AGREEMENT FOR NCQA HEALTH PLAN ACCREDITATION SURVEY

The National Committee for Quality Assurance ("NCQA"), located at 1100 13th Street, NW, Suite 1000, Washington, D.C. 20005, and ___________________________ ("Organization"), located at ___________________________, for good and valuable consideration, hereby agree as follows:

1. Terms of Contract. This Agreement for NCQA Health Plan Accreditation Survey (the "Agreement"), effective on the date accepted by NCQA, and the Health Plan Accreditation Application (the "Application") submitted previously or herewith, the NCQA Standards and Guidelines for the Accreditation of Health Plans (the "Standards and Guidelines") and any policies and procedures governing NCQA Health Plan Accreditation that are in effect at the time Organization undergoes its NCQA accreditation survey (the "Survey") or while Organization is accredited (collectively this Agreement, the Application, Standards and Guidelines and any policies and procedures governing NCQA Health Plan Accreditation are referred to herein as the "Contract") establishes the entire content of the agreement between NCQA and Organization. There are no additional terms beyond those set forth in the Contract. Upon receipt of payment of its fees in full, NCQA will survey Organization and render an accreditation determination in accordance with the Contract.

2. Survey Fees and Cancellation Fees. Organization agrees to pay the fees billed by NCQA and calculated according to the Pricing Methodology and Cancellation Policy, set forth in Exhibit A, attached hereto and incorporated herein by reference.

3. Survey Tool. For the products (HMO, POS, PPO, EPO) reviewed under the Survey, Organization will license and input information into NCQA’s electronic version of the Standards and Guidelines (the "Survey Tool"). Organization acknowledges that at the discretion of NCQA, Organization may need to submit separate Survey Tools for different products being reviewed under the Survey. Organization will complete and submit the Survey Tool on the date mutually agreed upon by Organization and NCQA. The date of Organization’s submission of the Survey Tool to NCQA, including supporting documentation, will be considered the official commencement date of the Survey for all purposes under the Contract.

4. Submission of HEDIS® and CAHPS®

   a. Submission of Reportable HEDIS Results. As applicable for the selected evaluation option in accordance with the Standards and Guidelines, Organization agrees to submit Reportable HEDIS Results (defined below) for each product/product line for which Organization seeks accreditation under the Contract with the frequency and as of the date specified by NCQA as the HEDIS assessment date (the "HEDIS Date"). Reportable HEDIS Results include the HEDIS Effectiveness of Care Measures and required CAHPS Survey results (audited by NCQA licensed auditors and survey vendors prior to submission to NCQA) and any other HEDIS measures.
specified in the Standards and Guidelines (hereinafter collectively referred to as the “Reportable HEDIS Results”). The Reportable HEDIS Results must be submitted for specific geographic reporting units as specified in the Standards and Guidelines. The Reportable HEDIS Results will be evaluated by NCQA and will count toward Organization’s accreditation as specified in the Standards and Guidelines in effect at the time of the Survey.

b. Fees and Failure to Report. In conjunction with submission of the Reportable HEDIS Results, Organization will pay to NCQA a HEDIS data assessment fee for each accredited product as specified in Exhibit A. In addition, if Organization fails to submit any or all of the Reportable HEDIS Results to NCQA by the HEDIS Date, Organization shall pay the late HEDIS data assessment penalty specified in Exhibit A. In addition, if Organization has not submitted all required Reportable HEDIS Results to NCQA prior to commencement of the Survey as required in the NCQA Standards and Guidelines, NCQA will not proceed with the Survey and Organization shall pay full cancellation penalties as specified in Exhibit A. If Organization is already accredited and Organization fails to submit Reportable HEDIS Results annually on the schedule specified by NCQA, NCQA shall also have the right after giving prior written notice to Organization to suspend Organization’s accreditation status, if applicable, until such time as the required Reportable HEDIS Results are submitted to NCQA.

5. Information Considered. NCQA may consider information about the operations of Organization as NCQA deems relevant to the accreditation decision and such information is not limited to information supplied to NCQA by Organization. Organization agrees to provide any and all information and materials to NCQA as requested by NCQA at any point during the accreditation process and as deemed relevant by NCQA to the accreditation decision. If Organization declines to provide information to NCQA based on the information being subject to the attorney-client or other asserted privilege, Organization acknowledges and agrees that it may receive a score of zero percent on the applicable element(s) for which information is not provided to NCQA and such zero percent scores may impact Organization’s accreditation status. Organization further agrees to provide only true, accurate and complete information to NCQA and that submission of any Falsified Document or Fraudulent Information (defined below) used to evaluate compliance with NCQA Standards and Guidelines may be grounds for suspension, denial or revocation of accreditation.

a. Falsified Document[s] are documents provided by an applicant that have been redrafted, reformatted or fabricated, in whole or in part, with false or misleading information to substantiate compliance with NCQA Standards and Guidelines.

b. Fraudulent Information includes oral statements made by an applicant or another accredited, certified or recognized person on behalf of the applicant to substantiate compliance with NCQA Standards and Guidelines or to otherwise influence the outcome of an NCQA Survey, which are false or otherwise misleading.

