure that any agent or subcontractor of QHN agrees to the same restrictions, conditions and requirements as regards PHI that apply to QHN throughout this Agreement when such agents or subcontractors are performing any of the tasks,

duties, or obligations required of QHN by this Agreement.

4.9. De-identified PHI. QHN is authorized to Use PHI to de-identify the information in accordance with 45 C.F.R. 164.514(a)-(c).

4.10. Privacy Practices and Restrictions. Participant shall notify QHN of any limitation(s) in the notice of privacy practices of Participant under 45 C.F.R. 164.520, to the extent that such limitation may affect QHN’s Use or Disclosure of PHI. Participant shall notify QHN of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her PHI, to the extent that such changes may affect QHN’s Use or Disclosure of PHI. Participant shall notify QHN of any restriction on the Use or Disclosure of PHI that Participant has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect QHN’s Use or Disclosure of PHI.

4.11. Auditing of Records. QHN agrees to make its internal practices, books, and records relating to its access to, Use, and Disclosure of PHI received from or on behalf of Participant or created by QHN on behalf of Participant available to Participant or, at the request of Participant, to the U.S. Secretary of the Department of Health and Human Services (“Secretary”) in a time and manner designated by Participant or the Secretary for purposes of determining compliance with Information Privacy and Protection Laws.

4.12. Breach Notification by Participant in eHealth Exchange. At all times while subject to this Agreement:

4.12.1. Within one (1) hour of discovering information that leads Participant to reasonably believe that a Breach may have occurred, Participant will alert QHN of the discovery, and will assist and cooperate with QHN in the notification by QHN of any other user of the QHN System and the eHealth Exchange Coordinating Committee.

4.12.2. As soon as reasonably practicable, but no later than twenty-four (24) hours after determining that a Breach occurred, Participant will notify QHN, and will assist and cooperate with QHN in the notification by QHN of any other user of the QHN System likely impacted by the Breach and the eHealth Exchange Coordinating Committee. The notification by Participant to QHN shall include all information required by QHN's Standards.

4.13. Compliance with Law and Agreement. To the extent QHN is to carry out one or more of the Participant's obligations under Subpart E of 45 C.F.R. Part 164, QHN shall comply with the requirements of Subpart E that apply to Participant's performance of such obligations. Each party to this Agreement shall comply with, and as applicable shall require its directors, officers and employees to comply with, all applicable Information Privacy and Protection Laws and with each party's duties and obligations pursuant to this Agreement.

4.14. Incorporation of Additional Requirements; Construction. The requirements of applicable law pertaining to PHI are, to the extent not adequately provided for in this Agreement, hereby incorporated by this reference and shall become a part of this Agreement. This Agreement shall be construed as broadly as necessary to implement and comply with Information Privacy and Protection Laws.

5. Arbitration.

5.1. Agreement to Arbitrate. Any claim arising out of or in any way related to the rights, duties and obligations described in this Agreement shall be submitted to final and binding arbitration in accordance with this paragraph, and such claim shall be submitted to arbitration within one (1) year of the event on which the claim is based.

5.2. Arbitration Procedures. The arbitration shall be governed by the Colorado Uniform Arbitration Act, section 13-22-201, et

seq., C.R.S., except as otherwise expressly provided herein. The panel of arbitrators shall consist of three arbitrators. One arbitrator shall be selected by one party, one arbitrator shall be selected by the other party, and the third arbitrator shall be selected by the two arbitrators that have been chosen. If the two arbitrators are unable to agree to the selection of a third arbitrator, the third arbitrator shall be selected in accordance with the Colorado Uniform Arbitration Act. Each party shall be required to make "Disclosures" as set forth in Colorado Rule of Civil Procedure (C.R.C.P.) 26(a)(1), which disclosures shall be made within ten (10) days after a date is selected for the arbitration hearing. In addition to such disclosures, each party shall disclose to the other party the "Disclosure of Expert Testimony" as set forth in C.R.C.P. 26(a)(2)(A) and 26(a)(2)(B), which disclosures shall be made at least twenty (20) days prior to the date of the arbitration hearing. The arbitration shall be conducted in Mesa County, Colorado. The arbitrators shall follow Colorado law in making an award. Written findings of fact and conclusions of law shall be issued by the arbitrators.

