

NQF

THE NATIONAL QUALITY FORUM

Agreement with Measure Stewards

AGREEMENT BETWEEN

NATIONAL QUALITY FORUM

AND

This Agreement (this “Agreement”) between the National Quality Forum, a District of Columbia not-for-profit corporation (“NQF”) and _____, a _____ (the “Steward”) is entered into on this _____ day of _____, 20____.

Whereas, NQF is an organization created to develop and implement a national strategy for health care performance measurement and reporting.

Whereas, NQF has adopted a policy with respect to endorsement of healthcare performance measures that have proprietary components, including but not limited to specifications, groupers, risk adjustment methodologies and data collection instruments.

Whereas, the Steward wishes to submit its performance measure, including its proprietary components, which may include but not be limited to specifications, groupers, risk adjustment methodologies and data collection instrument for the purpose of seeking NQF endorsement for such measure.

Whereas, the Steward acknowledges and agrees that it shall benefit from NQF endorsement of its measure, but that endorsement by NQF of the Steward’s measure may require disclosure of the proprietary components of the measure and the Steward’s pricing structure for its measure in accordance with NQF’s mission and policies.

Whereas, NQF and the Steward acknowledge that the purpose of this Agreement is to (i) provide for the disclosure of information regarding the Steward’s measure to NQF for review and consideration for endorsement, (ii) identify conditions for NQF endorsement, including, without limitation, covenants on the part of the Steward with respect to the dissemination of the Steward’s measure and (iii) provide for the protection of the Steward’s intellectual property associated with the Steward’s measure, including, but not limited to, the Steward’s right to develop derivative works from the Steward’s measure.

Whereas, NQF and the Steward desire that this Agreement provide for the submission by the Steward of multiple performance measures over time.

Now, therefore, in consideration of the foregoing, and such other agreements as are contained herein, the parties agree as follows:

SECTION 1. Definitions.

a. The term “Measure” shall have the meaning set forth on Exhibit A, and shall include “Complex Measure”. Exhibit A shall be updated to the extent the Steward submits additional Measures for consideration for endorsement by NQF. Any reference to a Measure shall be a reference to each Measure submitted by the Steward under this Agreement for consideration for endorsement by NQF.

b. The term “Complex Measure” shall mean a Measure that requires the use of a proprietary (non public domain) grouper, risk adjustment or other similar methodology that is essential to calculating the result of the Measure.

c. The term “Permitted Use” shall mean the use of a Measure for the purpose of calculating and reporting performance data to: (i) the public without an associated charge or fee with respect to such reporting; (ii) public and private purchasers of, and payors for, healthcare related services and products; and (iii) federal, state, local and foreign regulatory programs and regulators. Permitted Use shall also mean the use of a Measure by an organization or individual, for the purpose of internal performance improvement or internal auditing of the assessment of any organization or individual the performance of which is being assessed by the Measure.

d. The term “Proprietary Material” shall mean all trade secrets identified by the Steward, copyrights, trademarks and service marks, patents and all other material identified by the Steward as proprietary.

SECTION 2. Disclosure for Review and Assessment.

a. Disclosures; Generally.

1. The Steward hereby agrees to disclose to NQF, for the purpose of seeking NQF endorsement, complete information concerning the Measure, including specifications, logic, beta values, standard errors, algorithms, groupers, risk adjustment methodologies and, upon request for complex measures, source code or a complete definitions manual, in order to permit NQF to evaluate the technical aspects of the Measure.

2. Proprietary Material disclosed to NQF in accordance with this Agreement is and shall remain the sole and exclusive property of the Steward.

3. NQF hereby agrees that all Proprietary Material shall be utilized and disclosed by NQF solely for the purpose of evaluation for endorsement and shall not be utilized or disclosed by NQF for any other purpose. Disclosure to NQF includes disclosure to NQF committees, officers, directors and agents NQF deems appropriate for purposes of NQF’s evaluation. NQF conflict of interest policies provide that any measure developer that has submitted a performance measure for NQF endorsement, and other measure developers competing with such measure developer, shall be prohibited from participating in the NQF evaluation of such performance measure for NQF endorsement. To the extent that NQF

discloses Proprietary Information to NQF committees, officers, directors and agents, NQF shall (i) inform such committees, officers, directors and agents of the restrictions contained in this Agreement and their obligation to maintain the confidentiality of the Proprietary Information; (ii) require such committee members, officers, directors and agents to sign a non-disclosure agreement with respect to their review of measures submitted to NQF for review and (iii) maintain the confidentiality of the Proprietary Information using such methods and procedures NQF uses to maintain the confidentiality of its own proprietary information.