NCQA shall notify Organization if NCQA suspects fraud and Organization shall have an opportunity to initially respond to such allegations within seven (7) business days of receiving such notice. If NCQA has cause to believe that Organization may have provided Falsified Documents or Fraudulent Information to NCQA, NCQA shall conduct an appropriate evaluation of the situation which may include an unannounced on-site survey of Organization. If NCQA is reasonably persuaded that Organization has provided Falsified Documents or Fraudulent Information in seeking
to achieve or retain accreditation status, NCQA at its sole discretion shall take appropriate action, which may include:

a. Suspension, denial, or revocation of accreditation;

b. Notification to the responsible federal and state government agencies of suspension, denial or revocation of accreditation;

c. Prohibiting Organization from seeking NCQA accreditation for a period of one (1) year unless NCQA, for good cause, waives all or a portion of this waiting period.

Organization agrees to notify NCQA immediately if it determines that Falsified Documents or Fraudulent Information has been supplied to NCQA and of any material changes in any information provided by it to NCQA. Organization understands and agrees that failure to provide such notification can result in suspension, denial or revocation of accreditation status at the sole discretion of NCQA. Organization may request reconsideration of a denial or revocation of accreditation status in accordance with the Standards and Guidelines. Because suspension of accreditation status is temporary and is designed to allow NCQA to investigate and gather information for decision making, reconsideration is not available when status has been suspended.

6. **Notice to Regulatory Agencies.** In the event that NCQA finds that any aspect of Organization’s operations poses a potential imminent threat to the health and safety of its members (as defined in the Standards and Guidelines), such findings may be considered by NCQA for accreditation purposes, and may result in a suspension, denial or revocation of accreditation, even if the Standards and Guidelines do not specifically address such operations. If NCQA identifies any condition that poses a potential imminent threat to health or safety of Organization’s members, its findings will be relayed to Organization’s Chief Executive Officer and to NCQA’s President. In addition, if at any time during the Survey or while this Agreement is in effect, NCQA identifies a condition that poses a potential imminent threat to health or safety of Organization’s members, NCQA may notify applicable regulatory agencies. Prior to NCQA’s notification to applicable regulatory agencies, Organization will have one (1) business day to correct the condition or rebut NCQA’s finding. NCQA will consider Organization’s correction of the condition or rebuttal of NCQA’s finding and then decide if a potential imminent threat to health or safety to Organization’s members still exists.

7. **Accreditation Status.** After completion of the Survey, NCQA will advise Organization of its accreditation determination for each product/product line and assign to Organization one of the accreditation status designations in accordance with the Standards and Guidelines. NCQA’s accreditation decision and resulting accreditation status designation will be based upon NCQA’s nonbinding scoring guidelines and the professional evaluative judgment of the NCQA Review Oversight Committee (ROC). Resurveys will be assessed under the Standards and Guidelines in effect at the time of the initial full Survey under this Agreement.

8. **Public Reporting and Use of Data.** NCQA reserves the right to publish Organization’s status designation and explanations of the meanings of its various accreditation status designations as described in the Standards and Guidelines. NCQA also reserves the right to release and publish, and authorize others to publish: 1) Organization’s accreditation status; 2) the results of Organization’s performance under specific standards, elements, factors and NCQA reporting categories (as may be
defined by NCQA from time to time as described in the Standards and Guidelines); 3) Organization’s Reportable HEDIS Results; 4) the names of the NCQA-accredited and/or NCQA-certified organizations with which Organization contracts; and 5) aggregate data based on the accreditation surveys NCQA has performed and the Reportable HEDIS Results submitted to NCQA. In addition, Organization expressly authorizes NCQA to release the accreditation status and survey results for the Marketplace product to the Federally Facilitated Marketplace (if applicable) and acknowledges and agrees that the Marketplace Internet Portal may display composite data gathered using the CAHPS measures, which correspond to Organization’s existing product lines (e.g., commercial, Marketplace, Medicare, Medicaid) in accordance with the conditions and requirements of the Marketplace Internet Portal. NCQA also reserves the right to use aggregate data it collects from accreditation surveys and assessment of Reportable HEDIS Results in connection with NCQA’s information products, health plan decision support tools and for NCQA’s research and development purposes, and to authorize others to use such aggregate data for such purposes; provided all uses of aggregate data is subject to all requirements and limitations for the use and disclosure of protected health information, if applicable, in accordance with the Business Associate Agreement (defined in Section 24 below). NCQA bears no responsibility for any use by third parties of any information about Organization released as provided in this Section 8, or for any effect of such release on Organization.

