NOTE: Refer to the *Sample Network Contracts - Annotations* for explanation of specific provisions. This sample agreement is provided for illustrative purposes only; it does not constitute and cannot be relied upon as legal advice.

NETWORK PARTICIPANT AGREEMENT

This Network Participant Agreement (“**Agreement**”) is effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“**Effective Date**”), by and between [***name of entity***] (“**Network Entity**”), and [***name of entity***] (“**CBO**”) (collectively, the “**Parties**”). WHEREAS, Network Entity has been formed as a separate legal entity to provide a means by which multiple community-based organizations may pursue single-signature contracts with state and federal health care programs, managed care organizations, health care providers, and/or employers for the provision of certain home- and community-based services; and

**WHEREAS**, Network Entity has contracted or intends to contract with one or more such entities ) (each such contract a “**Network Contract**” and each such entity a “**Contracting Entity**”) to provide services to a population designated in such Network Contract (the “**Population**”); and

**WHEREAS**, Network Entity has established or intends to establish certain protocols, policies, procedures, and processes relating to the delivery of home and community-based services pursuant to one or more Network Contracts (the “**Standards**”); and

**WHEREAS**, Network Entity desires to contract with CBO to provide to identified individuals in the Populations those services defined in **Exhibit A** (“**Services**”) and CBO is willing to provide the Services to the Populations on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, Network Entity and CBO agree as follows:

1. **Network Entity Duties.** Network Entity shall be responsible for performing the following duties either directly or under arrangement with an independent contractor:
   1. Negotiating, entering into, and performing administrative duties under the Network Contracts.
   2. Providing CBO with written or electronic copies of all applicable Standards and providing reasonable advance written or electronic notice to CBO of any modification to any such Standard.
   3. Providing reasonable guidance to CBO regarding the Standards and the terms and activities required to provide Services under each Network Contract.
   4. Providing reasonable ongoing technical assistance, support, and training to CBO in relation to provision of the Services including, but not limited to, compliance with the HIPAA Privacy and Security Rules.
   5. In collaboration with CBO, establishing and adhering to a process by which Network Entity assigns identified individuals in the Populations to CBO for the provision of Services pursuant to a Network Contract(“**Individuals**”) including, but not limited to, the specification of demographic and health information and other data regarding the Individual to be shared by Network Entity with CBO.
   6. Coordinating with CBO to determine the volume of Services CBO is capable of providing to Individuals during a specified time period and not exceeding that volume in assigning Individuals to CBO for the provision of Services without CBO’s express prior agreement.
   7. Coordinating the data collection and evaluation process, providing access to shared information technology systems where appropriate, as determined by Network Entity in its sole reasonable discretion.
   8. Overseeing performance and quality according to the terms of the Network Contracts by evaluating whether CBO’s performance meets applicable Standards and taking appropriate remedial action including, but not limited to, restrictions on CBO’s performance of Services unless and until CBO meets specified Standards. Notwithstanding the foregoing, Network Entity shall not owe any duty to CBO to enter into or maintain any Network Contract or to assign any Individual to CBO for the provision of Services.

**2. CBO’s Duties**. Network Entity shall present to CBO each Network Contract into which Network Entity has entered or intends to enter (including any substantial modification and/or renewal of an existing Network Contract), along with all relevant documentation and information, to allow CBO to evaluate its own capacity and capability to perform its duties and responsibilities under the Network Contract. CBO may opt out of a Network Contract (or renewal thereof) by providing Network Entity a written notice within ten (10) business days following presentation of such Network Contract to CBO. If the CBO has not provided such notice within such ten (10)-day period, CBO will be deemed to be bound to that Network Contract as presented and obligated to adhere to the applicable terms and conditions of that Network Contract. [***NOTE: See Annotations page for an explanation of this provision and why it is important to the success of any network of CBOs***] CBO shall execute and return in a timely manner any and all documents presented by Network Entity necessary for participation in a Network Contract.