4. With respect to any Measure that is not a Complex Measure, the Steward hereby agrees to permit full public disclosure of complete information concerning the Measure on the NQF website for purposes of public review and comment and NQF-Member voting. With respect to any Measure that is a Complex Measure, the Steward hereby agrees to permit disclosure of a detailed Measure description, Measure logic and a list of the clinical and demographic variables included in the model on the NQF website for purposes of public review and comment and NQF member voting. With respect to a Complex Measure, the Steward shall also provide a Measure calculator on its website or provide a Measure calculator for NQF to post on its website that may be utilized to measure performance related to an individual patient or healthcare event. All disclosures permitted by this subsection shall include all appropriate copyright notices and disclaimers.

b. Disclosures; Pricing Structure.

1. With respect to any Measure that is a Complex Measure, the Steward hereby agrees to disclose to NQF the pricing structure it intends to use in imposing fees or other charges on end users in connection with Permitted Uses; such disclosure to include information regarding the factors affecting the determination of the amount of the fees or charges sufficient to allow NQF to understand the general monetary range of the fees or charges (the "Pricing Structure"). The Pricing Structure shall be set forth on Exhibit B. The Pricing Structure shall be reviewed by NQF as part of its feasibility evaluation of the Measure for endorsement. The Pricing Structure shall not be treated by NQF as Proprietary Material and shall be posted on the NQF website during NQF's review of the Measure. Further, if the Measure is endorsed by NQF, NQF shall be entitled to refer to and include the Pricing Structure in any publication of NQF.

2. NQF and the Steward acknowledge and agree that the Steward may distribute the Measure to (i) private and public sector oversight organizations, including but not limited to accreditation, professional certification, and licensure programs; or (ii) health information technology companies in connection with use in electronic health records or personal health records ("Other Organizations"). NQF and the Steward acknowledge and agree that the utilization of the Measure by Other Organizations may not constitute Permitted Use in all cases. The Steward acknowledges that one of the criteria NQF will use to evaluate a Measure for endorsement is the likelihood of the widespread adoption and utilization of the Measure and that utilization of the Measure by Other Organizations could increase the widespread adoption and utilization of the Measure. Accordingly, the Steward agrees to disclose to NQF whether it intends to limit distribution of the Measure to Other Organizations and whether it intends to impose any fees or charges on Other Organizations; such disclosure to include information sufficient to allow NQF to assess whether the Steward's distribution restrictions with respect to Other Organizations (if any) or such fees are likely to impede widespread adoption of the

Measure. Such fees or charges shall be set forth on Exhibit C. Such information shall not be treated by NQF as Proprietary Material and shall be posted on the NQF website during NQF's review of the Measure. Further, if the Measure is endorsed by NQF, NQF shall be entitled to refer to and include a description of these fees and charges in any publication of NQF.

3. Under no circumstance shall NQF have any authority to require or request a change in the Pricing Structure or any other fees or charges of the Steward.

SECTION 3. **Endorsement.**

a. Process and Standards.

1. Upon execution of this Agreement and submission of the Measure to NQF, NQF will use commercially reasonable efforts to undertake a review of the Measure to determine whether to endorse the Measure for Permitted Uses. The Steward acknowledges that the basis and standards of NQF's evaluation of the Measure may change over time and that among the considerations that NQF may use are the following:

(a) The Measure must be broadly available for use on reasonable terms and on a non-discriminatory basis such that significant Permitted Use is reasonably anticipated; and

(b) The Measure must be available for use by all (i.e., not limited to use by only certain types of entities or users, and not limited to use with particular vendors).

2. Notwithstanding these criteria, the determination of whether to endorse the Measure and whether to withdraw endorsement shall be in the sole and unfettered discretion of NQF, and the Steward shall have no right under any circumstances to require endorsement or challenge any decision by NQF to not endorse or withdraw endorsement except through the NQF appeals process with respect to Measure endorsement. The Steward hereby acknowledges that recommendations or endorsements by NQF or its agents shall depend on the full disclosure of the Measure as provided in this Agreement, and waives any claim against NQF arising from its refusal to endorse the Measure or its subsequent withdrawal of endorsement of the Measure, irrespective of the basis of such refusal or withdrawal, except through the NQF appeals process with respect to Measure endorsement.

3. If NQF proposes changes to a Measure prior to endorsement, NQF shall notify the Steward of the proposed changes, and the Steward shall have the right to accept such proposed changes or reject such proposed changes and withdraw the Measure from consideration for endorsement. If the Steward withdraws the Measure from consideration for endorsement, NQF shall have no right to endorse the original or modified Measure without consent of the Steward.

b. The Steward hereby acknowledges and agrees that NQF endorsement is not permanent, and that NQF shall periodically review and reevaluate the effectiveness, efficiency and feasibility of the Measure with respect to the performance indicator addressed by the

Measure. At the time of such review and reevaluation, the Steward shall again disclose all the information required under and in accordance with this Agreement.