9. **Confidentiality.** NCQA acknowledges that, except as otherwise provided in the Contract, any information obtained or generated by NCQA in connection with the accreditation process shall be considered confidential between Organization and NCQA and will not be released except (i) on prior written authorization from Organization; or (ii) as otherwise required by law, regulation or court order. NCQA reserves the right to disclose the content of its final results and any additional information, without prior written authorization from Organization, if NCQA determines that Organization has supplied NCQA with Fraudulent Information or Falsified Documents, misrepresented NCQA’s findings, or misrepresented its accreditation determination in any way; provided, that NCQA shall first notify Organization if it suspects fraud or misrepresentation, and Organization shall have an opportunity to respond, as provided in Section 5. Organization may disclose its final accreditation results and components of the final accreditation report as described in the Standards and Guidelines, including summarized results to third parties, but may not disclose reports or numeric results from the readiness evaluation without a final NCQA accreditation decision. Organization may not release supplemental worksheets (e.g., QI, CR and UM file review results). Organization agrees not to misrepresent its NCQA accreditation status and Organization may not release any information to third parties from its preliminary results without NCQA’s written consent. Organization further agrees that unless Organization is using NCQA pre-approved advertising language, any reference to NCQA or to NCQA’s accreditation determination in Organization’s advertising or other promotional materials must be reviewed and approved in advance by NCQA. In addition, Organization certifies that it has reviewed NCQA’s *Guidelines for Advertising and Marketing* and agrees that its failure to comply with such Guidelines, as revised by NCQA from time to time, may result in suspension, denial or revocation of its accreditation status at the sole discretion of NCQA. NCQA bears no responsibility for any use by third parties of any information about Organization disclosed as provided in this Section 9, or for any effect of such disclosure on Organization; provided, that, in addition to any other remedies available, Organization will have the right to seek injunctive relief for breach of this confidentiality provision by NCQA.
10. **Peer Review Process.** Organization understands and agrees that any notes, internal memoranda, drafts or other documents that reflect the internal thought processes and deliberations of NCQA, its officers, directors, employees, agents, contractors, independent surveyors, members of the ROC and members of the NCQA Reconsideration Committee shall hereby be deemed, considered and treated as peer review materials generated for the purpose of reviewing the professional services of, and/or the quality of care provided or arranged by, Organization, notwithstanding any statutes or case law or other authority that would not recognize such materials and information as peer review materials. Under no circumstances will such materials or information be disclosed to Organization except as summarized in NCQA’s preliminary results, final results, or the results of a discretionary survey. With respect to any disclosure sought by third parties, such information and materials will be afforded any and all protections recognized as attaching to peer review materials under applicable law, and should such disclosure be ordered by a court, such court shall decide the extent to which Organization should also be entitled to disclosure of such information.

11. **Disclaimer.** Organization understands and agrees that NCQA’s accreditation determination does not constitute a warranty by NCQA to any third parties, including, but not limited to, employers, consumers, members or enrollees, regarding the quality or nature of the health care services provided or arranged by Organization. Organization further understands and agrees that NCQA’s accreditation process does not take the place of, or relieve Organization of its responsibility to conduct its own ongoing evaluation, assessment and monitoring procedures.

12. **Limitation of Liability.** Organization understands that NCQA is a non-profit corporation that serves the public interest. Organization shall not institute or file any legal proceeding of any nature, or otherwise assert any legal claims, against NCQA or its officers, directors, employees, agents, contractors, independent surveyors, members of the ROC, and members of the Reconsideration Committee, for any claims, liabilities, damages or injuries arising from any transactions or occurrences in connection with the accreditation process under the Contract and any resulting accreditation decision or denial of accreditation other than for claims against NCQA arising from any material procedural errors or omissions in connection with the scheduling or processing of the results of any accreditation survey, or breach of NCQA’s confidentiality obligations under Section 9 which causes actual and direct damage to the Organization. NCQA’s liability to Organization for any loss or damage arising therefrom shall be limited to the fees paid or payable for the specific accreditation survey associated with the Contract. Organization will only be entitled to seek recovery of Organization’s actual compensatory damages and injunctive relief, as necessary, for breaches of confidentiality under Section 9. In no event will NCQA be responsible for any damages caused by the failure of Organization to perform its responsibilities; any claims or demands of third parties; or any lost profits, loss of business, loss of use, lost savings, or other consequential, special, incidental, indirect, exemplary, or punitive damages, even if NCQA has been advised of the possibility of such damages. These limitations on liability shall apply to the fullest extent permitted by law regardless of whether Organization’s claim for loss or damage is based upon contract, tort, strict liability, or otherwise, and shall constitute NCQA’s sole liability to Organization and Organization’s exclusive remedy against NCQA in the event of any such claims as set forth above. Prior to bringing any claim against NCQA for any claim, Organization must provide NCQA with written notice of any breach, provide thirty (30) calendar days to cure, and NCQA must fail to cure such breach within that thirty (30) calendar day period.
Organization also acknowledges and agrees that the NCQA accreditation and reconsideration procedures expressly provided for in the Contract constitute the maximum procedures to which it is entitled in connection with the accreditation process. Any determination reached by the Reconsideration Committee at any stage in the appeal process regarding compliance designations for elements and standards is final and binding.

13. **Indemnification and Hold Harmless.** Organization and NCQA intend and agree that there are no third party beneficiaries of the Contract and that no third parties shall have any rights or claims by reason of the Contract. In addition, Organization agrees to indemnify and hold harmless NCQA, its directors, officers, employees, agents, contractors, independent surveyors, members of the ROC and members of the Reconsideration Committee against any and all liability, losses, damages, judgments, settlements, costs, expenses and reasonable attorneys’ fees arising from third party claims regarding the quality or nature of the health care services provided or arranged by Organization and alleging or entailing in any way professional liability or malpractice, negligent credentialing, utilization management, denial or refusal to provide benefits, coverage or treatment determinations, or Organization’s billing practices. NCQA agrees (i) it will give prompt written notice to Organization of any claim, demand or action, of which NCQA has actual knowledge, or any incident which may reasonably result in a claim, demand or action and (ii) NCQA will not enter into any agreement or settlement that may affect the rights of Organization without the prior written consent and approval of Organization. Organization shall have the right, in its sole discretion, to assume the defense of NCQA in connection with any such claim, action or proceeding. If Organization is an institution of a state government or a political subdivision of such state, this Section 13 shall apply only to the extent permitted under applicable state law, and nothing herein shall be deemed an express or implied waiver of sovereign immunity.

