

NORTH CAROLINA COMMUNITY CARE NETWORKS, INC. PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (the "Agreement") will be effective when signed by the named Participant below (the "Effective Date") and is made and entered into by and between **NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.**, a North Carolina nonprofit corporation ("N3CN") and the **Participant** named herein below ("Participant"), on behalf of itself and any Participating Entities for whom Participant has the authority to bind to this Agreement. N3CN and Participant are individually a "Party", and collectively, the "Parties".

Legal Name of Participant

Address of Participant

RECITALS

- A. N3CN provides a Data Platform to facilitate the access, use, maintenance, storage, and transfer of Protected Health Information ("PHI") and other Data relating to Participant's involvement in Care Management and Provider Services administered by N3CN.
- B. The Data originates from multiple sources such as the State, Participant, N3CN, and third parties.
- C. The form of this Agreement has been presented to and accepted by the State and is intended to be executed without material changes to its terms.
- D. The Parties wish to enter into this Agreement to set forth the permissions and obligations of the Parties related to access, use, maintenance, storage, and transfer of Data through the Data Platform.

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

1. **Supersedure.** This Agreement shall be deemed to and hereby does supersede and replace any prior or contemporaneous oral or written agreements and understandings between the Parties related to access, use, maintenance, storage, or transfer of Data between the Parties. Without limiting the foregoing, this Agreement specifically supersedes:
 - a. *The North Carolina Community Care Networks, Inc. Participation Agreement;*
 - b. *The Community Care of North Carolina, Inc. Participation Agreement;*
 - c. *The Contract to Participate in the Statewide Enhanced Primary Care Case Management Program;*
 - d. *The Technology Enabled Care Coordination Agreement;*
 - e. Any other prior agreements between the Parties controlling access to and protection of State-owned data.

2. **Incorporation of Recitals.** The Recitals to this Agreement are hereby incorporated into and made part of this Agreement.
3. **Rules of Construction.**
 - a. The words “include” and “including,” and all variations, will be deemed to be followed by the words “without limitation” and not deemed terms of limitation.
 - b. The word “and” includes the meaning of an alternative as well as the meaning of addition.
 - c. The word “or” includes the meaning of addition as well as the meaning of an alternative.
 - d. The word “any” includes the meaning of a singular item and the meaning of all items.
 - e. Sections and headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
 - f. The Parties waive any common law or statutory rule of construction which favors the non-writing Party, and the Parties agree that this Agreement, including all terms, conditions, and provisions, must be construed without regard to which Party wrote that term, condition, or provision.
 - g. References to Participant will be deemed to include reference to Participant’s Authorized Users unless the context requires otherwise.
4. **Definitions.** All capitalized terms will have the meaning defined herein below; any capitalized term not defined herein or elsewhere in this Agreement shall have the meaning defined in the HIPAA Regulations or, if not defined in the HIPAA Regulations, the term shall have the meaning ascribed to it by other Applicable Law.
 - a. **Affiliate.** “Affiliate” means any entity that owns, is owned by, or shares common ownership with, a Party.
 - b. **Applicable Law.** “Applicable Law” means all state and federal statutes and regulations governing the activities of N3CN and Participant in connection with their participation in programs administered by N3CN and governing the access, use, transmission, storage, and maintenance of PHI and other Personally Identifiable Information.
 - c. **Authorized User.** “Authorized User” means Participant’s employees, workforce members, and contractors who have been authorized by N3CN, or by Participant’s Site Administrator under N3CN’s then-current data use policy, to use the Data Platform for a Permitted Purpose and who have been assigned a user name and password to access the Data Platform. Authorized Users may only be Natural Persons.
 - d. **Business Associate.** “Business Associate” has the meaning ascribed to this term in **45 CFR §160.103**.
 - e. **Business Associate Agreement (“BAA”).** “BAA” means the business associate contract or other arrangement between the Covered Entity and the Business Associate that establishes the Permitted Purposes for PHI and requires the Business Associate to comply with the privacy and security provisions of HIPAA related to PHI.

- f. **Care Management.** “Care Management” refers to a broad array of healthcare-related activities including care coordination, care planning, case management, quality improvement, quality assessment, and population-based activities performed by a care manager or related position on behalf of Participants and Enrollees to promote better health outcomes at a reduced cost.
- g. **Confidential Information.** “Confidential Information” means any and all information of strategic or commercial value relating to a Party’s or any Affiliate’s business or operations that a Party discloses to the other Party and that is either (i) designated in writing as confidential or proprietary at the time of disclosure or in a reasonable period after disclosure, or (ii) should reasonably be regarded as confidential or proprietary given the nature and circumstances of its disclosure. All proprietary information is Confidential Information. All business information that derives value in not being generally known to the public, or which has the potential to cause reputational damage to a Party, is Confidential Information. This Agreement is Confidential Information.
- h. **Confidentiality Agreement.** “Confidentiality Agreement” means an agreement between Participant and its Authorized Users that establishes Permitted Uses and all restrictions and obligations related to the access, use, maintenance, storage, and transfer of the Data and the Confidential Information made available pursuant to this Agreement.
- i. **Covered Entity.** “Covered Entity” has the meaning ascribed to this term in **45 CFR §160.103**.
- j. **Data.** The “Data” means all PHI, IIHI, and PII accessed, used, maintained, stored, or transferred through the Data Platform or otherwise pursuant to this Agreement and *the 2019 Primary Care Case Management Agreement Between The North Carolina Department of Health and Human Services Department of Health Benefits and North Carolina Community Care Networks, Inc.* and any successor agreement between the State and N3CN authorizing use of State-owned data.
- k. **Data Breach.** “Data Breach” means an impermissible access, use, or disclosure of the Data that does or is likely to compromise the security or privacy of the Data. To be deemed likely to compromise the privacy or security of the Data, the unauthorized access, use, or disclosure must be determined to meet the following criteria: (i) The Data is clearly or likely to be identifiable to specific individuals; (ii) The person accessing, using, or disclosing the Data is acting in an unauthorized manner or outside the control of either Party and is likely to use the Data other than for a Permitted Purpose; (iii) The Data was actually acquired or viewed; and (iv) the risk of an unpermitted use or disclosure causing harm to either Party or to the specific individual identified has not been or cannot be mitigated.
- l. **Data Platform.** “Data Platform” means collectively the software, hardware, applications, systems, and other code and devices controlled, leased, or used by N3CN or any Affiliate to facilitate the acquisition, use, maintenance, storage, and transfer of Data between the Parties. The Data Platform also includes any backup systems and Data created and maintained to enable N3CN and Participant to recover from any event resulting in a loss of access to the Data Platform or the Data.
- m. **Enrollee.** “Enrollee” means a person identified by the State as eligible for Medicaid or Health Choice services.
- n. **Health Plan.** “Health Plan” has the meaning ascribed to this term in **45 C.F.R. §160.103**.