**2**.**1** CBO shall promptly communicate in writing to Network Entity if CBO’s capacity to accept assignment of Individuals changes or is anticipated to change for any reason or if CBO is unable or is anticipated to become unable to continue providing Services for any Individual assigned by Network Entity to CBO. Such communication shall be initiated as soon as the CBO is aware of the existing or anticipated change and shall include an explanation of CBO’s limitations and estimate the date by which CBO will resume full volume of Services capacity. CBO shall make good faith efforts to immediately resolve any limitation on CBO’s ability to accept assignments or to continue providing Services to a currently assigned Individual and in all cases shall keep the Network Entity apprised of the status of its ability to perform under this Agreement.

**2.2** CBO shall provide all Services in accordance with (a) all applicable local, state, and federal laws and regulations including, but not limited to, those concerning privacy and security, fraud and abuse, and licensure; (b) all applicable Standards; (c) any operational specifications provided by Network Entity relating to a specific Network Contract; and (d) any standards or procedures imposed by any accreditation organization by which Network Entity or CBO is accredited. To the extent there is any conflict regarding the requirements applicable to the provision of Services to a specific Individual, the most stringent requirement shall apply.

**2.3** CBO represents and warrants that all persons or entities CBO employs, contracts with, or engages to perform Services currently has and will maintain all qualifications, accreditations, certifications, and licenses required by federal, state, or local law or third-party payer policy or rule, including any Network Contract requirement (“Qualification” or collectively, “**Qualifications**”) to fully perform the Services. To the extent there is any conflict regarding the Qualifications required in a specific circumstance, the more stringent Qualification shall apply. CBO shall immediately notify Network Entity in writing of any threatened or actual loss, limitation, of or noncompliance with any Qualification.

**2.4** CBO warrants and represents that neither CBO nor any of its officers, managers, directors, employees, or contractors has ever been (a) convicted of a criminal offense related to health care or related to the provision of services paid for by a federal or state health care program; (b) assessed civil money penalties for an offense related to health care or related to the provision of services paid for by a federal or state health care program; (c) excluded from participation in any federal or state health care program or from any other federal government executive branch procurement or non-procurement program or activity; or (c) excluded by any federal agency from receiving federal contracts (collectively “Exclusion and Debarment rules”).CBO shall be responsible for proactively monitoring the Exclusion and Debarment status of its officers, managers, directors, employees, or contractors at least monthly and shall immediately notify Network Entity in writing and cease providing applicable Services if (a) any above person or entity associated with the CBO becomes the subject of an investigation that could threaten CBO’s ability to continue to accurately represent and warrant the statements in this Section 2.4, or (b) CBO no longer can represent and warrant the statements in this Section 2.4.

**2.5** CBO shall cooperate with Network Entity in the conduct of quality improvement activities and efforts to meet the Standards and requirements of each Network Contract as determined by the Network Entity. [***NOTE: Network Entities may also wish to add a basic framework of minimum quality improvement expectations and standards as Exhibit C.***]

**2.6** CBO shall (a) produce any document or information in its possession that Network Entity reasonably requires to comply with any request from any Contracting Entity, state or federal agency, or accreditation organization, and (b) maintain all documents and records necessary to ensure compliance with all Standards.

**2.7** CBO shall not discriminate against any Individual because of race, ethnicity, national origin, citizenship, pre-existing medical condition, age, sex, marital status, religion, sexual orientation, physical or mental handicap, insurance status, economic status, or ability to pay.

**2.8** CBO shall enforce a drug-free workplace policy and shall complete in a timely manner individual background checks, tests for communicable diseases, and drug screenings as required by the Standards.

**2.9** CBO shall ensure that any person performing work under this Agreement (a) receive appropriate training regarding the requirements of the HIPAA Privacy and Security Rules and other state and federal laws and regulations regarding patient confidentiality, and (b) are informed of and agree in writing to adhere to CBO’s confidentiality obligations under this Agreement.

**2.10** CBO shall provide upon Network Entity’s request a list of all personnel then-presently dedicated to providing Services under this Agreement and their respective job titles.Network Entity may in its discretion from time to time require CBO to remove any such personnel from providing Services under this Agreement, with or without cause, and CBO shall complete such removal within twenty-four (24) hours and replace such individual as soon as practicable.

