COMMUNITY CARE OF NORTH CAROLINA, INC. PARTICIPATION AGREEMENT

THIS COMMUNITY CARE OF NORTH CAROLINA, INC. PARTICIPATION AGREEMENT (the “Agreement”) is entered into and effective pursuant to the terms of the Agreement, by and between COMMUNITY CARE OF NORTH CAROLINA, INC., a North Carolina nonprofit corporation, on behalf of itself and its Affiliates (collectively “CCNC”) and Participants, as defined herein, on behalf of itself and any Participating Entities (collectively, “Participant”) (individually a “Party” or collectively the “Parties”).

RECITALS:

A. CCNC has established and maintains a Data Platform (as defined below) to facilitate the sharing and exchange of Patient Information (as defined below) between and among a variety of entities, including Participants, in connection with Participant’s involvement in Services and Programs administered or sponsored by CCNC.

B. Participants will use the Data Platform to participate in and subscribe to programs and services offered by CCNC to, in part, ensure that appropriate care management is delivered between multi-disciplinary care teams to improve the efficiency, quality and coordination of health care services through the enhanced access to Patient Information, quality and performance metrics and other clinical support services from the Data Platform (as defined below).

C. CCNC will assist Participants improve the efficiency, quality and coordination of health care services through enhanced access to Patient Information and other clinical support by facilitating access to the Data Platform for Permitted Purposes (as defined below).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is admitted and acknowledged, and wishing to be legally bound, the Parties agree as follows:

1. Supersedure and Replacement of the North Carolina Community Care Networks, Inc. Participation Agreement. This Agreement shall be deemed to and hereby does replace the North Carolina Community Care Networks, Inc. Participation Agreement, including all those versions as amended or restated.

2. Supersedure and Replacement of Informatics Center System Access Agreement (ICSAA). This Agreement shall be deemed to and hereby does supersede and replace in full the Informatics Center System Access Agreement (ICSAA) to the extent the Participant has previously executed an ICSAA.

3. Supersedure and Replacement of Network System Access Agreement (NSAA). This Agreement shall be deemed to and hereby does supersede and replace in full the Network System Access Agreement (NSAA) to the extent the Participant has previously executed a NSAA.

4. Definitions. A defined term, indicated by capitalizing of the first letter(s) not otherwise set forth below or elsewhere in the Agreement shall have the meaning stated in the HIPAA Regulations or if not defined in the HIPAA Regulations, assigned by other Applicable Law.

(a) Committee means the appropriate committee of the CCNC Board of Directors, composed of qualified individuals selected and formed to advise CCNC as to matters related to the governance and operations of CCNC.
(b) **Affiliate(s)** means a company that is the parent of a Party, a subsidiary of a Party, or an entity that owns the majority of the shares of a Party, or an entity who has an IRS control group relationship with a Party.

(c) **Agreement** means this Agreement and all exhibits, appendices, or other documents attached and incorporated hereto.

(d) **Applicable Law** means all applicable state and federal statutes and regulations governing the activities of Participants in connection with this Agreement.

(e) **Authorized Users** means health care providers, employees, professional staff, and other workforce members of a Participant organization who have been authorized by the Participant to utilize the Data Platform for a Permitted Purpose through Participant’s System or through user interfaces made available by CCNC and who have, at the request of Participant or as otherwise provided in the CCNC Policies and Procedures, been assigned a user name and password by CCNC. Authorized Users shall only be natural persons and shall not be other legal or operating entities or affiliates or subsidiaries of Participant except as may be provided in the CCNC Policies and Procedures. References to Participant will be deemed to include a reference to the Participant’s Authorized Users unless the context requires otherwise.

(f) **Breach** means, generally, an impermissible use or disclosure under the HIPAA Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity, Participant, or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:

   i. The nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
   ii. The unauthorized person who used the protected health information or to whom the disclosure was made;
   iii. Whether the protected health information was actually acquired or viewed; and
   iv. The extent to which the risk to the protected health information has been mitigated.

(g) **CCNC Policies and Procedures** means the CCNC’s detailed policies and procedures, which shall be amended in accordance with Section 14 of this Agreement.

(h) **Confidentiality Agreement** means an agreement between a Party and one or more of its Authorized Users that establishes and defines restrictions on the acquisition, access, Disclosure, and use of Patient Information through its System and the Data Platform, including means for safeguarding Patient Information and Confidential Business Information.

(i) **Confidential Business Information** means proprietary or confidential materials or information of a Party in any medium or format that a Party labels as such upon disclosure, and shall include, but not be limited to: (i) the Party’s designs, drawings, procedures, trade secrets, processes, specifications, source code, System architecture, security measures, research and development, including, but not limited to, research protocols and findings, passwords and identifiers, new products, and marketing plans; (ii) proprietary financial and business information of a Party; and (iii) information or reports provided by a Discloser pursuant to this Agreement. “Confidential Business Information” shall not include Patient Information; or any information which: (a) is or becomes known publicly available through no fault of a Receiving
Party (as defined below); (b) is learned of by a Receiving Party from a third party entitled to Disclose such information; (c) is already known to a Receiving Party before receipt from a Discloser, as evidenced by such Receiving Party’s written records generated before the Receiving Party received such information; or (d) is independently developed by a Receiving Party without reference to, reliance on, or use of a Discloser’s Confidential Business Information. Patient Information is excluded from the definition of Confidential Business Information.

(j) Data Platform means the software, portal, platform, or other electronic medium controlled or utilized by CCNC that enables the secure sharing and exchange of Patient Information between and among Participants.

