

## FOUNDATION ACCOUNTABLE CARE NETWORK ACO PARTICIPANT AGREEMENT

This ACO Participant Agreement (“Agreement”), is by and between FOUNDATION ACCOUNTABLE CARE NETWORK (“ACO”), 3993 Jurupa Avenue, Riverside, CA 92506, and \_\_\_\_\_ (“ACO Participant”), and is effective January 1, 2018 (“Effective Date”) and ending December 31, 2019 (“Ending Date”).

The Participant TIN includes one or more “Practice Providers” meaning any physician or other licensed health care provider who is employed by or who is contracted with Provider and who has agreed to provide Covered Services under this Agreement and who bills for items and services furnished to Medicare fee-for-service beneficiaries under the Medicare billing number assigned to the TIN of Provider.

ACO and Participant agree as follows:

1. **Participant Services.** Participant agrees to require Practice Providers to furnish Covered Services to beneficiaries (“Members”) assigned (including those Members reflected as being preliminary prospective assigned) to the ACO that are within the Practice Provider’s licensing and qualifications. “Covered Services” means those medically necessary health care services and items that are covered by Medicare Parts A and/or B). All Covered Services shall be provided in accordance with all applicable provisions of law, all applicable generally accepted professional standards, and the terms of this Agreement.
2. **Standard Terms and Conditions.** Except as otherwise stated, capitalized terms in this Agreement have the meanings set forth in Exhibit A, Standard Terms and Conditions, attached hereto and incorporated herein. In the event of any inconsistency or conflict between the provisions of this Agreement and Exhibit A, Exhibit A shall control. Exhibit B, MSSP Requirements, and Exhibit C, Business Associate Addendum, are attached hereto and incorporated herein. Provider expressly agrees to comply with the terms of Exhibit A, Exhibit B and Exhibit C.
3. **Additional Participant Obligations.** In order to support the ACO mission to provide better care for individuals, improved health for populations and lower per capita growth in expenditures for Medicare beneficiaries, Participant agrees to become more fully aware of evidence-based clinical guidelines and to become actively engaged in the ACO’s quality assurance and improvement program by:
  - a. participating in person or via phone conference in three (3) of four (4) scheduled quarterly ACO one hour meetings each year. If Practice Providers are unable to fulfill this obligation, an employee representative of the Participant must participate.
  - b. participating in Manifest MedEx and complying with all data exchange requirements to support clinical quality improvement activities. This includes working with the Participant’s EMR vendor to support continuous data exchange during and after onboarding with continuous improvement related requirements.
  - c. complying with all data requests for ACO PQRS quality reporting in a timely manner in strict accordance with a published schedule adopted by the ACO Board of Directors.
  - d. participating in the Inland Empire Foundation for Medical Care (IEFMC), or affiliated California Foundation for Medical Care (CFMC) or other local FMC.

Failure to comply with these Additional Provider Obligations as well as the requirements of the Medicare Shared Savings Program and other program integrity issues, including those identified by CMS will result in remedial actions carried out by the ACO Board that may

include the imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the duly authorized representatives as of the dates below.

**For the ACO**

Foundation Accountable Care Network

By:  \_\_\_\_\_

Dolores L. Green  
CEO

Date: January 1, 2018  
3993 Jurupa Avenue  
Riverside, CA 92506  
951-686-9049

**For the ACO Participant**

Legal Entity Name \_\_\_\_\_

DBA Name \_\_\_\_\_

Signature (on behalf of the ACO Participant) \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

City, State Zip Code \_\_\_\_\_

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

Tin \_\_\_\_\_

**EXHIBIT A**  
**FOUNDATION ACCOUNTABLE CARE NETWORK**  
**ACO PARTICIPANT TERMS AND CONDITIONS**

ACO and Provider (Participant) agree as follows:

The ACO Participant agrees and ensures that each ACO provider/supplier billing through the TIN of the ACO Participant agrees to participate in the Medicare Shared Savings Program and will comply with all requirements and conditions of the Medicare Shared Savings Program and all other applicable laws and regulations (including, but not limited to, those specified in 42 CFR Part 425, the participation agreement with CMS, federal criminal law, False Claims Act, anti-kickback statute, civil monetary penalties law, and physician self-referral law).

**1. Practice Provider Obligations.**

1. **Practice Providers Notice of Termination.** If applicable, Provider shall use its reasonable best efforts to provide ACO with at least ninety (90) days prior written notice of the withdrawal of any Practice Provider from the ACO.
  - a. If Participant terminates this agreement, Participant is responsible for quality reporting in accordance with CMS rules.
  - b. Participants understand and agree that under CMS Close-out Regulations, regardless of whether the Participation Agreement has terminated, the Participant agrees to furnish data necessary to complete the annual assessment of the ACO's quality of care and relevant matters as required by CMS. The ACO quality reporting/audits generally commence January 1st and run through March 30th of the following contract year ("End Date"). The Participant agrees to continue to maintain ACO access to its EMR and to collaborate with the ACO on ACO-related activities and data sharing through such End Date.
2. **Quality Improvement, Credentialing, and Care Management.** Participant agrees and shall require Practice Providers to agree to participate, cooperate, and comply with all of ACO's applicable Policies and Procedures as set forth on Section 2 of Exhibit B, that are furnished to Participant in writing. ACO may amend the Policies and Procedures at any time, but will use reasonable efforts to provide written notice at least thirty (30) days prior to their effective date. The parties agree that any Policies and Procedures necessary to effect compliance with laws do not require thirty (30) days prior notice and shall be effective as stated in such notice.
3. **Practice Provider Availability.** Participant shall use reasonable efforts to ensure that Covered Services, when necessary, are available twenty-four (24) hours a day, seven (7) days a week, including coverage after hours or when a Practice Provider is otherwise absent.
4. **Disciplinary Action.** Subject to any limitations or restrictions imposed by law on Participant, Participant shall notify ACO within five (5) business days of Provider's actual knowledge of any of the following matters:
  - a. any action taken by any governmental authority to restrict, suspend or revoke Participant's or any Practice Provider's license, certification or other approvals to provide the Covered Services contemplated by this Agreement;
  - b. any cancellation or material modification of Provider's general or professional liability insurance; or