- o. **HIPAA Regulations.** “HIPAA Regulations” mean the standards for privacy of Individually Identifiable Health Information and the security standards for the protection of Electronic Protected Health Information as promulgated under **45 C.F.R. Parts 160 and 164** 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, in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered hereafter.
- p. **Individual.** “Individual” has the meaning ascribed to this term in **45 C.F.R. § 160.103** and includes a personal representative in accordance with **45 C.F.R. § 164.502(g)**.
- q. **Individually Identifiable Health Information (“IIHI”).** “IIHI” means information that is a subset of health information, including demographic information collected from an individual, and: 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.
- r. **Minimum Necessary Standard.** “Minimum Necessary Standard” has the meaning ascribed to that term in **45 C.F.R. § 164.502**, and this standard must be used in all situations described in that section as situations to which the standard applies.
- s. **Natural Person.** “Natural Person” means only living people.
- t. **Participating Entity.** “Participating Entity” means any person or entity owned or controlled by or under the supervision of Participant that will by means of the signature authority of Participant access or use Data covered under this Agreement.
- u. **PCCM Network.** “PCCM Network” refers to any of the entities defined as a PCCM Network under the State Plan of North Carolina or approved as a PCCM Network by the State.
- v. **Permitted Purpose.** “Permitted Purpose” includes the following activities, provided those activities are performed in compliance with all Applicable Laws:
 - i. *Treatment.* Treatment means the provision, coordination, or management of health care and related services by one or more healthcare providers.
 - ii. *Health Care Operations.* Health Care Operations includes quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines; population-based activities relating to improving health, reducing health care costs, protocol development, case management and care coordination.
 - iii. *Payment.* Payment means activities undertaken by: (1) a Health Plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (2) a health care provider or Health Plan to obtain or provide reimbursement for providing health care. Payment activities include (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 information relating to collection of premiums or reimbursement.

- 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 development, testing, and evaluation, designed to contribute to generalizable knowledge.
- vi. **Administration.** Administration means carrying out N3CN's proper management and oversight of its Data Platform and its responsibilities under *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* or any successor agreement for accessing and using State-owned data, this Agreement, and Applicable Law, Applicable Law, this Agreement, and any other agreement between N3CN and any third party for accessing and using Data through the Data Platform. Without limiting the generality of the foregoing, Administration also includes performing record maintenance, conducting or assisting in audits permitted or required, evaluating performance of the Data Platform, conducting technical system support on the Data Platform and the Data, carrying out N3CN's and Participant's functions and obligations under this Agreement (including any necessary data extractions from Participant's systems and applications), and all applicable BAAs, other agreements, and policy and procedure documents, and all other activities authorized by the N3CN Board of Directors consistent with Applicable Law.
- w. **Person.** "Person" means both a Natural Person and any entity managed by Natural Persons, except where Person is part of the term "Natural Person".
- x. **Personally Identifiable Information ("PII").** "PII" means a Natural Person's first name or initial followed by their last name in combination with identifying information as defined in **North Carolina General Statute § 14-113.20(b)**, other than email addresses and related internet account information.
- y. **Protected Health Information ("PHI").** "PHI" means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- z. **Provider Services.** "Provider Services" refer to activities that support healthcare providers participating in the PCCM Program, including Practice Support, Behavioral Health Integration, and Pharmacy Support.
- aa. **Representative.** "Representative" includes any employee, contractor, agent, officer, or consultant of a Party, including any Affiliate.
- bb. **Required by Law.** "Required by Law" has the meaning ascribed to this term in **45 C.F.R. § 164.103**.
- cc. **State.** "State" refers to the State of North Carolina, including all administrative agencies involved in the management of Medicaid and Health Choice data, populations, and programs.

- dd. **State-owned data.** “State-owned data” means Medicaid and Health Choice Claims Data and Medicaid and Health Choice enrollment data, provided by the State to either Party, and for which the State of North Carolina is the Covered Entity for HIPAA purposes.
- ee. **Subcontractor.** “Subcontractor”, when capitalized, means those entities including PCCM Networks to which N3CN contractually delegates any of its care management or provider support responsibilities which are contractual responsibilities of N3CN under contracts with the State or any other payor of healthcare or care management services.
5. **Intent of the Parties.** It is the express intent of the Parties that this Agreement be executed to ensure that Data accessed, used, stored, maintained, or transferred through the Data Platform as part of participation in Care Management and Provider Services are protected from unauthorized use or disclosure and are used and disclosed consistent with Permitted Purposes, N3CN and State policies and procedures, and Applicable Law.
6. **License to the Data.** During the Term of this Agreement, and subject to the terms and obligations of this Agreement and all applicable policies and procedures, for each type of Data owned or controlled by a Party, that Party grants to the other Party and its Authorized Users a limited, non-exclusive, non-transferable, non-commercial license to access, use, maintain, store, and transfer Data through the Data Platform for the Permitted Purposes subject to all obligations and restrictions contained in this Agreement. Each Party’s license granted hereunder ends immediately upon the termination or expiration of this Agreement. The ending of a Party’s license hereunder does not terminate a Party’s obligations to keep and to make available any Data required to be kept or made available to meet any obligation Required by Law or required by *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* or any successor agreement between N3CN and the State related to the access and use of State-owned data.
7. **License to the Data Platform.** During the Term of this Agreement, and subject to the terms and obligations of this Agreement and all applicable policies and procedures, N3CN grants to Participant and to Participant’s Authorized Users a limited, non-exclusive, non-transferable, non-commercial license to access and use the Data Platform solely to enable Participant to fulfill its obligations under this Agreement and *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* or any successor agreement between N3CN and the State related to the access and use of State-owned data. Participant and Participant’s Authorized Users must at all times comply with all applicable N3CN and State policies regarding access to and use of State-owned data and any component of the Data Platform. When Participant’s license to the Data Platform ends for any reason, Participant and all its Authorized Users must immediately cease all access to and use of the Data Platform and any Data.
8. **Participants.** This Agreement will be used by all entities participating in Care Management and Provider Services administered by N3CN. Types of Participants include:
- a. Behavioral Health Providers (non-LME/MCO)
 - b. County or other Government Agency