14. **Obligation during Investigation.** Organization agrees that it will fully cooperate in any investigation by NCQA of a patient, member or practitioner complaint submitted to NCQA. If the matter involves personal health information and/or relates to quality of care, NCQA shall provide Organization with an authorization to release information to NCQA signed by the individual or personal representative. Organization shall investigate any complaint referred to it by NCQA and shall respond in writing to NCQA and the person who submitted the complaint with Organization’s resolution of each issue addressed in the complaint within thirty (30) calendar days of receipt of the complaint from NCQA. Failure to comply is grounds for suspension or revocation of Organization’s accreditation status.

15. **Discretionary Surveys.** If accredited, Organization agrees that it will continue to take reasonable steps to remain, at a minimum, in substantial compliance with the Standards and Guidelines in effect as of the commencement date of Organization’s Survey, and that failure to do so may result in revocation of accreditation status. Prior to any proposed revocation of Organization’s accreditation status pursuant to this Section, and in accordance with the Standards and Guidelines, NCQA shall conduct a discretionary survey of Organization and give Organization notice and an opportunity to comment on NCQA’s findings, and the ROC will determine if revocation is warranted following review of all information submitted. Although NCQA may from time to time supplement or modify its standards, Organization will not be judged against such new or modified standards until its next renewal survey. Organization is responsible for the cost of a discretionary survey according to the pricing methodology for a discretionary survey set forth in Exhibit A.
Failure to comply with an NCQA request for discretionary survey, or failure to provide documentation and materials to NCQA pursuant to a discretionary survey, may result in suspension, denial or revocation of accreditation status in accordance with the Standards and Guidelines.

16. Organization’s Notification Obligations. Organization agrees to provide written notice to NCQA within thirty (30) calendar days of the occurrence of any of the following Reportable Events in accordance the policies and procedures governing NCQA Health Plan Accreditation that are in effect at the time Organization undergoes its Survey:

a. The final determination by a state or federal agency with respect to request for corrective action, imposition of sanctions, changes in licensure or qualification status if applicable or violation of any federal or state law that affects the Scope of Review under the Standards and Guidelines, including specifically any of the following:
   - Issuance of intermediate sanctions and/or suspension of enrollment issued by CMS or any other federal regulatory agency;
   - Issuance of any fine equal to or exceeding $50,000 by CMS or any other state or federal regulatory agency; and
   - Issuance of any request for a corrective action by any state or federal regulatory authority where the substance of such corrective action relates to handling of utilization management decisions, network adequacy, benefit denials, complaints, grievances, appeals or other important patient safety matters.

b. A change in operational structure or Organization’s status that affects the Scope of Review under the Standards and Guidelines, such as any of the following:
   - Expansion of a service area;
   - Product name change;
   - Material restructuring or consolidation of the provider network, medical management, utilization management, case management or disease management functions;
   - Filing for bankruptcy under any state or federal bankruptcy law, or initiation of receivership, liquidation, or state insurance supervision;
   - Dissolution or reorganization of Organization as another entity; and
   - Merger, acquisition, or consolidation by or with another entity or plan in accordance with the Standards and Guidelines.

17. Accreditation Status Not Transferable Without NCQA Consent. NCQA accreditation status is not transferable from one entity or plan to another without NCQA’s prior written consent, which may or may not be given at NCQA’s sole discretion. In the event Organization merges with, consolidates with, or is acquired by another entity, NCQA, in its sole discretion, may review Organization in accordance with any published policy of NCQA governing mergers, acquisitions and consolidations, to determine the effect of the merger, consolidation or acquisition on Organization’s accreditation status. NCQA is not obligated to conduct a full accreditation survey or to implement accreditation survey procedures before making such a determination. If Organization is dissatisfied with a resulting NCQA determination, its sole option shall be to reapply for accreditation. Changes in Organization’s accreditation status will be publicly reported.
18. Accreditable Entity. NCQA reserves the right to determine what part of Organization operations constitutes an accreditable entity for purposes of the Survey and HEDIS reporting and any resulting accreditation decision. Organization acknowledges and agrees that because Organization’s operations may be composed of a single corporate entity with multiple operating units or distinct service areas or geographic HEDIS reporting units NCQA’s accreditation determination may be limited to a specific operating or geographic HEDIS reporting unit and NCQA has discretion to determine within a single corporate entity that part of Organization’s service area to be included in the Survey. In addition, NCQA’s accreditation decision will relate to specific product lines of Organization (e.g., commercial, Marketplace, Medicare, Medicaid). The specific accreditable entity and operating units, geographic HEDIS reporting unit(s) and product line(s) to be included in the Survey shall be identified on Exhibit B attached to this Agreement. Organization shall execute an Add-On Addendum if Organization desires to add additional product lines during its Accreditation Cycle (defined in Section 22) and Organization shall pay any applicable fees as specified in Exhibit A for adding product lines. Organization also acknowledges and agrees that each operating unit, geographic HEDIS reporting unit and product line shall receive its own accreditation status.

19. Waiver and Binding Effect. A waiver of any term or condition of the Contract by either party shall not constitute a waiver of any other term or condition of the Contract. The Contract is binding on the parties and their successors and permitted assigns.

20. Force Majeure. Neither party will be responsible, or be held to have failed to meet its obligations under the Contract, if it either delays performance or fails to perform as a result of any strike, lockout or other labor dispute; fire, earthquake or other natural disaster; or act of war, terrorism or casualty or damage to personnel, materials or equipment (a “Force Majeure Event”).

