

VON Quality Improvement Agreement

THIS AGREEMENT REGARDING THE VERMONT OXFORD NETWORK NEONATAL ABSTINENCE SYNDROME UNIVERSAL TRAINING PROGRAM SUBSCRIPTION (the "Agreement") made effective as of March 1, 2018 (the "Effective Date") between the WICHITA STATE UNIVERSITY (the "WSU") in the Project (as such term is defined below) and Vermont Oxford Network, Inc., a Vermont nonprofit corporation ("VON").

Recitals

WHEREAS, Participant desires to participate in the WSU subscription to the VON Neonatal Abstinence Syndrome Universal Training Program for the period from March 1, 2018 through March 1, 2020 (the "Project"); and

WHEREAS, VON and Participant desire to enter into an agreement setting forth the terms relating to the Project.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, and intending to be legally bound, VON and Participant agree as follows:

Agreement

2. **Project Participants.** The participants in the Project include health care providers who are existing members of VON and health care providers who are not yet members of VON. All participants in the Project that are not current members of VON with an in-force membership agreement, including Participant, are required to enter into this Agreement as a condition of participation in the Project.

2. **Purpose and Goals of the Project.** The VON Neonatal Abstinence Syndrome Universal Training Program consists of 18 online micro-lessons, a Virtual Video Visit to a NAS Center of Excellence, a Facilitator's Guide and a VON NAS Toolkit. The Participant shall receive an unlimited number of enrollments for designated staff and outpatient providers to access the VON Learning Management System (the "LMS") and improvement tools and resources available on VON's website during the term of the Program. As part of the Program, VON will coordinate with WSU a snapshot data collection and assessment of local practices ("VON Day Quality Audits"). WSU will receive VON Day Quality Audit Reports containing aggregated data submitted to VON by the Participants.

3. **Term of the Project.** The Project will commence on March 1, 2018 through March 1, 2020 (the "Term"). The provisions contained in Sections 6, 7, 8, 10, 12, 16, 17 and 18 of this Agreement shall survive termination of Participant's participation in the Project and the termination or expiration of this Agreement.

4. **Fees.** The Participant's fees will be paid by, or on behalf of, WSU to VON to fund the quality improvement and educational services of the Project. In addition, the Participant will be responsible for funding the travel and lodging expenses of its personnel participating in any on-site activities of the Project.

5. **Purpose of Reports; De-Identified Data.** As part of the VON Day Quality

Audits, the Participant may provide data from time to time to VON regarding health care services provided by the Participants to its patients. Such data shall not identify patients by name, medical record number, social security number, or in any other manner that may result in disclosure of the patient's identity. The Participant shall ensure that all data submitted to VON shall comply with the requirements for de-identification of protected health information set forth in the privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, as said regulations or Act may be amended or supplemented from time to time. The purpose of the submission of such data and any reports generated by VON containing such data is the evaluation and improvement of the quality and cost of health care rendered by the Participant, as part of the Participant's quality assurance program.

6. Ownership of Database. Although the Participant owns its own data, the parties agree that the data submitted to VON becomes part of VON's database (the "Database"). The Participant acknowledges and agrees that VON owns the Database and the compilation of all participants' and members' data set forth in the Database, all forms distributed by VON for use by its participants and members and all reports generated by VON. The Participant agrees that it will not contest VON's ownership of the Database or the compilation of data set forth therein, forms or reports, or VON's sole right to any copyright interests in the Database, forms or reports. The Participant must use the Database, all data set forth therein and in any forms or reports in accordance with the Vermont Oxford Network Policy on Data Use, which may be amended from time to time. The current version of that policy is available at www.vtoxford.org/datause.

7. Identification of Participants in Reports. The Participant agrees that it may be identified by name in reports or summaries of data that are not related solely to the Participant; provided, however, that VON shall not identify which data corresponds to the Participant unless the report is solely for the Participant's own use. VON may publish and distribute data and summaries of data at VON's own discretion. VON shall not, however, publish or distribute data related solely to the Participant without the Participant's prior written consent. The Participant and the Participant's data will not be individually identified in the aggregated VON Day Quality Audit Reports provided to WSU.

8. Protection of Reports from Discovery. It is the intention of the Participant, because of the purposes for which the Participant will submit data to VON, for such data and any reports relating thereto to be treated as confidential. The Participant acknowledges that the law of the state where it is located will most likely govern with respect to an issue as to whether such reports will be immune from discovery in litigation matters. The Participant acknowledges that it is the Participant's and not VON's obligation to protect the data and reports from discovery. VON agrees, however, that in the event that any person or entity shall move a court of competent jurisdiction to order disclosure of any data or reports relating to the Participant, VON shall timely notify the Participant of such motion and shall provide such assistance as is reasonably requested by the Participant in any efforts of the Participant to intervene.