- c. any disciplinary action involving Participant or any Practice Provider by any administrative agency or accreditation body which directly relates to the provision of Covered Services.
5. **Referrals.** Participant shall use reasonable efforts to make referrals of Members to Practice Providers and other ACO providers/suppliers within the ACO in accordance with the voluntary referral policies established by the ACO. Participants and Practice Providers are prohibited from conditioning the participation of network providers, suppliers, or other individuals or entities performing functions or services related to ACO activities in the ACO on referrals of federal health care program business that the ACO, its participants, other ACO providers/suppliers, or other individuals or entities performing functions or services related to ACO activities know or should know is being (or would be) provided to beneficiaries who are not assigned to the ACO. Participants and Practice Providers are prohibited from requiring that Members be referred only to Practice Providers, other ACO providers/suppliers within the ACO, or to any other ACO provider or supplier. This prohibition does not apply to referrals made by employees or contractors who are operating within the scope of their employment or contractual arrangement to the employer or contracting entity, provided that the employees and contractors remain free to make referrals without restriction or limitation if the Member expresses a preference for a different provider, practitioner, or supplier; the Member's insurer determines the provider, practitioner, or supplier; or the referral is not in the Member's best medical interests in the judgment of the referring party.
6. **Financial Incentive Plans.** In the event Participant or a Practice Provider receives from ACO a "financial incentive" (as defined under applicable Law or Policies and Procedures) related to the performance of Participant's or Practice Provider's duties under this Agreement, Participant agrees that no payments shall be made directly or indirectly to Participant or any Practice Provider as an inducement to reduce or limit medically necessary services.
7. **Participant Representations and Notification.** Provider represents and warrants that:
  - a. Participant and each Practice Provider, if applicable, is currently licensed, participating under the Medicare program, accredited or certified, as applicable, in accordance with the laws of the state in which such Participant renders services covered by the terms of this Agreement;
  - b. Participant and each Practice Provider, if applicable, holds and maintains a current and valid federal Drug Enforcement Agency ("DEA") number, where applicable;
  - c. Participant will keep its Medicare enrollment up to date, including additions and deletions of Practice Providers billing through the Participants TIN, in accordance with Medicare requirements and notify the ACO within 30 days of the change;
  - d. Participant shall notify ACO within thirty (30) calendar days of obtaining actual knowledge of any change (i) in the roster of Practice Providers participating in the ACO, including any termination of any Practice Provider; (ii) of address, phone number, business hours, tax identification number, national provider identifier, licensure, certification, accreditation, Medicare or Medicaid qualification, medical staff privileges at either a participating or non-participating hospital or DEA status; (iii) in any Participant representations or warranties in Section 2(d); and (iv) if applicable, any changes to the foregoing with respect to a Practice Provider;
  - e. Participant represents and warrants to ACO that (i) neither Participant, Practice Provider, nor to the actual knowledge of Provider, any of their respective Affiliates (for purposes of this Agreement, "Affiliate" means, with respect to a

party, an entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with such party) are an Excluded Individual required pursuant to Section 7 of Exhibit B;

- f. Participant is authorized to act on behalf of its Practice Providers and shall provide, upon request, evidence of such authority;
  - g. Participant and Practice Providers are prohibited from providing gifts or other remuneration to Members as inducements for receiving items or services from or remaining in the ACO or with ACO providers/suppliers in the ACO or receiving items or services from ACO participants or ACO providers/suppliers; provided. Provider and Practice Providers may provide in-kind items or services to Members if there is a reasonable connection between the items and services and the medical care of the Member and the items or services are preventive care items or services or advance a clinical goal for the Member, including adherence to a treatment regimen, adherence to a drug regimen, adherence to a follow-up care plan, or management of a chronic disease or condition; and
  - h. Participant shall or shall require each Practice Provider to: (i) notify Members at the point of care that they are participating in the MSSP; (ii) post signs in their facilities to notify Members that they are participating in the MSSP; and (iii) make available standardized written notices regarding participation in an accountable care organization. Such written notices must be provided by the Practice Provider in settings in which Members receive primary care services.
8. **ACO Representations and Notification.** ACO represents and warrants that neither ACO nor any of its Affiliates are an Excluded Individual required pursuant to Section 7 of Exhibit B.
9. **Term and Termination.** Except as otherwise provided in Section 4(a), the term of this Agreement shall terminate on December 31, 2019.
10. **Immediate Termination.** This Agreement may be terminated immediately for the following reasons:
- a. **Insolvency.** If either party commits an act of bankruptcy within the meaning of the bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings under either state or federal laws;
  - b. **Termination of Participant's Insurance.** By ACO, upon the termination or cancelation without replacement of Participant's insurance required by this Agreement;
  - c. **Loss of Participant's License.** By ACO, if at any time during the term of this Agreement, Participant's or a Practice Provider's license to practice medicine, accreditation or certification, as applicable, is suspended, conditioned, or revoked, this Agreement with respect Participant or the affected Practice Provider may be excluded from participation under this Agreement immediately by ACO.
11. **Termination for Breach.** Either party may terminate this Agreement at any time for a material breach of any term or condition. Such termination shall be effective only if, after ninety (90) days written notice of intent to terminate is given by the terminating party, the breach is not cured by the non-performing party during such time period. However, if the breach cannot reasonably be corrected within ninety (90) days, and the defaulting Party makes substantial and diligent progress toward correction during such period, this Agreement shall remain in full force and effect. If the breach is not or cannot be cured within one hundred twenty (120) days from the date of the notice of breach, either Party may terminate this Agreement after such one hundred twenty (120) day period. The

written notice shall set forth the nature and details of the breach with sufficient specificity as to fully describe the nature of the alleged breach.

