

**KENTUCKYONE HEALTH PARTNERS, LLC  
PARTICIPATION AGREEMENT FOR HOSPITAL SERVICES**

This Participation Agreement for Hospital Services (“Agreement”) is between KentuckyOne Health Partners, LLC, a Kentucky limited liability corporation (“KYOne HP”), and [REDACTED], a Kentucky nonprofit corporation, with respect to each of the Participating Hospitals defined below (hereinafter “Participating Hospital”).

**RECITALS**

A. KYOne HP is organized to participate (i) as an accountable care organization (“ACO”) under the “Medicare Shared Savings Program” (“MSSP”) and in “Commercial Shared Savings Programs” pursuant to which, KYOne HP will enter into one or more Shared Savings Agreements with the Centers for Medicare & Medicaid Services (“CMS”) and/or Commercial Payers, and (ii) in arrangements with “Contracting Hospitals” whereby KYOne HP and certain of its Participants will assist the Contracting Hospitals in various initiatives to improve the quality and efficiency of services provided to Contracting Hospital patients (“Hospital Initiatives”), (the MSSP, Commercial Shared Savings Programs and Hospital Initiatives, referred to as “Program(s)” and agreement related thereto shall be referred to as “Program Agreement(s)”).

B. By entering into this Agreement, Participant will become a “Participant,” through KYOne HP, in one or more Programs.

C. Under this Agreement, Participating Hospital agree to work with other Participants and Providers/Suppliers to manage and coordinate care and furnish Covered Services to Covered Persons in accordance with the applicable Programs, the “Program Agreements,” and this Agreement.

D. Capitalized terms not otherwise defined in the body of this Agreement have the meanings listed on Exhibit A.

**NOW, THEREFORE**, in consideration of the covenants and promises recited herein, the parties agree to be legally bound to the following:

**AGREEMENT**

**1. PURPOSE AND APPLICATION.**

**1.1 Participation and Application.** This Agreement is intended to serve as a master agreement governing the relationship between KYOne HP and Participating Hospital with respect to Program Agreements. Participating Hospital will participate in Program Agreements as designated by KYOne HP; provided however, Participating Hospital understand and agree that Participating Hospital shall not be requested to participate in every KYOne HP Program, as Participating Hospital participation is governed by the qualifications and terms of any such Programs. For purposes of this Agreement, the terms “Programs” or “Program Agreement” shall mean only those Programs and Program Agreements which Participating Hospital are requested to participate. Participating Hospital agree to comply with the terms of each applicable Program Agreement, and to sign any documents required by KYOne HP, a Payer or a Contracting

Hospital to evidence that agreement. KYOne HP will provide Participating Hospital with notice of Program Agreements entered into by KYOne HP in which Participating Hospital will participate in accordance with KYOne HP Policies. If Participating Hospital participate in the Medicare Shared Savings Program, as designated by KYOne HP, the terms and conditions set forth in Exhibit E apply and are incorporated herein by reference as if fully set forth herein.

## **2. PARTICIPANT OBLIGATIONS**

**2.1 KYOne HP Participation Requirements.** To participate in KYOne HP, Participating Hospital must, during the Term of this Agreement, meet and maintain the following “Participation Requirements”; provided that as applicable, one or more participation requirements may be waived by Board of Managers Approval: (a) maintain in good standing all required and applicable federal and state licenses and certifications to provide services; (b) not be excluded from participation in any federal or state healthcare programs currently or in the past; (c) not be indicted or convicted of a felony or any law applicable to health care; (d) maintain professional liability insurance coverage required by this Agreement; (e) agree to provide all services to KYOne HP or Covered Persons as required by this Agreement, the applicable Program Agreement and Payor Agreement, and in accordance with all applicable state and federal laws; (f) consent and agree to KYOne HP’s disclosure and submission of Participating Hospital’s taxpayer identification number (“TIN”) to Payers; (g) bill for Covered Services furnished to Covered Persons solely through the billing number assigned to Participating Hospital’s TIN; and (h) meet all other Participation Requirements defined in KYOne HP Policies, including without limitation, meeting quality standards imposed by any Payor or Contracting Hospital under a Program Agreement.

