

MASTER SERVICE AGREEMENT

This Master Service Agreement (“**Agreement**”), effective as of the date last executed as shown below (“**Effective Date**”), is made and entered into by and among California Hospital Quality Institute (“**HQI**”), a California not-for-profit corporation, and the hospital(s) listed in **Exhibit A** (whether single or multiple, hereafter, “**Hospital**”), which is a member of the California Hospital Association or one of its affiliates. (HQI and Hospital are herein individually sometimes referred to as “**Party**” collectively as “**Parties.**”)

- 1. Term of Agreement.** This Agreement shall take effect beginning on the Effective Date _____ through and including Termination Date _____, unless sooner terminated as set forth below.
- 2. Services Provided by HQI.** In consideration of the compensation described in Paragraph 3 below, HQI will provide the services and deliverables, if any, (individually and collectively “**Services**”) set forth in **Exhibit B (Services)** attached hereto and incorporated herein by this reference.
- 3. Compensation.** HQI’s compensation for the Services, and HQI’s entitlement to reimbursement for expenses incurred in connection therewith, if any, are set forth in **Exhibit C (Compensation)** attached hereto and incorporated herein by this reference.
- 4. HQI’s Standard of Conduct.** In performing Services under this Agreement, HQI shall conform to high professional standards of work and business ethics and shall act in compliance with all applicable federal, state, and local laws, regulations, and codes. HQI shall not use time, materials, or equipment of Hospital without the prior written consent of Hospital. All Services must be satisfactory in the reasonable opinion of Hospital.
- 5. Use of Outside Services.** HQI may use the services of any other person, entity, or organization (individually and collectively “**Third Party**”) in the performance of the Services, in which case HQI will require such Third Party to be bound by the applicable provisions of this Agreement, including the applicable provisions of its Confidentiality provision (below) and attendant Business Associate Agreement, attached to this Agreement as **Exhibit D** and incorporated herein by this reference. HQI has engaged ArborMetrix, Inc., to serve as such a Third Party with respect to the Services. The agreement between HQI and ArborMetrix, Inc., as amended, (“ArborMetrix, Inc. Master Consulting Services and Subscription Agreement”) is attached to this Agreement as **Exhibit E (ArborMetrix, Inc. Master Consulting Services and Subscription Agreement)**. Hospital shall be a third party beneficiary to the ArborMetrix, Inc. Master Consulting Services and Subscription Agreement and shall have the right to enforce such agreement directly to the extent it may deem such enforcement necessary or advisable to protect its rights hereunder.

6. **Confidentiality.** During and after the term of this Agreement, HQI agrees to maintain as strictly confidential, and not to disclose or use for the benefit of HQI or any third party, either directly or indirectly, any Confidential Information, as hereinafter defined, obtained from Hospital or developed in the course of and by virtue of the Services.
 - 6.1. **Confidential Information.** “Confidential Information” means information not generally known and which is proprietary to Hospital, including, without limitation, all data, proprietary information, trade secrets, reports, questionnaires, lists, concepts, techniques, materials, evaluations, processes, development or research work, or any other information or proprietary aspects of the business or activities of Hospital provided by Hospital to HQI to assist in HQI’s performance of this Agreement.
 - 6.2. **Limitations on Confidential Information.** Confidential Information does not include information that is:
 - 6.2.1. Publicly known at the time of disclosure or subsequently becomes publicly known through no fault of HQI;
 - 6.2.2. Discovered or created by HQI before disclosure by Hospital;
 - 6.2.3. Learned by HQI through legitimate means other than from Hospital or Hospital representatives; or
 - 6.2.4. Disclosed by HQI with Hospital’s prior written approval.
 - 6.3. **Property of Hospital.** HQI agrees that all reports, manuals, documents, and specific material developed and delivered by HQI for Hospital in connection with the Services are and shall remain the property of Hospital subject to any applicable intellectual property rights of HQI.
7. **Non-Solicitation.** Parties agree as follows:
 - 7.1. **[Intentionally left blank.]**
 - 7.2. **Non-Solicitation.** During the term of this Agreement and for a period of one year after its termination, Hospital will not, directly or indirectly, through an existing corporation, unincorporated business, affiliated party, successor employer, or otherwise, solicit, hire for employment, or pay any remuneration to, whether on a part-time, consulting, advising, or any other basis, any current employee of HQI without the prior written consent of HQI.
8. **Injunctive Relief.** The Parties acknowledge that the terms of paragraphs 6 and 7 of this Agreement are reasonably necessary to protect the legitimate interests of the respective Parties, are reasonable in scope and duration, and are not unduly restrictive. The Parties therefore agree that each shall be entitled to seek all equitable relief, including, but not limited to, injunctive relief, as well as any other remedy that may be available under any applicable law or this Agreement between the Parties.

