

## QUALITY MEASURE DEVELOPER AND STEWARD AGREEMENT NUMBER \_\_\_\_\_

This Quality Measure Developer and Steward Agreement (the “Agreement”) is entered into by and between Battelle Memorial Institute, an Ohio non-profit corporation (“Battelle”) having its principal place of business at 505 King Avenue, Columbus, Ohio 43201 and \_\_\_\_\_ (“Steward”) (collectively, “Parties”), effective upon last date of the signatures below (“Effective Date”).

**WHEREAS**, Steward wishes submitted health care performance measures to be considered for endorsement by Battelle; and

**WHEREAS**, Parties wish to agree upon the terms for submitting such health care performance measures for endorsement consideration;

**THEREFORE**, Parties agree as follows:

### **1** **Definitions**

- 1.1** “**Steward**” means any signatory authorized person within an organization.
- 1.2** “**Measure**” means a health care performance measure submitted by Steward for endorsement.
- 1.3** “**Fee-Based Measure**” means a Measure that requires the use of a grouper, risk adjustment, other methodology or any component that is not publicly available or free of charge and is essential to calculating the Measure.
- 1.4** “**Permitted Use**” means the use of a Measure for any of the following purposes:
  - 1.4.1** Calculating, reporting, or displaying of Measure results to:
  - 1.4.2** The public, free of charge; or
  - 1.4.3** Public and private purchasers of, and payers for, health care related service and products; or
  - 1.4.4** Federal, state, or local regulatory programs and regulators.
  - 1.4.5** Improving or auditing the internal performance of an organization or individual where the improvement or audit is performed by such organization or individual.

### **2** **Term**

- 2.1** This Agreement’s Term is from the Effective Date to no longer than five (5) years after. Each Endorsed Measure will remain active from its endorsement date until either a given Measure is up for maintenance, or this Agreement is otherwise terminated; whichever comes first.

### **3** **Measure Submission**

**3.1** Steward will submit Measures for endorsement following either the latest version of the "QMDSA FORM" or the "ADDITIONAL AND MAINTENANCE MEASURES FORM" based on the "QMDSA SUBMISSION INSTRUCTIONS" found on the Battelle website, on a voluntary basis. These documents will knowingly be updated over time. All Measures submitted either using the "QMDSA FORM" or the "ADDITIONAL AND MAINTENANCE MEASURES FORM" will be incorporated into this Agreement upon their Effective Date.

### **4** **Measure Review**

**4.1** All Measures will be reviewed for endorsement in accordance with Battelle's endorsement policies, procedures, and the required criteria. Steward acknowledges that any of these may change at any time and that the decisions made are also based on Steward's full disclosure of the Measures and the information related to them.

**4.2** Steward agrees that all Measure changes after submission and before endorsement are subject to review and proposed changes. If changes are proposed by Battelle, Steward will have the right to review and accept the changes, enter into discussions on changes, or reject the changes and withdraw the Measure from review.

**4.3** Steward agrees that all Measure changes during the maintenance review are subject to proposed changes. If changes are proposed by Battelle, Steward will have the right to review and accept the changes, enter into discussions on changes, or reject the changes and withdraw the Measure from review.

**4.4** If Steward withdraws any Measure from consideration at any time, that Measure cannot be endorsed by Battelle unless it is resubmitted by Steward and accepted through the process for endorsement.

**4.5** Stewards must abide by the Measure Maintenance Process to maintain the endorsement for each Measure. This process occurs approximately every three (3) years. If Steward does not maintain each endorsed Measure by this process, then the Measure may lose its endorsement.

**4.6** If Steward changes a Measure after it has been received/approved for endorsement, Steward must send notification via email to Battelle within 5 business days of the change and make the change available to the public for Permitted Uses at no cost and on a non-discriminatory basis within 10 business days. A Fee-Based Measure must be made available to the public for Permitted Uses at a reasonable cost in accordance with the pricing structure submitted as part of the endorsement process. Any change to costs must be presented to Battelle. Steward may require a user to enter into a no-cost non-disclosure or licensing agreement in order to use the Fee-Based Measure for a Permitted Use.

- 4.7** Steward agrees to any reviews for any Measure at any time.
- 4.8** Battelle has sole discretion on whether to endorse any Measure. Steward may appeal an endorsement decision based on Battelle’s appeal process. The result of that appeal will be final and abided by.

## **5 Disclosure of Measure**

- 5.1** Steward agrees that prior to endorsement of Measure they give full disclosure of complete information regarding each Measure to Battelle and all of their respective directors, officers, employees, consultants, committee members, agents, and the public for the purpose of evaluating, analyzing, or displaying of each Measure, including but not limited to:
  - 5.1.1** Detailed measure specifications, including codes with descriptors, algorithms/measure logic, and risk adjustment model.
  - 5.1.2** Information supporting the usability and use of the measure.
  - 5.1.3** Information supporting the feasibility of the measure.
  - 5.1.4** Evidence supporting the measure focus.
  - 5.1.5** Data and results generated from testing the measure; and
  - 5.1.6** For a Fee-Based Measure, the proposed price structure for the grouper, risk adjustment, other methodology or component that is essential to calculating the Fee-Based Measure.
- 5.2** If a Measure is endorsed, Steward agrees Battelle can publicly share and make available in any format all information regarding the endorsed Measure to include but not be limited to the completed “QMDSA FORM” or the “ADDITIONAL AND MAINTENANCE MEASURES FORM,” any and all updates to Measure(s), and all their location links.
- 5.3** In conjunction with the above, Steward agrees to all guidelines on the Battelle Partnership for Quality Measurement (PQM)<sup>TM</sup> website in reference to the status of any endorsed Measure they wish to publicize and may refer to any actively endorsed Measure as “CBE-endorsed.”
- 5.4** If a Measure is rejected during the evaluation process and is not endorsed, Steward agrees Battelle can publicly share and make available in any format all information regarding the endorsed Measure to include but not be limited to the completed “QMDSA FORM” or the “ADDITIONAL AND MAINTENANCE MEASURES FORM,” any and all updates to Measure(s), all their location links, and the reasons as to why the Measure was rejected for endorsement.
- 5.5** If a Measure is withdrawn by Steward during the evaluation process and is not endorsed, Steward agrees Battelle can publicly share and make available in any format all information regarding the endorsed Measure to include but not be limited to the completed “QMDSA FORM” or the “ADDITIONAL AND