**2.11** Notwithstanding the foregoing, CBO shall not be prohibited from participating in other network arrangements or contracting directly with any state and federal health care program, managed care organization, health care provider, or employer for the provision of certain home- and community-based services. Notwithstanding the foregoing, CBO shall be prohibited for a period of one year from entering into any contractual arrangement for similar services, either directly or indirectly, with any entity that was a party to a Network Contract for which CBO opted out of participation without Network Entity’s express written permission.

**3. Compensation and Expenses.** As full compensation for the Services, Network Entity shall pay CBO pursuant to the terms of each Network Contract. Except as otherwise expressly provided herein, CBO shall be responsible for all expenses, taxes, and other indebtedness of any kind incurred by CBO in performing CBO’s duties under this Agreement. CBO shall not seek compensation from any other source for Services furnished pursuant to this Agreement.

**4. Subcontractors.** If CBO delegates to any subcontractor any duty CBO is required to perform under this Agreement, CBO shall ensure that such subcontractor is bound by written agreement to comply with all applicable terms of this Agreement. Any breach of the terms of this Agreement by such subcontractor shall be considered a breach of this Agreement by CBO and CBO shall be held fully liable for such breach.

**5. Term and Termination.**

**5.1 Term.**The initial term of this Agreement shall be from the Effective Date through [***date***], unless terminated sooner in accordance with the terms of this Agreement.This Agreement will automatically renew for additional twelve (12) month periods unless terminated in accordance with this Section 5.

**5.2 Termination for Breach.**In the event a party (“**Breaching Party**”) breaches the terms of this Agreement, the other party (“**Non-Breaching Party**”) may provide written notice of its intent to terminate this Agreement to the Breaching Party at least thirty (30) calendar days before the effective date of termination stated in the notice. The notice shall state the circumstances of the alleged breach and may state a reasonable period, not less than seven (7) calendar days, during which the alleged breach may be cured, subject to the approval of Breaching Party.If such breach is not cured to the reasonable satisfaction of Non-Breaching Party within the cure period, the Non-Breaching Party shall have the right to terminate this Agreement on the effective date of the termination stated in the notice. Notwithstanding the foregoing, if Network Entity provides notice of its intent to terminate based on CBO’s provision of Services to an Individual or Individuals, CBO shall discontinue providing Services to such Individual(s) and Network Entity is free to reassign the provision of such Services pending resolution by the Parties.

**5.4 Termination Upon Mutual Agreement.**This Agreement may be immediately terminated at any time by mutual written agreement of the parties.

**5.5 Termination by Either Party with Notice.**This Agreement may be terminated by either party with or without cause by providing the other party sixty (60) days’ prior written notice.

**6. Miscellaneous**

**6.1** **Change in Law**. If there is a substantial change in applicable law, which renders any of the material terms of this Agreement unlawful or unenforceable or in violation of the applicable requirement, the Parties shall negotiate in good faith to resolve such issue, if necessary, revising the terms of this Agreement to comply with the applicable law, while retaining in effect, to the extent reasonably possible, the current business terms. With regard to minor changes in regulatory requirements impacting performance under this Agreement or any Network Contract, CBO agrees to any changes to this Agreement or a specific Network Contract strictly necessary to comply with such regulatory requirement.

**6.2** **Independent Contractor**. CBO is an independent contractor of Network Entity, and neither Party nor the Party's employees or independent contractors are employed by, agents of, or partners or joint ventures of or with the other Party. No fiduciary or partnership relationship between the Parties is created under this Agreement.

**6.3** **Insurance***.* Network Entity and CBO each shall maintain adequate general liability and workers’ compensation insurance coverage issued by companies authorized to do business in the applicable state and sufficient to cover their respective obligations hereunder. Additionally, Network Entity and CBO shall meet any minimum insurance requirements specified in any Network Contract in which CBO participates.