21. Governing Law; Jurisdiction and Attorney’s Fees. Any and all claims or actions arising under the Contract shall be governed by the law of the District of Columbia regardless of any applicable conflicts of laws principles, and shall be exclusively resolved in a court of competent jurisdiction within the District of Columbia. Notwithstanding the foregoing, this governing law and venue provision shall not apply if Organization is an institution of a state government or a political subdivision of such state and afforded sovereign immunity under applicable state law. If any action in law or equity is instituted to enforce the terms of this Agreement or to remedy any breach of this Agreement, the non-prevailing party agrees to pay all reasonable attorneys’ fees and costs incurred by the prevailing party in preparing, processing, litigating, collecting, and/or, if necessary, appealing such action.

22. Term. This Agreement shall remain in effect during the life of Organization’s accreditation cycle, which shall not last longer than eighteen (18) months from the date Organization receives an accreditation decision following the Interim Evaluation Option, and not longer than three (3) years from the date Organization receives an accreditation decision following the First or Renewal Evaluation Option (the “Accreditation Cycle”). Organization’s accreditation status is subject to change during the Accreditation Cycle as set forth and only as set forth in the Contract. Organization is subject to being resurveyed by NCQA during the Accreditation Cycle if Organization’s score on the accreditation standards falls below certain thresholds specified in the Standards and Guidelines. The terms of this Agreement shall govern any resurvey, and Organization shall pay a new application fee and the resurvey fees identified in Exhibit A. Organization shall execute a new agreement at the time Organization seeks renewal of its accreditation status.
23. Notices. All notices required to be given hereunder shall be in writing and shall be deemed delivered when personally delivered; delivered by an express mail service; or delivered by confirmed facsimile or email transmission followed by a hard copy, properly addressed to the parties at their respective addresses set forth below:

If to NCQA:
National Committee for Quality Assurance
1100 13th Street, NW
Suite 1000
Washington, D.C. 20005
Attention: Vice President, Accreditation & Recognition Operations
Email: NCQA-Accreditation@ncqa.org
Fax: 202-955-3599

If to Organization:

________________________________________________________
________________________________________________________
________________________________________________________
Attention:_____________________________________________
Fax:___________________________________________________
Email:_________________________________________________

24. HIPAA. NCQA and Organization acknowledge that certain sections of the Federal Privacy, Security, Breach Notification, and Enforcement Rules established at 45 C.F.R. Parts 160 and 164, as amended from time to time (collectively the “HIPAA Rules”), 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 (“ARRA”), may apply to them, their relationship and the performance of the Contract. NCQA and Organization acknowledge and agree that they will enter into, or have entered into, a Business Associate Agreement in the form attached hereto as “Exhibit C” or a confidentiality agreement to satisfy their relative obligations under the applicable HIPAA Rules (the “Business Associate Agreement”). In the course of fulfilling the terms of the Contract, Organization agrees that it will not provide to NCQA protected health information that is subject to protection under the HIPAA Rules unless expressly required under the Standards and Guidelines in effect at the time of the Survey. Notwithstanding any other provision to the contrary, to the extent the terms of the Business Associate Agreement directly relate to NCQA’s performance under the Contract, the provisions of such Business Associate Agreement shall control as required, and only as required, to allow Organization to comply with the applicable provisions of the HIPAA Rules. Notwithstanding any other provision to the contrary, nothing in the Contract shall alter the obligations and rights of the parties under the Business Associate Agreement.

25. Changes to Standards and Guidelines. All changes to the Standards and Guidelines must be finalized at least ninety (90) calendar days prior to the commencement date of the Survey and NCQA shall not retroactively apply to Organization changes to the Standards and Guidelines made
less than ninety (90) calendar days prior to the commencement date of the Survey, except that NCQA shall have the option not to apply standards and elements that are slated for future retirement or that ease the requirements of Organization and NCQA may opt not to count specific Reportable HEDIS Measures if NCQA determines that the data is unreliable or invalid. NCQA shall give Organization at least ninety (90) calendar days advance written notice of any changes to the Standards and Guidelines.

26. Survival. Sections 8, 9, 10, 11, 12, 13, 19, 21, 23 and 24 shall survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties, each acting under due and proper authority, have executed this Agreement effective as of the date accepted by NCQA.

______________________________________________
Name of Organization

______________________________________________
Signature

______________________________________________
Name and Title

Date: ____________________________________________

ACCEPTED:

National Committee for Quality Assurance

______________________________________________
Signature

______________________________________________
Name and Title

Date: ____________________________________________
Pricing Methodology and Cancellation Policy
for NCQA’s
Health Plan Accreditation Program
Survey Fee - Effective July 1, 2016
HEDIS Assessment Fee – Effective January 1, 2011

1. Application and Presurvey Fees

A nonrefundable Application and Presurvey Fee is due at the time of application for each Survey, including Resurveys and Renewal Surveys. The amount of the fee is set according to the type of Survey, as outlined in Table A below.

This fee will be applied to the final price of the Survey or be forfeited if the Survey is changed, canceled, postponed or delayed by the Organization other than for a Force Majeure Event as defined in the Contract.

The Application and Presurvey Fee for a Survey, including Resurveys and Renewal Surveys, is due nine months prior to the scheduled Survey date. Late Application and Presurvey Fees will be assessed late charges at a rate equal to 1.5 percent per month. If the Application and Presurvey Fee has not been paid within eight months of the scheduled Survey date, NCQA will remove the Survey from the Accreditation Survey schedule. Upon payment of the Application and Presurvey Fee, NCQA will reschedule the Survey, but will not guarantee that the original Survey dates will be available.