SECTION 4. Limited Use Access; Steward Covenants.

a. Upon endorsement by NQF, the Steward of a Complex Measure shall, upon request, disclose to all end-users wishing to use the Measure for a Permitted Use all of the information and material, including, without limitation, all Proprietary Material, disclosed to NQF with respect to the Measure for purposes of consideration for endorsement so that the end-user may evaluate the Measure; provided, however, that the Steward may require that such end-user enter into a commercially reasonable non-disclosure agreement, without charge or cost to the end-user, with respect to such access for evaluation purposes.

b. The Steward shall make the Measure generally available for Permitted Uses to all users wishing to use the Measure for a Permitted Use and on a non-discriminatory basis such that significant utilization by end-users is reasonably anticipated. With respect to a Measure that is not a Complex Measure, the Steward shall make the Measure available to all users for all Permitted Uses without cost. With respect to a Measure that is a Complex Measure, the Steward shall make the Measure available to all users for all Permitted Uses and shall notify NQF if the Steward imposes a fee, charge or cost that is inconsistent with the Pricing Structure.

c. Upon endorsement by NQF, the Steward shall submit the measure to National Quality Measures ClearinghouseTM as an NQF EndorsedTM measure.

d. The Steward shall maintain and update the Measure as necessary for the Measure to continue to have application, as determined in the Steward's discretion. Such updates to the Measure shall be made available to the public without cost. The Steward's website shall identify how such updates may be obtained, and NQF shall provide a link from the NQF website to the Steward's website to provide end-users with further means to ensure they are accessing and using the most current version of the Measure. The Steward shall immediately notify NQF of any change in technical aspects of the Measure including, without limitation, any and all updates to the Measure.

e. The Steward agrees that endorsement by NQF constitutes permission by the Steward for full public disclosure of the disclosure policy reflected in this Agreement. The Steward agrees that, upon final endorsement by NQF, the Steward will permit full public disclosure of the availability of the Measure from the Steward. The Measure shall not be limited to an exclusive chain of distribution nor require particular proprietary software available from a sole source unless the cost of acquisition or utilization of such proprietary software is disclosed as part of the Pricing Structure. Utilization of the Measure as contemplated by this Agreement shall not entitle end-users to alter, maintain, enhance, or otherwise modify the Measure or to disassemble, recompile, or reverse engineer the source code or object code relating to the Measure.

SECTION 5. Other Steward Activities.

a. The Steward may further develop the Measure, create derivative works from the Measure, and incorporate the Measure into other products and services ("Related Products and

Services”) without notification or approval from NQF. The Steward may distribute, license, sell and otherwise dispose of such Related Products and Services for any purpose and in any manner; provided, however, that NQF endorsement may not be associated, in any manner, with any Related Products and Services unless the Related Products and Services include the Measure as endorsed by NQF, without any alterations or modifications (except for those needed to maintain or update the Measure as necessary for the Measure to continue to have application as contemplated in this Agreement), in which case the Steward may only indicate that the Related Products and Services include an NQF-endorsed Measure. Nothing in this Agreement shall be construed to prohibit the Steward from charging fees for the use of a Measure outside of a Permitted Use or from charging fees for any derivative works or products from the Measure.

b. This Agreement shall not affect, in any manner, the ability of the Steward to charge fees for services related to Permitted Uses, such as, for example, fees related to the processing, calculation, auditing or reporting of performance data.

SECTION 6. Term and Endorsement.

a. This Agreement shall be effective as of the date first above written, and shall have a term, with respect to each Measure from the date such Measure is submitted to NQF for consideration for endorsement until the third anniversary of the date of endorsement.

b. NQF may terminate this Agreement with respect to a Measure upon ten (10)-days written notice upon any subsequent determination to withdraw its endorsement of the Measure, which determination may be made in NQF’s sole and unfettered discretion; provided, however, that prior to withdrawing endorsement of the Measure, NQF shall notify the Steward of its reasons for withdrawal, if any, and provide the Steward with a reasonable opportunity to address the reasons identified by NQF; provided further, however, that the determination of whether the Steward has sufficiently addressed the reasons identified by NQF shall be made in NQF’s sole and unfettered discretion.

c. The Steward may terminate endorsement of a Measure by NQF by providing NQF with ten (10)-days written notice. Upon any such termination, the Steward may terminate this Agreement with respect to such Measure upon ten (10)-days written notice to NQF.

d. This Agreement shall automatically terminate with respect to a Measure upon the Steward’s withdrawal of the Measure for consideration for NQF endorsement and shall automatically terminate upon NQF’s rejection of the Measure for endorsement.

e. Except as specifically provided in this Agreement, upon termination of this Agreement with respect to a Measure, all rights and obligations under this Agreement shall terminate without the need for further action on the part of either party with respect to the Measure. Upon termination, the Steward shall immediately cease all use of any references to NQF or NQF’s endorsement of the Measure or any other relationship between the parties.

f. Upon termination of the Agreement with respect to a Measure for any reason, (i) the obligations of confidentiality set forth in this Agreement shall continue and (ii) NQF agrees not

to publicly disclose Proprietary Material with respect to the Measure and to remove all information regarding the Measure from the NQF website.

