

PRACTICE TRANSFORMATION NETWORK PROGRAM PARTICIPATION AGREEMENT

THIS PROGRAM PARTICIPATION AGREEMENT (“Agreement”) is made and entered into as of the dates provided herein below, and effective as of the latter of the signature dates below, by and between **Community Care of North Carolina, Inc.** (“CCNC”), a North Carolina nonprofit company, and the participant (“Participant”) identified below (each a “Party” and collectively the “Parties”).

Participant Name: _____

Participant Address: _____

WHEREAS, CCNC is a recipient of Cooperative Agreement #: 1L1CMS331452-01-00 from the Department of Health and Human Services, Centers for Medicare and Medicaid Services titled Transforming Clinical Practices Initiative - PTN (“Program”); and

WHEREAS, the Program runs for four (4) years beginning September 29, 2015 and running through September 28, 2019, subject to continued availability of funding; and

WHEREAS, Participant wishes to participate in the Program and CCNC wishes to include Participant in the Program under the following terms and conditions;

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, and wishing to be bound legally, the Parties hereby agree as follows:

1. **Term.** The Term of this Agreement shall commence on the latter of the dates of execution provided herein below, and shall run through the end of the Program year in which it was signed. This Agreement shall thereafter renew automatically for successive one year Terms until September 28, 2019, unless terminated earlier by one of the Parties under one of the Termination provisions provided herein below. In the event the Program is extended beyond September 28, 2019, if this Agreement is in effect on that date it shall continue in effect through the final date of the Program without need to amend the Agreement.
2. **Objectives of Participation.** Participation in the Program is intended to accomplish the goals of reducing the cost of providing quality healthcare to vulnerable populations including Medicaid, Medicare, Dual eligible, and Children’s Health Insurance Program (“CHIP”) patients. Participation will include working with a designated Practice Transformation Coach and other personnel through the five phases of practice transformation:
 - a. Setting aims and developing basic capabilities
 - b. Reporting and using data to generate improvements
 - c. Achieve aims of reducing costs, better health and better care
 - d. Getting to benchmark status
 - e. Practice has demonstrated capability to generate better care and better health at lower cost, and can thrive as a business in a pay for value approach
3. **Activities and Deliverables.** Participants will, working with a Practice Transformation Coach and others, engage in Quality Improvement activities as they work through a defined outline of project steps (“Change Package”) and the five stages of practice transformation. Participant will participate in various assessments and possibly training as part of the Program. CCNC will work with Participant to ensure the activities and obligations are reasonable and respect the ongoing needs of Participant and the patients they serve, while comporting with the requirements of the Program funding the work under this Agreement. The primary deliverable for Participant

will be a quarterly report on activities and implementations, with the specific format of the report to be determined based on the specific engagements.

4. **Payments.** Participation in the Program and the services of the Practice Transformation Coach are being offered to Participant at no cost to Participant. The Parties acknowledge that participation may require that the Participant be able to send data to CCNC for Program use and evaluation, whether via Electronic Medical Record (“EMR”) connections or self-reporting. In the case of the former, CCNC will use its best efforts to establish a connection using third party vendors and existing avenues for reimbursement of the cost of establishing the connection. However, in the event funding is not available for Participant, the Parties shall mutually agree upon the reasonable connectivity charges to apply to Participant.
5. **Joinder to Participation Agreement.** Participant is hereby joined as a party to the Community Care of North Carolina, Inc. Participation Agreement, available at <https://www.communitycarenc.org/media/files/ccnc-participation-agreement-041116.pdf> and incorporated herein by reference as if fully restated. A breach of the Participation Agreement by Participant shall constitute a material breach of this Agreement.
6. **Eligibility.** To be eligible for the Program, Participant must agree to each of the eligibility criteria provided herein below. By signing this Agreement, Participant agrees that it meets and will continue to meet each of these criteria. If at any time during the Program Participant no longer meets one of these criteria, Participant will no longer be part of the Program. Eligibility criteria:
 - a. Participant must maintain enrollment as a Medicare, Medicaid, Dual eligible, or Children’s Health Insurance Program provider.
 - b. Participant is not participating in any other comprehensive practice transformation initiatives that might compromise or confound the results of participating in the Program. Participant shall immediately notify CCNC in the event Participant begins such participation. Initiatives requiring notification shall include but not be limited to Medicare Shared Services Programs, the Bundled Payment Program, and Comprehensive Primary Care Initiative.
 - c. Participant has completed its implementation of ICD-10 coding and is in full compliance with all federal requirements for implementing and using ICD-10.
 - d. Participant participates in the Physician Quality Reporting System and reports as applicable.
 - e. Participant shares its clinical quality data with CCNC for purposes of the Program, through either an existing or a to-be-created electronic connection between the Participant’s EMR and CCNC, or via self-reporting.
 - f. Participant allows CCNC to share Participant data with third party evaluators for the sole purpose of Program evaluation.
 - g. Participant works directly with a designated Practice Transformation Coach and one of the Community Care Networks on the five phases of practice transformation.
 - h. Participant is not suspended, debarred, declared ineligible, or voluntarily excluded from eligibility for receipt of cooperative grant funding. Participant shall immediately notify CCNC of any change in this status at any time during participation in the Program.
 - i. Participant supplies to CCNC its national provider identifier (“NPI”), employee identification number (“EIN”), or other identifier for the purpose of CMS performing a background check.
7. **Relation of the Parties.** The Parties shall at all times act and perform as independent contractors under this Agreement. Nothing in this Agreement shall be deemed to create a joint venture, agency, partnership, or employer-employee relationship between the Parties or with any person supplied by either Party. Neither Party shall have any claim against the other Party for employee benefits of any kind.