(k) Data Platform Services means software, utilities, and automated tools made available by CCNC for use in connection with the use of the Data Platform.

(l) Disclose, Disclosed, and the noun form, Disclosure, means the release, transfer, provision of, access to, or divulging in any other manner, of Patient Information.

(m) Effective Date means the date that the TECCA that incorporates this Agreement is fully executed by both CCNC and a Participant.

(n) Health Plan has the meaning ascribed to this term in 45 C.F.R. §160.103.

(o) HIPAA Regulations means the Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (“HIPAA”) of 1996 and the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) of the American Recovery and Reinvestment Act of 2009, as in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered hereafter.

(p) Individual means the term as defined in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(q) Joinder Agreement means an agreement that a Participant agrees to become a party to, and be bound by, pursuant to the terms and conditions of the TECCA, into which this Agreement is incorporated.

(r) Participant means a person or organization that is a signatory to the TECCA into which this Agreement is incorporated. The following persons or entities are eligible to be Participants: (1) Any Covered Entity; (2) Any Provider that is not a Covered Entity; and (3) Business Associates that are approved by CCNC in accordance with its Policies and Procedures. Affiliates may elect to use the Data Platform as a single Participant or multiple Participants. If the TECCA is signed by a single Participant on behalf of multiple related entities, the individual entities shall be listed on an Exhibit to the TECCA captioned “Participating Entities” and each entity so listed shall be individually entitled to the rights and subject to the obligations set forth in this Agreement.

(s) Patient Information means medical or other health care information of or about an Individual which is created, received, transmitted, or maintained on behalf of Participants through the Data Platform in accordance with the TECCA, including all documents incorporated into the TECCA, CCNC Policies and Procedures, and Applicable Law.
(t) **Permitted Purposes** means the following reasons for which Patient Information may be acquired, accessed, Disclosed or used through the Data Platform, provided that the use or Disclosure complies with the applicable requirements of HIPAA set forth in 45 CFR §164.506 (c) or successor provisions of HIPAA and is otherwise permitted by Applicable Law:

i. **Treatment of the Individual.** Treatment means the provision, coordination, or management of health care and related services by one or more Providers.

ii. **Health Care Operations.** Health Care Operations means conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about Treatment alternatives; and related functions that do not include Treatment.

iii. **Payment.** Payment means activities undertaken by: (i) a Health Plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (ii) a health care provider or Health Plan to obtain or reimburse for the provision of health care. The activities must relate to the Individual to whom health care is provided and include, but are not limited to: (1) determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims; (2) risk adjusting amounts due based on enrollee health status and demographic characteristics; (3) billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related health care data processing; (4) review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges; (5) utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and (6) Disclosure to consumer reporting agencies of any of the following Protected Health Information relating to collection of premiums or reimbursement: (A) name and address; (B) date of birth; (C) social security number; (D) payment history; (E) account number; and (F) name and address of the health care provider and/or Health Plan.

iv. **Public Health.** Public Health means the activities described in 45 C.F.R. §164.512(b).

v. **Research.** Research means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

vi. **To carry out CCNC’s proper management and administration of its System or its responsibilities under this Agreement and Applicable Law.**

vii. **CCNC may limit within the TECCA or other written agreement between CCNC and Participant, the permitted purposes for which Patient Information may be acquired, accessed, Disclosed to a Participant through the Data Platform.** In the event CCNC so elects to limit the permitted purposes for which Patient Information may be
acquired, accessed, Disclosed or used, then “Permitted Purposes” means the purposes set forth within the applicable written agreement.

(u) **Protected Health Information or PHI or ePHI** means information, including demographic information, collected from an Individual that: (1) is created or received by a healthcare provider, Health Plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an Individual; the provision of health care to an Individual; or the past, present, or future payment for the provision of health care to an Individual; and (i) that identifies the Individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. Notwithstanding the foregoing, Protected Health Information excludes (A) education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g; (B) records described at 20 U.S.C. § 1232g(a)(4)(B)(iv); (C) employment records held by a Covered Entity in its role as employer; and individually identifiable health information regarding an individual who has been deceased for more than 50 years.

For clarity, specific references to “ePHI” shall be deemed to refer only to PHI in electronic form. All references to PHI or ePHI shall refer only to PHI or ePHI of Covered Entity Disclosed to, accessed, used, held, or created by CCNC under an applicable TECCA and this Agreement unless specifically stated otherwise.

(v) **Provider** means a provider of medical or health services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business.

(w) **Required by Law** has the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

(x) **Research** means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

(y) **Substance Abuse Treatment Records** means the records of federally assisted drug or alcohol abuse treatment facilities and programs that are subject to protection under 42 C.F.R. Part 2.

(z) **System** means any software, user interface, database, infrastructure, or other electronic medium used by a Party through which the Party accesses, Discloses or uses Patient Information through the Data Platform, without regard to whether or not such Party controls the applicable software, user interface, database, infrastructure, or medium, whether through ownership, lease, license, or otherwise.

(aa) **TECCA** means a Technology Enabled Care Coordination Agreement, as may be updated, renamed, and amended from time to time by CCNC, by and between CCNC and a subscribing Participant that authorizes and governs the terms and conditions by which such Participant subscribes to services and programs offered by CCNC. The term TECCA shall include all agreements, exhibits, indices, tables, appendices, attachments, and any other referenced document incorporated into the TECCA.