**2.2 General Obligations of Participants.** Upon meeting the Participation Requirements, full execution of this Agreement, and following Board of Managers Approval, Participating Hospital will participate in designated Program Agreements effective as of the earlier of the date of this Agreement, the date defined in the applicable Program Agreement or the date specified in the Board of Managers Approval. By executing this Agreement, Participating Hospital agrees to perform KYOne HP Activities, and to be bound by and comply with this Agreement, KYOne HP Policies, Provider Manuals, Program Regulations, and Performance Standards, as applicable to each Program Agreement in which Participating Hospital are designated to participate. If Participating Hospital’s performance is determined by KYOne HP to fall below the level of performance required for a particular Program Agreement, KYOne HP shall notify Participating Hospital of such failure to adequately perform, and Participating Hospital shall be placed in a performance improvement plan as determined by KYOne HP. In the event the Participating Hospital’s performance does not sufficiently improve in accordance with the terms of the performance improvement plan, KYOne HP shall have the right to terminate Participating Hospital’s participation in the applicable Program Agreement and/or this Agreement upon written notice to Participating Hospital.

**2.3 Provision of Services to Covered Persons and Accountability.** Participating Hospital agree to provide to Covered Persons those Covered Services that Participating Hospital are licensed and credentialed to provide in compliance with this Agreement, and to make available and provide such Covered Services in the same manner, in accordance with the same standards, and within the same time availability that Participating Hospital offer to Participating

Hospital's other patients. Participating Hospital agree not to discriminate against any Covered Person based on any legally protected status, marital status, health status, income, source of payment, or health plan participation. Participating Hospital agree to become accountable for the quality, cost, and overall care of the Covered Persons assigned to KYOne HP, to perform KYOne HP Activities in accordance with the applicable Program Agreements, and to provide services in a manner consistent with the applicable Performance Standards to the extent appropriate for each Covered Person.

**2.4 Provider/Patient and Other Relationships.** Notwithstanding any of the terms of this Agreement, it will be Participating Hospital's sole right and responsibility to create and maintain a physician/patient or other applicable relationship with each Covered Person receiving Covered Services from Participating Hospital. Participating Hospital are solely responsible to each Covered Person for all aspects of health care and treatment within the scope of Participant's license, including the quality and levels of such care and treatment. The parties to this Agreement are independent entities contracting with each other as further set forth on Exhibit C, Section 1.12.

**2.5 Professional Liability and Other Insurance.** Participating Hospital must maintain in effect during the term of this Agreement, the insurance coverage referenced on Exhibit C, Section 2.5 If the insurance is provided through a "claims made" policy, upon termination of the policy or Participating Hospital's relationship with any of agents and employees, Participating Hospital agree to purchase "tail" coverage providing on-going coverage for Participating Hospital or the terminated agent/employee, as applicable, for a period of time consistent with the applicable statute of limitations. Participating Hospital must furnish KYOne HP with evidence of compliance with this Section upon request.

**2.6 Indemnification.** Participating Hospital and Participating Hospital's successors and assigns, agree to indemnify KYOne HP, its members, Board of Managers, employees, agents, successors and assigns, against all loss, liability, claims or actions based upon or arising out of damage or injury (including death) to persons or properties caused by Participating Hospital's acts or omissions, the acts or omissions of Participating Hospital's agents or employees arising from (a) the performance of services to any Covered Person; (b) any breach or non-compliance with this Agreement; (c) Participating Hospital's performance of KYOne HP Activities; or (d) in connection with any act or omission of Participating Hospital, Participating Hospital's agents or employees under the terms of this Agreement.

**2.7 Board of Managers.** Participating Hospital have the right to participate in the selection of "Participant Manager" representatives to the KYOne HP Board of Managers as provided in the then-current KYOne HP's Operating Agreement. Each member of the KYOne HP Board of Managers will be subject to KYOne HP's conflict of interest policy.

**2.8 Marketing Materials and Activities.** Participating Hospital agree to use Marketing Materials and Activities as provided in the applicable Program Agreement. KYOne HP and any Payer may make public reference to Participating Hospital in connection with the applicable Program, and use Participating Hospital's demographic and other descriptive information in its published rosters and for advertising purposes. Participating Hospital may inform third parties that Participating Hospital are a Participant but may not otherwise advertise

or market or use the name or trademark of the KYOne HP or of any Payer without KYOne HP's prior written approval.