8. **Representations of Participant.** Participant represents and warrants that:

- a. *Authority.* It has full right, power, and authority to make this Agreement.
- b. *Capacity.* It will perform under this Agreement in a professional manner and with that degree of skill and care ordinarily exercised under similar conditions by reputable members of the same or similar profession.
- c. *Compliance.* It shall follow all applicable federal and state laws and regulations, and it shall comply with all applicable terms and conditions of the Grant, which are attached to this Agreement and incorporated herein by reference as if fully restated. CCNC may audit Participant during regular business hours to confirm Participant's compliance.
- d. *Conflicts.* It will not enter into any agreements with third parties which will prevent it from performing fully under this Agreement.
- e. *Debarment.* It is not debarred by any governmental authority; it will not knowingly employ or use the services of any person or entity that has been debarred in performing under any agreement between them; it shall inform CCNC promptly of any debarment action.
- f. *Exclusion.* Neither it nor any of its officers, directors, key employees, or key subcontractors have been convicted of any felonies listed on the US Department of Health and Human Services, Office of Inspector General ("OIG") website or listed by any federal agency as suspended, debarred, excluded, or otherwise ineligible to participate in federal programs;
- g. *Funding.* It expressly acknowledges all payments, whether or not work has been performed, are conditioned on the continuing availability of the Program funds. CCNC shall notify Participant promptly if funding becomes unavailable, and Participant shall have no further obligation to perform upon receipt of such notice.
- h. *Lawfulness.* It will follow the federal anti-kickback statutes related to influencing the prescribing or providing of specific medicinal products or services, under this Agreement.

9. **Intellectual Property.**

- a. *Definition.* Intellectual Property ("IP") shall mean all ideas, concepts, data, inventions, improvements, discoveries, software, source codes, object codes, prototypes, working models, production models, processes, writings, and compositions, whether or not patented or patentable or copyrighted or copyrighable, regardless of medium or format.
- b. *Prior IP.* CCNC shall be using IP owned by it and by third parties as part of the Program. Participant acknowledges that it shall not gain any title or interest in any IP of CCNC or of any third party for participating in the Program. Participant shall have the right to use the IP disclosed under the Program for its own internal purposes during the Term of this Agreement.
- c. *Patient Data.* Participant shall remain the owner of all patient data collected at its location. CCNC shall not gain any title to patient data collected as part of the Program. CCNC shall have the limited right to use patient data collected at Participant's location to provide services to Participant consistent with the Permitted Uses section of the Participation Agreement joined by Participant through this Agreement. The limited right to use data shall include for evaluation of the Program by CCNC and third party evaluators.

10. **Confidentiality.**

- a. *Confidential Information.* All information held by a Party that has value in not being known publicly is Confidential Information, whether or not the information is marked confidential or private. This definition includes information about a Party or about a third party, if the information was disclosed in confidence and there is value in the information not being known publicly.