(bb) **Workforce** means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for an entity, is under the direct control of such entity, whether or not they are paid by such entity.
5. **Purpose and Scope.** This Agreement sets forth the provisions governing the acquisition, access, Disclosure or use of Patient Information through the Data Platform. It is the intent of the Parties hereto to protect the confidentiality, privacy and security of Patient Information in accordance with this Agreement, the CCNC Policies and Procedures, and Applicable Law.

6. **License to Access Patient Information.**
   (a) **By Participants.** During the Term defined in Section 13(a), and solely as permitted by this Agreement, CCNC hereby grants Participants a non-exclusive, non-transferable, non-sublicensable, and revocable in accordance with Section 13 of this Agreement, limited license to access, Disclose and use Patient Information through the Data Platform to carry out Permitted Purposes and to comply with the requirements of Applicable Law.
   
   (b) **By CCNC and All Other Participants.** Participant hereby grants separately to CCNC and all other Participants an irrevocable, non-exclusive, royalty-free right and license to use all Patient Information and Confidential Information that was Disclosed by Participant to CCNC during the Term of this Agreement and solely as permitted by this Agreement. Nothing in the grant of a license shall be deemed to limit Section 9 of this Agreement or of any Applicable Law that makes Patient Information incorporated into a Participant’s medical records, other data or databases, the property, and the legal responsibility of such Participant.

7. **Obligations of Participants.**
   (a) Participant shall be responsible for assuring that Participant and its Authorized Users have all equipment, software and other resources necessary and appropriate to acquire, access, use and Disclose Patient Information through the Data Platform in accordance with the TECCA, into which this Agreement is incorporated and to conform to technical or operational specifications required by CCNC.
   
   (b) Participant acknowledges and agrees that it is responsible for its Authorized Users’ access, Disclosure and use of Patient Information through the Data Platform and for any other individuals’ use of the Data Platform by use of any security credential received or obtained, directly or indirectly, lawfully or unlawfully, from the Participant or its Authorized Users.
   
   (c) Participant will use and maintain reasonable and appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity, and availability of Patient Information and to prevent the acquisition, access, Disclosure or use of Patient Information through the Data Platform other than for Permitted Purposes or as required by Applicable Law. To that end, Participant agrees to:
      
      i. Establish or ensure compliance with Participant’s existing role-based access standards reasonably designed to enable each Authorized User to access such Patient Information through the Data Platform only to the extent as is necessary for the performance of authorized work activities for the Participant. Authorized Users must access, Disclose, or use only the Minimum Necessary amount of Patient Information reasonably required to carry out the authorized purpose.
      
      ii. Establish or ensure compliance with Participant’s existing policies and procedures that provide for appropriate: (1) identification and authentication of its Authorized Users; (2) security audit controls and review to guard against unauthorized access to Patient Information through Participant’s System; and (3) protection against virus or malicious software designed to disrupt the operation of, destroy or damage Participant’s System.
(d) Participant shall maintain place written agreements, such as User Access Policies and Confidentiality Agreements that govern its Authorized Users’ ability to access, Disclose and use Patient Information through the Data Platform using such Participant’s System. Such Policies shall be consistent with this Agreement. Participant agrees to provide to CCNC, upon reasonable request, copies or summaries of such agreements.

(e) Participant is responsible for establishing a means to inform it’s Authorized Users of notices, changes and restrictions applicable to the use and Disclosure of Patient Information through the Data Platform under this Agreement. Participant shall require that all of its Authorized Users comply with the applicable requirements of this Agreement and Applicable Law and shall promptly take appropriate action in the event that Participant knows of a violation of this Agreement by an Authorized User. Participant will be responsible for any breach of this Agreement by an Authorized User. Participant agrees that notices provided to Participant will be effective as to its Authorized Users and Participant will secure its Authorized Users agreement to the foregoing.

(f) Participants shall provide periodic reports to CCNC upon request and within mutually agreed upon time frames about the security measures implemented for using the Data Platform, including any material security incidents that have arisen since any prior report. A “material security incident” is one that results in unauthorized acquisition, access, use, Disclosure, modification, destruction of Patient Information, or interference with CCNC’s or Participant’s System operations. Security incidents that are not material include, but are not limited to, pings on a firewall, attempts to log onto a system with an invalid security credential, malware, and denial-of-service attacks that do not result in a server being taken off-line.

(g) CCNC, in its discretion, may deny access to Patient Information through the Data Platform to any Participant or Authorized User it reasonably believes has acquired, accessed, used or Disclosed Patient Information through the Data Platform other than as permitted under the TECCA, this Agreement, which is incorporated into the TECCA, or Applicable Law.

(h) If Participant identifies “Participating Entities” in the TECCA, the Participant warrants, represents and agrees that the Participant has written authority to bind each of the identified Participating Entities to the duties and obligations set forth in this Agreement, which is incorporated into the TECCA. To the extent the Participant does not have appropriate written authority to bind a Participating Entity, the Participant hereby guarantees the Participating Entity’s performance of Participating Entity’s obligations under this Agreement.

(i) Participant agrees to make its internal practices, books and records relating to uses and Disclosures of Patient Information pursuant to applicable Subscription Agreements and this Agreement available to the Secretary of the U.S. Department of Health and Human Services or his/her designee, as necessary to comply with the HIPAA Regulations or other Applicable Law.