- c. Division of State-owned Hospital Facilities (“DSOHF”)
- d. HIV Case Management Providers
- e. Hospital and Hospital Systems
- f. Local Management Entity / Managed Care Organization (“LME/MCO”)
- g. Primary Care Provider (“PCP”), Group Practices
- h. Subcontractor

If Participant does not clearly fit into one of the categories a-g, Participant will be deemed to be in category h regardless of any similarities or dissimilarities Participant has to other categorizations.

9. **General Obligations Applicable to Participant.** Participant is responsible for its Participating Entities and Authorized Users, including any breach of this Agreement by its Participating Entities or Authorized Users or by anyone using Participant’s facilities or any equipment or software owned, leased, or controlled by Participant to access or use the Data Platform or the Data, including for any purpose other than a Permitted Purpose. In recognition of these obligations, Participant agrees to:
- a. Follow all Applicable Law.
 - b. Work with designated care managers and other N3CN and Subcontractor staff under the PCCM Program to enhance continuity of care for Enrollees and to help promote self-management of physical and behavioral health conditions for Enrollees.
 - c. Ensure its Authorized Users have all necessary equipment, software, and other resources to access and use the Data Platform and the Data in accordance with the technical and operational specifications provided by N3CN.
 - d. Ensure Participant’s Representatives, Participating Entities, and Authorized Users access and use the Data Platform and access, use, store, maintain, and transfer Data only for Permitted Purposes and consistent with all Applicable Law.
 - e. Maintain and provide to N3CN as requested an ongoing list of all Participating Entities and Authorized Users of Participant.
 - f. Monitor all access and use of the Data Platform and all access, use, storage, maintenance, and transfer of Data occurring at any location owned, leased, or controlled by Participant or any Authorized User of Participant, or occurring through equipment under the ownership or control of Participant or any Authorized User of Participant.
 - g. Implement and maintain reasonable administrative, technical, and physical safeguards to protect the confidentiality, integrity, and availability of the Data Platform and the Data.
 - i. Administrative safeguards must include written policies and procedures for managing access, use, storage, maintenance, transfer, and disclosure of Data and access and use of the Data Platform and must include sanctions for any violations of those policies and procedures.
 - ii. Technical safeguards must include appropriate security lockouts, password management, data encryption, and related mechanisms to ensure the privacy and security of the Data Platform and the Data.
 - iii. Physical safeguards must include restricted access to places where the Data Platform may be accessed or used, and where the Data may be accessed, used, stored, maintained, or transferred.

- h. Ensure Authorized Users have appropriate role-based access to the Data Platform and the Data that complies with the Minimum Necessary Standard under HIPAA.
- i. Implement and maintain written policies and procedures that address: (1) identification and authorization of Authorized Users; (2) audit controls and periodic reviews to ensure all access and use occurs by Authorized Users for Permitted Purposes only; (3) notification to Authorized Users of any changes in the Data Platform, the Data, or the policies and processes through which they are accessed or used; (4) notification to N3CN of any violation of this Agreement, including any unauthorized access to or use of the Data Platform or any unauthorized access, use, storage, maintenance, or transfer of the Data; and (5) protection against malware and other mechanisms, both tangible and intangible, designed to disrupt, destroy, damage, or delay the operation of the Data Platform or the Data.
- j. Follow all N3CN and State-issued policies and procedures related to accessing, using, storing, maintaining, transferring, monitoring, and auditing State-owned data and Data within the Data Platform. This obligation includes communicating to N3CN and working with N3CN to resolve any suspected violations of those policies and procedures including any suspected breaches of PHI, IIHI, or PII.
- k. Report to N3CN monthly or as requested the results of all periodic audits and reviews to ensure all access to and use of the Data Platform and the Data are by Authorized Users for Permitted Purposes according to Applicable Law. Participant must perform audits and reviews at least monthly.
- l. Cooperate fully with N3CN, the State, and any regulatory or credentialing authority in any investigation or audit by making available all personnel, and all books, records, and related information created or maintained in connection with Participant's access and use of the Data Platform or access, use, storage, maintenance, or transfer of Data.
- m. Notify N3CN as soon as practical after first becoming aware of a Data Breach. In the case of a breach involving social security numbers, Participant must notify N3CN within sixty minutes of becoming aware of the breach. This timeline is a State requirement for all entities accessing and using State-owned data. For confirmed breaches of PHI, notification must be made to N3CN within twenty-four hours. This timeline also is a State requirement for entities accessing and using State-owned data. The notification will include, to the extent available:
 - i. A brief description of what happened, including the date of the Data Breach and the date of discovery of the Data Breach;
 - ii. The identification of each Individual whose Data has been, or is reasonably believed to have been, accessed, acquired, used, or Disclosed;
 - iii. A description of the roles of the people involved in the Data Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);
 - iv. A description of the types of Data involved in the Data Breach (whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of identifiable information);
 - v. The number of Individuals or records impacted/estimated to be impacted by the Data Breach;

- vi. A description of actions taken to investigate the Data Breach, to mitigate harm to Individuals, and to protect against any further Data Breaches;
 - vii. The current status of the Data Breach (under investigation or resolved);
 - viii. 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
 - ix. Corrective actions taken and planned to prevent a similar Data Breach.
- n. Ensure that any subcontractors, agents, or other third parties used by Participant or by any Authorized User execute all necessary documents binding those subcontractors, agents, or other third parties to protect the privacy and security of the Data Platform and the Data consistent with the obligations of this Agreement and all Applicable Law.

