

**O-Health Information Technology Extension Center (“O-HITEC”)  
MEMBERSHIP AGREEMENT**

This Membership Agreement (“Agreement”) is entered into by and between the undersigned practice (“the Practice”), its participating Eligible Professionals (each, “EP”, and collectively, “EPs”), and O-HITEC, a division of Our Community Health Information Network (“OCHIN, Inc.”), acting as the Oregon Regional Extension Center (each a “Party”, and collectively, “the Parties”). EPs are defined in Exhibit A.

O-HITEC is the Regional Extension Center for Oregon as designated by the Office of the National Coordinator (ONC) at the United States Department of Health and Human Services (US HHS) pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act). O-HITEC will provide technical assistance, guidance, and information to accelerate EP adoption and support Meaningful Use of electronic health records (EHRs).

The Parties agree that Meaningful Use shall have the same meaning as the one set forth in the rules published by the US HHS Centers for Medicare & Medicaid Services (CMS) in the Federal Register (see 42 CFR Parts 412,413,422, and 495) on July 28, 2010.

O-HITEC services are for Providers who meet the definition of "Health Care Provider" in Section 3000(3) of the Public Health Service Act (PHSA) as added by the American Reinvestment and Recovery Act of 2009<sup>1</sup>, which includes, though it is not limited to, hospitals, physicians, Eligible Professionals (EP, as defined by the Office of the National Coordinator [“ONC”]), federally-qualified health centers, and rural health centers.

The Practice and its Providers, working with the assistance of O-HITEC, commit to working toward achieving “go-live” status, including operational e-Prescribing and quality reporting as defined by ONC, within twelve (12) months of signing this Agreement (see Exhibit B). In addition, the Practice and its Providers agree to fully cooperate with O-HITEC on efforts to achieve Meaningful Use as specified by the Centers for Medicare and Medicaid (CMS). O-HITEC makes no guarantees that EP will achieve Meaningful Use.

This Agreement outlines an initial proposed set of services to benefit the Practice in its efforts to achieve Meaningful Use, and the financial arrangement whereby these services can be provided. The initial proposed set of services include:

- EHR vendor selection and installation assistance
- Meaningful use evaluation and consulting including on-site auditing
- Education and training including HIPAA privacy and security training and policies and procedures, web-based provider training
- Group purchasing
- Seminars including webinar series for meaningful use, leadership and team training
- Participation in learning communities including vendor-specific communities

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<sup>1</sup> American Reinvestment and Recovery Act of 2009, Title XXX, Section 3000(3).

- Practice and workflow redesign and consulting services to reach meaningful use and achieve clinical transformation
- Benchmarking and data warehousing services
- Functional interoperability and health information exchange
- Other products and services as needed by members.

**Fees**

These services may be provided by O-HITEC and/or service provider/providers agreed upon by O-HITEC and the Practice upon payment of a non-refundable, thirty six (36) month subscription fee (“Membership Subscription Fee”). Membership fees are calculated based upon the number of EPs. The table below reflects O-HITEC fees for membership.

Primary Care Eligible Professionals	Monthly Fee
1 to 25	\$ 100
26-50	\$ 75
50+	\$ 50
All Other Eligible Professionals	Monthly Fee
1 to 25	\$ 110
26-50	\$ 85
50+	\$ 60

Primary Care Eligible Professionals are defined in Exhibit A.

The Membership Fee will be used to support the general operations of O-HITEC consistent with the Federal requirements to support regional extension centers, as well as contributions to the cost of specific services the Practice will utilize. For all Practices enrolling in O-HITEC before \_\_\_\_\_ the O-HITEC membership subscription fee will be waived for each EP for the first six months of the thirty six (36) month term. The fee will then be prorated and billed monthly for the full term of this agreement. For all Practices enrolling after \_\_\_\_\_, this discount will not apply and the Practice will be invoiced on a monthly basis on the first of the month following a duly executed Agreement.