(j) To the extent that a Participant uses technology partners in connection with the Participant’s acquisition, access, use or Disclosure of Patient Information through the Data Platform, such Participant shall have valid and enforceable agreements with each technology partner that require the technology partner to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of Patient Information to which it has access; (iii) as soon as reasonably practicable, but no later than ten (10) business days after determining a Breach has occurred, report such Breach to the Participant in accordance with Section 11 of this Agreement; and (iv) reasonably cooperate with other Participants and CCNC on issues related to this Agreement, under the direction of the Participant.
8. **Obligations of CCNC.**

(a) **Data Platform Services.** CCNC shall maintain the functionality of the Data Platform and provide or arrange for the provision of such Data Platform Services, security, and other updates to CCNC’s System as CCNC determines are appropriate from time to time.

(b) **Permitted Uses.** To the extent that CCNC’s workforce members have access to data, including Patient Information or Confidential Information of Participant, such information will be used only for one or more of the following purposes:

i. To facilitate the Disclosure of Patient Information to Participants for Permitted Purposes;

ii. To perform patient identity or patient records maintenance;

iii. To conduct or assist in the performance of audits permitted or required by the CCNC’s Policies and Procedures;

iv. To evaluate the performance of or develop recommendations for improving the operation of the Data Platform;

v. To conduct technical system support and maintenance on the Data Platform;

vi. To carry out CCNC’s functions and obligations under this Agreement, the TECCA, other applicable agreements, applicable Business Associate Agreements and CCNC Policies and Procedures; and

vii. To engage in any other activities as may be required to facilitate the operation of the Data Platform that are authorized by the CCNC Board of Directors and are consistent with the TECCA, this Agreement, and Applicable Law.

(c) **Business Associate Services.** CCNC agrees that to the extent that CCNC is performing its obligations under any applicable agreement(s) and this Agreement as a Business Associate of Participants who are considered Covered Entities, it will limit its use and Disclosure of any Patient Information Disclosed to CCNC by such Covered Entity Participants to only those purposes described in and allowed by the “Additional Business Associate Obligations” attached hereto and Exhibit A, which is incorporated herein by reference as if fully restated.

(d) **Subcontractors.** To the extent that CCNC uses subcontractors in connection with this Agreement, CCNC shall have valid and enforceable agreements with each subcontractor that requires the subcontractor to, at a minimum: (i) comply with Applicable Law; (ii) protect the privacy and security of Patient Information to which it has access; (iii) as soon as reasonably practicable, but no later than ten (10) business days, unless the Parties have expressly negotiated otherwise, after determining a Breach has occurred, report such Breach to CCNC in accordance with Section 11 of this Agreement; and (iv) reasonably cooperate with CCNC on issues related to this Agreement, under the direction of CCNC.

(e) **Secondary Use of Patient Information.** CCNC will not use or Disclose Patient Information except as may be required or permitted by this Agreement or Applicable Law, and will not de-identify such Patient Information in order to engage for a Secondary Use (as defined below) or to provide the Patient Information or other information derived from Patient Information to any other person or entity for the recipient’s Secondary Use, even if the Secondary Use is otherwise permitted by Applicable Law, unless a Secondary Use has been approved by CCNC. For purposes of this subsection (e) a Secondary Use, unless otherwise defined by Applicable Law, is the use of the Patient Information or the extraction of
information from the Patient Information for analytic, predictive or other business purposes that are not described in this Agreement.

9. **Ownership of Data.** Disclosure of Patient Information under this Agreement does not change the ownership of such Patient Information under Applicable Law. Patient Information created by one Participant that has been accessed through the Data Platform by another Participant hereunder may thereafter be integrated into the patient records of the accessing Participant and shall be maintained in accordance with such Participant’s policies and procedures, Applicable Law, and this Agreement.

10. **Applicability of HIPAA Regulations.** Each Participant agrees as follows:
   (a) If the Participant is a Covered Entity, the Participant does, and at all times shall, comply with the HIPAA Regulations to the extent applicable.
   (b) If the Participant is a Business Associate of a Covered Entity, the Participant does, and at all times shall, comply with the provisions of its Business Associate Agreement(s) and Applicable Law.
   (c) If the Participant is neither a Covered Entity or a Business Associate of a Covered Entity, the Participant shall, as a contractual standard, at all times, at a minimum, comply with the provisions of the HIPAA Regulations as if it were acting in the capacity of a Covered Entity.

11. **Breach Notification.**
   (a) **Responsibilities of Participants.** Participants are required to notify CCNC if they become aware of any actual or suspected Breach through the Data Platform. Except as otherwise provided in the CCNC Policies and Procedures, notification shall be made as expeditiously as possible and without unreasonable delay but in no event, more than ten (10) business days.
   (b) **Responsibilities of CCNC.** If CCNC becomes aware of any actual or suspected Breach, either through notification by a Participant or otherwise, CCNC will, at a minimum, notify any Participants whose Patient Information is affected by the Breach. Except as otherwise provided in the CCNC Policies and Procedures, such notification shall be made as expeditiously as possible and without unreasonable delay but in no event, more than ten (10) business days.
   (c) **Contents of Notification.** The notification required by this Section 11 shall include sufficient information for CCNC and notified Participants to understand the nature and the extent of the Breach. For instance, such notification should include, to the extent available at the time of the notification the following information:
      i. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
      ii. The identification of each Individual whose Patient Information has been, or is reasonably believed to have been, accessed, acquired, used, or Disclosed during the Breach;
      iii. Description of the roles of the people involved in the Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);
      iv. Description of the types of Patient Information that were involved in the Breach (whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
v. Description of Participants likely impacted by the Breach;

vi. Number of Individuals or records impacted/estimated to be impacted by the Breach;

vii. Description of actions taken to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breach;

viii. Current status of the Breach (under investigation or resolved);

ix. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address; and

x. Corrective action taken and steps planned to be taken to prevent a similar Breach.