- b. *Proprietary Information.* Any protectable interest of a Party or of a third party, including all IP, shall be deemed Proprietary Information. All Proprietary Information shall be Confidential Information subject to these Confidentiality provisions.
 - c. *Obligations.* Each Party agrees not to disclose further Confidential Information disclosed to it under this Agreement without express permission from the disclosing Party. Each Party further agrees not to use or allow any other person or entity to use any Confidential Information disclosed under this Agreement for any purpose other than performance under the Program, which also includes evaluation of the Program. If Confidential Information is to be disclosed to a third party as part of performing under this Agreement, the disclosing Party must execute a Confidentiality Agreement with the third party prior to any disclosure. All Confidential Information disclosed to a Party shall be returned to that Party or destroyed at the termination of this Agreement for any reason. A Party shall keep confidential all Confidential Information disclosed to it for at least three (3) years from the date of disclosure.
 - d. *Protection.* Each Party agrees to protect all Confidential Information disclosed to it from inadvertent or unauthorized disclosure using all reasonable measures, including at least those measures the Party uses to protect its own trade secrets and confidential information.
 - e. *Judicial Requests.* If a Party receives by means of a valid subpoena or from a court of competent jurisdiction a request for Confidential Information disclosed by the other Party, that Party receiving the request shall notify the other Party immediately upon receipt and shall assist any efforts to limit the disclosure of Confidential Information. Any disclosure under this provision shall not alter or diminish the continuing confidential nature of the Confidential Information or the Parties' responsibilities to keep the Confidential Information from being disclosed further.
11. **Insurance.** Participant shall obtain and maintain in full force and effect reasonable policies of liability insurance or self-insurance of types and in amounts reasonably sufficient to protect itself, and its employees and agents against liabilities arising from work conducted under this Agreement. Upon reasonable request, Participant shall provide CCNC relevant information regarding its current insurance policies.
12. **Indemnification.**
- a. *By CCNC.* CCNC shall indemnify, hold harmless, and defend Participant against any third party claims arising from: (i) the use by CCNC of the trade secrets, trademarks, patent rights, or other proprietary rights of any third party while performing under this Agreement; and (ii) any breach by CCNC of Data Security rules under HIPAA relating to the protection of PHI and personally identifiable information ("PII") while performing under this Agreement. Notwithstanding the prior sentence, CCNC shall not indemnify, hold harmless, or defend Participant against any such claims to the extent CCNC's alleged infringement of third party rights or alleged breach of data security was caused by any negligent or intentional act or omission on the part of Participant, any participating entity, or any employee, contractor, or agent of Participant or any participating entity. The indemnification of Participant by CCNC under these circumstances further requires that Participant relinquish control of all litigation and settlement efforts related to the claim to CCNC, except that Participant may participate at its sole expense in the litigation and settlement efforts without directing or interfering with the litigation or settlement efforts of CCNC. CCNC shall not sign any settlement obligating Participant without the prior approval of Participant.
 - b. *By Participant.* Participant shall indemnify, hold harmless, and defend CCNC against any claim, loss, damage, expense, or liability for personal injury or death, or property damage that arises from work performed by or on behalf of Participant under this Agreement, and against any claim, loss, damage, expense, or liability that arises from the negligence or intentional misconduct of Participant or any person or entity working for or on behalf of Participant, including without limitation any disclosure of Confidential Information or PHI, except Participant shall not be liable to the extent CCNC acted with intentional misconduct in regard to the circumstances giving rise to the claim.

13. **Disclaimer of Warranties.** ALL SERVICES, EQUIPMENT, AND DATA FROM EITHER PARTY ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR INFRINGEMENT. Without limiting the generality of the foregoing, neither Party warrants that the operation of any systems will be uninterrupted or error free, or that any data provided shall be accurate, complete, or error free.
14. **Limitation of Liability.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL HAVE ANY LIABILITY OF ANY KIND FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OR LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR LOST DATA, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.
15. **Injunctive Relief.** Participant agrees that CCNC would be irreparably harmed in a manner that would be difficult to quantify or compensate adequately through money damages for Participant’s breach of the Intellectual Property, Confidentiality, Indemnification, or Insurance provisions of this Agreement, and Participant expressly agrees CCNC shall be entitled to injunctive relief without need to first prove entitlement to injunctive relief or to post bond, to stop Participant from breaching or to prevent an imminent breach of any of these provisions.
16. **Termination.**
 - a. *Mutual Consent.* The Parties may terminate this Agreement at any time by mutual consent.
 - b. *Bankruptcy.* Either Party may terminate this Agreement immediately upon the filing by the other Party or by any third party against that other Party of a petition in bankruptcy.
 - c. *Without Cause.* Either Party may terminate this Agreement without cause after sixty (60) days' written notice of termination. The Parties agree to cooperate fully and work diligently to finish or transition any work in progress during those sixty (60) days.
 - d. *For Cause.* Any breach, other than of Confidentiality or a Data Breach, must be cured within thirty (30) days of the breaching Party receiving notice of the breach. If a breach cannot reasonably be cured in thirty (30) days after notice but can be cured soon thereafter, the breaching Party shall have a reasonable time to cure the breach. If a cure is not made in this time, as determined solely by the non-breaching Party, then the non-breaching Party may terminate the Agreement with immediate effect by sending written notice to the breaching Party.
 - e. *For Loss of Eligibility.* If at any time during any Term of this Agreement Participant joins an Accountable Care Organization or Medicare Shared Services Program, CCNC may terminate this Agreement immediately on notice without liability toward Participant.
 - f. *For Loss of Funding.* Either Party may terminate this Agreement immediately upon receipt of notice that sufficient funding for this Agreement is no longer available.
 - g. *Confidentiality Breach.* If either Party breaches its Confidentiality obligations, the non-breaching Party may terminate this Agreement immediately and seek all remedies available at law, in equity, and otherwise.
 - h. *Data Breach.* Either Party may terminate this Agreement immediately without liability upon the confirmation of a substantial breach of PHI by the other Party.
17. **Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered personally or by certified or registered mail, return receipt requested, postage prepaid, or by nationally recognized overnight courier, to the addresses listed herein below. Either Party may by written notice amend the address at which they receive notice.

