

## **THE VERMONT OXFORD NETWORK MEMBERSHIP AGREEMENT**

This Membership Agreement is entered into effective January 1, 2012 and is by and between the undersigned member (the "Member") and Vermont Oxford Network, Inc., a Vermont nonprofit corporation ("VON"). In consideration of the mutual promises set forth below, VON and the Member agree as follows:

1. Mission Statement of VON. VON is a nonprofit corporation formed, in addition to the other purposes set forth in its corporate documents, to conduct scientific research, gather scientific data and maintain databases regarding the quality, utilization, costs, outcomes and effectiveness of medical treatments and health care practices. VON is composed primarily of professional health care providers who, among other things, gather and review information relating to the care and treatment of patients for the purposes of evaluating and improving the quality and efficiency of health care rendered.

2. Purpose of Reports; De-Identified Data. The Member may provide data from time to time to VON regarding health care services provided by the Member 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 Member 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 Member, as part of the Member's quality assurance program.

3. Ownership of Database. Although the Member owns its own data, the parties agree that the data submitted to VON becomes part of VON's database (the "Database"). The Member acknowledges and agrees that VON owns the Database and the compilation of all members' data set forth in the Database, all forms distributed by VON for use by its members and all reports generated by VON. The Member 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.

4. Identification of Member in Reports. The Member agrees that it may be identified by name in reports or summaries of data that are not related solely to the specific Member; provided, however, that VON shall not identify which data corresponds to the Member unless the report is solely for the Member'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 Member without the Member's prior written consent.

5. Protection of Reports from Discovery. It is the intention of the Member, because of the purposes for which the Member will submit data to VON, for such data and any reports relating thereto to be treated as confidential. The Member 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 Member acknowledges that it

is the Member'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 Member, VON shall notify the Member of such motion immediately and shall provide such assistance as is reasonably requested by the Member in any efforts of the Member to intervene.

6. Representations and Warranties of Member. The Member makes the following representations and warranties to VON with the understanding that VON is relying upon the accuracy thereof to extend a membership to the Member:

a) Authority to Submit Data and Receive Reports. The Member has the authority to submit data to VON for all of the purposes contemplated by this Agreement. In the event that the Member is affiliated with a hospital or other health care provider, the Member has obtained all necessary consents to submit data to VON. The Member 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 Member agrees that all of the representations and warranties made in this Section 6 (i) shall be true and correct at all times during its membership in VON; and (ii) shall survive the termination of its membership in VON.

7. Contact Person for Reports Prepared by VON. With the exception of the VON Web Member Services (Section 13 below), the Member requests that all communications and reports relating to data submitted by the Member should be made to the following individual, who is a member of the Member's committee relating to peer review or quality improvement activities:

_____ Name
_____ Address
_____

or such other member(s) of said committee as the Member shall notify VON in writing from time to time. The Member shall notify VON of any change in the contact person for communications and reports within thirty (30) days of such change.

The Member hereby acknowledges and agrees that, in addition to the contact person specified above, the Member authorizes VON to provide interim communications and reports of an administrative nature (such as data submission errors, requests for special reports, and other administrative items) to the following individuals:

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Name

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Address

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Name

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Address

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Name

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Address

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or such other individuals as the Member shall notify VON in writing from time to time. If any person listed above is no longer authorized by the Member to receive administrative communications from VON, the Member shall promptly notify VON of such change.

8. Member Benefits. The Member will be entitled to the usual privileges incident to membership in VON, including newsletters and the opportunity to attend the annual members meeting of VON and CME programs offered by VON.

9. Membership Dues; Fees for Reports. The Member agrees that it shall pay to VON the annual membership dues and, in addition, any standard fees charged by VON for special reports requested by the Member.

10. Indemnification. The Member 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, 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 Member in this Agreement was not correct or accurate, or (b) the Member breached any provision of this Agreement.