**Term and Termination**

- The term of this Agreement will be thirty six (36) months from the Effective Date set forth below (Term). This Agreement shall automatically renew for an additional twenty four (24) month term from the end of the thirty six (36) month period. The Agreement may be modified at any time based on mutual agreement of both parties.
- Either O-HITEC or the Practice may terminate this Agreement with 30 days written notice to the other.

## **Representations**

- a) O-HITEC services are for EPs as defined in Exhibit A. Pursuant to the intent of the ONC regional extension center initiative, priority will be given to EPs in individual and small group practices primarily focused on primary care; and those EPs who provide primary care services in public and critical access hospitals, community health centers, rural health clinics, and in other settings that serve uninsured, underinsured, and medically underserved populations.
- b) The Practice agrees to fully cooperate with O-HITEC and its partner(s) and service provider(s) on efforts to achieve Meaningful Use as specified by ONC.
- c) The Practice agrees to provide non-identifiable public health epidemiologic, quality, and utilization data as defined by O-HITEC. Such data is to be EHR-derived and remotely transmitted to the Oregon Department of Health and Human Services on a periodic or ad hoc basis as determined by O-HITEC.
- d) The Practice agrees that by joining O-HITEC, O-HITEC may, from time to time, disclose to its auditors, ONC, and to other third parties such EPs' participation in O-HITEC.
- e) O-HITEC reserves the right to modify support provided to the Practice based upon mutual agreement of the two Parties.
- f) In providing services, O-HITEC may inadvertently acquire or access Personal Health Information ("PHI"). The Parties agree that, in relation to PHI and any other data or information governed by HIPAA, they are bound by the Business Associate Agreement language set forth in the annexed Exhibit C.

## **Miscellaneous**

- a) The Practice agrees that it shall hold harmless O-HITEC for costs, legal fees, judgments, incidental and consequential damages, penalties or any other monetary claims asserted by any federal, state or local governmental entity or any other third party against O-HITEC or OCHIN which arises out of or relates to the Practice's or any EP's failure to fully, properly or lawfully perform its obligations under this Membership Agreement.
- b) This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of Oregon. Any claim which arises or is related to this Membership Agreement shall be heard either in a Federal Court located in Portland or in an Oregon State Court located in Portland.
- c) This Agreement may, from time to time, be modified in writing, signed by authorized representatives of the Parties. It may not be altered, modified, rescinded, or extended orally.

- d) Each Party agrees that it shall not assign, transfer, convey or otherwise dispose of this Agreement, except by operation of law, without the prior written consent of the other Parties.
- e) This Agreement shall be binding upon and for the benefit of the Parties and each of their respective successors and permitted assigns. The provisions of this Agreement shall be for the sole benefit of the Parties and no other person or entity.

IN WITNESS, WHEREOF, the Parties hereto have duly executed this Agreement, which includes the applicable Exhibits annexed hereto and made a part hereof, as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ (“Effective Date”). The undersigned, as an authorized representative of the Practice named below, hereby executes this Agreement on behalf of the Practice and its Eligible Professionals designated in the submitted O-HITEC Practice Workbook. The Practice has a policy in place authorizing the signatory below to sign as an official representative.

<b>PRACTICE NAME:</b>		<b>OCHIN, INC. on behalf of O-HITEC 707 SW Washington St., Suite 1200 Portland, OR 97205</b>	
<b>By:</b>		<b>By:</b>	
<b>Printed Name:</b>		<b>Printed Name:</b>	Abby Sears
<b>Title:</b>		<b>Title:</b>	OCHIN Chief Executive Officer
<b>Date:</b>		<b>Date:</b>	

## Exhibit A

In order to be an Eligible Professional (EP) for potential receipt of HITECH/ARRA Federal stimulus dollars, providers must have one of the credentials below.

<b>Provider Credentials</b>	
MD	Medical Doctor
DO	Doctor of Osteopathic Medicine
NP	Nurse Practitioner
PA	Physician Assistant * Who furnishes services in a Federally Qualified Health Center or Rural Health Clinic that is led by a physician assistant.
CNMW	Certified Nurse Midwife
DDS	Doctor of Dental Surgery
DMD	Doctor of Dental Medicine
DPM	Doctor of Podiatric Medicine
OD	Doctor of Optometry
DC	Doctor of Chiropractic

O-HITEC’s fee schedule reflects the focus on primary care services. EPs who are in the primary care “specialties” below will be invoiced for the monthly primary care subscription fee (see above); all other “specialties” will be invoiced for the non-primary care fee.