If to CCNC:

Community Care of North Carolina, Inc.
2300 Rexwoods Drive
Raleigh, NC 27607
Attention: General Counsel

If to Participant:

- 18. **Amendments**. This Agreement may be amended or modified only in a writing duly executed by both Parties. Any attempted oral amendment or modification shall be void. Any attempted email amendment or modification shall be void, although a paper writing containing the same information and duly executed by both Parties shall be valid.
- 19. **Integration**. This Agreement contains the entire understanding between the Parties related to the subject matter herein, and shall supersede any prior oral or written agreement or understanding between the Parties with relation to the subject matter contained in this Agreement.
- 20. **Assignment**. CCNC may assign this Agreement, or the performance of obligations hereunder, to any of its affiliates. Participant may not assign or transfer this Agreement or any portion of it without the prior written authorization of CCNC.
- 21. **Subcontracting**. CCNC may subcontract to any of its affiliates work to be performed by CCNC under this Agreement. Participant may not subcontract any performance under this Agreement without the prior written authorization of CCNC.
- 22. **Governing Law**. This Agreement shall be governed by and construed under, and the rights and liabilities of the Parties determined by, the laws and regulations of the State of North Carolina.
- 23. **Severability**. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the agreement shall remain in full force and effect without the invalid, void, or unenforceable provision.
- 24. **Effect of Waiver**. If a Party waives the enforcement of any obligation or right created by this Agreement, that waiver shall not operate as or be construed as an amendment or modification of the agreement. Further, such waiver shall not bar any subsequent enforcement of any obligation or right created by this Agreement.
- 25. **Survivability**. Any provisions of this Agreement that by their nature extend beyond the term or expiration of this Agreement, shall survive the termination or expiration of this Agreement. The Confidentiality, Indemnification, Injunctive Relief, Intellectual Property, and Limitation of Liability provisions shall expressly survive expiration or termination of this Agreement for any reason.
- 26. **Captions and Headings**. The headings and captions in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement.

- 27. **Interpretation.** The Parties waive any common law or statutory rule of construction which favors the non-writing Party, and the Parties expressly agree that all terms, conditions, and provisions of this Agreement shall be construed without regard to which Party wrote that term, condition, or provision.
- 28. **Force Majeure.** If a Party is prevented from performing under this Agreement due to circumstance not brought about by and beyond the reasonable control of that Party (a "Disability"), then that Party's performance shall be excused for the period of the Disability. A Party claiming Disability must notify the other Party as soon as the claiming Party believes the Disability will affect their performance.
- 29. **Duplicate Originals.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute a single instrument. Any conflict among duplicate originals shall be resolved to give full effect to the Agreement under common sense rules of construction. A conflict shall not render the Agreement unenforceable. Executed copies transmitted electronically shall be considered the equivalent to originals as shall signatures applied to such documents. The Parties agree that signed electronic copies shall be binding upon them the same as though they were hardcopies with original signatures.

IN WITNESS WHEREOF, CCNC and Participant have caused this Agreement to be executed by their duly authorized officers, as of the date(s) provided herein below.

Community Care of North Carolina, Inc. _____

By: _____

Name: Torlen Wade

Title: Executive Vice President

Date: _____

By: _____

Name: _____

Title: _____

Date: _____