

Data Use Agreement

This Data Use Agreement (this “Agreement”) dated as of _____, 202_, (the “Effective Date”) is made by and between _____ (“Covered Entity”) and Colorado Perinatal Care Quality Collaborative, a Colorado nonprofit corporation (“CPCQC”). Covered Entity and CPCQC may be referred to collectively as the “Parties,” or individually as a “Party.”

WHEREAS, CPCQC aims to work with Colorado perinatal stakeholders to reduce health disparities and improve perinatal safety, efficiency, quality of care, and outcomes for women, birthing individuals, and infants; and

WHEREAS, Covered Entity and the EHR or Application Programming Interface system developers, if applicable (“Business Associate”) maintain certain clinical data and information regarding perinatal outcomes in the state of Colorado that CPCQC wishes to use and/or disclose for public health purposes, health care operations, or IRB-exempt research per 45 C.F.R. 46.101(b)(1)-(6) as they relate to CPCQC.

NOW THEREFORE, in consideration of the above recitals and the promises and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree, as follows.

1. **Definitions.** Unless otherwise specified in this Agreement, all capitalized terms used in this Agreement not otherwise defined have the meanings established under the Health Insurance Portability and Accountability Act, as amended, and related privacy, security, breach notification, and enforcement regulations defined at 45 C.F.R. Parts 160 and 164 (collectively, “HIPAA”).

2. **Purpose.**

- (a) This Agreement specifies the terms and conditions of Covered Entity’s and its Business Associate’s submissions of their clinical data and information regarding perinatal outcomes and hospital locations in the state of Colorado (“Data”) to CPCQC for addition to CPCQC’s data warehouse (“CPCQC Data Warehouse”).
- (b) The purpose of this Agreement is to provide for the use and/or disclosure of Data which may consist of a Limited Data Set, as defined under HIPAA, (“LDS”), from Covered Entity and its Business Associate’s to the CPCQC Data Warehouse and to comply with the Standards for Privacy of Individually Identifiable Health Information (“Protected Health Information” or “PHI”) under HIPAA.
- (c) The purpose of the CPCQC Data Warehouse is to support CPCQC-related initiatives and to evaluate the impact of CPCQC’s initiatives on public health and health care-related processes and outcomes. The CPCQC Data Warehouse will be populated with data provided by the voluntary participation of organizations willing to submit their data for inclusion in the CPCQC Data Warehouse.
- (d) Covered Entity and its Business Associate’s Data will be used and/or disclosed for the following purposes (collectively, the “Purposes”):
 - i. Data will be analyzed and used for the purposes of providing participating Covered Entities and Business Associates their data to assess progress, strengthen quality improvement efforts, and evaluate the impact of the initiative.

CPCQC will review Data to provide quality improvement support and evaluate initiative progress and outcomes.

- ii. Data will be aggregated and De-identified for comparative purposes along with other Covered Entity's Data in the CPCQC Data Warehouse.
- iii. Aggregated and/or De-identified versions of the Data may be presented or published, or compiled into data reports that are shared with other participating hospitals and institutions, and the larger perinatal community, including grant funders or other public health institutions contractually obligated to the program for which the Data is relevant.
- iv. CPCQC may disclose the name of the location where the Data was collected; provided, however, that the Data is shared in the aggregate and is not attributable to the location where the Data was collected.

3. Minimum Necessary Data.

- (a) Data elements included in the CPCQC Data Warehouse will be mutually selected by CPCQC and Covered Entity or its Business Associate to support specific improvement projects. Multiple improvement projects may be conducted simultaneously and sequentially over time. Although the data elements used to support individual quality improvement projects will vary over time and different improvement projects will use different data elements, the data will be in the form of an LDS.
- (b) The following PHI will be included in the LDS used by and/or disclosed to CPCQC: Date of Delivery, Race, Ethnicity, Payor, and Ages in years.
- (c) The Data transferred under this Agreement will exclude the following PHI: names, postal address information, telephone numbers, fax numbers, electronic mail addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate/license numbers, vehicle identifiers and serial numbers (including license plate numbers), device identifiers and serial numbers, web universal resource locators (URLs), internet protocol (IP) address numbers, biometric identifiers (including fingerprints and voiceprints), and full-face photographic images and any comparable images.

4. Data Disclosure and Use.

(a) Covered Entity hereby grants CPCQC rights to access, use, and disclose the Data for the Purposes as set forth in Section 2. Covered Entity hereby grants CPCQC permission to access the Data through a third-party intermediary. CPCQC agrees to use or disclose the Data only for the Purposes as set forth in Section 2 and will not otherwise use or disclose the Data unless required by law or authorized by the Covered Entity.

(b) CPCQC agrees to establish and maintain appropriate safeguards, sufficient to comply with HIPAA and designed to prevent use or disclosure of the Data other than as permitted by this Agreement or required by law.