9. **Independent Contractor.** HQI is an independent contractor and not an employee, partner, or co-venturer of, or in any other service relationship with, Hospital. The manner in which HQI's services are rendered shall be within HQI's sole control and discretion. HQI is not authorized to speak for, represent, or obligate Hospital in any manner without prior express written authorization from an officer of Hospital.
 - 9.1. **Taxes.** HQI shall be solely responsible for all taxes arising from compensation and other amounts paid under this Agreement, including, but not limited to, payroll taxes and fringe benefits of HQI's employees, if any. Neither federal, state, nor local income tax nor payroll tax of any kind, shall be withheld or paid by Hospital on behalf of HQI or HQI's employees or contractors. HQI understands that HQI is responsible to pay, according to law, HQI's taxes, if any.
 - 9.2. **Benefits.** HQI and HQI's employees and contractors, if any, will not be eligible for, and shall not participate in, any employee pension, health, welfare, or other fringe benefit plan of Hospital. No workers' compensation insurance shall be obtained by Hospital covering HQI or HQI's employees or contractors, if any.
10. **Termination of Agreement.** During its term, this Agreement may be terminated as follows:
 - 10.1. Either Party may terminate the Agreement upon ten (10) business days' written notice to the other Party ("Breaching Party") in the event (1) the Breaching Party fails to perform, or has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants or representations under or in connection with this Agreement, and (2) the failure, inaccuracy, or breach continues for a period of seven (7) business days after the injured Party delivers notice to the Breaching Party reasonably detailing the breach.
 - 10.2. Either Party may terminate the Agreement with immediate effect upon giving written notice under the following circumstances:
 - 10.2.1. If the other Party becomes insolvent, bankrupt, or enters receivership, dissolution, or liquidation; or
 - 10.2.2. If any law or regulation exists or is enacted or issued that makes the performance of the terms of this Agreement illegal or otherwise prohibited or any governmental authority issues an order restraining or enjoining the activities contemplated under this Agreement.
 - 10.3. The Parties may terminate this Agreement at any time upon mutual agreement.
 - 10.4. [Intentionally left blank.]
 - 10.5. Either Party may at any time and for any reason, terminate this Agreement upon thirty (30) days' written notice to the other Party. Upon receipt of such notice by the receiving Party, HQI shall, unless the notice directs otherwise, immediately discontinue the work contemplated by the Agreement and the placing of orders or

contracts for materials, facilities or services in connection with the performance of this Agreement.

11. **Equal Employment Opportunity.** This contract is subject to the provisions of (i) Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)); and (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a)). This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals on the basis of disability, and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities, and qualified protected veterans.
12. **General Provisions.**
 - 12.1. **Construction of Terms.** This Agreement shall be deemed the joint work product of the Parties and may not be construed against either Party as drafter. Captions are for convenience only and shall not be construed to define, limit or affect the construction or interpretation of this Agreement. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, that provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.
 - 12.2. **Governing Law.** This Agreement is entered into and shall be performed in the State of California. This Agreement shall be governed by and construed in accordance with the internal laws (and not the laws regarding conflict of laws) of the State of California.
 - 12.3. **Jurisdiction and Venue.** Each Party hereby irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located within Sacramento County, State of California, in connection with any matter arising out of this Agreement or the transactions contemplated under this Agreement. Any arbitration in connection with this Agreement shall occur in Sacramento County unless the Parties jointly agree to another location.
 - 12.4. **Complete Agreement.** This Agreement constitutes the complete agreement and sole understanding of the Parties as to the subject matter of this Agreement and supersedes all prior discussions and understandings with respect to the subject of this Agreement, whether written or oral.
 - 12.5. **Dispute Resolution.** Any dispute or controversy between the parties arising out of or relating to this Agreement will be arbitrated by the American Health Lawyers Association (“AHLA”) Dispute Resolution Services and conducted in accordance with the AHLA Rules of Procedure for Arbitration, with such arbitration to be the exclusive dispute resolution method under this Agreement. The decision and award determined by such arbitration will be final and binding upon both Parties.

The prevailing Party in such proceeding shall have the right to collect from the other Party its reasonable attorneys' fees, costs, and necessary disbursements, including but not limited to expert witness fees, incurred in enforcing this Agreement.

- 12.6. **Modification.** No amendment, modification, or termination of this Agreement, or any provision thereof, shall be valid unless in writing signed by the Party against whom the same is sought to be enforced.
- 12.7. **Waiver of Breach.** The waiver by a Party of a breach of any provision of this Agreement by the other Party shall not operate or be construed as a waiver of any other or subsequent breach by the Party in breach.
- 12.8. **Successors and Assigns.** This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however, that the Agreement shall be assignable by Hospital without HQI's consent in the event Hospital is acquired by or merged into another corporation or business entity that is a member of the California Hospital Association or one of its affiliates. The benefits and obligations of this Agreement shall be binding upon and inure to the Parties hereto, their successors and assigns.