(d) The notifying party shall have a duty to supplement the information contained in the notification as it becomes available and to cooperate with other Participants and CCNC in mitigating the effects of the Breach.

(e) Except as provided for in Section 11(c)(ii), the notification required by this Section 11 shall not include any Patient Information.

(f) CCNC will provide, in a timely manner, a summary of the Breach to such Participants that does not identify any of the Participants or Individuals involved in the Breach.

(g) This Section 11 shall not be deemed to supersede or relieve a Party’s reporting obligations (if any) under relevant Security Incident, Breach notification or confidentiality provisions of Applicable Law.

(h) The Parties shall work together to coordinate any notification to Individuals, and applicable regulatory agencies, and any public announcement regarding the Breach that may be required by Applicable Law or the policies of a Party.

12. Confidential Business Information.

(a) Each Party shall hold all Confidential Business Information it receives in confidence and shall not, during the term or after termination of the TECCA, which includes this Agreement, disclose to any person or entity, nor use for its own business or benefit, any Confidential Business Information obtained by it in connection with this Agreement, unless such use or disclosure is permitted by the terms of this Agreement. Notwithstanding the foregoing, Confidential Business Information may be disclosed as required by operation of Applicable Law, provided that CCNC or a Participant, as the receiving Party, promptly and in advance of such disclosure, if at all possible, notifies the disclosing Party of the existence, terms and circumstances surrounding such operation of law or Applicable Law to allow the disclosing Party its rights to object to such disclosure. If after the disclosing Party’s objection, the receiving Party is still required by operation of law or Applicable Law to disclose the disclosing party’s Confidential Business Information, it shall do so only to the minimum extent necessary to comply with the operation of law or Applicable Law and shall request that the Confidential Business Information be treated as confidential to the maximum extent practicable under the circumstances.

(b) The receiving Party shall return, or destroy and certify the destruction of, all Confidential Business Information (including all copies thereof) to the disclosing Party
promptly upon request, provided that the receiving Party may retain in its confidential files one
copy of any written materials for purposes of verifying compliance with this Agreement.

13. **Term and Termination.**

(a) **Term.** The initial term of this Agreement shall commence as of the Effective Date and
shall extend through December 31 of that same year. Following the initial term, this
Agreement will automatically renew for consecutive one (1) year periods (the initial term,
collectively with any such renewal terms, the “Term”).

(b) **Termination by CCNC of Data Platform Services.** CCNC may terminate this
Agreement at any time by giving not less than sixty (60) days prior written notice to all
Participants of CCNC’s termination of Data Platform Services. Upon CCNC’s termination of
Data Platform Services, CCNC will treat the Patient Information Disclosed to CCNC by
Participants as set forth in Exhibit A.

(c) **Effect of Termination of the TECCA on Access to the Data Platform.** The termination
of a Participant’s TECCA, for any reason, will terminate the Participant’s access to and use of
the Data Platform.

(d) **Termination Based Upon Change in Law.** CCNC and Participants intend and in good
faith believe that this Agreement complies with all federal, State and local laws. If any
provision of this Agreement is declared void or unenforceable in a final, non-appealable ruling
by a court or arbitrator of competent jurisdiction, or if this Agreement is otherwise rendered
void, unenforceable or obsolete by the enactment of any law or regulation, and if the
provision(s) at issue is necessary to effectuate the purposes of this Agreement, the Parties agree
to attempt to renegotiate in good faith the affected provision(s) of this Agreement so as to
comply with such rulings(s), law(s), or regulation(s) to the satisfaction of CCNC and
Participants. In the event the Parties are not able to renegotiate the affected provision(s) of
this Agreement to their mutual satisfaction within one hundred eighty (180) days of the
enactment of the applicable ruling(s), law(s), or regulations(s), then this Agreement shall
automatically terminate.

14. **Conflicts.**

(a) CCNC Policies and Procedures contain specific terms and conditions of operation and
use of the Data Platform Services, specific technical specifications information, and other
terms or requirements relating to the Data Platform Services as are specified in the terms and
conditions of the TECCA, this Agreement, or other, applicable Agreements and are consistent
with, or that supplement or implement the provisions of the TECCA, this Agreement or other
applicable agreements. In the event of a material conflict between a provision of the terms and
conditions of the TECCA and this Agreement or another, applicable agreement, and a provision
of the CCNC Policies and Procedures, the provision of this Agreement will govern.

15. **Disclaimers.**

(a) **Carrier Lines.** The Parties acknowledge that access to the Data Platform is to be
provided over various facilities and communication lines, and information will be transmitted
over facilities and communications lines, and information will be transmitted over local
exchange and Internet backbone carrier lines and through VPN, routers, switches, and other
devices (collectively, “carrier lines”) owned, maintained and serviced by third-party carriers,
utilities, and Internet service providers, all of which are beyond CCNC’s control. CCNC
HEREBY DISCLAIMS ANY LIABILITY FOR OR RELATING TO THE INTEGRITY,
PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION WHILE IT IS TRANSMITTED ON THE CARRIER LINES, OR ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY PATIENT INFORMATION OR CONFIDENTIAL BUSINESS INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT THE RISK OF EACH PARTICIPANT AND ITS AUTHORIZED USERS, AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, NATIONAL AND INTERNATIONAL LAWS.