**6.4** **Dispute Resolution.** In the event of any dispute under this Agreement, the Parties initially shall attempt to resolve the dispute informally by meeting as often as reasonably necessary during a thirty (30)-day period (“**Resolution Period**”). If a good-faith effort to resolve the dispute has not produced a mutually agreeable resolution during the thirty (30)-day period or such extended period to which the Parties may agree, either Party may pursue its rights in a judicial proceeding.

**6.5 Confidentiality***.* Neither Network Entity nor CBO shall disclose to any unauthorized third party any confidential or proprietary information collected or exchanged pursuant to this Agreement or in discussions or negotiations relating to this Agreement unless such disclosure is (a) required by law; (b) authorized in writing by the other Party; (c) made to a Party’s directors, managers, officers, employees, consultants, advisors, affiliates, counsel, and accountants (“Agents”) on an as-needed basis, but only if such Agent has agreed in writing to maintain confidentiality of such information. Any disclosure on the part of one Party to the other Party pursuant to this Agreement shall not constitute a transfer, assignment, or license of the same and such information shall remain the sole and exclusive property of the disclosing Party.

**6.6 HIPAA Business Associate Agreement**. The Parties shall enter into and adhere to a HIPAA-compliant Business Associate Agreement attached as **Exhibit B**.

**6.7 Third-Party Beneficiaries***.* This Agreement is entered into by and between Network Entity and CBO for their respective benefit. Except as specifically provided herein, no third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.

**6.8 Waiver***.* No waiver may be deemed to have been made unless made expressly in writing and signed by the waiving Party. The waiving by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach or violation of the same or other provision hereof. No failure by either Party to insist upon the strict performance of any provision of this Agreement may be construed as depriving that Party of the right to insist on strict performance of that provision or of any other provision in the future.

**6.9 Jurisdiction.** This Agreement and any claim of any kind under any theory of law will be governed by and construed in accordance with the laws of the State of [***insert state***], including all matters of construction, validity, performance, and enforcement and without giving effect to contrary principles of conflict of laws.

**6.10 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Signatures to this Agreement that are distributed to the Parties via facsimile or other electronic means (including PDF) shall have the same effect as if distributed in original form to all Parties.

**6.11 Severability.** Each provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

**6.12 Notices**. Any notices required by this Agreement, from one Party to the other, shall be delivered in person, sent by e-mail message to the Party’s address indicated below, or sent by first-class mail, postage prepaid, to the Party’s address indicated below.

**6.13 Mutual Representation of Authority***.* Each signatory to this Agreement represents and warrants to the other that they have full right, power, and authority to act on behalf of and bind the Party on whose behalf they are executing the Agreement.

**6.14 Assignment***.* This Agreement may not be assigned by any Party without the prior express written approval of the other Party, except that either Party may assign this Agreement to an affiliate, successor entity, or subsidiary without the written approval of the other Party.

**6.15 Entire Agreement**. This Agreement (a) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof; (b) supersedes and replaces all prior agreements, oral or written, between the Parties relating to the subject matter hereof; and (c) except as otherwise indicated herein, may not be modified, amended or otherwise changed in any manner except by a written instrument executed by the Party against whom enforcement is sought.

“**Network Entity”** **“CBO”**

**[*insert legal business name*] [*insert legal business name*]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

Address for Notices: Address for Notices:

Attention: [***insert name of individual***] Attention: [***insert name of individual***]

[***insert address line 1***] [***insert address line 1***]

[***insert address line*** ***2***] [***insert address line 2***]

[***insert city, state, ZIP code***] [***insert city, state, ZIP code***]

E-Mail: E-Mail:

Business Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Business Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A – SERVICES**

**[*Insert description of the types of Services CBO is qualified and willing to perform under the Agreement. Identify specific populations and geographical areas to be served by CBO, if applicable*]**

**EXHIBIT B – HIPAA BUSINESS ASSOCIATE AGREEMENT**

On its HIPAA web site, the U.S. Department of Health and Human Services has Sample Business Associate Agreement provisions: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>