IN WITNESS WHEREOF, this Agreement is executed by each of the Parties as of the date set forth below:

HOSPITAL

HQI:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

EXHIBIT B

Services

Statement of Work Number: 01

Project Name: Hospital Quality Improvement Platform (HQIP)

Date: _____ (“Effective Date”)

This Statement of Work is entered into in connection with the Master Services Agreement between HQI and the Hospital effective _____ (the “Agreement”).

Capitalized terms not defined here shall have the meaning set forth in the Agreement.

Incorporated in the Agreement as **Exhibit D (Business Associate Agreement)** is a Business Associate Agreement (the “BAA”) pursuant to which HQI and its subcontractor(s) (each a “Vendor”; currently, the only Vendor is ArborMetrix, Inc., with the option to change to, or to add, other Vendors) serve as business associates of Hospital under the Agreement.

SUMMARY OF WORK AND STEPS TO BE PERFORMED FOR THE SERVICES:

1. Hospital has engaged HQI to utilize HQI’s data collection, quality analysis, health service analysis, reporting (including to third parties as permitted) and evaluation services (the “Services”) in an effort to improve the quality of care delivered at the Hospital, and ultimately improving the patient care delivery system and/or public health in general.
2. Hospital will use best efforts to cooperate with HQI’s data collection in connection with the Services, including, but not limited to, enrolling in the Hospital Quality Improvement Platform (“HQIP”) developed by HQI and Vendor to remove Prohibited Information, as defined below, and to provide statistical analyses reports to Hospital. The data described in subsections 3.a (AB 2876 Data) and 3.b (MIRCal Data), below, are collectively referred to as the “Data”.
3. AB 2876 Data and MIRCal Data:
 - a. **AB 2876 Data:** Upon Hospital’s enrollment in HQIP, Hospital shall request from the California Office of Statewide Health Planning and Development (“OSHPD”) confidential Hospital Discharge Abstract Data Records for inpatient discharge, emergency department, and ambulatory surgery collected in the Medical Information Reporting for California (“MIRCal”) format (“AB 2876 Data”) for the most recent three (3) years, for a total of nine (9) data files. In making such request to OSHPD, Hospital shall provide to OSHPD a copy of the Agreement and the BAA which will permit Hospital to provide AB 2876 Data to Vendor. Each year thereafter, Hospital shall request and obtain from OSHPD the AB 2876 Data released by OSHPD, for a total of three (3) data files per year. Hospital then shall disclose to Vendor the AB 2876 Data pursuant to Assembly Bill 2876 and Health and Safety Code § 128766.

- b. **MIRCal Data:** Upon Hospital's enrollment in HQIP, Hospital shall disclose to Vendor all Hospital Discharge Abstract Data Records for inpatient discharge, emergency department, and ambulatory surgery collected in the MIRCal format that Hospital has already sent to OSHPD ("**MIRCal Data**"). The first such submission shall be for the period from the date of the last AB 2876 Data released by OSHPD through Hospital's date of enrollment in HQIP. Thereafter, Hospital shall disclose to Vendor all MIRCal Data following every subsequent submission of MIRCal Data to OSHPD. Hospital shall disclose to Vendor inpatient discharge data files at least every six (6) months and emergency department and ambulatory surgery data files at least every three (3) months, for a minimum of ten (10) files per year. Hospital shall not send to Vendor any MIRCal Data that is less than 90 days old in compliance with the August 1996 Statements of Antitrust Enforcement Policy in Health Care issued by the Department of Justice and Federal Trade Commission.
- c. Given that the AB 2876 Data and the MIRCal Data contain Protected Health Information ("PHI") and other confidential information, whose use may be restricted pursuant to federal, state and other regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), HQI will not receive the AB 2876 Data and the MIRCal Data directly from Hospital, but will receive it through Vendor, which will remove all PHI which is not minimally necessary to HQI's legitimate purposes, as well as all ICD-9 and ICD-10 codes for HIV disease and all prenatal blood test results (collectively, the "Prohibited Information").
- d. Pursuant to the BAA, Hospital will permit Vendor to act on Hospital's behalf to remove the Prohibited Information and non-minimally necessary PHI before delivering it to HQI. Pursuant to Vendor's own agreement with HQI, Vendor is contractually bound to uphold HQI's business associate obligations to Hospital.
- e. Vendor will be the first recipient of the Data from Hospital.
- f. Vendor will store the Data on a secure database and perform so-called "Data Conditioning" to remove the Prohibited Information and non-minimally necessary PHI from the Data. The Data Conditioning process is described in additional detail in HQI's agreement with Vendor.
- g. HQI will receive only AB 2876 Data and MIRCal Data that has undergone Data Conditioning (the "Processed Data").
- h. Processed Data will be available to HQI only after Vendor transfers it to the HQI Report Server.