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2. Survey Pricing

| TABLE A |
|------------------|-----------------|-----------------|------------------|-----------------|
| **Survey Type**  | Application and Presurvey Fee | Base Fee | “Per Member” Assessment | “Per Member” Cap |
| **Full Survey**  |                               |           |                           |                 |
| HMO, PPO, POS or HMO/POS products only |                               |           |                           |                 |
| Interim Evaluation Option | $15,000 | $26,500 | $0.19\(^2\) | 3,000,000 |
| First Evaluation Option   | $15,000 | $39,500 | $0.19\(^2\) | 3,000,000 |
| Renewal Evaluation Option | $15,000 | $39,500 | $0.19\(^2\) | 3,000,000 |
| HMO/POS/PPO combined      | $20,000 | NA | A 25% discount is applied to the PPO per member assessment. |
| HMO, POS or HMO/POS and PPO Surveyed at same time (different entities) | $20,000 | Price calculated for HMO, POS or HMO/POS and PPO individually using above fees, then 25% discount applied to PPO. See Example below illustrating method to calculate Survey fee. |
| Introductory Follow-Up Survey or Resurvey | Survey fee calculated using Full Survey methodology (above) and applying 25% discount. |
| **Single Site Multiple Entity Survey** |                               |           |                           |                 |
| Primary Site             | $15,000 | $39,500 | $0.19\(^2\) | 3,000,000 |
| Secondary Site           | $15,000 | $26,000 | $0.19\(^2\) | 3,000,000 |
| National/Multi State PPO\(^4\) | $15,000 | $39,500 | $0.19\(^2\) | 3,000,000 |
| **Add-On Survey**        |                               |           |                           |                 |
| Add-On Product           | $10,000 | $22,250 | None | NA |
| **Corporate Survey**     |                               |           |                           |                 |
| Full scope corporate survey (1\(^{st}\) corporate survey in 3-year Accreditation cycle) or Follow-up corporate annual assessment survey with onsite | None | $11,500 | None | NA |
| Follow-up corporate annual assessment survey (2\(^{nd}\) and 3\(^{rd}\) corporate surveys in 3-year Accreditation cycle) w/o onsite | None | $9,500 | None | NA |
| **Merger, Acquisition and Consolidation (MAC) Survey** | None | $19,500 | None | NA |

1. See Standards and Guidelines for complete definitions of each Survey type.
2. For each member reported at the time of application.
3. HMO or HMO/POS members will be counted first, followed by PPO members.
4. For PPOs that are single legal entity operating across multiple states, have centralized operations and are submitting reportable HEDIS results for each state, NCQA charges a single Survey fee.
Example

By way of example only, the price of a Survey with HMO/POS and PPO for a health plan with 125,000 HMO members and 250,000 PPO enrollees is as follows.

**HMO Component**

<table>
<thead>
<tr>
<th>Component</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Fee</td>
<td>$39,500</td>
</tr>
<tr>
<td>Per-Member Assessment</td>
<td>$23,750</td>
</tr>
<tr>
<td>Total MCO Component</td>
<td>$63,250</td>
</tr>
</tbody>
</table>

**PPO Component**

<table>
<thead>
<tr>
<th>Component</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Fee</td>
<td>$39,500</td>
</tr>
<tr>
<td>Per Enrollee Assessment</td>
<td>$47,500</td>
</tr>
<tr>
<td>PPO discount</td>
<td>($21,750)</td>
</tr>
<tr>
<td>Total PPO Component</td>
<td>$65,250</td>
</tr>
</tbody>
</table>

HMO/POS and PPO Survey Fee ...........$128,500

Discretionary Surveys:
A Discretionary Survey will be priced at the time it is initiated, based on its nature and scope. The cost of a Discretionary Survey will not exceed the price of a Full Survey.

Survey Pricing Adjustments:
The Accreditation Survey price may be increased by NCQA if it is determined, after NCQA’s receipt of the completed Application and discussion with the Organization that certain complexity factors exist. The additional cost associated with the complexity factors is based primarily on the necessity for additional Surveyors (either physicians or administrative) or Survey days that are required to adequately evaluate the Organization against NCQA Standards and Guidelines. On average, complexity pricing adjustments will range between $5,000 and $10,500.

Surveys Conducted Outside of the Continental United States:
To cover any additional travel expenses, NCQA reserves the right to increase the Survey fees up to $1,000 per traveler for any Survey conducted outside of the continental United States.

[INTENTIONALLY LEFT BLANK]
Reconsideration Fees:
A fee is charged for Reconsiderations. This fee must be paid at the time a Reconsideration is requested. The amount of the fee is based on the aggregate number of Accreditation elements for which Reconsideration is requested, as summarized below.