9. Representations and Warranties of Participant. The Participant makes the following representations and warranties to VON with the understanding that VON is relying upon the accuracy thereof to allow participation to the Participant:

a) Authority to Submit Data and Receive Reports. The Participant has the authority to submit data to VON for all of the purposes contemplated by this Agreement. In the event that the Participant is affiliated with a hospital or other health care provider, the Participant has obtained all necessary consents to submit data to VON. The Participant also

has the authority to receive all reports and results relating to the data that it submits to VON.

b) Continuation of Representations and Warranties. The Participant agrees that all of the representations and warranties made in this Section 9: (i) shall be true and correct at all times during its participation in the Project; and (ii) shall survive the termination of this Agreement.

10. Indemnification. The Participant hereby agrees to indemnify and hold harmless VON and each of its directors, officers, employees and agents from all litigation, damages, claims, settlement payments, liabilities, actions, causes of action, and reasonable costs or expenses (including attorneys' fees and expenses), incurred, suffered, sustained or required to be paid by VON or any of the indemnitees listed above by reason of, in connection with or resulting from, a claim by any third party based upon an implied or express allegation that (a) any representation or warranty made by the Participant in this Agreement was not correct or accurate, or (b) the Participant breached any provision of this Agreement.

11. Access to the VON Web Services. If the Participant elects to use the web based services offered by VON in support of this Project (the "VON Web Services"), the Participant shall adhere to the following:

a) Access to the VON Web Services will be restricted to specific users (the "Authorized Users"), as designated by the Administrator (as defined in Section 11.c. below) but will not be restricted to specific Internet Protocol (IP) addresses. Authorized Users may access the system from any computer with a connection to the Internet.

b) Authorized Users shall consist only of (i) in the case of VON Web Services that the Administrator determines in his or her discretion should be restricted due to peer-review type content, persons who are members of the Participant's committee relating to peer review or quality improvement activities; and (ii) in the case of all other VON Web Services, persons who are on the staff of the Participant and who are involved with the Participant's quality improvement activities.

c) The Participant appoints the following person as the administrator for VON Web Services ("Administrator"). Administrator privileges will include use of the VON Web Services and authorization of Participant personnel to use the VON Web Services.

**VON Web Services
Administrator Name**

Title

Email Address

d) Only the local Web Services Administrator may add or delete Authorized Users to the VON data platform. When an Administrator authorizes access to an Authorized User, the system will allow the Administrator to send an email to the Authorized User stating that access has been granted. After access is granted, Authorized Users may change their own password.

e) The Participant accepts responsibility that Administrator will only allow Authorized Users to be personnel who are employed by or affiliated with the Participant and who will use the information only for improving or tracking neonatal care.

a) The Participant accepts responsibility that Administrator will promptly remove Authorized Users from access to the VON Web Services if they are no longer employed by or affiliated with the Participant or no longer have need for access to the VON Web Services.

b) The Participant shall appoint a "VON Champion" whose responsibilities shall include helping the Participant's Authorized Users navigate the VON Web Services specifically related to the Project. In addition, the VON Champion will develop, monitor and update a list of those Authorized Users and submit that list to VON for enrollment in the VON Web Services specific to the Project. The VON Champion will monitor Participant reports which highlight Participant progress in the Project.

c) The Participant shall be liable for any unauthorized access or improper use of the VON Web Services by any Authorized User, Administrator or other employee or agent of the Participant.

The Participant agrees that it shall use the VON Web Services solely for improving the quality of neonatal care and other purposes that are relevant to actions contemplated by, or matters relating to, this Agreement. Summary statistics, which include data from all participants in the Project or grouped by similar types of participants in the Project, will be made available for comparison purposes and may be viewed using the VON Web Services.

The Participant acknowledges and agrees that the VON Web Services has the following limitations: (i) information will likely appear in a tentative state at some times and, as a result, the Participant should not draw conclusions until reports are posted as final reports; (ii) the Authorized Users may be able to view information before all entries by the Participant have been completed and, as a result, the Participant should not draw conclusions based upon the incomplete data; and (iii) the Participant's data for a specific period may not reflect complete entries for the entire period and, as a result, should not be viewed as final reports. The Participant acknowledges and agrees that all Authorized Users and all Administrators will be required to enter into "Click Wrap" agreements with VON. The current forms of said agreements are available on the Member's Area of the VON website and the login page of the VON LMS website.