12. **Termination of Individual Practice Provider.** ACO retains the right to approve, suspend or terminate the participation status of Practice Providers under this Agreement upon sixty (60) days' prior written notice to Participant.

13. **Insurance and Liability.**

- a. **Participant Insurance.** Provider shall procure and maintain throughout the entire term of this agreement, a policy of professional liability insurance in a minimum amount equal to two hundred fifty thousand dollars (\$250,000) per occurrence and seven hundred fifty thousand dollars (\$750,000) aggregate, to cover any loss, liability or damage alleged to have been committed by Participant or Participant's agents, servants or employees. Participant shall also procure and maintain general liability insurance in a minimum amount equal to one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate as well as workers' compensation and other policies as may be required or prudent to insure Participant and Provider's employees, agents or subcontractors against any and all claim or claims for damages arising in connection with the performance of any service by Participant or Provider's employees, agents or subcontractors. Upon termination of any claims made policy, Participant shall obtain and maintain a "tail" policy for a period of not less than five (5) years following the effective termination date of any "claims made policy." The "tail" policy shall have the same policy limits as Provider's professional liability policy. Participant shall provide ACO proof of such coverages upon request.

- b. **Indemnification.** Each Party shall be responsible for its own acts or omissions and any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds which may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by either party, their employees, or representatives, in the performance or omission of any act or responsibility of either Party under this Agreement. Practice Providers shall not be considered to be employees or representatives of Participant or ACO. Without limiting the generality of the foregoing, Provider agrees to defend, indemnify, and hold harmless, ACO and its, directors, officers, employees, Affiliates, representatives, and agents against any claims, losses, damages, costs, expenses, or liabilities, including costs and reasonable attorneys' fees resulting from, arising out of, or related to any matters involving the actual or alleged malpractice by Participant or any Practice Provider or their respective directors, officers, employees, Affiliates, representatives, and agents. This indemnity shall not be construed to limit ACO's rights to common law indemnity.

In the event that a claim is made against both Parties, it is the intent of both Parties to cooperate in the defense of said claim and to cause their insurers to do likewise. The provisions of this Section 13(b) shall survive the termination of this Agreement regardless of the reason giving rise to such termination.

14. **Amendments.** This Agreement may be amended or modified in writing as mutually agreed upon by the Parties. In the event any change in applicable law or regulation requires an amendment to this Agreement, the parties shall, at the request of the other party, negotiate the amendment in good faith. If the parties are unable to agree on an amendment within sixty (60) days of the request, either party may terminate this Agreement on sixty (60) days' prior written notice to the other.
15. **Independent Contractor Relationship.** This Agreement is not intended to create nor shall be construed to create any relationship between ACO and Participant other than

that of independent entities contracting for the purpose of effecting provisions of this Agreement.

#### 16. Confidentiality/Communications.

- a. **Confidentiality.** Each Party shall, and shall cause its Affiliates to, keep all information concerning this Agreement (collectively, "Confidential Information"), strictly confidential. Notwithstanding the foregoing, each Party may disclose Confidential Information: (a) to its directors, employees, contractors, consultants, advisors, Affiliates, counsel, and accountants on an as-needed basis to the extent such party agree to keep such information confidential; (b) in connection with ordinary course investor relations activities of such Party and its Affiliates; and (c) as required by applicable law.
- b. **Communications to Members.** Nothing in this Agreement shall be interpreted to interfere with the provider-patient relationship. Provider shall provide information regarding treatment options in a culturally competent manner to Members, including those with limited English proficiency or reading skills, diverse cultural and ethnic backgrounds, and/or physical or mental disabilities.
- c. The term Confidential Information shall not include such portions of the Confidential Information as:
  - i. Are or become generally available to the public other than as a result of the disclosure by the receiving party; or
  - ii. Was known by the receiving party prior to disclosure by the non-disclosing party; or
  - iii. Become available to the receiving party on a non-confidential basis from a source other than the disclosing party (or agent thereof) which is not prohibited from disclosing such Confidential Information to the receiving party by a legal, contractual or fiduciary obligation to the disclosing party.

#### 17. Disputes.

- a. In the event of any dispute under this Agreement, the Parties agree that they will initially attempt to resolve their dispute informally by holding not less than three (3) meetings (at least one (1) of which shall be in person) between senior executives of each Party. These individuals shall meet as often as necessary during a thirty (30) day period in an attempt to resolve the dispute, and shall negotiate in good faith. All proposals and information exchanged, as well as discussions undertaken, during this informal process shall be considered settlement discussions and proposals and will be inadmissible in any subsequent proceedings.
- b. In the event the dispute is not settled by the Parties during the thirty (30) day period identified in Section 8(c), either Party may, resort to judicial proceedings in the event a good faith effort to resolve the dispute has not produced a mutually agreeable resolution the thirty (30) day period.