<b>Specialties</b>	
<b>Primary Care Eligible Professionals (EPs)</b>	<b>Other Eligible Professionals (EPs)</b>
Adolescent Medicine	All Other Specialties Not Listed at the left.
Family Practice	
General Practice	
Geriatrics	
Gynecology	
Internal Medicine	
OB-GYN	
Pediatrics	

**Note:** This criteria of a potential Eligible Professional (EP) does not guarantee the provider will qualify for ARRA EHR incentive payments as there is additional criteria that applies and the ultimate determination will come from CMS.

## Exhibit B

### Attestation of “Go-Live” Date

O-HITEC and the Practice, on behalf of their EPs, hereby attest that the Practice and each of its EPs signatory to this Agreement, as may have been amended from time to time in Exhibit A, has gone live on \_\_\_\_\_ (EHR name and version) as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

If the Practice has more than one Clinic, please choose one of the options below:

All Clinics have gone live on the EHR

Some of the Clinics have gone live on the EHR. List them: \_\_\_\_\_

<b>PRACTICE NAME:</b>		<b>OCHIN, INC. on behalf of O-HITEC 707 SW Washington St., Suite 1200 Portland, OR 97205</b>	
<b>By:</b>		<b>By:</b>	
<b>Printed Name:</b>		<b>Printed Name:</b>	Abby Sears
<b>Title:</b>		<b>Title:</b>	OCHIN Chief Executive Officer
<b>Date:</b>		<b>Date:</b>	

## Quality Reporting Using EHR

The Practice, on behalf of their EPs, hereby attest that the Practice and each of its EPs signatory to this Agreement, as may have been amended from time to time in Exhibit A, is capable of performing quality reporting. Quality reporting is conducted using the ambulatory clinical quality measures as defined by the Centers for Medicare and Medicaid Services (CMS) and the State of Oregon. The Clinical Quality Measures include 3 required Core Measures (Substituting alternate core measures where necessary) and 3 additional measures.

If the Practice has more than one Clinic, please choose one of the options below:

- All Clinics are capable of performing quality reporting
- Some of the Clinics are capable of performing quality reporting. List them: \_\_\_\_\_

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<b>PRACTICE NAME:</b>	
<b>By:</b>	
<b>Printed Name:</b>	
<b>Title:</b>	
<b>Date of Implementation:</b>	
<b>Date:</b>	

## e-Prescribing Transmission Using EHR

The Practice, on behalf of their EPs, hereby attests that the Practice and each of its EPs signatory to this Agreement, as may have been amended from time to time in Exhibit A, is performing e-prescribing transmission. E-prescribing is the transmission, using electronic media, of prescription or prescription-related information between a prescriber, dispenser, pharmacy benefit manager, or health plan, either directly or through an intermediary, including an e-prescribing network. E-prescribing includes, but is not limited to, one-way transmission between the point of care and the dispenser.

If the Practice has more than one Clinic, please choose one of the options below:

- All Clinics are performing e-prescribing transmission.
- Some of the Clinics are performing e-prescribing transmission. List them: \_\_\_\_\_

<b>PRACTICE NAME:</b>	
<b>By:</b>	
<b>Printed Name:</b>	
<b>Title:</b>	
<b>Date of Implementation:</b>	
<b>Date:</b>	

## **Exhibit C**

### **Health Insurance Portability and Accountability Act**

#### **Business Associate Provisions**

##### **I. Definitions**

Except as otherwise defined herein, any and all terms used in this Exhibit shall have the same meaning as those terms in the Privacy Rule (defined herein) and the Agreement. As used in this Exhibit, the following terms shall have the following meanings:

- (a) "Exhibit" shall mean the Health Insurance Portability and Accountability Act Business Associate Provisions constituting this Exhibit.
- (b) "Business Associate" shall mean OCHIN, INC, and O-HITEC.
- (c) "Covered Entity" shall mean the Practice and the EPs or other Health Care Component(s) (as defined in 45 CFR §164.103) of the Practice, as applicable.
- (d) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, and the regulations promulgated there under.
- (e) "Individual" shall have the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- (f) "Privacy Rule" shall mean the HIPAA regulations regarding the Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (g) "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (h) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- (i) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

##### **II. Obligations and Activities of Business Associate**

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Exhibit or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Exhibit.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Exhibit.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Exhibit of which it becomes aware as soon as reasonably practicable.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Exhibit to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524, if the Business Associate has Protected Health Information in a Designated Record Set.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity, if the Business Associate has Protected Health Information in a Designated Record Set.

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, and to the Secretary, in the time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by the Covered Entity, information collected in accordance with paragraph (i) of this Section II of this Exhibit, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

### **III. Permitted Uses and Disclosures by Business Associate**

(a) Except as otherwise limited in this Exhibit, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement to which this is an Exhibit, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(b) Except as otherwise limited in this Exhibit, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Exhibit, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Exhibit, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

### **IV. Obligations of Covered Entity**

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

### **V. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except as provided in paragraphs (b), (c), and (d) of Section III of this Exhibit.

## **VI. Term and Termination**

(a) Term. The Term of this Exhibit shall be effective during the term of the Agreement to which this is an Exhibit, or until earlier termination of the Agreement, after which time all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, shall be destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of any of the terms and conditions of this Exhibit, Covered Entity shall either:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement to which this is an Exhibit if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(2) Immediately terminate the Agreement to which this is an Exhibit if Business Associate has breached a material term of this Exhibit and cure is not possible; or

(3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of the Agreement to which this is an Exhibit, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon receipt by Covered Entity of such notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Exhibit to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(d) The termination provisions of this Section VI are in addition to, and not in lieu of, the termination provisions provided elsewhere in the Agreement to which this is an Exhibit and any other rights and remedies of the Covered Entity that are provided by law or by the Agreement to which this is an Exhibit.

## **VII. Miscellaneous**

(a) Regulatory References. A reference in this Exhibit to a section in the HIPAA Privacy Rule means the section as in effect or as amended.

(b) Amendment. In order to ensure that this Exhibit at all times remains consistent with applicable law regarding use and disclosure of Protected Health Information (including, but not limited to HIPAA), Business Associate agrees that this Exhibit may be amended from time to time upon written notice from Covered Entity to Business Associate as to the revisions required to make this Exhibit consistent with applicable law.

(c) Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Section VI(c), Section VII (a) and (f), and Section II (solely with respect to Public Health Information that Business Associate retains in accordance with Section VI(c) where it is not feasible to return or destroy such Public Health Information), shall survive the expiration or termination of the Agreement to which this is an Exhibit.

(d) Interpretation. Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy Rule.

(e) No Third Party Beneficiaries. Nothing express or implied in this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

(f) More Restrictive Provisions Control. In the event that the Agreement to which this is an Exhibit contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Exhibit, the provisions which are more restrictive shall control.

(g) Requirements of Public Health Law Article 27-F. If HIV/AIDS information is to be disclosed under the Agreement to which this is an Exhibit, the Business Associate acknowledges that it is aware of the confidentiality requirements of Public Health Law Article 27-F.

(h) Requirements of the Genetic Information non-Discrimination Act of 2008 Public Law No. 110-233

(i) Confidentiality of Substance Abuse Patient Records USC 290dd-21 42 C.F.R part 2

(j) Requirements regarding the confidentiality of a minor's Family Planning or Substance Abuse treatment records in which a minor has consented to same.

## **Exhibit D**

The Practice will be queried by O-HITEC on a quarterly basis for revisions to the original O-HITEC Practice Workbook submitted at Agreement signing. This will be the Practice's opportunity to report changes to Eligible Professional staffing e.g. terminations, new hires, changes in licensure, main site assignment, etc.