11. Term and Termination. The term of this Agreement shall be for a period of one (1) year beginning January 1, 2012 and shall be automatically renewed for additional one-year periods, unless terminated as provided herein. This Agreement may be terminated by the Member at any time by written notice to VON. VON may terminate this Agreement upon written notice to the Member for failure to pay the annual membership dues or to pay other amounts owed to VON for items or services requested by the Member or for breach of this Agreement by Member. Regardless of the manner of termination of this Agreement, the provisions contained in Sections 3, 4, 5, 6 and 10 of this Agreement shall survive expiration of the Member's membership in VON and termination of this Agreement.

12. Electronic Submission of Data by Member. If the Member elects to submit data to VON by electronic means, the Member shall submit data in the manner set forth in the VON Member Instructions for Submitting Electronic Data, as said instructions may be amended, supplemented or replaced from time to time (the "**Instructions for Submitting Electronic Data**"). The Member acknowledges its receipt of the Instructions for Submitting Electronic Data. The Member acknowledges and agrees that, in the event that it fails to comply with the Instructions for Submitting Electronic Data, VON shall have the right to exclude such noncompliant data from any and all reports. Unless the Member provides express written instructions to VON stating otherwise, VON shall have the right to transmit reports (including without limitation quarterly, annual and administrative reports) by electronic means to the contact person(s) identified above in this Agreement.

The Member agrees that it shall use VON's e-mail solely for electronic submission of data and other purposes that are relevant to actions contemplated by, or matters relating to, this Agreement. VON agrees that it shall use the Member's e-mail solely for electronic submission of reports and other purposes that are relevant to actions contemplated by, or matters relating to, this Agreement. Each of VON and the Member agrees that it will not send (or facilitate the sending by third parties) multiple, unsolicited e-mail communications to the other party.

13. Access to the VON Member Web Services. If the Member elects to use the VON Member Web Services, the Member shall adhere to the following:

a) The Member chooses the option below for allowing access to the VON Member Web Services (check only one box).

Access to the VON Member Web Services will be restricted to specific users (the "Authorized Users"), as designated by the hospital VON Web Services Administrators (the "Administrators" – see Section 13.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.

Access to the VON Member Web Services will be restricted to

specific users and specific IP addresses, as designated by the Administrators. Without exception, only Authorized Users who use computers at the designated IP addresses will be allowed access to the system.

- Access to the VON Member Web Services will be restricted to Authorized Users, as designated by the Administrator(s). Unless exception is given by the Administrators, Authorized Users will only be allowed access to the system from specific IP addresses. If exception is granted, some 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 the VON Internet Reporting System, persons who are members of the Member’s committee relating to peer review or quality improvement activities; (ii) in the case of other VON Member 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 Member’s committee relating to peer review or quality improvement activities; and (iii) in the case of all other VON Member Web Services, persons who are on the staff of the Member hospital and who are involved with the Member’s quality improvement activities.

c) The Member appoints the following VON Member Web Services Administrators (“Administrators”). Administrator privileges will include use of the VON Member Web Services and authorization of other Member hospital personnel to use these services.

Administrator Name	Title	Email Address
_____	_____	_____
_____	_____	_____
_____	_____	_____

d) Only the Administrators may add or delete users of the system. When an Administrator authorizes access to a user, the system will allow the Administrator to send an email to the user stating that access has been granted. After access is granted, users may change their own password.

e) The Member accepts responsibility that Administrators will only allow access to the VON Member Web Services to personnel who are employed by the Member hospital and who will use the information only for improving or tracking neonatal care.

f) The Member accepts responsibility that Administrators will promptly remove Users from access to the VON Member Web Services if they are no longer employed by the Member hospital or no longer have need for access to the system.

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

The Member agrees that it shall use the VON Member 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 Membership Agreement. VON agrees that it shall not allow access to the Member's data by any other member using the VON Member Web Services. Summary statistics, which include data from all Network hospitals, or all hospitals of an aggregate grouping, will be made available for comparison purposes and may be viewed using the VON Member Web Services.