- 18. Notice.** All notices and other communications under this Agreement shall be in writing and shall be deemed given when: (a) delivered by hand; (b) transmitted by fax with automatic confirmation of transmission; (c) delivered by FedEx or other reputable receipted express delivery service, or registered or certified mail, return receipt requested, postage prepaid; or (d) an attempted delivery by one of the means described

in the foregoing subparagraphs (a) through (c) is refused by the addressee, in each case to the Parties at their respective address on the signature page hereto.

- 19. Assignment.** Neither Party to this Agreement shall assign or transfer its rights, duties or obligations under this Agreement without the prior written consent of the other party. Other than as expressly provided by this Agreement, any attempted assignment, by operation of Law or otherwise, shall be void and unenforceable. This Agreement shall inure to the benefit of and shall bind the successors and permitted assignees of the parties hereto.
- 20. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, the parties shall each be excused, discharged and released from performance under this Agreement to the extent such performance is limited, delayed or prevented in whole or in part for any reason whatsoever not reasonably within the control of the affected party, including but not limited to any acts of God, war, invasion, acts of foreign enemy, acts of terrorism, hostilities (whether war was declared or not) or by any laws or court order. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as such conditions cease, the party affected thereby shall promptly fulfill its obligations under this Agreement.
- 21. 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 which 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.
- 22. Severability.** Each provision hereof 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.
- 23. Headings.** All headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall not be considered in the construction or interpretation of any provision of this Agreement.
- 24. Governing Law.** The execution, performance, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the state of California. ALL PARTIES HERETO EXPRESSLY WAIVE ANY AND ALL JURY TRIAL RIGHTS IN CONNECTION WITH THIS AGREEMENT AND OF ANY CLAIM, DEMAND, ACTION, PROCEEDING OR CAUSE OF ACTION ARISING UNDER, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT.
- 25. Non Waiver.** No course of dealing between the Parties, and no delay by either Party in exercising any right, power or remedy, shall operate as a waiver or otherwise prejudice the exercise by the Party of that right, power or remedy against that or any other Party.
- 26. Third Party Rights.** This Agreement is entered into by and between ACO and Provider for their 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.
- 27. No Guarantee of Utilization / Payment of Claims.**

  - a. Participant acknowledges that ACO in no way guarantees that a particular number of Members, if any, will be assigned to ACO by CMS or will receive Covered Services from Participant.
  - b. Participant further acknowledges and agrees that ACO is not a payor, fiscal intermediary, CMS carrier, third party administrator, or other fiduciary with respect to payment for Covered Services and that ACO shall not, directly or indirectly, be responsible for payment of Covered Services. Provider shall look solely to CMS or its designees for payment for Covered Services, except for any

copayments, coinsurance, deductibles, and any other fees that are the Member's responsibility (collectively "Member Costs"). Participant agrees to pursue collection of Member Costs consistent with Participant's past practices and that ACO is not responsible for, does not guarantee, and does not assume any liability for payment of any Participant claims or for Member Costs.

- 28. Entire Agreement.** This Agreement, including all exhibits hereto, constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous oral and written understandings or agreements. All exhibits that are annexed or attached to this Agreement are expressly made a part of this Agreement as fully as though completely set forth herein, and all references to this Agreement herein or in any of such exhibits shall be deemed to refer to and include all such exhibits.
- 29. Compliance with Laws.** Provider acknowledges that ACO receives federal funds and that as a contractor of ACO, the payments to Provider or Practice Providers under this Agreement are, in whole or in part, from federal funds. Participant and Practice Providers shall follow and adhere to all Applicable Requirements as set forth in Section 9 of Exhibit B. Participant shall notify ACO in writing if (i) Participant is; or (ii) Participant knows or has a good faith belief that a Practice Provider, is in violation of any such laws.
- 30. Audits and Fraud, Waste, and Abuse.** Consistent with federal regulations, Provider shall fully cooperate with ACO's initiatives, policies, procedures, processes, and programs relating to (i) ACO's auditing and oversight obligations, including, without limitation, audits of Participant's and Practice Providers' books and records relating to hierarchical condition categories; and (ii) the identification of and remediation of identified instances or patterns of fraud, waste, and abuse (collectively "FWA Program"). Participant acknowledges and agrees that ACO's FWA Program may include any process, procedure, or program that has been adopted by or contemplated by CMS or its designees, including, but not limited to, Program Safeguard Contractors, Zone Program Integrity Contractors, Carriers, Fiscal Intermediaries, Medicare Drug Integrity Contractors, Recovery Audit Contractors, and Medicaid Integrity Contractors.
- 31. Remedies.** Each of the Parties agrees that irreparable damage would occur in the event that any of the provisions of this Agreement were not to be performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof in addition to any other remedies at law or in equity.

## **EXHIBIT B MSSP REQUIREMENTS**

As part of Participant's obligations under this Agreement, Participant shall comply, and shall contractually require its Practice Providers and Suppliers to comply, with the requirements set forth in this Exhibit B with respect to the provision of Covered Services to Members under this Agreement.

**1. ACO Mission.** Participant and each Practice Provider agrees to use commercially reasonable efforts to assist ACO in fulfilling its purpose (the "ACO Mission") under the MSSP of providing better care for individuals, improved health for populations and lower per capita growth in expenditures for Medicare beneficiaries.

**2. Policies and Procedures.** Participant and each Practice Provider shall follow and adhere to all of ACO's standards, corrective action plans, policies, procedures, programs, rules, and regulations (including, but not limited to, any credentialing, re-credentialing, case management, care coordination, referral guidelines, quality assurance, quality improvement, medical records, and clinical integration policies and programs, including those processes adopted by ACO, to promote evidence-based patient-centeredness medicine; promote patient engagement; enable Participant to provide feedback on quality and cost metrics; and coordinate care among PCPs, specialists, and acute and post-acute providers) (collectively "Policies and Procedures"), any or all of which ACO may amend from time-to-time in connection with the MSSP Agreement; notwithstanding the foregoing, as of the Effective Date, the physician credentialing/re-credentialing procedures shall be the physician credentialing/re-credentialing procedures then in effect and used by Provider.