**2.9 Participation in Other Medicare Initiatives.** Participating Hospital agree not to participate in any other Medicare initiative that involves shared savings except upon KYOne HP's determination that such participation will not jeopardize KYOne HP's and Participating Hospital's eligibility to participate in the MSSP.

### **3. RECORDS, DATA AND CONFIDENTIALITY**

**3.1 Information Submitted by Participating Hospital.** In submitting data and information to KYOne HP, an individual with the authority to legally bind Participating Hospital's entity will be required to certify the accuracy, completeness, and truthfulness of the records data and information so submitted to the best of such individual's knowledge information and belief, and Participating Hospital agree to certify same, when required by KYOne HP. Participating Hospital must promptly, at least thirty (30) days in advance of any change, and under all circumstances, no later than ten (10) days following the completion of any such change, notify KYOne HP in accordance with Section 6.1.4 of any changes applicable to Participating Hospital's TIN, business address, business telephone number, office hours, or malpractice insurance carrier or coverage.

**3.2 Records Generally.** Participating Hospital must maintain medical and other records, and collect data and information relating to services furnished in connection with the Programs in accordance with applicable state and federal laws and KYOne HP Policies. Except with respect to claims data for Covered Persons who have opted out of claims data sharing if required under a Program, Participating Hospital agree to provide KYOne HP with access, without charge, to all medical, claims and other data and information related to Covered Persons to allow KYOne HP to perform KYOne HP Activities and meet Performance Standards.

**3.3 Claims/Encounter/Quality Data Submission.** During the Term, Participating Hospital must prepare and submit electronically in accordance with each applicable Program and otherwise in a form and manner specified by KYOne HP: (a) claims and Encounter Data for Covered Services rendered to Covered Persons along with information necessary to process and/or to verify such claims; (b) all data and information, including quality data, required by KYOne HP Policies and applicable Programs.

**3.4 Access to Records and Documentation.** Participating Hospital must cooperate with KYOne HP and any state or federal agency in making available, and in arranging or allowing inspection of, any records, data or information in accordance with all state and federal laws and regulations regarding the confidentiality of patient records. Program Agreements may give Payers the right to audit, inspect, investigate and evaluate the records, data and other information created or used by KYOne HP, Participating Hospital and other individuals or entities performing KYOne HP Activities that pertain to a Program. Participating Hospital agree to cooperate fully with all such requests for access, and to provide access to all such records, data and other information sufficient to enable the audit, evaluation, investigation, and inspection as required by this Section, and to comply with the additional record keeping and access requirements set forth on Exhibit C, Sections 1.4 and 1.5.

**3.5 Confidential Information.** Participating Hospital agree that all Confidential Information of KYOne HP, except medical records of Covered Persons and any non-aggregated data and other information belonging to Participating Hospital, is the exclusive property of KYOne HP, is confidential and may not be used or disclosed by Participating Hospital, except as expressly permitted herein or required by law, and that Participating Hospital have no right, title, or interest in the same. In the event of a breach of this Section, KYOne HP will be entitled to enjoin Participating Hospital from such breach and obtain an equitable remedy prohibiting Participating Hospital from disclosing in whole or in part the Confidential Information of KYOne HP. “Confidential Information of KYOne HP” includes, regardless of form and without limitation: (a) all budgets, strategic plans, marketing plans, financial information, data, documents, records and other materials, including all memoranda, clinical manuals, staff training materials, handbooks, production books, educational materials and audio or visual recordings, which contain information relating to the operation of KYOne HP; (b) all methods, techniques, and procedures utilized in providing services to patients not readily available through sources in the public domain; (c) all trademarks, trade names, and service marks of KYOne HP; (d) all proprietary computer software, programs, data files and documentation; (e) all work product (including materials developed by Participating Hospital or Participating Hospital’s Providers/Suppliers) prepared in connection with or resulting from the performance of services under this Agreement; (f) all KYOne HP Policies and the methods and manner by which KYOne HP conducts the KYOne HP Activities; and (g) all non-public information referenced on Exhibit C, Section 1.9.

