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.

**SERVICES AGREEMENT**

This **SERVICES AGREEMENT** (the **"Agreement"),** effective this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (“**Effective Date**”), by and between [***name of entity***] (“**Network Entity**”) and [***name of entity***] (“**Payer**”) (each, a “**Party**” and collectively, the “**Parties**.”)

**WHEREAS**, Network Entity arranges for the delivery of certain home and community-based services listed in Exhibit A (“**Core Services**”) by participating community-based organizations in [***insert geographic area***] (“**Participating CBOs**”) for individuals with complex medical and social needs; and

**WHEREAS**, Payer desires to secure Core Services provided by the Participating CBOs for individuals for whom Payer arranges the provision of health care and related services who meet specific written criteria to be developed by the Parties and included as Exhibit B to this Agreement (“**Beneficiaries**”); and

**WHEREAS**, Network Entity desires to arrange for the provision of Core Services by Participating CBOs for Beneficiaries in collaboration with Payer on the terms and conditions specified herein.

**NOW, THEREFORE,** in consideration of the foregoing and other good and valuable consideration, the validity of which is hereby acknowledged, the Parties agree as follows:

1. **Beneficiary Referrals**. During the one-year period beginning on the date Payer first refers a Beneficiary to Network Entity (“**Initial Performance Period**”), Payer shall make a minimum of [***insert number***] Beneficiary referrals for Core Services to Network Entity and Network Entity shall accept from Payer up to [***insert number***] Beneficiary referrals for Core Services. The Parties shall negotiate in good faith a minimum and maximum number of Beneficiary referrals for any Renewal Performance Periods (as defined in Section 7(a)).

(a) *Rate of Referrals.* Payer acknowledges and agrees that, during the Initial Performance Period, Network Entity may determine that it is necessary and prudent to put monthly caps on the number of new Beneficiary referrals due to Participating CBO resource limitations. Accordingly, although Network Entity may accept additional Beneficiary referrals if sufficient Participating CBO resources are available, Network Entity shall not be obligated to accept more than [***insert number***] new Beneficiary referrals per month during the Initial Performance Period. Notwithstanding the foregoing, Payer shall make a minimum of [***insert number***] Beneficiary referrals during each month of the Initial Performance Period. The Parties shall negotiate maximum and/or minimum referrals, if necessary, for any Renewal Performance Period(s).

(b) *Referral Process*. Payer and Network Entity shall define, implement, evaluate, and refine the process for making individual Beneficiary referrals including, but not limited to: (i) the process by which a referral is communicated to Network Entity by Payer; (ii) the specific demographic and health information, health insurance coverage, and other data to be shared by Payer with Network Entity at the time of referral; and (iii) how such information and data will be shared by the Parties and with the Participating CBOs.

(c) *Social Care Plans*. Network Entity, in cooperation with Participating CBOs, shall (i) make initial contact with each Beneficiary referred to Network Entity within [***insert number***] business days following receipt of referral, and (ii) transmit to Payer a preliminary care plan for that Beneficiary specifying the Core Services to be furnished by one or more Participating CBOs to address the Beneficiary’s identified social needs (as opposed to the Beneficiary’s medical care needs) (“**Social Care** **Plan**”) within [***insert number***] business days following initial contact with the Beneficiary; provided, however, if despite its best efforts Network Entity is unable to contact the referred Beneficiary within [***insert number***] business days of the referral, Network Entity will be deemed in compliance with this Section if it follows the Payer and Network Entity’s agreed upon contact procedures, so documents, and notifies Payer within the [***insert number***]*-*day timeframe. Upon receipt of the Social Care Plan, Payer shall promptly review, revise, and approve the Social Care Plan and transmit the approved plan to Network Entity. Any updates or revisions to a Beneficiary’s Social Care Plan shall be accomplished in the same manner. Payer and Network Entity shall cooperate to establish the specific processes and procedures (including, but not limited to, standard forms and patient information privacy and data transmission security plans) for completion and revision of Social Care Plans.