**The opportunity to receive shared savings clearly encourages** ACO Participants and Practice Providers to adhere to the FOUNDATION ACCOUNTABLE CARE NETWORK quality assurance and improvement program, as well as evidence-based medicine/clinical guidelines. A portion of shared savings distribution (20%) is allocated exclusively on the achievement of high quality in accordance with evidence-based guidelines and FOUNDATION ACCOUNTABLE CARE NETWORK policies. A "zero-sum game" (mathematical representation of a situation in which each Participant's gain (or loss) is exactly balanced by the losses (or gains) of the other Participants), has been established to encourage exemplary performance and provide differential payments to Participants based on actual performance in terms of evidence-based medicine/clinical guidelines.

Participant and each Practice Provider shall comply with all data requests for ACO PQRS quality reporting in a timely manner in strict accordance with a published schedule adopted by the ACO Board of Directors. In addition, failure to meet quality benchmarks established by the FOUNDATION ACCOUNTABLE CARE NETWORK quality assurance and improvement program will result in remedial actions carried out by the ACO Board that may include additional education, the imposition of a corrective action plan, denial of incentive payments, and termination of the ACO participant agreement.

**3. Other ACO Participation.** Neither Participant nor any Practice Provider shall participate in the MSSP under this Agreement if they participate in any mutually excluded Medicare Demonstration project or any other Medicare initiative that involves shared savings. Accordingly, Participant represents, warrants, and covenants, and shall attest upon written request, that neither Provider, Practice Provider, nor any affiliate for which Medicare beneficiaries are assigned to the ACO under the MSSP is currently or will subsequently participate in the Medicare Shared Savings Program under the same or a different name, or is related to or has an affiliation with another MSSP ACO.

- a. If Participant or a Practice Provider was previously terminated from the MSSP, it shall notify ACO the cause of termination and what safeguards are now in place to enable Participant or Practice Provider to participate in the MSSP for the full term of the MSSP Agreement.
- b. ACO shall have a process for Participant, Practice Providers, and other individuals or entities performing functions or services related to ACO activities (“Suppliers”) to anonymously report suspected problems related to the ACO to the ACO and its compliance office.

**4. Member Inducements.** Participant, Practice Providers, and Suppliers are prohibited from:

- a. providing gifts or other remuneration to Members as inducements for receiving items or services from or remaining in, an ACO or with Participant, Practice Providers, or Suppliers of a particular ACO or receiving items or services from ACO participants, Practice Providers, or Suppliers. Participant, Practice Providers and Suppliers may provide in-kind items or services to Members if there is a reasonable connection between the items and services and the medical care of the Member and the items or services are preventive care items or services or advance a clinical goal for the Member, including adherence to a treatment regime, adherence to a drug regime, adherence to a follow-up care plan, or management of a chronic disease or condition.
- b. Conditioning the participation of Practice Providers or Suppliers on referrals of Federal health care program business that the ACO, Provider, Practice Provider, or Suppliers know or should know is being (or would be) provided to Members who are not assigned to the ACO.
- c. Except as permitted by 42 C.F.R. 425.304, requiring that Members be referred only to Participant, Practice Providers, or Suppliers within the ACO or to any other provider or Supplier.

**5. Marketing. Participant, Practice Providers, and Suppliers shall:**

- a. notify Members at the point of care that Participant, Practice Provider, or Supplier, as applicable, is participating in the MSSP;
- b. post signs in their facilities to notify Members that Provider, Practice Provider, or Supplier, as applicable, is participating in the MSSP;
- c. use the standardized written notice developed by ACO and CMS;
- d. only market involvement in the MSSP utilizing materials approved by ACO; and
- e. discontinue use of any marketing materials or activities disapproved by ACO and CMS.

**6. Confidentiality of Records and Enrollment Information.** Participant shall comply and shall contractually require each Practice Provider and Supplier to comply with all Applicable Requirements regarding health care privacy and security and the use and disclosure of any medical records or other information Participant, Practice Providers, or Suppliers maintain with respect to Members. Nothing herein shall be construed to limit or restrict appropriate sharing of medical record data with providers and suppliers both within and outside the ACO in accordance with Applicable Requirements.

**7. Screening and Related Requirements.** Participant shall not employ or contract with, and shall contractually require its Practice Providers and Supplier to not employ or contract with, individuals or entities that are excluded under the HHS Office of Inspector General’s List of

Excluded Individuals/Entities (the "OIG List"), the U.S. General Services Administration's Excluded Parties List System ("EPLS"), or otherwise excluded from participation in Medicare or other Federal Health Care Programs, or are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency ("Excluded Individuals").

Provider shall and shall contractually require its Practice Providers and Supplier to:

- a. Review the OIG List and the EPLS prior to the initial hiring of any employee or the engagement of any Practice Provider or Supplier to furnish Covered Services, and monthly thereafter, to ensure compliance with this Section 7;
- b. Provide documentation, upon written request by ACO, of such screening;
- c. Immediately notify ACO upon discovering that it, or any of its employees or a Practice Provider or Supplier (a) has furnished Covered Services to Members under this Agreement as or through an Excluded Individual; (b) has been convicted of a criminal felony that could serve as the basis of federal health care program exclusion; or (c) has a history of health care program integrity, including any history of Medicare program exclusions or other sanctions and affiliations with individuals or entities that have a history of program integrity issues; and
- d. Immediately remove an Excluded Individual from any work related, directly or indirectly, to services furnished under this Agreement and take other appropriate corrective action requested by ACO based on the above notification.