The Member acknowledges and agrees that the VON Member Web Services has the following limitations: (i) information will likely appear in a tentative state at some times and, as a result, the Member 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 Member have been completed and, as a result, the Member should not draw conclusions based upon the incomplete data; and (iii) the Member'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 Member acknowledges and agrees that all Authorized Users and all Administrators will be required to enter into a "Click Wrap" agreement with VON. The current forms of said agreements are attached to this agreement as Exhibit A and Exhibit B.

14. Limitation of Liability; Disclaimer of Warranties. The Member 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 Member's service provider, the Member's submission of data through a third party, or otherwise.

THE MEMBER ACKNOWLEDGES AND AGREES THAT VON IS PROVIDING THE OPTION OF SUBMITTING DATA AND FORWARDING REPORTS TO MEMBER 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 MEMBER'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 MEMBER HEREBY WAIVES ANY AND ALL WARRANTIES. THE MEMBER 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.

15. Compliance with Laws and Standards. The Member 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 Member further agrees that it shall comply with all standards, policies, procedures, and requirements that VON may establish from time to time for members of VON (with respect to which VON has informed the Member). Without limiting the generality of the foregoing, the Member agrees to comply with all policies and procedures set forth in VON's Manual of Operations, as it may be amended, supplemented or replaced from time to time (to the extent Member is informed by VON of the amendments, supplements or replacements).

16. 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.

17. 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 Member. 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.

18. 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 Member: 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: Administrative Director

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 18.

19. Future Membership Agreements. The Member acknowledges and agrees that, as a condition to its continued membership in VON, VON shall have the right, if it revises its standard Membership Agreement, to require the Member to enter into the then-current version of VON Membership Agreement. Nothing in this Section 19 shall be deemed to affect the Member's right to terminate this Agreement under Section 11 above.

20. Retroactive Application. In the event that the Member participated as a member of VON prior to the date of this Agreement and had not executed a prior Membership Agreement, the Member agrees that all provisions of this Agreement shall apply to its membership in VON during such prior period.

21. 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.

22. Miscellaneous. This Agreement supersedes all prior agreements and constitutes the entire Agreement between the Member and VON regarding the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of VON, the Member and their 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.

*The remainder of this page is left blank intentionally.*

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.

MEMBER: \_\_\_\_\_

By: \_\_\_\_\_

Its duly authorized agent

Member's Address: \_\_\_\_\_

\_\_\_\_\_

**[NOTE REGARDING IDENTIFICATION OF MEMBER: Please note that the Member should be the institution or group of neonatologists and not an individual. Please be sure to use the correct name of the entity. Please make sure that the person signing this Agreement has proper authority to do so.]**

VERMONT OXFORD NETWORK, INC.

By: \_\_\_\_\_

Its duly authorized agent

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## EXHIBIT A

Access to and use of the Restricted Access Sections of the Site are conditioned upon acceptance of all of the terms and conditions of this Agreement.

You represent and warrant that you (a) are affiliated with a Member Hospital of the Vermont Oxford Network or an organization that provides neonatal services to such a Member Hospital; (b) have been designated as an authorized User of the Site by an Administrator at the Member Center; and (c) are accessing the Restricted Access Sections of the Site solely for the purposes specified below. You agree to take all efforts reasonably necessary to protect the privileged and confidential nature of the proceedings that occur on the Site and will not disclose or use any findings, evaluations, analyses, statements, opinions, or recommendations made or exchanged in the Site (or any records thereof) for any purpose not specifically related to improving the quality of care rendered to Members' patients.

The Restricted Access Sections of the Site exist for the purpose of improving the quality of care delivered to neonatal patients by the health care professionals of the members of Vermont Oxford Network, Inc. (the "Members"). The proceedings that take place in the Restricted Access Sections of the Site involve both the retrospective evaluation of health care that has been rendered by the health care professionals of the Members and the prospective analysis of ways in which the quality of care rendered in the present and future might be improved. Retrospective evaluations involve the review of care provided in the past to determine whether such care was medically necessary and indicated and/or whether such care was delivered in accordance with the accepted standards of the specialty or practice of the health care professional or institution rendering the care. Such evaluations may focus on the methods and techniques, the risks and benefits, and the reasonableness of the costs associated with the care provided.