(d) *Access to Information*. Each Party shall promptly respond to reasonable requests for information from the other Party relating to the provision of Core Services to Beneficiaries. As necessary and appropriate, Payer shall arrange to disclose to Network Entity and/or those Participating CBOs providing Core Services to Beneficiaries such Beneficiaries’ Protected Health Information (as defined by HIPAA Requirements (as that term is defined below)) (“PHI”) available to Payer solely for the purpose of providing Core Services to Beneficiaries; provided that any access is strictly subject to such access being permissible and compliant with all applicable Federal and State laws, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 (“HIPAA”) as amended by the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) and any current and future regulations promulgated thereunder, including the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the “Federal Privacy Regulations”), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the “Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as “HIPAA Requirements”. Network Entity shall ensure Participating CBO staff complete all appropriate training relating to use and disclosure of PHI in compliance with HIPAA requirements.

(e) *Documentation of Core Services*. In addition to the aforementioned care plans, Network, in cooperation with Participating CBOs, shall provide to Payer in a timely manner complete and accurate documentation of all Core Services furnished to Beneficiaries. Payer and Network Entity shall cooperate to establish the specific processes and procedures (including, but not limited to, standard forms) for the generation, transmission, review, and retention of documentation of Core Services.

2. **Training.** Network Entity shall ensure Network Entity and Participating CBO staff are fully trained on compliance with HIPAA requirements. The Parties shall work collaboratively to ensure Payer, Network Entity, and Participating CBO staff are appropriately trained on policies, procedures, communications channels, documentation, and other operational needs as identified by the Parties.

3. **Evaluation**. The Parties shall cooperate fully in compiling, sharing, and analyzing data to evaluate (a) the efficiency and effectiveness of processes to deliver the Core Services to Beneficiaries; and (b) whether and to what extent the Core Services impact Beneficiaries’ health outcomes, Beneficiary satisfaction, the cost of health care goods and services, and/or Participating CBO operations.

4. **Compensation**. In exchange for the services provided during the Initial Performance Period, Payer shall pay Network Entity [***insert amount***] by no later than thirty (30) days following full execution of this Agreement and each month thereafter during the Initial Performance Period. The parties acknowledge this amount is based on the maximum number of Beneficiary referrals as stated in Section 1 of this Agreement divided by twelve (12) months and multiplied by [***insert number***], the estimated per Beneficiary cost to provide Core Services (inclusive of Network Entity’s direct administrative costs, program evaluation costs, and payments to Participating CBOs). If Network Entity accepts more than the maximum number of Beneficiary referrals as stated in Section 1 of this Agreement during the Initial Performance Period, Payer shall pay Network Entity [***insert same number as above***] multiplied by the number of Beneficiary referrals accepted in excess of such maximum. Payer shall not have any obligation to make payment directly to any Participating CBO for any Core Services furnished pursuant to this Agreement. The Parties shall negotiate in good faith regarding compensation for subsequent performance periods.

5. **Network Entity’s Representations and Warranties.** Network Entity represents and warrants the following:

(a) *Compliance*. Network Entity represents Participating CBOs have agreed to provide Core Services in accordance with (i) all applicable laws and regulations, including all HIPAA Requirements and other privacy laws and fraud and abuse laws; (ii) Network Entity-approved protocols, policies, and procedures; and (iii) any applicable licensure requirements relating to delivery of Core Services. Notwithstanding the foregoing, Network Entity shall not be liable to Payer or any third party for any negligent or intentional act of a Participating CBO or Participating CBO agent in the delivery of Core Services.

 (b) *No Violations***.** Neither Network Entity nor any of its officers, managers, directors, employees, or contractors has ever been (i) 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; (ii) 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; (iii) 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 (iv) excluded by any federal agency from receiving federal contracts.