12. Limitation of Liability; Disclaimer of Warranties. The Participant acknowledges and agrees that VON shall not be responsible for any problems relating to the electronic transmission of data or reports, whether due to problems with VON's server, the Participant's service provider, or otherwise.

THE PARTICIPANT ACKNOWLEDGES AND AGREES THAT VON IS PROVIDING THE OPTION OF SUBMITTING DATA AND FORWARDING REPORTS TO PARTICIPANT VIA ELECTRONIC MEANS WITH NO WARRANTIES WHATSOEVER, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY WARRANTY OF COMPATIBILITY BETWEEN THE PARTICIPANT'S ELECTRONIC COMMUNICATION SYSTEM (OR ANY THIRD PARTY'S SYSTEM) AND THAT OF VON, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE. VON HEREBY DISCLAIMS AND THE PARTICIPANT HEREBY WAIVES ANY AND ALL WARRANTIES. THE PARTICIPANT AGREES THAT, WITH RESPECT TO ANY AND ALL CLAIMS, DEMANDS, ACTIONS, OR CAUSES OF ACTION ARISING UNDER OR IN CONNECTION WITH THE ELECTRONIC SUBMISSION OR

ELECTRONIC REPORTING OF DATA, AND REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT OR IN TORT, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT), VON SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOSS OF BUSINESS, LOSS OF USE, LOST DATA, OR OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, EVEN IF VON HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

13. Compliance with Laws and Standards. The Participant and VON hereby agree to comply with all laws and regulations that are relevant to actions contemplated by, or matters relating to, this Agreement. The Participant further agrees that it shall comply with all standards, policies, procedures, and requirements that VON may establish from time to time for members and participants of VON (with respect to which VON has informed the Participant). Without limiting the generality of the foregoing, the Participant agrees to comply with all policies and procedures set forth in Project materials and manuals provided to the Participant.

14. Excluded Provider Warranty. Each party represents and warrants to the other that it is not now and at no time has been excluded from participation in any federally funded healthcare program, including Medicare and Medicaid. Each party hereby agrees to notify the other party promptly of any threatened, proposed or actual exclusion from any federally funded healthcare program, including Medicare and Medicaid. Each party further represents and warrants to the other party that none of its employees are now and at no time have been excluded from participation in any federally funded healthcare program, including Medicare and Medicaid. In the event that either party, or any of its employees, is excluded from participation in any federally funded healthcare program, the other party shall have the right to declare this Agreement terminated automatically as of the date of such exclusion.

15. Independent Contractors. None of the provisions of this Agreement are intended to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Nothing in this Agreement shall constitute or be construed as constituting or intending to create an agency, partnership, joint venture, or employer-employee relationship between VON and the Participant. Neither of the parties, nor any of their respective officers, directors, employees, or agents, shall have the authority to bind the other or shall be deemed or construed to be the agent, employee or representative of the other. Neither party, nor any of their employees or agents, shall have any claim under this Agreement or otherwise against the other party for workers' compensation or any employee benefits of any kind.

16. Notices. Any notice required or permitted to be given to a party under the provisions of this Agreement shall be deemed given if mailed by certified or registered United States mail, first-class, postage prepaid, or nationally recognized courier service, addressed as follows:

If to Participant: To the address set forth on the signature page hereof (or, if no address is provided on the signature page, then to the address for Member in VON's records)

If to VON: Vermont Oxford Network, Inc.

33 Kilburn Street
Burlington, VT 05401
Attn: Operations Manager

Either party may, from time to time, change its notice address by written notice to the other party in accordance with the provisions of this Section 16.

17. Severability. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be limited and construed so as to make it enforceable or, if such limitation or construction is not possible, such provision shall be deemed stricken from this Agreement. In such event, all other provisions not stricken from this Agreement shall remain in full force and effect, unless such enforcement would be inconsistent with the purposes of this Agreement.

18. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of VON, the Participant and their respective successors and assigns. This Agreement shall be governed by and construed under the laws of the State of Vermont, without giving effect to conflict of laws principles. This Agreement may not be modified except in a written amendment signed by both parties.

[Remainder of Page Intentionally Left Blank – Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the effective date specified on the first page.

Participant:_____

By:_____ Its duly authorized agent

Name:_____

Title:_____

Date:_____

Participant Address:

VERMONT OXFORD NETWORK, INC.

By:_____ Its duly authorized agent

Name:_____

Title:_____

Date:_____