10. N3CN Data Obligations. N3CN agrees to:

- a. Follow all Applicable Law.
- b. Ensure N3CN's workforce members, including any contractors, access and use the Data Platform and access, use, store, maintain, and transfer Participant Data only for Permitted Purposes and consistent with all Applicable Law.
- c. Monitor all access and use of the Data Platform and all access, use, storage, maintenance, and transfer of the Data occurring at a location owned, leased, or controlled by N3CN, or occurring through equipment under the ownership or control of N3CN, to ensure all access and use is only for Permitted Purposes and consistent with all Applicable Law.
- d. Implement and maintain reasonable administrative, technical, and physical safeguards to protect the confidentiality, integrity, and availability of the Data Platform and the Data.
 - i. Administrative safeguards must include written policies and procedures for managing access, use, storage, maintenance, transfer, and disclosure of Data and access and use of the Data Platform and must include sanctions for any violations of those policies and procedures.
 - ii. Technical safeguards must include appropriate security lockouts, password management, data encryption, and related mechanisms to ensure the privacy and security of the Data Platform and the Data.
 - iii. Physical safeguards must include restricted access to places where the Data Platform and the Data may be accessed, used, or disclosed.
- e. Ensure N3CN workforce members have appropriate role-based access to the Data Platform and the Data that complies with the Minimum Necessary Standard under HIPAA.
- f. Implement and maintain written policies and procedures that address: (1) proper access to and use of the Data Platform and the Data; (2) audit controls and periodic reviews to ensure access to and use of the Data Platform and the Data is for Permitted Purposes only; (3) notification to Participant of any changes in the Data Platform, the Data, or the policies and processes through which they are accessed or used; (4) notification to Participant of any unauthorized access to or use of Participant Data by N3CN's Authorized Users of which N3CN becomes aware (unless N3CN is required not to make such notification as part of an ongoing criminal investigation); and (5) protection against malware and other mechanisms, both tangible and intangible, designed to disrupt, destroy, damage, or delay the operation of the Data Platform or the Data.

- g. Notify Participant as soon as practical after first becoming aware of a Data Breach affecting Data provided by Participant. For disclosures of social security numbers or confirmed breaches of Participant data, this notice will occur promptly after reporting the Data Breach to the State unless the State or an investigatory agency requests notification be delayed so as not to hinder any law enforcement activities or investigations. The notification will include, to the extent available:
 - i. A brief description of what happened, including the date of the Data Breach and the date of discovery of the Data Breach;
 - ii. The identification of each Individual whose Data has been, or is reasonably believed to have been, accessed, acquired, used, or Disclosed;
 - iii. A description of the roles of the people involved in the Data Breach (e.g., employees, Authorized Users, service providers, unauthorized persons, etc.);
 - iv. A description of the types of Data involved in the Data Breach (whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of identifiable information);
 - v. The number of Individuals or records impacted/estimated to be impacted by the Data Breach;
 - vi. A description of actions taken to investigate the Data Breach, to mitigate harm to Individuals, and to protect against any further Data Breaches;
 - vii. The current status of the Data Breach (under investigation or resolved);
 - viii. 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
 - ix. Corrective actions taken and planned to prevent a similar Data Breach.
- h. Ensure that any subcontractors, agents, or other third parties used by N3CN execute all necessary documents binding those subcontractors, agents, or other third parties to protect the privacy and security of the Data Platform and the Data consistent with the obligations of this Agreement and all Applicable Law.

11. Obligations Based on Category of Participant. This Agreement must include the applicable exhibit(s), as listed below and incorporated herein by reference, to describe additional obligations specific to Participant's type of entity. If Participant is a type that does not have additional obligations based on its type, Participant will not have an attached exhibit. If Participant may perform obligations as more than one type of entity, more than one exhibit will be attached, and all those obligations will apply to Participant.

- a. Division of State-owned Hospitals and Facilities. Additional DSOHF obligations will be those described in Exhibit: DSOHF.
- b. County or other Government Agency. Additional County obligations will be those described in Exhibit: Governmental Entity.
- c. Subcontractor. Additional Subcontractor obligations will be those described in Exhibit: Subcontractor.

- d. Hospital, Hospital Groups, Primary Care Practices, Primary Care Practice Groups. These additional obligations will be described in Exhibit: Hospital / Hospital Groups / Primary Care Practices / Primary Care Practice Groups.

12. Mutual Business Associate Obligations. Each Party individually stands as a Business Associate to the other Party regarding PHI provided by that other Party, whether the providing Party is itself a Covered Entity or a Business Associate for that PHI. Therefore, each Party individually agrees to the following Business Associate Agreement provisions for any PHI it accesses or uses for which it is not the owner or the primary custodian. Each Party, in its role as a Business Associate, agrees to:

- a. Use PHI in its possession only as permitted or required by this Agreement or as otherwise Required by Law.
- b. Disclose PHI in its possession to third parties only if (i) the disclosures are Required By Law, or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under **45 CFR §164.504(e)(4)**, and the third party agrees in writing to notify Business Associate of any instances of which it becomes aware that the confidentiality of the information has been breached.
- c. Comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information (ePHI), to prevent use or disclosure of PHI other than as provided for by this Agreement.
- d. Acknowledge its continuing obligations under HIPAA and agree to comply with any subsequent regulations promulgated under HIPAA and any guidance thereto.
- e. Acknowledge that (i) the foregoing requirements shall apply to Business Associate in the same manner that such requirements apply to a Covered Entity, and (ii) Business Associate shall be subject to the civil and criminal enforcement provisions set forth at **42 USC 1320d-5 and 1320d-6**, as amended from time to time, for failure to comply with the requirements and any applicable guidance subsequently issued by the Secretary of the Department of Health and Human Services (“Secretary”) with respect to such requirements.
- f. Disclose to its subcontractors, agents, or other third parties only the minimum PHI necessary to perform or fulfill the Permitted Uses.
- g. Transmit any ePHI it creates, receives, or maintains in a manner that the ePHI is rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary in the guidance issued under **section 13402(h)(2) of Public Law 111-5**.
- h. Establish procedures for mitigating any deleterious effects from any improper use or disclosure of PHI from Business Associate or any subcontractor or agent thereof.
- i. Make available all records, books, agreements, policies, and procedures relating to the use or disclosure of PHI to the Secretary for purposes of investigating or determining compliance with HIPAA.
- j. Upon prior written request, make available to the other Party during normal business hours at Business Associate’s offices all records, books, agreements, policies, and procedures relating to

the use and disclosure of PHI to determine Business Associate's compliance with the terms of this Agreement.

- k. Document all disclosures of PHI that require an accounting of disclosures as required under **45 CFR §164.528**. Business Associate further agrees, within thirty (30) days of receiving a written request from the other Party, to provide to that Party such information as is requested and reasonably available to permit that Party to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with **45 CFR §164.528**.
- l. Notify the other Party within ten (10) business days of Business Associate's discovery of:
 - i. any use or disclosure of PHI not provided for by this Agreement;
 - ii. any breach of unsecured PHI as defined at **45 CFR §164.402**; and
 - iii. any Security Incident of which it becomes aware. Pings and related broadcast actions not resulting in any known or suspected security interference shall not be reported except as aggregate statistics of such events as requested by the other Party.

Notification under this section shall include, as reasonably available, the identification of each individual whose PHI has been, or is suspected to have been, accessed, acquired, or disclosed. Business Associate further agrees to make available in a reasonable time and manner any other available information needed by the other Party to respond to individual and governmental inquiries regarding any of the notifications received from Business Associate. The Party responsible for any Data Breach, through its actions or omissions or through those of its agents, shall be responsible for notifying the persons affected and any administrative bodies in accordance with Applicable Law. The Parties agree to coordinate any public announcement required under Applicable Law.

- m. Comply with all the restrictions on access, use, disclosure, storage, and transmission of PHI found in the *2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* and any successor agreement between N3CN and the State for accessing and using State-owned data.

13. **Mutual Covered Entity Obligations.** To the extent either Party is a Covered Entity regarding any Data it provides, accesses, or uses through the Data Platform, that Party agrees to:

- a. inform the Business Associate of any changes in the notice of privacy practices that the Covered Entity provides to individuals pursuant to **45 CFR §164.520** that affect Business Associate's use or disclosure of PHI, and provide to the Business Associate, upon request, a copy of the notice of privacy practices currently in use.
- b. inform the Business Associate of any changes in, or revocation of, the authorization provided pursuant to **45 CFR §164.508**, to the extent relevant to any obligations under this Agreement.
- c. inform the Business Associate, in writing and in a timely manner, of any arrangements required of Covered Entity under **45 CFR § part 160 and 164** that may affect the use or disclosure of PHI required by the Business Associate under this Agreement, including restrictions regarding the use or disclosure of PHI as provided for in **45 CFR §164.522**.
- d. make any amendments to PHI that Covered Entity agrees to pursuant to **45 CFR §164.526**.

- e. document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with **45 CFR §164.528**.

14. Participant Obligations when neither a Covered Entity nor a Business Associate. Any Participant who does not fit the description of a Covered Entity or a Business Associate, by executing this Agreement agrees to be bound to all the obligations for safeguarding the privacy and security of the Data Platform and the Data as if Participant were a Business Associate, for all Data accessed or used by Participant.

15. Ownership of Data. Access to or use of Data under this Agreement does not change the ownership of Data accessed or used. Notwithstanding the foregoing, Data provided through the Data Platform may become integrated into patient records and may no longer be separable from the Data of the receiving entity. The Parties acknowledge it is impractical to require deletion of Data that has been integrated into other systems and applications, but that Data shall remain under all the privacy and security and Permitted Use restrictions set forth in this Agreement.

16. Confidential Information. Confidential Information disclosed to a Party must be kept confidential until it has been disclosed publicly by someone authorized by the owner of the Confidential Information. Confidential Information must only be retained while needed to perform under this Agreement. When the need to perform ends for any reason, that Confidential Information disclosed, including all copies, must be returned to the disclosing Party or destroyed with a certificate of destruction attested by the person responsible for its destruction. Records that cannot be destroyed or returned must be kept confidential until those records have lost their confidential nature through no fault of the Party receiving the Confidential Information. A record of this Agreement may be retained securely as a record of the Party's obligations. Confidential Information must only be used for the specific purpose for which it was disclosed. A Party receiving Confidential Information must take all reasonable measures to prevent unauthorized disclosure. At a minimum, a Party must treat Confidential Information with as much security as it treats its own confidential information, and never with less than reasonable care.

17. Term and Termination.

a. **Term.** This Agreement commences on its Effective Date and continues through the thirty-first day of December of the year in which it was signed by Participant (the "Initial Term"). Thereafter, this Agreement renews automatically for consecutive one (1) year Terms (the "Renewal Terms") until terminated by one of the Parties as provided herein below. The Initial Term and all Renewal Terms are collectively the "Term" of this Agreement.

b. **Automatic Termination.** If Participant is participating only in the State program covered by *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.*, then this Agreement will terminate immediately upon the termination of that contract, except that this Agreement will continue in force under any successor agreement between N3CN or its Affiliate and the State for accessing and using State-owned data. Additionally, if any Applicable Law is changed making Participant's

access or use of the Data Platform or the Data unlawful, or Participant becomes ineligible to access or use the Data Platform or the Data, then this Agreement will end immediately upon that change.