MAINTENANCE MEASURES FORM,” any and all updates to Measure(s), all their location links, and the reasons as to why the Measure was not endorsed.

**5.6** If a Measure is removed either by Battelle or Steward and is no longer endorsed, Steward agrees Battelle can publicly share and make available in any format all information regarding the endorsed Measure to include but is not limited to the completed “QMDSA FORM” or the “ADDITIONAL AND MAINTENANCE MEASURES FORM,” any and all updates to Measure(s), all their location links, and the reasons as to why the Measure was removed.

**5.7** This Section shall survive the expiration or termination of this Agreement.

## **6** **Termination**

**6.1** Battelle may terminate/remove the endorsement of any Measure in writing to Steward with explanation for removal. Steward has ten (10) business days from delivery of notice to address the reasons for removal of the endorsed Measure. Upon receipt of Steward’s response, Battelle will have the sole discretion on whether to terminate/remove the endorsement.

## **7** **Indemnification**

**7.1** Steward waives any claim against Battelle and releases Battelle from any liability for the decisions to endorse, decline to endorse, remove an endorsement, or terminate an Agreement or endorsement of a Measure.

**7.2** Steward agrees to indemnify, defend, and hold Battelle, its affiliates, and their respective directors, officers, employees, consultants, and agents harmless from any and all liabilities, demands, damages, costs, and expenses (including reasonable attorney fees and court costs) arising from (i) any claims, allegations, suits, or other actions that submitted Measure(s) or the use thereof that infringes or constitutes a misappropriation of any trademark, patent, copyright, trade secret, proprietary right, or similar property right, or (ii) any claim, action, suit or allegation that is based on Steward’s negligence or willful misconduct related to all Measure(s).

**7.3** Steward waives any claim against Battelle and releases Battelle from any liability for any inaccurate or fraudulent information displayed by Battelle in regard to the Steward’s Measure(s) unless it is a result of gross negligence or willful misconduct of Battelle. Any such damage shall be limited to actual damages.

**7.4** Steward agrees to indemnify, defend, and hold Battelle, its affiliates, and their respective directors, officers, employees, consultants, and agents harmless from any and all liabilities, demands, damages, costs, and expenses (including reasonable attorney fees and court costs) arising from third party suits or claims resulting from liability and/or Steward’s use, inability to use, or misuse of any deliverable, data, item, or other information delivered by Battelle.

**7.5** This Section shall survive the expiration or termination of this Agreement.

## **8** **Liability**

**8.1** BATTELLE MAKES NO OTHER WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, FOR ANY GOOD, REPORT, DESIGN, ITEM, SERVICE, OR OTHER RESULT TO BE DELIVERED UNDER THIS AGREEMENT.

**8.2** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT AND REGARDLESS OF THE CAUSE OF ACTION OR THEORY OF LAW ASSERTED.

**8.3** This Section shall survive the expiration or termination of this Agreement.

## **9** **Assignment**

**9.1** This Agreement may not be assigned in whole or in part without the prior written consent of both parties, which shall not be unreasonably withheld or delayed. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the successors and permitted assigns of each party.

## **10** **Modifications**

**10.1** This Agreement may be modified or amended only by mutual agreement in writing. No course of dealing, usage of trade, waiver, or non-enforcement shall be construed to modify or otherwise alter the terms and conditions of this Agreement.

## **11** **Miscellaneous**

**11.1** In the event of a dispute, claim, question, or disagreement pertaining to this Agreement, the Parties will attempt to reach a suitable satisfactory solution between them using reasonable efforts through negotiation or other informal means. In the event that the dispute, claim, question, or disagreement cannot be resolved the Parties will agree to arbitration. This shall survive the expiration or termination of the Agreement.

**11.2** *The failure by one party to require performance of any provision or to exercise any right, remedy or option available under this Agreement shall not affect that party's right to require performance or to exercise such right, remedy or option at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.*

- 11.3** If any part of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other part of this Agreement.
- 11.4** This Agreement shall be construed in accordance with the laws and enforced within the jurisdiction of the State of Ohio, without regard to its conflicts of law principles.

The remainder of this page is intentionally blank.



**IN WITNESS WHEREOF**, this Agreement is executed by the duly authorized representatives of the Parties.

**Battelle Memorial Institute**

\_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## MEASURES TABLE

This Measures Table (“Form”) is incorporated into the above Agreement, Agreement Number \_\_\_\_\_. This is the first Form request submitted to Battelle Memorial Institute (“Battelle”) by \_\_\_\_\_ (“Steward”). All terms and conditions of the Agreement apply to this Form and remain unchanged.

- I. List Measures.** Steward lists below all Measures for consideration for endorsement by Battelle.
- a. CBE ID Number, if applicable
  - b. Measure Title
  - c. Steward’s Name that signed as “Authorized Representative” in the Agreement
  - d. Submission Cycle – Spring or Fall and year (e.g., Spring 23)

CBE ID#	Measure Title	Steward Name	Submission Cycle