5.3. Powers of Arbitrators -- Enforcement of Award. The arbitrators shall have all powers as set forth in section 13-22-201, et seq., C.R.S. The decision or award of the arbitrators shall be binding upon the parties to the same extent and to the same degree as if the matter had been adjudicated by a court of competent jurisdiction. The party in whose favor any award shall be made may file the same with the Clerk of the Mesa County, Colorado District Court, which may enter a judgment thereon, and if such award requires the payment of money, the Clerk may issue execution therefore. Each party, however, shall pay its own attorneys' fees and costs of arbitration, including filing fees, arbitration fees, and other costs. Fees and expenses incurred by the arbitrator that each party chooses shall be paid by that party. Each party shall pay one-half of the fees and expenses incurred by the arbitrator chosen by the other two arbitrators.

5.4. Jurisdiction and Venue. No court shall have subject matter jurisdiction over any claim set forth in paragraph 5. The dispute procedure in this paragraph 5 is the exclusive and mandatory dispute resolution procedure under this Agreement. In the event any claim set forth in paragraph 5. is attempted to be resolved in any court by either party, the venue of such matter shall only be in Mesa County, Colorado.

5.5. Time Requirements. All time periods to take or request action provided or required under this paragraph 5 shall be strictly construed and shall be of the essence of this Agreement.

6. Termination.

6.1. Unilateral Termination. This Agreement may be terminated by QHN or Participant with or without cause on at least sixty (60) days' prior written notice to the other party.

6.2. Participant's Right to Termination.

6.2.1. Participant may terminate this Agreement upon thirty (30) days' prior written notice to QHN should QHN's Standards change regarding Use of the QHN System in a manner that Participant reasonably believes lessens the safeguards on accessing the data that is available through Use of the QHN System.

6.2.2. Participant may terminate this Agreement upon thirty (30) days' prior written notice to QHN should QHN change the fees referenced on attached Exhibit B. Notice of termination under this subparagraph must be given by Participant within thirty (30) days of QHN changing the fees.

6.3. Termination for Material Breach. Notwithstanding anything to the contrary in this Agreement, upon gaining knowledge of a material breach of the terms of this Agreement by a party to this Agreement, the non-breaching

party may, but need not, at its sole discretion: (1) if the breach cannot be cured, terminate this Agreement upon thirty (30) days written notice to the breaching party without any judicial intervention being required and without liability for such termination; or (2) if the breach can be cured, provide at least ten (10) business days written notice of the breach to the breaching party and the opportunity to cure the same within the ten (10) day period or be subject to termination of this Agreement within thirty (30) days.

6.4. QHN's Right to Termination / Suspension.

6.4.1. QHN may terminate this Agreement upon written notice to Participant should QHN determine or become aware that: (1) Participant or Participant Users have not complied with QHN's Standards, Information Privacy and Protection Laws or requirements of applicable law with regard to Use of the QHN System and fail to cure such noncompliance within ten (10) business days after receiving notice of such noncompliance from QHN; (2) Participant's license to provide health care services is terminated or suspended; or (3) Participant has engaged in any pattern or practice that would constitute a violation of this Agreement and Participant fails to discontinue such conduct within ten (10) business days after receiving notice of such noncompliance from QHN.

6.4.2. QHN may terminate this Agreement upon written notice to Participant if Participant fails to pay amounts owed to QHN when due, and such failure to pay continues for thirty (30) days after written notice from QHN.

6.4.3. QHN may also immediately suspend a Participant or Participant User's access to the QHN System, without terminating this Agreement, pursuant to terms of QHN's Standards.

6.5. Participant Rights Upon Termination. Upon termination of this Agreement, Participant shall have the right to have QHN remove any and all of Participant's data residing within the QHN System, excepting data that would not be feasible to remove or data that is being held or Used for treatment, payment or health care operation purposes by a Covered Entity or Business Associate of a Covered Entity, such as data rightfully transferred to and residing in one or more discrete work group database(s), data transferred to a Covered Entity or Business Associate of a Covered Entity, or data residing in the virtual health record, prior to the date of Participant's request for removal. In addition, QHN may retain data that is necessary for the proper management and administration of QHN or to carry out the legal responsibilities of QHN. With regard to such data that is PHI, QHN will continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to protect Use or Disclosure of the PHI for as long as QHN retains the PHI. QHN will not Use or Disclose such PHI retained by QHN, other than for the purposes for which such PHI was retained and subject to the same conditions of this Agreement which applied prior to termination. If PHI is only being retained by QHN for the proper management and administration of QHN or to carry out the legal responsibilities of QHN, QHN will return to Participant, or destroy PHI retained by QHN when it is no longer needed by QHN for its proper management and administration or to carry out its legal responsibilities, unless such return or destruction is not feasible, or except as otherwise provided in this Agreement. The provisions of paragraph 4 of this Agreement shall survive termination of this Agreement and continue to apply to Participant's data not removed from the QHN System. Upon notice of termination for reasons other than termination by QHN under paragraph 6.3 or paragraph 6.4.1 of this Agreement, QHN and Participant shall agree upon a reasonable time (not to exceed one hundred eighty (180) days from the effective date of termination), terms and conditions

within which Participant may continue Use of the QHN System. During this time period, Participant may continue Use of the QHN System in accordance with this Agreement, and the parties shall be subject to all terms of this Agreement and any agreement between the parties regarding the termination, including payment of all amounts that may be owed to QHN.