(b) DATA PLATFORM SERVICES AND SOFTWARE. THE DATA PLATFORM SERVICES AND ALL ASSOCIATED SOFTWARE ARE PROVIDED ON AN “AS IS’ BASIS ONLY. ACCORDINGLY, BUT WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, CCNC DOES NOT REPRESENT OR WARRANT THAT THE DATA PLATFORM SERVICES OR ASSOCIATED SOFTWARE WILL MEET THE REQUIREMENTS OF ANY PERSON OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY, AND CCNC MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OR REPRESENTATIONS CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY ONE OR MORE OF THE GOODS AND SERVICES REFERRED TO ABOVE. THE PARTIES AGREE THAT NO AGREEMENTS, REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE CCNC PRIVACY AND SECURITY POLICIES HAVE BEEN MADE, AND THAT NO FUTURE AGREEMENT, REPRESENTATION OR WARRANTY OF ANY PARTY WITH REGARD TO INFORMATION, GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO, OR AN AMENDED AND RESTATED VERSION OF, THIS AGREEMENT.

(c) PATIENT INFORMATION. PATIENT INFORMATION THAT MAY BE PROVIDED TO PARTICIPANTS AND THEIR AUTHORIZED USERS THROUGH THE DATA PLATFORM ARE BEING PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WHETHER STATUTORY OR COMMON LAW, ARISING FROM COURSE OF DEALING, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. NO PARTY WARRANTS THAT THE PERFORMANCE OF ITS SYSTEM OR THE DATA PLATFORM OR THE DELIVERY OF PATIENT INFORMATION WILL BE TIMELY, UNINTERRUPTED, OR ERROR FREE.

16. Limitations of Party Liability.

(a) As between Parties to this Agreement:

i. No Party to this Agreement shall be responsible to one another for any claims, demands, expenses, liabilities, or losses, including reasonable attorney fees, which may arise from any acts or failures to act by the other Parties to this Agreement or such other Parties’ workforce members or agents in connection with this Agreement.

ii. In circumstances involving harm to other parties caused by the acts or omissions of individuals who access Patient Information or Confidential Business Information through the Data Platform by use of any security credential received or obtained
directly or indirectly, lawfully or unlawfully, from a Participant or such Participant’s Authorized Users or authorized members of such Participant’s Workforce or from CCNC or any of CCNC’s Authorized Users or authorized members of CCNC’s Workforce, such Participant or CCNC shall be responsible for the harm to other parties to the extent that the individual’s access was caused by such Participant’s or CCNC’s breach of this Agreement or its grossly negligent conduct for which there is a civil remedy under Applicable Law.

iii. Notwithstanding any provision in this Agreement to the contrary, the Party shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law.

iv. If the Participant is an agency of the State of North Carolina, the provisions of N.C. General Statutes §143-291 et.seq. North Carolina General Statutes, relating to sovereign immunity shall govern.

(b) **Patient Care.** Each Participant and each Participant’s Authorized Users shall be solely responsible for all decisions and actions taken or not taken involving patient care, utilization management, and quality management of Individuals resulting from or in any way related to the use of the Data Platform or Patient Information made available thereby. Neither Participants nor any of their Authorized Users shall have any recourse against, and each hereby waives any and all claims against CCNC for any loss, damage, claim or cost relating to or resulting from such Participant’s or its Authorized Users’ use or misuse of the Data Platform and Patient Information.

(c) **Patient Information.** The Parties acknowledge that Patient Information Disclosed through the Data Platform is subject to change. Without limiting any other provision under this Agreement, no Party shall have responsibility for or liability related to the accuracy, content, currency, completeness, or delivery of any Patient Information provided by CCNC, CCNC’s Authorized Users, a Participant or a Participant’s Authorized Users to or through the Data Platform.

(d) **Limitation on Damages.** It is expressly agreed that in no event shall a Party be liable to another Party for consequential, incidental, indirect, punitive, exemplary, or special damages suffered by a Party or any other third party unless such liability arises out of a Participant’s non-compliance with Applicable Law or the obligations set forth in this Agreement.

17. **Indemnification.** Each Party agrees to indemnify, defend, and hold the other and its successors, officers, directors, agents and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages (including attorneys’ fees) arising out of, or in connection with, the indemnifying Party’s performance of its obligations under this Agreement or any breach of this Agreement by the indemnifying Party. The obligation to indemnify in this Section 17 shall not apply to any Participant who is barred by Applicable Law from indemnifying another Party, nor shall any such Participant be entitled to indemnification by another Participant pursuant to this Section 17.

18. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon (a) personal delivery; or (b) one day after deposit with a nationally recognized commercial courier service; or (c) in the United States mail, by registered or certified mail, return receipt requested, postage and other fees prepaid. Notices will be addressed to the other Party at the address set forth in the TECCA or such other address as either Party may designate to the other in writing.
19. **Amendments.** This Agreement, including all Exhibits attached hereto, may be amended by an affirmative vote of at least two-thirds (2/3) of the Board of Directors of CCNC. However, if a change to this Agreement or the Exhibits attached to this Agreement is required for CCNC or Participants to comply with Applicable Law, then this Agreement or the Exhibits, as applicable, may be amended by approval of a majority of the CCNC Board. All amended documents shall be made available to Participants by posting on CCNC’s website within ten (10) days of approval and shall become effective thirty (30) days after being posted on CCNC’s website, except for amendments required by Applicable Law, which shall become effective by the date specified in the governing legislation.