- c. **Termination by Participant.** Participant may terminate this Agreement for any or no reason sixty (60) days after providing written notice to N3CN of Participant's intent to terminate, provided Participant also terminates participation in and ceases all activities related to any programs covered by this Agreement. Termination of this Agreement will cause N3CN to de-authorize Participant and all Participant's Authorized Users from accessing the Data Platform and the Data.
- d. **Termination by N3CN.** N3CN may terminate this Agreement for any or no reason thirty (30) days after providing written notice to Participant of N3CN's intent to terminate. Termination of this Agreement will cause N3CN to de-authorize Participant and all Participant's Authorized Users from accessing the Data Platform and the Data. N3CN may terminate this Agreement immediately if it determines Participant has caused or allowed a Data Breach which would require notification to affected Individuals and the State.
- e. **Survival of Data Obligations.** In addition to any other survival terms in this Agreement, the Parties expressly acknowledge that termination of this Agreement will not and shall not be deemed to relieve any Party or its Authorized Users from maintaining the privacy and security of any Data accessed or used by or incorporated into that Party's systems and applications, and State-owned data may not be used for any purpose other than performing under this Agreement and may not be disclosed to any third party for any reason without the prior written permission of N3CN and the State.

18. Disclaimers.

- a. **Clinical Decision Support and Information.** The Data Platform and the Data may contain information, protocols, and input relating to clinical decision-making. The Parties mutually understand and agree that any such information, protocols, and input available through the Data Platform do not, and shall not be construed to act as, a substitute for a healthcare provider's professional judgment. THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OF ACCURACY OR COMPLETENESS OF ANY DATA OR INFORMATION INPUT INTO THE DATA PLATFORM BY ANY PARTY, AUTHORIZED USER, OR ANY THIRD PARTY. PARTICIPANT AND EACH AUTHORIZED USER ASSUME ALL RISK AND RESPONSIBILITY FOR ITS USE OF SUCH DATA, INFORMATION, PROTOCOLS, AND INPUT OBTAINED FROM OR THROUGH THE DATA PLATFORM. N3CN DOES NOT RECOMMEND OR ENDORSE ANY PROVIDER OF HEALTHCARE OR HEALTHCARE RELATED PRODUCTS, ITEMS, OR SERVICES, AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED TO IMPLY ANY SUCH ENDORSEMENT.
- b. **External Networks, Devices, Carrier Lines, and Exchanges.** Connections to external data repositories and information technology systems ("Networks") may be made available through or in conjunction with the Data Platform to facilitate the storage and transmission of Data. External monitoring and alert devices ("Peripherals") may also be made available through or in conjunction with the Data Platform to facilitate telehealth services. Participant hereby agrees and acknowledges that N3CN may access such Networks and Peripherals to facilitate various features in the Data Platform and that PHI may be stored and transmitted using such Networks and Peripherals. N3CN MAKES NO REPRESENTATION OR WARRANTY REGARDING THE AVAILABILITY

OF ANY PARTICULAR NETWORKS OR CARRIER LINES OR PERIPHERALS OR ANY PARTICULAR DATA SOURCE OR NETWORK PARTICIPANT OR DEVICE MANUFACTURER. PARTICIPANT ACKNOWLEDGES THAT ACCESS TO THE SYSTEM WILL BE PROVIDED OVER VARIOUS FACILITIES AND COMMUNICATION LINES, AND INFORMATION WILL BE STORED ON REMOTE SERVERS, REPOSITORIES, AND STORAGE MEDIA AND TRANSMITTED OVER LOCAL EXCHANGE AND INTERNET BACKBONE CARRIER LINES AND MOBILE NETWORKS AND THROUGH ROUTERS, SWITCHES, AND OTHER DEVICES OWNED, MAINTAINED, AND SERVICED BY THIRD-PARTY CARRIERS, UTILITIES, AND SERVICE PROVIDERS, ALL OF WHICH ARE BEYOND N3CN'S CONTROL. AT ANY TIME, SERVERS, REPOSITORIES, PERIPHERALS, DATA SOURCES, AND OTHER NETWORK PARTICIPANTS MAY BE ADDED OR DELETED WITHOUT PRIOR NOTICE. PARTICIPANT ACKNOWLEDGES AND AGREES THAT AT ANY TIME AND WITHOUT PRIOR NOTICE, A DATA SOURCE MAY ELECT NOT TO SEND OR RECEIVE DATA OR MESSAGES AND A PERIPHERAL MAY NO LONGER BE AVAILABLE IN CONJUNCTION WITH THE DATA PLATFORM. IN ADDITION, N3CN HEREBY DISCLAIMS ANY LIABILITY FOR OR RELATING TO: (I) THE INTEGRITY, PRIVACY, SECURITY, CONFIDENTIALITY, OR USE OF ANY INFORMATION OR DATA WHILE IT IS TRANSMITTED VIA CARRIER LINES; OR (II) ANY DELAY, FAILURE, INTERRUPTION, INTERCEPTION, LOSS, TRANSMISSION, OR CORRUPTION OF ANY DATA OR INFORMATION ATTRIBUTABLE TO TRANSMISSION ON THE CARRIER LINES. USE OF THE CARRIER LINES IS SOLELY AT THE RISK OF PARTICIPANT AND ITS AUTHORIZED USERS, AND IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, AND NATIONAL LAWS.

- c. **Data Platform Services and Software.** THE DATA PLATFORM IS PROVIDED ON AN "AS IS" BASIS ONLY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, N3CN DOES NOT REPRESENT OR WARRANT THAT THE DATA PLATFORM WILL MEET THE REQUIREMENTS OF ANY PERSON OR ENTITY OR WILL OPERATE ERROR-FREE OR CONTINUOUSLY, AND N3CN MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES AGREE THAT NO AGREEMENTS, REPRESENTATIONS, OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT HAVE BEEN MADE, AND THAT NO FUTURE AGREEMENT, REPRESENTATION, OR WARRANTY UNDER THIS AGREEMENT SHALL BE EFFECTIVE UNLESS EXPRESSLY STATED IN AN AMENDMENT TO THIS AGREEMENT.
- d. **Patient Information.** PATIENT INFORMATION THAT MAY BE PROVIDED TO PARTICIPANT 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.