7. General Provisions.

7.1. Compliance with Law. QHN, Participant and each Participant User shall comply with applicable laws regarding Use of the QHN System. This Agreement shall be interpreted to the maximum extent possible as being consistent with such laws.

7.2. Independent Contractor. This Agreement is intended to create the relationship of independent contractor between Participant and QHN. Nothing contained herein shall be interpreted to create any relationship of agency, employment, partnership or joint venture between QHN and Participant. Neither party shall represent or hold themselves out to any person or entity other than is consistent with the relationship of independent contractor.

7.3. Entire Agreement. This Agreement, and the Exhibits attached to this Agreement, constitute the entire understanding and agreement of the parties, and shall supersede all prior understandings and agreements of the parties on the subject matter of this Agreement.

7.4. Amendment. Except as otherwise set forth in this Agreement, this Agreement shall not be changed, modified or altered except by amendment, which, to be valid and enforceable, shall be in writing and signed by the parties. Notwithstanding the foregoing, QHN may unilaterally amend this Agreement in order to comply with any applicable federal or state laws or regulations, including but not limited to Information Privacy and Protection Laws, effective immediately upon written notice to the Participant, and may otherwise amend the terms of this Agreement effective upon ninety

(90) days prior written notice to the Participant. Participant's Use of the QHN System after the effective date specified in such notice shall constitute acceptance of the amendment. Notwithstanding the foregoing, QHN's Standards may be modified as provided in this Agreement.

7.5. Notices. Either party may send any notices required pursuant to this Agreement, except notices of termination and notices regarding indemnity obligations, by first class mail, electronic transmission, certified mail or a recognized overnight delivery service, to the last known physical or electronic address for Participant in QHN's records. All termination notices under this Agreement by either party, and all notices regarding indemnity obligations, shall be made in writing and sent via certified mail, return receipt requested, or a recognized overnight delivery service, to the addresses of the parties set forth above.

7.6. Assignment. Neither party's rights, duties and responsibilities pursuant to this Agreement may be assigned or delegated without the prior written consent of the other party, except for a transfer or assignment to a parent, subsidiary or affiliate or an entity with which it is merged or consolidated, or the purchaser of all or substantially all of its assets provided that the transferee assumes all of its obligations under this Agreement.

7.7. Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect, unless the invalid or unenforceable provision is material to this Agreement and its invalidity or unenforceability results in substantial economic detriment to either party to this Agreement.

7.8. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

7.9. Benefit. The terms and provisions of this Agreement shall bind and benefit Participant and permitted assigns, and shall bind and benefit QHN and its permitted

assigns. There shall be no third party beneficiaries of this Agreement.

7.10. Interpretation. Any ambiguity or inconsistency in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with applicable laws.

7.11. Non-Exclusion. Each party represents and warrants that it and its employees are not and have not been sanctioned, debarred, excluded or otherwise declared ineligible to participate in any state or federal health care program. If a party is ever sanctioned, debarred, excluded or otherwise declared ineligible for participation in any state or federal health care program, the other party to this Agreement may immediately terminate this Agreement by providing written notice of such termination.

ATTACHMENTS:

Exhibit A: Reserved

Exhibit B: Fees Associated with Uses of QHN System Chosen by Participant

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**EXHIBIT B
TO
ELECTRONIC COMMERCE AGREEMENT**

Fees Associated with Uses of the QHN System Chosen by Participant

- I. **Fees**. One time and/or recurring fees for use of QHN supplied products and services shall be those set forth on a products/ services quotation/order ("Order") which QHN will provide to Participant. Participant will be responsible for the payment to QHN of the fees set forth on the Order pursuant to all payment terms set forth on the Order and in this Agreement. The Order(s) provided to a Participant for products and services shall be executed by QHN and Participant. Fees, in an Order, are subject to change as provided in this Agreement.

- II. **Uses**. Participant shall have access to use of the modules in the QHN System as described in an Order executed by QHN and Participant.