20. **Assignment.** CCNC may assign or transfer this Agreement to an Affiliate, a successor-in-interest or to an acquirer of all or substantially all of the assets of CCNC. Participants may not assign or transfer this Agreement, or any part thereof, without the prior written consent of CCNC, such consent not to be unreasonably withheld. This Agreement shall be binding on CCNC and Participants, their successors and permitted assigns.

21. **Waiver.** No failure or delay by CCNC or Participant in exercising their rights under this Agreement shall operate as a waiver of such rights or estop enforcement thereof, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach or estop enforcement thereof.

22. **Interpretation.** This Agreement, all its Exhibits, and applicable TECCA shall be interpreted as a related set of agreements, obligations and requirements. In the event of any material conflict or ambiguity between any of their provisions governing Patient Information or Confidential Business Information, the provisions of this Agreement shall control. Any representation, promise, or condition, whether oral or written, that is not incorporated within the agreements described in this Section 22 or in the CCNC Policies and Procedures, shall not be binding upon CCNC or Participants.

23. **Incorporation by Reference.** All Exhibits attached to this Agreement are incorporated herein by reference and made a part of this Agreement as if those Exhibits were set forth in the text of this Agreement.

24. **Severability.** If any portion of this Agreement shall for any reason be invalid or unenforceable, such portion shall be ineffective only to the extent of such invalidity or unenforceability, and the remaining portions shall remain valid and enforceable and in full force and effect.

25. **Relationship of CCNC and Participants.** Nothing contained in this Agreement shall constitute, or be construed to create, a partnership, joint venture, agency or any other relationship between CCNC and Participants other than that of independent contractors.

26. **Third-party beneficiaries.** This Agreement does not and will not create in any natural person, corporation, partnership or other organization or entity other than CCNC and Participants any benefits or rights, and this Agreement will be effective only as to CCNC and Participants and their successors and permitted assigns.

27. **Force Majeure.** Notwithstanding any provision hereof to the contrary, in the event of a disruption, delay or inability to complete the requirements of this Agreement due to natural disasters, acts of terror or other similar events out of the reasonable control of CCNC or Participants, none of them shall be considered in breach of this Agreement.

28. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

29. **Authority to sign.** CCNC and Participants warrant that they have the capacity to enter into and perform the obligations under this Agreement and all activities contemplated herein, and that all
corporate and other actions required to authorize them to enter into and perform this Agreement were properly taken.

30. **Governing law.** This Agreement shall be governed by and construed in accordance with the applicable laws of the State of North Carolina and applicable Federal law.

31. **Survival.** The respective rights and obligations of CCNC and Participants under Sections 11 (Breach Notification), 12 (Confidential Business Information), 13(b), (Disposition of Patient Information Upon Termination of this Agreement), 14, CCNC Policies and Procedures; 16 (Limitations of Liability), 17 (Indemnification), and any other provision of this Agreement that by its nature or by express statement should survive, shall survive the termination of this Agreement by CCNC.
EXHIBIT A

BUSINESS ASSOCIATE RESPONSIBILITIES

1. **Purpose:** The purpose of this Exhibit A is to augment the terms and conditions of this Agreement to provide satisfactory written assurances to a Participant that is a Covered Entity that to the extent that CCNC is a Business Associate of a such Covered Entity Participant, hereinafter referred to as “Covered Entity”, CCNC will comply with applicable business associate requirements of the HIPAA Regulations, specifically, 45 C.F.R. §§ 164.314(a), .502(e), .504(e) of the privacy and security regulations as modified by the HITECH Act and implemented by Regulations and Guidance and as may be amended or modified from time to time.

2. **Application:** The Parties have entered into an arrangement as evidenced by a TECCA whereby CCNC will provide certain programs and services to Covered Entity, and pursuant to such arrangement, CCNC may be considered a “business associate” in the Privacy Rule to the extent CCNC, on behalf of Covered Entity:

   (a) Creates, receives, maintains, or transmits Protected Health Information (PHI) for a function or activity regulated by the HIPAA Privacy Rule; or

   (b) Provides, other than in the capacity of a member of the workforce of a Covered Entity, health information exchange services, population health management and quality improvement consulting, analytics and reporting, data aggregation (as defined in 45 CFR §164.501), management, administrative, or other services to or for a Covered Entity, where the provision of the service involves the use and Disclosure of PHI from such Covered Entity, or from another Business Associate of the Covered Entity, to CCNC.

3. **Definitions:** All capitalized terms used, but not otherwise defined in this Agreement, shall have the same meaning for those terms as set forth in the HIPAA Privacy and Security Rules for purposes of this Exhibit A.

   (a) **Designated Record Set** shall have the same meaning as set forth in 45 C.F.R. § 164.501.

   (b) **HITECH Act** means Title XIII and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5.

   (c) **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

   (d) **Security Incident** shall mean the attempted or successful unauthorized access, use, Disclosure, modification, or destruction of information or interference with System operations in an information system.

   (e) **Security Rule** means the Security Standards and Implementation Specifications at 45 C.F.R. part 160 and part 164, subpart C.

4. **Permitted Uses.**

   (a) CCNC may use and Disclose PHI only in accordance with the terms and conditions of the TECCA, including this Participation Agreement (if consistent with the Privacy Rule); and,
if necessary for the proper management and administration of CCNC. CCNC may also use and Disclose PHI on behalf of Covered Entity to carry out the legal responsibilities of CCNC. In each such instance, CCNC may only Disclose PHI if the Disclosure is Required By Law or CCNC obtains reasonable assurances from the person or entity to whom the PHI is Disclosed that such PHI will remain confidential and will be used or further Disclosed only as Required By Law or for the purpose for which such PHI was Disclosed to the person or entity, and the person or entity notifies CCNC of any instances of which it is aware in which the confidentiality of such PHI has been compromised.