19. **Limitations of Party Liability.** This provision is not meant to and shall not be deemed to limit the applicability of the *North Carolina Tort Claims Act* and any immunities available to government entities thereunder, including any sovereign immunity claim. Subject to the limitations described below, each Party agrees to be liable for all actions and failures to act of its Representatives, Participating Entities, and Authorized Users, including with respect to Participant any unauthorized access or use of Data or the Data Platform by anyone using facilities, equipment, or software owned, leased, controlled, or

used by Participant, its Participating Entities, or its Authorized Users. Without limiting the classification of other types of damages, damages arising from breaches of indemnification, confidentiality, insurance, or data privacy and security obligations are expressly agreed to be direct damages.

- a. **Damages Subject to Complete Limitation of Liability.** NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES WHETHER ARISING IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY, REGARDLESS OF WHETHER A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY FOR SUCH DAMAGES. N3CN SHALL HAVE NO LIABILITY TO PARTICIPANT OR TO ANY THIRD PARTY FOR ANY CLAIMS OR DAMAGES ARISING OUT OF OR RELATED TO PARTICIPANT'S FAILURE TO PROVIDE THE DATA REQUIRED IN THE FORMAT REQUIRED BY THIS AGREEMENT.
- b. **Damages Not Subject to Limitation of Liability.** NEITHER PARTY SHALL CLAIM ANY EXCLUSION OR LIMITATION OF LIABILITY RELATED TO ITS INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, OR TO DAMAGES RESULTING FROM THAT PARTY'S, ITS REPRESENTATIVES', OR ITS AUTHORIZED USERS' ACTS OR OMISSIONS THAT RESULT IN OR ALLOW A DATA BREACH.
- c. **Damages Subject to a Cap.** THE PARTIES AGREE TO LIMIT THEIR LIABILITY TOWARD THE OTHER FOR OTHER DIRECT DAMAGES TO THE AMOUNT OF INSURANCE COVERAGE MAINTAINED BY THE INSURED PARTY, OR THE AMOUNT OF INSURANCE REQUIRED BY STATUTE OR THIS AGREEMENT, WHICHEVER IS GREATER, FOR THE TYPE OF DAMAGE SUSTAINED. NOTWITHSTANDING THE FOREGOING, IN THE EVENT A PARTY DROPS OR LOWERS OR FAILS TO OBTAIN INSURANCE COVERAGE OTHER THAN AS AGREED TO IN WRITING BETWEEN THE PARTIES, THOSE DIRECT DAMAGES WILL NOT BE SUBJECT TO ANY CAP.
- d. **Acts of Other Participants.** Neither Party to this Agreement shall be responsible to the other for any claims, demands, expenses, costs, damages, liabilities, or losses, including reasonable attorney fees (collectively "Claims"), which may arise from any acts or failures to act by other participants or any persons acting for or on behalf of another participant. Participant shall hold N3CN harmless against all Claims arising from or relating to the acts or omissions of its Authorized Users and any person who uses the security credentials of one of those Authorized Users, whether lawfully or unlawfully. N3CN shall hold Participant harmless against all Claims arising from or relating to the acts or omissions of its Authorized Users and any person who uses the security credentials of one of those Authorized Users, whether lawfully or unlawfully.
- e. **Patient Care.** Participant and Participant's Authorized Users are 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 the Data. Neither Participant nor any of their Authorized Users shall have any recourse against N3CN for any Claim made by or on behalf of any Enrollee or other patient, and Participant, on behalf of itself, its Representatives, and its Authorized Users hereby irrevocably waives any and all Claims against N3CN, whether now existing or hereafter accruing, relating to or resulting from Participant's or its Authorized Users' use or misuse of the Data Platform or the Data.

20. **Notices.**

- a. **Business operations/issues Notices.** The primary means of communication between the Parties for Notice purposes regarding business operations and other non-legal issues related to performance under this Agreement shall be email. Either Party may change its email address of its contacts by giving written notice to the other Party of such change.
 - i. N3CN Business email: jalexander@communitycarenc.org
 - ii. Participant Business email: _____

Business operations and other non-legal issues allowing or requiring notice may also be sent by US Mail and delivered to the addresses provided herein below.

- b. **Legal Notices.** All Notices allowed or required under this Agreement relating to legal matters, including contract amendments, contract termination, breaches of the Agreement or any obligation contained therein, audits, and all related legal matters must be sent by US Mail, certified with return receipt requested, or by a nationally recognized courier (e.g. FedEx, UPS), and must be addressed using the address information provided below, as amended by the Parties from time to time.
 - i. For N3CN: *2300 Rexwoods, Drive, Raleigh, NC 27607 ATTENTION: General Counsel*
 - ii. For Participant: _____

21. **Remedies.** The rights and remedies of the Parties under this Agreement are cumulative and will not be construed as available only in the alternative. The Parties agree a material breach of its Confidentiality, Indemnification, or Insurance obligations would cause injury and damage which could not adequately be compensated for in an action at law. Therefore, a Party will be entitled to injunctive and other equitable relief in the event of a material breach, or to prevent the imminent breach of any such obligation by the other Party or its Representatives or Authorized Users, without the need for prior proof or any posting of bond. Resort to equitable relief will not be construed to be a waiver of any other rights or remedies of the Parties.