The purpose of all proceedings that occur in the Restricted Access Sections of the Site is to improve the quality of care rendered to the patients of the Members by reducing morbidity, mortality or patient injury associated with the care provided and the underlying illnesses and conditions for which care is rendered. Such improvement may take the form of increased awareness of issues related to patient care, the development of new or different standards of care or heightened review of care via various quality control techniques.

In order for the Restricted Access Sections of the Site to serve the purposes delineated above, the proceedings which occur in the Restricted Access Sections must be frank and unfettered by concerns over improper dissemination and use of any findings, evaluations, analyses, statements, opinions or recommendations made or exchanged for purposes beyond and unrelated to those outlined above.

As a User of the Restricted Access Sections of the Site you agree to use the information provided only to improve the quality and safety of health care for neonatal patients who are treated at the Member Hospital or families of these patients.

Unless replaced by a later agreement to which you and Vermont Oxford Network agree, this Sign-On Agreement shall continue in full force and effect. You acknowledge that, as a convenience to you, Vermont Oxford Network is not requiring you to read the terms set forth in

this Sign-On Agreement each time you access the Site. Rather, by entering into this Sign-On Agreement once, you have agreed to be bound by the terms hereof on an ongoing basis.

If you choose not to accept the foregoing terms and conditions governing the access and use of the Site, then you will not be given user privileges or have access to the Restricted Access Sections of the Site.

You agree that this Sign-On Agreement shall be valid and enforceable and that you shall not challenge its validity or enforceability due to the fact that it is an electronic (or "click-wrap") agreement rather than being a manually executed document.

#### A. NOTICE AND DISCLAIMER

Because the Members of the Vermont Oxford Network are located not only throughout the United States but throughout many countries (for example, in Canada, Europe, the Middle East, Asia, Japan, Australia, and New Zealand), there is uncertainty as to the ability of each Member to protect and preserve the confidentiality of any findings, evaluations, analyses, statements, opinions or recommendations that are made or exchanged through the Site. There is no legal precedent addressing issues involved in the confidentiality of cross-jurisdictional peer review or quality assurance processes such as that which occurs in the Restricted Access Sections of the Site. Accordingly, it is incumbent upon each Member to determine the extent to which the jurisdiction in which the Member is located will provide protection against the ability to subpoena or discover information or records related to any retrospective review or prospective analysis of health care conducted under the auspices of the Site.

VERMONT OXFORD NETWORK, INC. DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY WARRANTY OF COMPATIBILITY BETWEEN THE SITE OR SOFTWARE OR DATA PROVIDED BY VERMONT OXFORD NETWORK AND EQUIPMENT OR SOFTWARE OWNED OR USED BY YOU, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE. YOU AGREE THAT VERMONT OXFORD NETWORK SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOSS OF DATA, LOST PROFITS, LOSS OF BUSINESS, OR OTHER INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, EVEN IF VERMONT OXFORD NETWORK HAS BEEN INFORMED OF THEIR POSSIBILITY.

Click Wrap User

## EXHIBIT B

Access to and use of the Restricted Access Sections of the Site are conditioned upon acceptance of all of the terms and conditions of this Agreement.

You represent and warrant that you (a) are affiliated with a Member Hospital of the Vermont Oxford Network or an organization that provides neonatal services to such a Member Hospital; (b) have been designated as an authorized Center Administrator for Users of the Site by personnel at the Member Center; (c) are also an authorized User of the Site; and (d) are accessing the Restricted Access Sections of the Site solely for the purposes specified below. You agree to take all efforts reasonably necessary to protect the privileged and confidential nature of the proceedings that occur on the Site and will not disclose or use any findings, evaluations, analyses, statements, opinions, or recommendations made or exchanged in the Site (or any records thereof) for any purpose not specifically related to improving the quality of care rendered to Members' patients.