SECTION 7. **Limited License to Use NQF Name.** If NQF determines to endorse the Measure, the Steward shall have a non-exclusive, non-transferable license to use the name “The National Quality Forum” or “NQF” in conjunction with a phrase solely to the effect that the particular Measure is endorsed by NQF. Such license shall not entitle the Steward to use or otherwise refer to NQF as to any other aspects of the Steward’s enterprise. Upon termination of this Agreement, the Steward shall cease all such use of NQF or any variation thereof within a reasonable period of time after termination of this Agreement, and certify to NQF, in writing, the destruction of all materials containing references to NQF. This license and references to NQF endorsement are not assignable whether voluntarily or by operation of law. Should the Measure be transferred to any other party (either separately or in a transaction whereby there is a change in control of the Steward, by merger, consolidation sale of assets or any similar transaction), NQF’s endorsement thereof shall immediately terminate and the Steward (or any acquiror of the Measure) shall immediately cease use of the NQF endorsement or any reference to NQF. NQF shall retain the right to object to any use of its name, abbreviation or designation of endorsement of the Measure, as used by the Steward. Upon receipt of written notice of such objection, the Steward shall cease such objectionable use, and the parties shall work together to develop a use acceptable to NQF.

SECTION 8. **Indemnification.** The Steward shall hold NQF harmless and indemnify NQF for any and all costs, damages, and expenses, including reasonable attorneys fees, incurred by NQF arising out of any suit or cause of action that is the result of (i) any breach or violation of any of the terms or provisions of this Agreement, (ii) any claim, action, suit or allegation that the Measure or use thereof infringes or constitutes a misappropriation of any trademark, patent, copyright, trade secret, proprietary right or similar property right and (iii) the gross negligence or willful misconduct of the Steward.

SECTION 9. **Arbitration.** In the event that there is any dispute between the parties, the parties shall attempt to resolve such dispute by negotiation and/or informal mediation. In the event that a dispute cannot be resolved in this manner, all disputes shall be resolved by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association.

SECTION 10. **Miscellaneous.**

a. The captions herein are for reference purposes only and in no way define or limit the scope or content of this Agreement or in any way affect the interpretation of its provisions.

b. No delay or failure on the part of any party hereto in exercising any right, power, remedy or privilege hereunder, nor any course of dealing among the parties hereto, shall operate as a waiver of any right, power, remedy or privilege hereunder; nor shall any single or partial exercise of any right, power, remedy or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

c. This Agreement may not be amended or modified, nor may any provision hereof be waived, except pursuant to an instrument in writing signed by all of the parties hereto, or, in the case of a waiver, pursuant to an instrument signed by the party to whom or to which the subject obligation was owed.

d. Neither this Agreement nor any rights or obligations hereunder are assignable, in whole or in part, by any party without the prior written consent of the other party.

e. This Agreement shall inure to the benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed to confer any right or benefit, directly or indirect, upon any other person. This Agreement, together with its Exhibits, which are incorporated herein by this reference, constitutes the final written expression of all of the agreements between the parties regarding the subject matter hereof and is a complete and exclusive statement of those terms. This Agreement supersedes all previous understandings concerning the matters specified herein of the parties.

f. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 11. **Notice.** Any notice, consent, request, 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, if to the NQF, to The National Quality Forum, 601 Thirteenth Street, NW, Suite 500 North, Washington, DC 20005, and if to the Steward, _____ to, _____ or to such other address as either party may designate by written notice to the other.

SECTION 12. **Applicable Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the District of Columbia, without giving effect to any choice or conflict of law statute, provision, rule or principle.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the parties do hereby execute and accept the terms and conditions of the foregoing Agreement.

[The Steward] [Legal Name]

By: _____

Name: _____

Title: _____

The National Quality Forum

By: _____

Name: _____

Title: _____

EXHIBIT A

MEASURE INFORMATION

For All Measures

The term “Measure” shall mean the Steward measure as set forth in Exhibit A (Measure Submission form), including, but not limited to, specifications, groupers, risk adjustment methodologies, and data collection instruments necessary to convert health care data into the measure.

For Complex Measures Only

By signing below, NQF hereby acknowledges and agrees that the Measure is, and shall be treated as, a Complex Measure:

The National Qualify Forum

By: _____

Name: _____

Title: _____

EXHIBIT A
MEASURE SUBMISSION FORM

EXHIBIT B
PRICING STRUCTURE

EXHIBIT C
FEEES OR CHARGES TO OTHER ORGANIZATIONS