 (c) *Authority*. Network Entity represents and warrants that (i) it is duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization; (ii) it has the power, authority and legal right to enter into this Agreement, and that it has taken all necessary corporate action to authorize execution of this Agreement; (iii) all necessary consents, approvals and authorizations of governmental authorities and other persons required to be obtained related to the performance of this Agreement have been or will be obtained and all approvals will be in full force and effect during the Term.

7. **Term and Termination.**

(a) *Term*. The term of this Agreement shall commence as of the Effective Date and shall continue in effect for the Initial Performance Period, and then shall automatically renew for two (2) additional one (1) year terms (“**Renewal Performance Period**”), (collectively, the “**Performance Period**”), unless earlier terminated as provided herein.

(b) *Termination With Cause*. Either Party may terminate this Agreement if the other Party fails to observe or otherwise breaches any material term, condition, or covenant of this Agreement upon the expiration of thirty (30) days after the delivery of written notice to the breaching Party, which notice specifies the nature and extent of the breach, unless the breach is cured within such thirty (30) days.

(c) *Termination By Mutual Agreement*. This Agreement may be terminated at any time by mutual agreement of the Parties reduced to a writing signed by a properly authorized representative of each Party.

(d) *Termination Without Cause*. Either Party may terminate this Agreement as of the end of the Initial Performance Period by providing at least sixty (60) days prior written notice to the other Party.

8. **Miscellaneous**

 (a) *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, Network Entity agrees to any changes to this Agreement strictly necessary to comply with such regulatory requirement.

(b) *Independent Contractor*. Network Entity is an independent contractor of Payer, 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.

(c) *Insurance.* Network Entity shall maintain and shall ensure any Participating CBO providing Core Services maintains adequate general liability and workers’ compensation insurance coverage issued by companies authorized to do business in the State of [***insert state***] and sufficient to cover their respective obligations hereunder.

(d) *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. If a good-faith effort to resolve the dispute has not produced a mutually agreeable resolution during the thirty (30)-day period, the Parties may mutually agree to extend the period in which to settle their dispute, and, if no such extension is agreed upon, either Party may pursue its rights in a judicial proceeding.

(e) *Confidentiality.* Neither Network Entity nor Payer shall disclose to any unauthorized third party any confidential or proprietary information collected or exchanged pursuant to this Agreement unless such disclosure is (i) required by law; (ii) authorized in writing by the other Party; (iii) 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.

(f) *HIPAA Business Associate Agreement*. The Parties shall enter into and adhere to a HIPAA-compliant Business Associate Agreement (link to sample agreement included in **Exhibit C)**.

 (g) *Third-Party Beneficiaries.* This Agreement is entered into by and between Network Entity and Payer 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.

(h) *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.

(i)  *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.

(j) *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.

(k) *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.

(l) *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.

(m) *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.

(n) *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.

(o) *Entire Agreement*. This Agreement (i) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof; (ii) supersedes and replaces all prior agreements, oral or written, between the Parties relating to the subject matter hereof; and (iii) 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”** **“Payer”**

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

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Signature Signature

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Title Title

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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 – CORE SERVICES**

[***Insert Descriptions***]

**EXHIBIT B – PATIENT REFERRAL CRITERIA**

By no later than [***insert date***], the Parties shall agree to:

 (a) specific written criteria that an individual referred by Payer to Network Entity must satisfy to qualify as a Beneficiary to receive Core Services, and

 (b) a written process by which the criteria will be applied to determine if an individual qualifies as a Beneficiary.

Upon mutual agreement by the Parties, such written criteria and processes shall be included as Exhibit B to this Agreement. Such criteria shall include but not be limited to the following: (1) the individual is not homeless at the time of referral; (2) the individual has been diagnosed with severe and persistent mental illness; and (3) the individual is not already receiving Core Services from another provider and has not refused consent to receive Core Services.

**EXHIBIT C - 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>