In the event that Participating Hospital are compelled to disclose Confidential Information of KYOne HP pursuant to any statute, regulation, order, subpoena, document or discovery request, or other form of valid legal process, Participating Hospital must provide KYOne HP with prior written notice of such compelled disclosure in accordance with KYOne HP Policies as soon as practicable after receiving the legal process in order to permit KYOne HP to seek a protective order. If, following such written notice from Participating Hospital to KYOne HP, KYOne HP is unable to obtain or does not seek a protective order and Participating Hospital are legally compelled to disclose the Confidential Information of KYOne HP, then Participating Hospital’s disclosure of such Confidential Information of KYOne HP under legal compulsion will be made without liability so long as it is limited to the minimum necessary to comply with the legal process. This Section 3.5 will survive the termination of this Agreement for any reason.

**3.6 HIPAA.** The parties are subject to the provisions of the Health Information Portability and Accountability Act of 1996 (“HIPAA”) in the performance of KYOne HP Activities, as follows: (i) to the extent that KYOne HP and/or other Participants and Providers/Suppliers perform KYOne HP Activities for Participating Hospital, they are conducting health care operations on Participating Hospital’s behalf and are therefore a Business Associate of Participating Hospital; and (ii) to the extent that Participating Hospital perform KYOne HP Activities for other Participants and Providers/Suppliers, Participating Hospital are conducting health care operations on behalf of such other Participants and Providers/Suppliers and are therefore a Business Associate of such other Participants and Providers/Suppliers. Thus, in performing KYOne HP Activities, the parties agree to adhere to the requirements of HIPAA in relation to maintaining the privacy and security of PHI, and Participating Hospital to agree to

execute and abide by the terms and conditions of the Business Associate Agreement, in the form attached hereto as Exhibit D and incorporated herein by reference.

**3.7 OHCA.** Participating Hospital agrees that KYOne HP and all of its Participants are designated as an OHCA, as defined at 45 CFR 160.103, for purposes of conducting quality assessment and improvement activities, conducting utilization review and performing other KYOne HP Activities. As such, Participating Hospital agrees to hold itself out to the public as participating in KYOne HP and agrees to be identified (and may identify other Participants) as participating in KYOne HP. Participating Hospital agrees to conduct its activities as a member of the OHCA consistent with its Notice of Privacy Practices. Notwithstanding the foregoing, Participating Hospital acknowledges and agrees that the OHCA is created as a data sharing arrangement and does not otherwise create any legal relationship between the parties, and Participating Hospital, and each other Participant and KYOne HP, are solely responsible for, and each retain all liability in connection with, their own compliance with the requirements of HIPAA.

#### **4. KYONE HP AWARDS AND FINANCIAL OBLIGATIONS**

**4.1 Participating Hospital's Relationship With Payers.** During the Term, Participating Hospital must enroll and participate in the Medicare program and maintain in effect, a separate Payer Agreement with each Payer with whom KYOne HP has entered into a Program Agreement. Participating Hospital must also immediately notify KYOne HP in the event of suspension or other termination of Participating Hospital's Medicare enrollment or any such Payer Agreement. During the term of this Agreement, KYOne HP may determine, by Board of Managers Approval and with ninety (90) days prior written notice in accordance with KYOne HP Policies, to negotiate fee arrangements with Payers on behalf of Participating Hospital and all other Participants and Participating Hospital will be permitted to either continue or terminate this Agreement as permitted by Section 5.2; *provided that* if Participating Hospital elect to continue this Agreement, Participating Hospital must terminate any individual Payer Agreements Participating Hospital have entered into with the designated Payer following Participating Hospital's receipt of written notice from KYOne HP in accordance with KYOne HP Policies of KYOne HP's negotiation of the Payer Agreement. Participating Hospital agree that in order to meet the requirements of a Payer or a Contracting Hospital, KYOne HP may restrict or limit the number of Participants and/or Providers/Suppliers allowed to participate in the applicable Program Agreement. Except as expressly agreed in writing by KYOne HP, each Payer and Contracting Hospital has full and final responsibility and liability for payment of claims under an applicable Payer Agreement. KYOne HP is not responsible for, does not guarantee, and does not assume liability for payment of any claim for services rendered to Covered Persons, and all final decisions with respect to the payment of claims are the responsibility of the applicable Payer.

**4.2 Fee-Related Information.** Participating Hospital will maintain Participating Hospital's own independent fee structure for professional and other health care services. Under no circumstance may Participating Hospital share or disclose fee related information with other Participants. KYOne HP will maintain the confidentiality of any fee-related information Participating Hospital provide, will not share or disclose specific fee-related information to any other Participant (except as permitted by law), and will endeavor to otherwise conduct the

KYOne HP operations in a lawful manner. Participating Hospital must not seek or request fee-related information regarding any other person or entity participating in KYOne HP.