ADDENDUM TO ELECTRONIC COMMERCE AGREEMENT
TO PERMIT
IMMUNIZATION REGISTRY REPORTING

QUALITY HEALTH NETWORK, a Colorado _____, (herein
nonprofit corporation (herein "QHN") "PARTICIPANT")

Address of QHN:

Address of Participant:

744 Horizon Court, Suite 210
Grand Junction, CO 81506
(970) 248-0033
dthompson@qualityhealthnetwork.org

QHN and Participant are parties to an Electronic Commerce Agreement (the Electronic Commerce Agreement) and amendments thereto (Prior Amendments). The Electronic Commerce Agreement and Prior Amendments shall collectively be referred to as the "Agreement." All definitions and terms of the Agreement are incorporated herein by this reference.

Participant provides immunizations to Participant's patients.

QHN and Participant desire to enter into this Addendum for the purpose of QHN providing, on behalf of Participant, certain immunization records to the Colorado Immunization Information System authorized pursuant to the Colorado Immunization Registry Act, C.R.S. Sections 25-4-2401 *et seq.* (2007). Participant authorizes QHN to provide such records pursuant to the attached Terms and Conditions.

Participant and QHN agree to all attached Terms and Conditions.

This Addendum shall be effective on the date Agreement is effective.

**QUALITY HEALTH NETWORK, a
Colorado nonprofit corporation**

By _____

(print/type name of Participant)
By  _____

Name/Title: _____
(print/type name of signatory and title)

Name/Title: _____
(print/type name of signatory and title)

TERMS AND CONDITIONS

1. **Additional Definitions.** The words and terms below shall have the following definitions:

“CIIS” shall mean the Colorado Immunization Information System authorized pursuant to the Colorado Immunization Registry Act, C.R.S. Sections 25-4-2401 et seq. (2007).

2. **Duties, Obligations and Warranties of Participant.**

A. **Agreement with Colorado Immunization Registry.** Participant warrants to QHN that as of the effective date of this Addendum, Participant has an agreement in place with the Colorado Immunization Registry which allows Participant to utilize the CIIS, and that Participant will maintain such agreement for the duration of this Addendum.

B. **Use of the QHN System with Respect to Immunization Records to QHN.** Participant acknowledges that QHN will provide to CIIS all immunization records that Participant places in the QHN System.

C. **Warranty of Authorization.** By Participant’s Use of the QHN System with respect to immunization records, Participant warrants to QHN that Participant has provided notice to Participant’s patients to whom Participant provides immunizations that such patients may choose to have immunization information excluded or removed from the CIIS. Participant’s Use of the QHN System for immunization records constitutes authorization for QHN to forward to CIIS such immunization records.

D. **Warranty of Participant’s Notice of Privacy Practices Provisions.** By Participant’s Use of the QHN System with respect to immunization records, Participant warrants to QHN that Participant’s “Notice of Privacy Practices” provided to its patients: (1) discloses that Participant will disclose immunization information to the CIIS, and (2) discloses that the CIIS may provide

immunization records to schools, for school entry purposes.

3. **Duties, Obligations and Affirmation of QHN.**

A. **Submission and Receipt of Immunization Data to CIIS.** QHN is authorized to submit all immunization data in the QHN System to the CIIS and is authorized to receive immunization data from the CIIS.

B. **Affirmation of Business Associate Status.** In the performance of its duties and obligations under this Addendum, QHN is acting as a “business associate” of Participant. The CIIS may further disclose immunization records consistent with Colorado law. Likewise, as a “business associate” on behalf of Participant, QHN may receive immunization records which Participant may use and disclose consistent with Information Privacy and Protection Laws.

4. **General Provisions.**

A. **Duties and Obligations Under Agreement.** Except as otherwise set forth in this Addendum, the parties shall have the same duties, obligations, terms and conditions with regard to the Use of the QHN System as such parties have in the Agreement.

B. **Termination.** This Addendum shall be subject to termination on the same terms and conditions as set forth in the Agreement. Upon termination of the Agreement, this Addendum shall terminate. Termination of this Addendum, however, shall not terminate the Agreement.

C. **Relationship of Parties.** This Addendum is intended to create the relationship of independent contractor on the part of Participant as to the performance of the duties and obligations under this Addendum. Nothing contained herein shall be interpreted to create any relationship of agency, partnership or joint venture between QHN and

Participant. Neither party shall represent or hold themselves out to any person or entity other than is consistent with the relationship of independent contractor.

D. Entire Agreement. This Addendum and the Agreement constitute the entire understanding and agreement of the parties as regards to Participant's Use of the QHN System with respect to immunization records, and shall supersede all prior understandings and agreements of the parties on the subject matter of such Use.

E. Direct Submission. Nothing herein precludes Participant's submission of immunization records directly to the CIIS.

5. Effect. Except as set forth in this Addendum, all terms, covenants and conditions of the Agreement shall remain in full force and effect.