**8. Member Hold Harmless.** Neither Participant, Practice Provider, nor Supplier shall, in any event, including, without limitation, insolvency of ACO or breach of this Agreement, bill, charge, collect a deposit from, seek compensation or remuneration or reimbursement from, hold responsible, or otherwise have any recourse against any Member or any other person acting on behalf of any Member other than for Member Costs or non-Covered Services. Participant agrees that neither Provider nor any Practice Provider shall maintain any action at law or equity against a Member to collect sums owed to Participant or Practice Provider pursuant to this Agreement other than for Member Costs or non-Covered Services. This Section 8 shall (a) survive the termination or expiration of this Agreement regardless of the cause giving rise to such termination and shall be construed to be for the benefit of Members; and (b) supersede any oral or written contrary agreement now existing or hereafter entered into between Participant, Practice Provider, or Supplier and Member or a person acting on a Member's behalf.

**9. Compliance With Law.** Participant shall comply and shall contractually require its Practice Providers, Suppliers, and subcontractors providing services hereunder, to comply with any and all applicable federal and state laws, regulations and rules, CMS instructions and guidance, including, without limitations, (a) federal criminal law; (b) the False Claims Act (31 USC 3729 et seq.); (c) the anti-kickback statute (42 USC 1320a-7b(b)); (d) the civil monetary penalties law (42 USC 1320a-7a); (e) the physician self-referral law (42 USC 1395nn); (f) the MSSP regulations (42 CFR Part 425); and (g) those requirements specified in the MSSP Agreement (collectively the "Applicable Requirements").

#### **10. Maintenance of Records and Audits.**

- a. Participant shall maintain and shall contractually require its Practice Providers and Suppliers to maintain operational, financial, administrative and medical records, contracts, books, files and other documents as required legally or pursuant to prudent business practices in connection with services performed under this Agreement ("Records"). Such Records shall be maintained in a timely and accurate

manner and shall, at a minimum, be sufficient to allow ACO to determine whether Participant, Practice Providers, and its Suppliers are performing their obligations under this Agreement consistent with the terms of this Agreement and in accordance with Applicable Requirements and to confirm that the data submitted by Participant, Practice Providers, and its Suppliers for reporting and other purposes is accurate.

- b. Upon request, Provider shall give and shall contractually require its Practice Participants and Suppliers to give ACO, the U.S. Department of Health and Human Services, the Comptroller General of the United States, CMS, and/or their designees the right to access, audit, evaluate, and inspect any books, contracts, computer or electronic systems and records, including medical records, patient care documentation, encounter data, and other records of the Participant, Practice Provider, or any Supplier or its transferee that pertain to any aspect of this Agreement, including, without limitation, services performed under this Agreement, ACO's, Participant's, and Practice Providers' compliance with the MSSP, the quality of services performed, data related to Medicare utilization and costs; quality performance measures, MSSP distributions other financial arrangements to related to this Agreement, or such other Records as may be deemed necessary to enforce the MSSP Agreement. Participant, Practice Providers, and Suppliers shall furnish such access, audit, evaluation and inspection rights by providing copies of such Records to ACO at no additional cost and ACO will provide such Records directly to the applicable regulatory agency, unless ACO, in its discretion, directs Participant, Practice Provider, or Supplier to furnish copies directly to the applicable regulatory agency.
- c. Participant agrees to permit and shall contractually require Practice Providers and Suppliers to permit ACO, CMS, HHS, the Comptroller General and ACO or their designees to conduct on-site evaluations of Participant, Practice Provider, and Supplier personnel, physical premises, facilities and equipment to assess and audit Provider's, Practice Provider's, and Supplier's performance under this Agreement and with Applicable Requirements.
- d. The terms of this Section 10, including with respect to maintenance of Records by Participant, Practice Providers, and Suppliers, shall remain in effect for a period of the longer of (a) ten (10) years from the final date of the MSSP Agreement period; or (b) completion of any audit, evaluation, or inspection; unless (i) CMS determines there is a special need to retain a particular Record or group of Records for a longer period and notifies ACO at least thirty (30) days before the normal disposition date; or (ii) there has been a termination, dispute, or allegation of fraud or similar fault against ACO, Participant or its , Practice Providers, ACO's other providers and/or suppliers, or other individuals or entities performing functions or services related to ACO's activities under the MSSP Agreement, in which case Participant shall and shall contractually require its Practice Providers and Suppliers to retain Records for an additional six (6) years from the date of any resulting final resolution of the termination, dispute, or allegation of fraud or similar fault.

11. **Monitoring.** Participant acknowledges and understands that ACO has a contractual obligation to CMS to comply with the Applicable Requirements relating to the MSSP and that ACO is ultimately responsible and accountable to CMS for compliance with all terms and conditions of the MSSP Agreement. In view of the foregoing, Accordingly, Provider agrees that all services performed by Participant, Practice Providers, or its Suppliers will be consistent with and comply with the MSSP Agreement. Participant shall permit (and shall contractually require its Practice Providers and Suppliers to permit) ACO, directly or through their respective representatives, to monitor the services furnished under this Agreement on an on- going basis, in any reasonable manner that the ACO or CMS deems appropriate for compliance with the ACO's obligations to CMS.