22. **Amendments.** The form of this Agreement has been accepted by the North Carolina Department of Health and Human Services, Department for Health Benefits (“DHB”), for use under the contract *the 2019 PRIMARY CARE CASE MANAGEMENT SERVICES CONTRACT # 37761 BETWEEN THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES DIVISION OF HEALTH BENEFITS AND NORTH CAROLINA COMMUNITY CARE NETWORKS, INC.* and any successor agreement between N3CN and the State for accessing and using State-owned data. N3CN will not entertain substantive changes to the terms of this Agreement when used for protecting State-owned data. If Participant is not participating in any State-funded programs or using any State-owned data, this Agreement may be amended only in a writing signed by both Parties. The Parties agree that if Participant signs but does not date the Agreement, N3CN may fill in the date of Participant’s signature without need for a formal amendment and will notify Participant of this act if it occurs.

23. **Assignment.** N3CN 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 N3CN. Participant may not assign or transfer this Agreement, or any part thereof, without the prior written consent of N3CN. In the event Participant purchases or is purchased by another entity, no new Authorized Users are permitted until

the Parties amend this Agreement to reflect the change in ownership and the acceptance by the new participant of all the obligations of Participant under this Agreement. This Agreement shall inure to the benefit of N3CN, Participant, their successors and permitted assigns.

24. **Waiver.** If either Party waives the enforcement of any obligation or right created under this Agreement, that waiver shall not operate as or be construed as an amendment or modification of this Agreement. Further, such waiver will not bar any subsequent enforcement of the same or any other obligation or right under this Agreement.
25. **Integration.** This Agreement contains the entire understanding of the Parties as to its contents and supersedes all other prior and contemporaneous contracts, documents, and agreements in relation to the subject matter of this Agreement.
26. **Severability.** If any of the provisions this Agreement are adjudicated by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement will remain in full force and effect and the invalid, void, or unenforceable provision will not be part of the Agreement.
27. **Independent Contractors.** The Parties to this Agreement are contracting as independent contractors one toward the other, and nothing herein shall be construed to create a joint venture, agency, partnership, or employer-employee relationship. Neither Party will have the power to bind the other Party. Neither Party will have any claim against the other Party for employee benefits of any kind.
28. **No Third-Party Beneficiaries.** This Agreement does not and will not create in any natural person, corporation, partnership or other organization or entity other than N3CN and Participant any benefits or rights, and this Agreement will be effective only as to N3CN and Participant and their successors and permitted assigns. Any third party who benefits from any provision of this Agreement shall be deemed an incidental beneficiary only.
29. **Duplicate & Electronic Originals.** This Agreement may be executed simultaneously in one or more counterparts, each of which is deemed an original but all of which together 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 will not render the agreement void, invalid, or unenforceable. Copies transmitted electronically are the equivalent to originals, as are signatures applied to such documents and transmitted electronically. The Parties agree that signed electronic copies will be binding upon them the same as though they were hardcopies with original signatures.
30. **Insurance.** Each Party agrees to self-insure, or to obtain and maintain reasonable policies of insurance of types and in amounts sufficient to protect itself, its employees, and its agents against foreseeable liabilities arising from work contemplated under this Agreement. To the extent a Party does not maintain a sufficient self-insurance fund or insurance, the cap on liability for direct damages will not apply to that under-insured Party.
31. **Survival.** Any provisions of this Agreement, including pass-through State requirements, that by their nature extend beyond the Term or expiration of the Agreement, will survive the termination or expiration of the Agreement. Without limiting the generality of the foregoing, the Confidentiality,

Indemnification, Insurance, and Remedies provisions will survive termination or expiry of this Agreement. In addition, any entity in possession of or having access to State-owned data must continue to protect the privacy and security of that data after termination of this Agreement so long as that entity retains possession of or access to that data and may not use or allow access to that data for any purpose without the prior written consent of N3CN or the State.

32. **Authority to Sign.** N3CN and Participant warrant 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.

33. **Governing Law.** This Agreement will 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.

34. **Captions and Headings.** The headings and captions in this Agreement are for convenience only and will not affect the interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, execute this Participation Agreement as of the dates provided herein below:

North Carolina Community Care Networks, Inc. _____
[Legal Name of Participant]

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

**Exhibit
Governmental Entity**

For all Counties, health districts, and other governmental agencies or entities that participate in Care Management and Provider Services, these Participants will have the following additional specific obligations:

1. Work with N3CN and any designated Subcontractors to review periodic performance measures and other metrics from both standard and ad hoc reports and compare performance with quality, access, cost, and utilization benchmarks.
2. Participate in Provider Satisfaction Surveys administered by N3CN.
3. Provide the Care Management and Provider Services for the programs listed in the Payments section below.
4. Follow all published DHB, Department, and N3CN policies regarding travel expenses, international contractors, use of State funds, and other matters applicable to performance under this Agreement.
5. Comply within a reasonable timeframe with all N3CN requests for information related to financial and clinical activities of Participant performed pursuant to contract #37761 and any successor contract.

Payments.

For any governmental entity participating in the following programs, payment for participation as of the date of execution of the Agreement, subject to change by action of the State, will be per member per month (“PMPM”) payments as follows:

<u>Program (or Eligibility Category as appropriate)</u>	<u>PMPM Payment</u>
Care Coordination for Children (“CC4C”)	\$4.56
Obstetric Care Management (“OBCM”)	\$4.96

These payments will be made monthly, in arrears, on a net thirty (30) basis from the date N3CN receives the data on which the payment will be based. If payment amounts due to Participant for a given program decrease by more than fifty percent, N3CN may at its discretion change the frequency of payment for that program up to an annual payment. Payments will be distributed to Participant from the appropriate PCCM Network until such time as the program oversight and payment obligations are transferred to N3CN. Once N3CN assumes these responsibilities, all payments will be made via electronic funds transfer (“EFT”).

Payments may be discontinued at any time if: 1) N3CN no longer receives sufficient funds from the State to continue these services; 2) Participant fails to meet any of the performance measures required of N3CN under its obligations to the State for any services being subcontracted to Participant; or 3) N3CN terminates its contract(s) funding any of the listed programs or services.

Payments listed in this exhibit are subject to change by the State at any time. In the event the State changes its PMPM payments or eliminates any of these programs, those changes will automatically apply to this exhibit without need to amend this exhibit or the Agreement.