4. Other Data Sources As Applicable:

- a. **NHSN Data:** Hospital shall join HQI's National Healthcare Safety Network ("NHSN") group (Group ID: 56370; Group Name: HQI_CA) to allow HQI to access Hospital's hospital-level data (the "NHSN Data") for use in HQIP. HQI shall access the NHSN Data on a quarterly basis, shall process the NHSN Data, and shall upload the NHSN Data to Vendor for inclusion in HQIP.
 - b. **CALNOC Data:** Hospital shall permit the Collaborative Alliance for Nursing Outcomes ("CALNOC") to release data to HQI on the Hospital's behalf on a quarterly basis, or otherwise Hospital will upload these data directly to HQI when provided to CALNOC. HQI will then process the CALNOC data and upload it to Vendor for inclusion in HQIP.
 - c. **CMQCC Data:** Hospital shall permit the California Maternal Quality Care Collaborative ("CMQCC") to release data to HQI on the Hospital's behalf at least once per year. HQI will then process the CMQCC data and upload it to Vendor for inclusion in HQIP.
 - d. **Vital Statistics Data:** Hospital shall permit the California Department of Public Health ("CDPH") to release data to HQI on the Hospital's behalf on a quarterly basis. HQI will then process the CDPH data and upload it to Vendor for inclusion in HQIP.
5. The disclosure of the Data is pursuant to the BAA.
6. Pursuant to its agreement with HQI, Vendor is prohibited from sharing raw Data with HQI. Also, HQI will take all reasonable steps to restrict its employees, agents and other vendors from accessing the Data.

OBLIGATIONS AND RESTRICTIONS:

1. HQI shall use the Processed Data only as permitted or required by the Agreement, BAA, and applicable law, each of which permits HQI to use the Processed Data to create one or more limited data sets.
2. HQI may disclose the Processed Data only for the purpose of performing HQI's obligations under the Agreement and BAA, and as permitted by applicable law.
3. Such permitted disclosures may include disclosure by HQI of one or more limited data sets to the California Hospital Association and/or its affiliate(s) in accordance with 45 C.F.R. §164.514(e). The agreement between HQI and the California Hospital

Association's affiliate regional associations is hereby attached to this Agreement as **Attachment 1 (Data Use Agreement for Limited Data Sets(s))**. Although not a party to it, Hospital hereby consents to the existence and terms of the **Data Use Agreement for Limited Data Sets(s)**.

4. HQI shall not use or disclose Processed Data for fundraising or marketing purposes, except as provided under the Agreement and consistent with the requirement of 42 U.S.C. 17936 and HIPAA.
5. HQI shall implement reasonable and appropriate safeguards to prevent the use or disclosure of Processed Data other than as provided for by the Agreement and BAA.
6. HQI will require the Vendor to remove HIV testing or results, including HIV ICD-9 and ICD-10 codes, from the Data. HQI personnel shall not access the Data prior to the Vendor's removal of the HIV codes.
7. Hospital will not transmit data on prenatal blood test results to any Vendor. In the event of a production by Hospital of such information to any Vendor, HQI will require the Vendor to remove such information from the Data. HQI will take reasonable steps to segregate its personnel from the Data prior to the Vendor's removal of the prenatal blood test results.
8. HQI may receive from Hospital substance and alcohol abuse treatment data under 42 C.F.R. Part 2 ("Part 2") pursuant to HQI's status as a qualified service organization under 42 CFR § 2.12(c)(4). HQI will use appropriate safeguards to prevent the unauthorized use or disclosure of the protected information in accordance with 42 C.F.R. § 2.11 and the BAA.

ATTACHMENT 1

Data Use Agreement for Limited Data Sets(s)

http://www.hqinstitute.org/sites/main/files/file-attachments/attachment_1_duas_4_association_20190221.pdf

EXHIBIT C

Compensation

Services are included in the membership benefits secured by Hospital's membership in and dues payment to the California Hospital Association or its affiliate. The dues include quality and patient safety activities through HQL.

EXHIBIT D

Business Associate Agreement

http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit_e_3_baa_arbormetrix_hqi-amx_20190221.pdf

EXHIBIT E

ArborMetrix, Inc. Master Consulting Services and Subscription Agreement

http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit_e_1_msa_hqi_amx_20190221.pdf

http://www.hqinstitute.org/sites/main/files/file-attachments/exhibit_e_2_hqi-amx_2nd_amendment_msa20190221.pdf