**12. Reporting and Disclosure; Submission of Encounter and Other Data.** As applicable, Participant shall submit (and require Practice Providers and Suppliers to submit) encounter data with respect to Provider's and Practice Provider's participation under this Agreement, medical records, and such other information and data as ACO may reasonably request, including, without limitation and as applicable, as may be required in connection with ACO's reporting and other obligations under the MSSP Agreement, including, but not limited to (a) actual or suspected fraud, waste and abuse or non-compliance with Applicable Requirements by Participant, Practice Provider, a Supplier or others; or (b) responses to CMS requests for information and/or surveys. Such information shall be submitted by Participant and its Practice Providers and Suppliers in compliance with Applicable Requirements.

Practice Providers and Suppliers shall cooperate and assist with, ACO's requests for information and shall promptly submit encounter data, medical records and such other information as requested by ACO to allow ACO to respond in a timely manner to any data validation audits or requests for information by CMS, and to monitor and audit the obligation of Participant, Practice Providers, and Suppliers to provide accurate, complete and truthful data and other information in accordance with Applicable Requirements.

This Section 12 shall survive termination of this Agreement, regardless of the cause giving rise to termination.

**13. Compliance Program and Anti-Fraud Initiatives.** Participant shall (and shall contractually require its Practice Providers and Suppliers to) institute, operate, and maintain an effective compliance program to detect, correct and prevent the incidence of non-compliance with Applicable Requirements and the incidence of fraud, waste and abuse relating to the MSSP and the federal healthcare program generally. Such compliance program shall be appropriate to Participant, Practice Providers', or Supplier's organization and operations and shall include:

- a. Written policies, procedures and standards of conduct articulating the entity's commitment to comply with federal and state laws; and
- b. Provision of and required participation of all officers, directors, and employees in effective compliance and anti-fraud training and education that is consistent with guidance that CMS

**14. Certifications/Attestation.** Upon request, Participant, Practice Providers, and Suppliers shall certify and attest that:

- a. Participant, Practice Provider, and Supplier has, pursuant to Section 1 of this Exhibit B, (a) agreed to become accountable for the quality, cost, and overall care of the Medicare fee-for-service Members assigned to ACO under the MSSP; (b) will comply with and implement ACO's processes required by 42 C.F.R. 425.112; and (c) is held accountable for meeting ACO's performance standards for each required process;
- b. Participant, Practice Providers, and other individuals or entities performing functions or services related to ACO activities are, to the best of Participant's and Practice Provider's knowledge information, and belief, in compliance with MSSP requirements and consistent with the ACO Mission;
- c. All data and information that is generated or submitted by Participant or other individuals or entities performing functions or services related to ACO activities, including any quality data or other information or data relied upon by CMS in determining the ACO's eligibility and the amount of a shared savings payment or the amount of shared losses or other monies owed to CMS, is to the best of Participant's knowledge information, and belief accurate, complete, and truthful.

**15. Conformity with CMS Requirements.** This Agreement shall be supplemented automatically to conform to Applicable Requirements.

**16. Interpretation.** In the event of any conflict or inconsistency between this Exhibit B and this Agreement, the terms of this Exhibit B shall control.

**EXHIBIT C**  
**BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT is made as of the 1<sup>st</sup> day of January, 2018, by and between Foundation Accountable Care Network (hereinafter referred to as “Covered Entity”) and \_\_\_\_\_ (hereinafter referred to as “Business Associate”) (collectively the “Parties”) in order to comply with the federal Standards for Privacy of Individually Identifiable Health Information, located at 45 C.F.R. parts 160 and 164 (“HIPAA” or the “Privacy Rule”), the security standards located at 45 C.F.R. parts 160, 162, and 164, subpart C (the “Security Rule” and with the Privacy Rule, the “HIPAA Rules”), the Health Information Technology for Economic and Clinical Health Act of 2009, (“HITECH Act”), as they may be amended from time to time.

**RECITALS**

WHEREAS, Business Associate provides services on behalf of Covered Entity, including but not limited to, data aggregation, management, administrative, and/or financial services for Covered Entity;

WHEREAS, in connection with these services, Covered Entity may disclose to Business Associate certain protected health information (“PHI”) that is subject to protection under the HIPAA Rules;

WHEREAS, the HIPAA Rules requires that Covered Entity receives adequate assurances that Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services on behalf of Covered Entity; and

WHEREAS, the purpose of this Agreement is to comply with the requirements of the HIPAA Rules.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE 1 DEFINITIONS**

Terms used herein, but not otherwise defined, shall have meaning ascribed by 45 C.F.R. parts 160 and 164. Should any term set forth in 45 C.F.R Parts 160 or 164 conflict with any defined term herein, the definition found in 45 C.F.R. Parts 160 or 164 shall prevail.

**1.1 Designated Record Set.** “Designated Record Set” means a group of records maintained by or for a covered entity, as defined by the HIPAA Rules, that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

**1.2 HIPAA Rules.** “HIPAA Rules” means collectively the Privacy Rule, and the Security Standards.

**1.3 Individual.** “Individual” means the person who is the subject of the protected health information.

**1.4 Privacy Rule.** “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. parts 160 and 164, subparts A and E.

**1.5 Protected Health Information (“PHI”).** “Protected Health Information” or “PHI” means individually identifiable health information that is transmitted or maintained in any form or medium.

**1.6 Required by Law.** “Required by Law” means a mandate contained in law that compels a use or disclosure of PHI.

**1.7 Security Standards.** “Security Standards” means the Standards for the Security of Electronic Protected Health Information at 45 C.F.R. parts 160, 162, and 164, subpart C, as they may be amended from time to time.

**1.8 Secretary.** “Secretary” means the Secretary of the Department of Health and Human Services or his or her Designee.

## **ARTICLE 2. PURPOSES FOR DISCLOSURE**

In connection with the services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes contemplated by the ACO Participation Agreement to which this Agreement is attached.