(b) CCNC may use or Disclose PHI pursuant to a valid authorization by an Individual that satisfies the requirements of 45 C.F.R. § 164.508.

(c) CCNC may de-identify PHI only at the direction of Covered Entity. CCNC may not sell PHI except at the direction of Covered Entity and in compliance with the Privacy Rule.

(d) CCNC may provide data aggregation services relating to the health care operations of Covered Entity pursuant to any applicable agreements between Covered Entity and CCNC, including but not limited to a TECCA. For purposes of this Exhibit A, data aggregation means the combining PHI by CCNC with PHI received by with PHI received by CCNC in its capacity as a business associate of another Covered Entity to permit data analysis that relate to the Health Care Operations of the respective covered entities.

5. Obligations of CCNC.

(a) **Prohibition on Unauthorized Use or Disclosure.** CCNC will not use or disclose PHI except as permitted or required by the Privacy Rule, the Security Rule, the TECCA, this Agreement, other, applicable agreements, or as Required By Law.

(b) **Minimum Necessary Uses and Disclosures.** CCNC shall limit its use and disclosure of PHI under this Agreement to the “minimum necessary” as set forth in guidance that the Secretary issues under the Privacy Rule, or if guidance has not been issued, to the Limited Data Set (as defined by HIPAA) or the minimum necessary to carry out CCNC’s duties. This Section 5 (b) does not apply to: (1) Disclosures to, or requests by, a health care provider for Treatment; (2) uses or Disclosures made to the Individual; (3) Disclosures made pursuant to an authorization as set forth in 45 C.F.R. §164.508; (4) Disclosures made to the Secretary under 45 C.F.R. part 160, subpart C; (5) uses or Disclosures that are Required By Law as described in 45 C.F.R. §164.512(a); and (6) uses or Disclosures that are required for compliance with applicable requirements of the Privacy Rule.

(c) **Safeguards.** CCNC will use appropriate safeguards to prevent the use or Disclosure of PHI other than as provided for by this Agreement. CCNC will implement administrative, physical and technical safeguards as required by the Security Rule, and that reasonably and appropriately protect the confidentiality and integrity of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of Covered Entity.

(d) **Duty to Report Violations.** CCNC agrees to report to Covered Entity any use or Disclosure of PHI by CCNC not allowed for by the Privacy Rule, the Security Rule or this Agreement of which it becomes aware. CCNC agrees to report to Covered Entity any Security Incident (as defined by 45 C.F.R. §164.304) involving Electronic PHI. The Parties agree that this section satisfies any notice requirements by CCNC to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. “Unsuccessful Security Incidents” include activities such as “pings” on CCNC’s firewall(s), port scans, unsuccessful
log on attempts, denial-of-service attacks that do not result in a server being taken offline; or (e) malware, (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification or destruction of Electronic Protected Health Information.

(e) Duty to Report Breaches. CCNC also agrees to report any other Breaches of PHI. If a Breach occurs, CCNC shall cooperate and assist in any steps taken by Covered Entity to mitigate and address the Breach in accordance with Section 11 of this Agreement. Business Associate shall maintain evidence to demonstrate that any notifications required under this Section were made by Business Associate.

(f) Subcontractors and Agents. CCNC agrees to ensure that any subcontractor or agent to whom it provides PHI agrees in writing to the same restrictions and conditions that apply through this Agreement to CCNC with respect to such PHI. CCNC will ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information, agrees to implement appropriate administrative, technical and physical safeguards to protect such Electronic Protected Health Information. Personnel data made available to CCNC by Covered Entity for the performance or administration of this Agreement shall be used only for those purposes and shall not be used in any other way without the prior written approval of the Covered Entity.

(g) Access to PHI. Upon request by Covered Entity Participant, CCNC agrees to provide access to PHI in a Designated Record Set in CCNC’s possession and control to Covered Entity or, at the direction of Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. § 164.524.

(h) Amendment of PHI. Upon request by Covered Entity Participant, CCNC agrees to make available to the Covered Entity Participant, PHI in a Designated Record Set in CCNC’s possession and control, as required for amendment of such PHI, and shall make and incorporate any amendment(s) to the PHI that the Provider agrees to pursuant to 45 C.F.R. § 164.526.

(i) Inspection of Books and Records. Upon reasonable notice by Covered Entity Participant, CCNC agrees to make its internal practices, books, and records relating to the use and Disclosure of PHI available to Covered Entity Participant or, at the request of Covered Entity Participant to the Secretary in a time and manner designated by Provider or the Secretary for purposes of the Secretary determining Provider’s compliance with the Privacy Rule or Security Rule.

(j) Accounting of Disclosures. CCNC agrees to provide to Covered Entity Participant upon request, information regarding Disclosures of PHI by CCNC through the Data Platform to permit Covered Entity Participant to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 C.F.R. § 164.528.

6. Return of PHI Upon Termination. Upon termination as provided for in Section 13 of this Agreement, CCNC shall return or destroy all PHI received from or created or received by CCNC on behalf of Covered Entity that CCNC still maintains in any form and retain no copies of such information. In the event that CCNC determines that returning or destroying the PHI is infeasible, CCNC shall provide to Covered Entity notification of the conditions that make return or destruction infeasible, and CCNC shall extend the protections of this Agreement to such PHI and limit further uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as CCNC maintains such PHI.