The Restricted Access Sections of the Site exist for the purpose of improving the quality of care delivered to neonatal patients by the health care professionals of the members of Vermont Oxford Network, Inc. (the "Members"). The proceedings that take place in the Restricted Access Sections of the Site involve both the retrospective evaluation of health care that has been rendered by the health care professionals of the Members and the prospective analysis of ways in which the quality of care rendered in the present and future might be improved. Retrospective evaluations involve the review of care provided in the past to determine whether such care was medically necessary and indicated and/or whether such care was delivered in accordance with the accepted standards of the specialty or practice of the health care professional or institution rendering the care. Such evaluations may focus on the methods and techniques, the risks and benefits, and the reasonableness of the costs associated with the care provided.

The purpose of all proceedings that occur in the Restricted Access Sections of the Site is to improve the quality of care rendered to the patients of the Members by reducing morbidity, mortality or patient injury associated with the care provided and the underlying illnesses and conditions for which care is rendered. Such improvement may take the form of increased awareness of issues related to patient care, the development of new or different standards of care or heightened review of care via various quality control techniques.

In order for the Restricted Access Sections of the Site to serve the purposes delineated above, the proceedings which occur in the Restricted Access Sections must be frank and unfettered by concerns over improper dissemination and use of any findings, evaluations, analyses, statements, opinions or recommendations made or exchanged for purposes beyond and unrelated to those outlined above.

As Center Administrator you agree to authorize use of the Restricted Access Sections of the Site only to health care professionals who work at the Member Hospital and who have a role in improving the quality of care delivered to neonatal patients. You also agree to promptly rescind this authorization for any health care professional who no longer meets these conditions.

As a User of the Restricted Access Sections of the Site you agree to use the information provided only to improve the quality and safety of health care for neonatal patients who are treated at the Member Hospital or families of these patients.

Unless replaced by a later agreement to which you and Vermont Oxford Network agree, this Sign-On Agreement shall continue in full force and effect. You acknowledge that, as a convenience to you, Vermont Oxford Network is not requiring you to read the terms set forth in this Sign-On Agreement each time you access the Site. Rather, by entering into this Sign-On Agreement once, you have agreed to be bound by the terms hereof on an ongoing basis.

If you choose not to accept the foregoing terms and conditions governing the access and use of the Site, then you will not be given administrative privileges or user privileges or have access to the Restricted Access Sections of the Site.

You agree that this Sign-On Agreement shall be valid and enforceable and that you shall not challenge its validity or enforceability due to the fact that it is an electronic (or "click-wrap") agreement rather than being a manually executed document.

#### A.NOTICE AND DISCLAIMER

Because the Members of the Vermont Oxford Network are located not only throughout the United States but throughout many countries (for example, in Canada, Europe, the Middle East, Asia, Japan, Australia, and New Zealand), there is uncertainty as to the ability of each Member to protect and preserve the confidentiality of any findings, evaluations, analyses, statements, opinions or recommendations that are made or exchanged through the Site. There is no legal precedent addressing issues involved in the confidentiality of cross-jurisdictional peer review or quality assurance processes such as that which occurs in the Restricted Access Sections of the Site. Accordingly, it is incumbent upon each Member to determine the extent to which the jurisdiction in which the Member is located will provide protection against the ability to subpoena or discover information or records related to any retrospective review or prospective analysis of health care conducted under the auspices of the Site.

VERMONT OXFORD NETWORK, INC. DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ANY WARRANTY OF COMPATIBILITY BETWEEN THE SITE OR SOFTWARE OR DATA PROVIDED BY VERMONT OXFORD NETWORK AND EQUIPMENT OR SOFTWARE OWNED OR USED BY YOU, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE. YOU AGREE THAT VERMONT OXFORD NETWORK SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOSS OF DATA, LOST PROFITS, LOSS OF BUSINESS, OR OTHER INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, EVEN IF VERMONT OXFORD NETWORK HAS BEEN INFORMED OF THEIR POSSIBILITY.

Click Wrap Administrator

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