(c) CPCQC will report to Covered Entity any use or disclosure of the Data that is not permitted by this Agreement or required by law within thirty (30) days of its discovery. CPCQC will take reasonable steps to limit any further such use or disclosure.

(d) The Data will be used to create both site-specific and aggregate CPCQC-specific reports. CPCQC may share the site-specific reports to any agent or subcontractor of CPCQC or other public health institutions contractually obligated to the program for which the Data is relevant; provided that any agents subcontractor, or other third parties to whom CPCQC discloses the Data each agree to the same restrictions and conditions imposed on CPCQC by this Agreement, or as otherwise required by law or regulation.

(e) Upon no less than ten (10) business days prior written request, CPCQC will grant Covered Entity or its Business Associate reasonable access to its personnel, facilities, and the Data to conduct audits, inspections, or otherwise negotiated activities to allow Covered Entity to verify compliance with the terms of this Agreement. All such activities shall be conducted in such a way to minimize disturbance to CPCQC operations.

(f) CPCQC is authorized to use or disclose any hospital location, provided however such location is not attributable to the Data, and non-identifiable health information (“De-identified”) results, reports, or other outputs derived from the Data without Covered Entity’s prior written consent, including for purposes of, but not limited to, any peer review, submission to any federal or state agency, demonstration, presentation of findings, synopsis of research, or publication.

(g) Covered Entity represents that the Data is provided to CPCQC in accordance with all applicable laws and regulations and in accordance with the terms of any consent document(s) under which they were obtained.

5. Restrictions on Use and Disclosure.

(a) CPCQC will not use or disclose the Data except as provided for in this Agreement.

(b) CPCQC will not use the Data to identify or contact the individuals who are data subjects.

6. Term and Termination. The “Term” of this Agreement shall commence as of the Effective Date and shall continue for a period of two (2) years. The Agreement will automatically renew thereafter for two (2) year periods unless otherwise terminated by either Party in accordance with this Section upon thirty (30) days written notice to the other Party. The following Sections shall survive any termination or expiration of this Agreement: Sections 1-5, 7-8.

7. Indemnification. Subject to any applicable federal, state, or local laws, CPCQC shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of CPCQC in connection with the representations, duties and obligations of CPCQC under this Agreement.

8. Limitation of Liability. NOTWITHSTANDING APPLICABLE LAW OR ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS SHALL BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL, REMOTE, SPECULATIVE OR SIMILAR DAMAGES ARISING IN CONNECTION WITH UNDER THIS AGREEMENT. IN NO EVENT SHALL CPCQC NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO COVERED ENTITY FOR ANY CLAIM OR CAUSE OF ACTION, WHETHER BASED ON

CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR AN AMOUNT IN EXCESS OF \$250,000.00 (THE "LIABILITY LIMIT"). The Parties agree that only reasonable breach mitigation costs and expenses incurred by Covered Entity and caused primarily by CPCQC's material breach of this Agreement shall be considered direct damages (not indirect or consequential) and CPCQC's liability for such costs and expenses shall be subject to the Liability Limit. The terms of this Section allocate the risks under this Agreement.

9. Miscellaneous.

(a) Amendment. The Parties will cooperate to amend this Agreement as necessary from time to time to reflect changes in circumstances or applicable law, including HIPAA. All amendments to this Agreement must be in writing and signed by both Parties.

(b) No Third-Party Beneficiaries. Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

(c) Notices. Any notices required or permitted under this Agreement must be in writing and sent by United States mail, electronic mail with written acknowledgement of receipt, overnight delivery service, or facsimile transmission to the addresses for each Party provided below or such different addresses as a Party may later designate in writing. Notices regarding the unauthorized use or disclosure of the LDS must follow the specific requirements listed in this Agreement.

(d) Assignment. This Agreement shall be binding on the successors and assigns of Covered Entity and CPCQC. Any attempted assignment in violation of this provision shall be null and void.

(e) Choice of Law; Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without regard to the conflicts of laws provisions thereof. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreement with respect to the subject matter herein.

(f) Counterparts. This Agreement may be executed by the Parties in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one instrument. Counterparts delivered by facsimile, by PDF or via electronic signature service (e.g., DocuSign) shall be deemed originals.

(g) Use of Name and Trademarks. The Parties shall have the right, at each own's expense, to refer to the other Party in its promotional materials, provided no Data, PHI, confidential, proprietary, or disparaging information is disclosed.

[Signatures on following page]

IN WITNESS WHEREOF, authorized representatives of the Parties hereto have duly executed this Agreement as of the day and year first above written.

Covered Entity

[Name of Organization]

Recipient:

Colorado Perinatal Care Quality Collaborative

Signature:

Signature:

Date:

Date:

Name:

Name: Rebecca Alderfer, MPP

Title:

Title: Chief Executive Officer

Address:

Address: 820 S Monaco Pkwy. 4-B # 161
Denver, CO 80224