## **ARTICLE 3. BUSINESS ASSOCIATE OBLIGATIONS**

Business Associate agrees to comply with applicable federal confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to business associates (as defined by the HIPAA Rules), including:

**3.1 Use and Disclosure of PHI.** Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary to provide services to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules or HITECH Act if used or disclosed by Covered Entity. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:

- a. provide information to members of its workforce using or disclosing PHI regarding the confidentiality requirements in the HIPAA Rules and this Agreement;
- b. obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached;
- c. agree to notify the Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules or HITECH Act.

**3.2 Disclosure to Agents and Subcontractors.** If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or

subcontractor to agree in writing to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

**3.3 Data Aggregation.** Business Associate is permitted to use and disclose PHI for data aggregation purposes to the extent that such use is permitted under the HIPAA Rules.

**3.4 Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HIPAA Rules expressly applies.

**3.5 Safeguards.** Business Associate agrees to maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law. Business Associate shall implement, and shall ensure that its agents or subcontractors implement, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

**3.6 Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:

- a. **Individual Right to Copy or Inspection.** Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. Under the HIPAA Rules, Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate shall permit access according to its policies and procedures implementing the HIPAA Rules.
- b. **Individual Right to Amendment.** Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.
- c. **Accounting of Disclosures.** Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in

accordance with 45 C.F.R. § 164.528, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Such accounting is limited to disclosures that were made in the six (6) years prior to the request (not including disclosures prior to the compliance date of the HIPAA Rules) and shall be provided for as long as Business Associate maintains the PHI.

**3.7 Internal Practices, Policies, and Procedures.** Except as otherwise specified herein, Business Associate shall make available its internal practices, policies and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to Covered Entity and to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity, or Business Associate's compliance with this Agreement. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary.

**3.8 De-identified Information.** Business Associate may use and disclose de-identified health information if the de-identification is in compliance with 45 C.F.R. §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514(a) and (b).

**3.9 Minimum Necessary.** Business Associate shall attempt to ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.

**3.10 Notice of Privacy Practices.** Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

**3.11 Security Incident / Unauthorized Disclosure of PHI.** Business Associate shall report to Covered Entity, pursuant to the HITECH Act, any instances, including security incidents, of which it is aware in which PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules. In the event that Business Associate knows of any breach of any individual PHI (i.e. PHI was inappropriately used, disclosed, released, or obtained) Business Associate shall notify Covered Entity in writing within five (5) calendar days of such breach. Notification shall include detailed information about the breach, including, but not limited to, the nature and circumstances of such breach, the means by which PHI was or may have been breached (e.g. stolen laptop; breach of security protocols; unauthorized access to computer systems, etc.), the names and contact information of all individuals whose PHI was used, disclosed, released, or obtained in violation of this Agreement, and such other information as Covered Entity may reasonably request. Any delay in notification must include evidence demonstrating the necessity of the delay. The party responsible for the breach shall bear the cost of any required notifications and corrective actions (e.g. credit monitoring services).

**3.12 HIPAA Security Rule.** With regard to its use and/or disclosure of EPHI, Business Associate shall (as of the compliance date of April 20, 2005), at its own expense:

- a. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered

Entity or its affiliates and at a minimum comply with those applicable safeguards in 45 CFR Section 164;

b. ensure that any and all of Business Associate's subcontractors or agents to whom the Business Associate provides EPHI agree in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

c. report promptly to Covered Entity any security incident (as defined in 45 CFR Section 164.304) relating to EPHI created, received, maintained or transmitted in regards to Covered Entity, of which the Business Associate becomes aware.

#### **ARTICLE 4. COVERED ENTITY OBLIGATIONS**

4.1 If deemed applicable by Covered Entity, Covered Entity shall:

- a. provide Business Associate a copy of its Notice of Privacy Practices ("Notice") produced by Covered Entity in accordance with 45 C.F.R. 164.520 ("Notice of Privacy Practices") as well as any changes to such notice;
- b. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures;
- c. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522;
- d. notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by Business Associate; and
- e. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI.

#### **ARTICLE 5. MUTUAL OBLIGATIONS**

5.1 Electronic Transactions and Code Sets. Both Parties understand and agree that they are required to comply with the HIPAA Standards for Electronic Transactions, 45 C.F.R. Parts 160 and 162 (HIPAA Electronic Transaction Law) as amended from time to time. The HIPAA Electronic Transaction Law requires Covered Entity and, where applicable, Business Associate as these terms are defined under HIPAA to conduct certain transactions as "standard transactions" using defined medical data code sets. Business Associate agrees that it will require its subcontractors, vendors and independent contractors to comply with HIPAA Electronic Transaction Law as applicable. Business Associate agrees that it will not:

- a. change the definition, data condition or use of a data element or segment in a standard;
- b. add any data elements or segments to the maximum defined data set;
- c. use any code or data elements that are either marked "not used" or not included in the standard's implementation specification(s); or
- d. change the meaning or intent of the standard's implementation specification(s).

**ARTICLE 6. MISCELLANEOUS**

**6.1 Mitigation.** If Business Associate violates this Agreement or the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.

**6.2 Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the duly authorized representatives as of the dates below.

**For the ACO**

Foundation Accountable Care Network

By:  \_\_\_\_\_

Dolores L. Green  
CEO  
Date: January 1, 2018  
3993 Jurupa Avenue  
Riverside, CA 92506  
951-686-9049

**For the ACO Participant**

Legal Entity Name \_\_\_\_\_

DBA Name \_\_\_\_\_

Signature (on behalf of the ACO Participant) \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

City, State Zip Code \_\_\_\_\_

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