<table>
<thead>
<tr>
<th>Aggregate Number of Accreditation Elements for Which Reconsideration Is Requested</th>
<th>Reconsideration Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–9</td>
<td>$2,500</td>
</tr>
<tr>
<td>10–21</td>
<td>$5,000</td>
</tr>
<tr>
<td>22–33</td>
<td>$7,500</td>
</tr>
<tr>
<td>34–45</td>
<td>$10,000</td>
</tr>
<tr>
<td>46–57</td>
<td>$12,500</td>
</tr>
<tr>
<td>58–69</td>
<td>$15,000</td>
</tr>
<tr>
<td>79–81</td>
<td>$17,500</td>
</tr>
<tr>
<td>≥82</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

3. HEDIS Assessment Fee – Effective January 1, 2011
Annually, the Organization must submit to NCQA, on the date specified by NCQA, the Reportable HEDIS Results. At the time of submission of Reportable HEDIS Results, the Organization must submit an Assessment Fee of $1,950 for each product or product line covered under the Survey. For National/Multi-State PPOs, this fee is assessed for each HEDIS submission. Organizations that fail to submit the Reportable HEDIS Results postmarked by the date specified by NCQA are subject to a $1,500 late submission penalty per product or product line covered under the Survey. The Organization will be charged late fees at a rate equal to 1.5 percent per month if it does not pay the Assessment Fee by the date the Reportable HEDIS Results are due.

4. Postponement, Cancellation or Change of Survey Date
If the Organization changes, cancels, postpones or otherwise delays or terminates its Survey date or a portion of the Survey (i.e., PPO product or HMO product), other than for a Force Majeure Event, at a minimum, the Application and Presurvey Fee will be forfeited. In the case of a cancellation, postponement, termination or other delay of a Survey, other than for a Force Majeure Event, additional cancellation penalties as described below may apply. The Organization must submit written notification of cancellation and will need to submit new application documents and a new Application and Presurvey Fee before another Survey date will be scheduled.

The following cancellation penalties will be assessed against the total price of the Survey based on the number of days prior to the commencement date of the Survey that the Organization cancels, postpones, delays or otherwise terminates the Survey process.
### EXHIBIT A

<table>
<thead>
<tr>
<th>Days Prior to Survey</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>180+</td>
<td>Forfeiture of Application Fees</td>
</tr>
<tr>
<td>179–150</td>
<td>35% of total Survey Fee or Application Fee (whichever is higher)</td>
</tr>
<tr>
<td>149–120</td>
<td>40% of total Survey Fee</td>
</tr>
<tr>
<td>119–90</td>
<td>45% of total Survey Fee</td>
</tr>
<tr>
<td>89–60</td>
<td>50% of total Survey Fee</td>
</tr>
<tr>
<td>59–30</td>
<td>75% of total Survey Fee</td>
</tr>
<tr>
<td>29–0</td>
<td>100% of total Survey Fee</td>
</tr>
</tbody>
</table>

5. **Payment**

NCQA will invoice the Organization for the balance of its Accreditation Survey fee at least 60 days prior to the commencement date of the Survey. All payments (including Survey fees and cancellation fees) are due within 30 days of the date of the invoice. If such fees are not paid within 30 days, the Organization will be charged late fees at a rate equal to 1.5 percent per month. If NCQA has not received payment in full, including late fees, if applicable, 7 days prior to the commencement date of the Survey, NCQA will not conduct the Survey and the Organization shall be deemed to have canceled the Survey and is subject to the cancellation penalties as set forth above.

6. **Changes to Policy**

NCQA reserves the right, at its sole discretion, to revise this Exhibit A at any time, with the following limitations: (a) NCQA will not apply a revised Exhibit A to the Organization if NCQA has never surveyed the Organization previously, and the Organization undergoes a Survey within 18 months of the date NCQA accepts this Agreement; and (b) NCQA may increase the fees contained in this Exhibit A if the Survey is not the Organization’s first Survey, but any price increase will be limited to 5 percent per year. Subject to these limitations, the Organization agrees to be bound by any such revised Exhibit A and to pay fees accordingly upon receipt of written notice from NCQA, at least 180 calendar days prior to the commencement date of the Survey.
Name of Accreditable Entity:
______________________________________________________________

Location of Operating Units or Office Sites:
______________________________________________________________

Geographic HEDIS Reporting units:
______________________________________________________________

Products or Product Lines to be Surveyed:
______________________________________________________________

______________________________________________________________
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, distinction, or recognition entered into by Covered Entity and NCQA establish the terms of the relationship between NCQA and Covered Entity.

WHEREAS, Covered Entity is seeking accreditation, certification or recognition by NCQA and may disclose data to NCQA and input data into data collection tools stored and maintained by NCQA, which data may include certain Protected Health Information (as defined in 45 C.F.R. § 160.103) that is subject to protection under the Federal Privacy, Security, Breach Notification, and Enforcement Rules established at 45 C.F.R. Parts 160 and 164, as amended from time to time (collectively the “HIPAA Rules”), 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 (“ARRA”);

WHEREAS, NCQA may act in the role of a Business Associate (as defined in 45 C.F.R. § 160.103) for purposes of Covered Entity’s health care quality assessment and review by NCQA and satisfaction of NCQA’s standards and requirements and the HIPAA Rules dictate that the Covered Entity shall enter into an agreement with a Business Associate to whom it provides PHI, 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 when NCQA acts as a Business Associate of Covered Entity, as defined under the HIPAA Rules; and

WHEREAS, the purpose of this BAA is to satisfy certain standards and requirements of the HIPAA Rules, as the same may be amended from time to time.

NOW THEREFORE, 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, as amended from time to time. “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the information received from or on behalf of Covered Entity. “Electronic PHI” shall mean Electronic Protected Health Information, as defined in 45
C.F.R. § 160.103, limited to the information received from or on behalf of Covered Entity. The terms “use” and “disclosure” and any and all other terms with defined meanings established by 45 C.F.R. Parts 160 and 164, as amended from time to time, shall have the same meaning for the purpose of this BAA. References in the Contract or this BAA to a section or subsection of 45 C.F.R. Parts 160 and 164, and/or ARRA under Title 42 of the United States Code are references to provisions of ARRA and shall be deemed a reference to that provision and its existing and future implementing regulations, when and as each is effective and compliance is required under the applicable provision.

Section 2. **Effect.** This BAA shall apply to any PHI subject to the Contract and to any PHI disclosed by Covered Entity for purposes of Covered Entity’s health care quality assessment by NCQA and satisfaction of NCQA’s standards and requirements and using data collection tools stored and maintained by NCQA. 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. Notwithstanding anything in this Agreement to the contrary, nothing in this BAA shall alter the rights and obligations of the respective parties under the HIPAA Rules.

II. **RESPONSIBILITIES OF NCQA**

Section 1. **Use and Disclosure of Protected Health Information.** 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 if the disclosures are Required by Law, and 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) create a Limited Data Set and use and disclose such Limited Data Set pursuant to the Data Use Agreement as set forth in Article VI of this BAA; and

(e) de-identify 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 HIPAA Rules.

NCQA shall request, use and/or disclose the minimum amount of PHI necessary with regard to its use and/or disclosure of PHI under this Section 1. NCQA shall not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity. All other uses and disclosures of PHI not authorized by this BAA or the Contract are prohibited. NCQA acknowledges that it may be
subject to the civil and criminal enforcement provisions set forth at 42 U.S.C. 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the use and disclosure requirements and any guidance issued by the Secretary from time to time.

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, in accordance with the requirements set forth in Subpart C of 45 C.F.R. Part 164, 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 relating to such safeguards, available to the Secretary in accordance with the HIPAA Rules.

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 45 C.F.R. §§ 164.400, 164.402, and 164.410 and any guidance issued by the Secretary from time to time.

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 in accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, 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. § 164.528 and, 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. § 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.

(c) 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 in accordance with the HIPAA
Rules; and

(d) forward to Covered Entity within five (5) business days of receiving any requests an
Individual makes of NCQA pursuant to 45 C.F.R. §§ 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 45 C.F.R. §§ 164.502(a)(5), 164.504(e)(2)(i), and 164.508(a);

(b) NCQA shall not make or cause to be made any communication about a product or service
that is prohibited by 45 C.F.R. §§ 164.502(a)(5), 164.504(e)(2)(i), and 164.508(a);

(c) NCQA shall not make or cause to be made any written fundraising communication that is
prohibited by 45 C.F.R. § 164.514(f).

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. § 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 45
C.F.R. § 164.522(a), Covered Entity shall provide NCQA with clear written notice of those restrictions
and the PHI to which they pertain.

Section 2. 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 HIPAA Rules and ARRA. Covered Entity agrees that it will not
provide to NCQA PHI unless expressly requested by NCQA in the fulfillment of the Contract.

Section 3. Covered Entity Requests. Covered Entity shall not request or require NCQA to
use or disclose Protected Health Information in any manner that would not be permissible under Subpart
E of 45 C.F.R. Part 164 if done by Covered Entity.

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. 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 VI of this BAA, or with information that has been de-identified. 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. 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.

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. LIMITATION OF LIABILITY

Section 1. Hold Harmless. Each party agrees to hold harmless the other party to this BAA from and against any and all claims, losses, liabilities, costs and other expenses (including reasonable attorney fees and costs associated with any suits, actions, proceedings, claims, or official investigations or inquiries) incurred as a result of: (i) any misrepresentation or non-fulfillment of any undertaking on the part of the party pursuant to this BAA; and (ii) negligent or intentional acts or omissions in the party’s performance under this BAA. In no event will a party be responsible for any damages, caused by the failure of the other party to perform its responsibilities. If Covered Entity is an institution of a state government or a political subdivision of such state, this Article V shall apply only to the extent permitted under applicable state law, and nothing herein shall be deemed an express or implied waiver of sovereign immunity.

Section 2. 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.

VI. DATA USE AGREEMENT

Section 1. Preparation of the Limited Data Set. In accordance with Article II, Section 1(d) of this BAA NCQA may, on behalf of Covered Entity, prepare a Limited Data Set (“LDS”) in accordance with the 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 VI.

Section 3. Responsibilities of NCQA. All of the restrictions, obligations, requirements and conditions of this BAA shall apply to such LDS in the same manner as they apply to PHI under this BAA. NCQA agrees to not use or further disclose the LDS other than as permitted by this Article VI or as otherwise Required by Law. NCQA further agrees that it will 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.

VII. 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. Notwithstanding the foregoing, this choice of law and venue provision shall not apply if Covered Entity is an institution of a state government and afforded sovereign immunity under applicable state law.

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 Article V, and Article VII 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 VI 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 facsimile 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: General Counsel and Chief Privacy Officer  
Email: Donohue@ncqa.org

**If to Covered Entity:**
Name of Individual/Entity: ________________________________

__________________________

Address: ________________________________

__________________________

City/State/Zip: ________________________________

__________________________

Fax: ________________________________

**SIGNATURE LINES FOLLOW ON NEXT PAGE**
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date of the contract.

Covered Entity
Print Name of Covered Entity:

By: ______________________________________________________
Print Name: ______________________________________________
Title: _____________________________________________________
Date: _____________________________________________________

National Committee for Quality Assurance

By: ______________________________________________________
Print Name: ______________________________________________
Title: _____________________________________________________
Date: _____________________________________________________