**4.3 Program Agreement Incentive Awards and Shared Loss Obligations.** KYOne HP may be eligible for Incentive Awards, and may have a Shared Loss Obligation in accordance with the terms of the individual Program Agreements. KYOne HP will use and/or distribute each Incentive Award in accordance with the Incentive Award Methodology for the applicable Program Agreement which is adopted upon Board of Managers Approval and otherwise in accordance with the KYOne HP Operating Agreement. With respect to participation in MSSP, the Board of Managers will ensure that the Incentive Award Methodology will be structured so that Participating Hospital will receive a distribution only if it has adhered to the quality assurance and improvement programs and evidenced-based clinical guidelines of KYOne HP. Likewise, if KYOne HP has a Shared Loss Payment Obligation under an applicable Program Agreement, KYOne HP will satisfy the obligation in accordance with the Shared Loss Payment Methodology for the applicable Program Agreement adopted upon Board of Managers Approval in accordance with the KYOne HP Operating Agreement. To the extent KYOne HP receives Incentive Awards and distributes all or a portion of such Incentive Awards, Participating Hospital shall only be entitled to receive a distribution for Incentive Awards associated with Programs in which Participating Hospital have participated during the applicable period.

## **5. TERM AND TERMINATION**

**5.1 Term and Renewal.** The Initial Term of this Agreement will begin on [REDACTED] (“Start Date”), and unless otherwise earlier terminated as provided herein, shall terminate on **December 31, 2015**. Upon expiration of the Initial Term, this Agreement will automatically renew for successive three (3) year Renewal Terms thereafter unless either party provides notice to the other of non-renewal at least ninety (90) days prior to the end of the Initial or any Renewal Term. The Initial and Renewal Terms collectively constitute the “Term” of this Agreement.

**5.2 Termination of Participant Participation Agreement.** Either party may terminate this Agreement for any or no reason, without penalty, upon providing the other with one hundred eighty (180) days’ prior written notice; provided that upon Board of Managers Approval to negotiate fee arrangements on behalf of Payers on behalf of Participating Hospital, Participating Hospital will be permitted to terminate this Agreement no later than the last date of the ninety (90) day prior written notice period specified in Section 4.1 above.

**5.3 Additional Grounds for KYONE HP Termination of Participant.** KYOne HP may terminate Participant’s participation in KYOne HP under this Agreement for: (a) failure to meet and maintain the Participation Requirements; (b) engaging in conduct inconsistent with or potentially detrimental to the delivery of good quality patient care or contrary to the best interests of KYOne HP; or (c) material non-compliance with this Agreement; provided that in lieu of terminating this Agreement, KYOne HP may terminate Participating Hospital’s participation in select Programs only. Participating Hospital will be provided written notice if there is any ground to terminate under this Section along with a reasonable time to cure, with “a reasonable time to cure” meaning that period of time determined, upon Board of Managers Approval, that is

appropriate to the circumstances. A termination under Section 2.2 shall not require an additional “reasonable time to cure.”

**5.4 Immediate Suspension.** The Board of Managers may suspend immediately, Participating Hospital’s participation in any or all Programs pending completion of termination proceedings if the Board of Managers has a reasonable basis for concluding that noncompliance with the Participation Requirements or this Agreement poses a risk to patient care or disrupts KYOne HP operations.

**5.5 Review of Decision.** Any and all decisions of KYOne HP and/or its Board of Managers pursuant to this Article will not be subject to review by or appeal to any individual, committee, institution, court, arbitrator, judicial, administrative or corporate body or other entity.

**5.6 Termination of Program Agreement.** The termination of a Program Agreement will terminate Participating Hospital’s participation in the applicable Program Agreement.

**5.7 Obligations After Termination.** The provisions of this Agreement will be of no further force or effect after the termination effective date but each party will remain liable for obligations or liabilities arising from activities carried on prior to the termination effective date and under provisions which by their terms survive termination of this Agreement. In the event of any termination or expiration of a Program Agreement, any and all financial benefits, rewards, or incentives available under the terms of any Program Agreement will be used and/or distributed in accordance with the KYOne HP’s Operating Agreement.

## **6. GENERAL PROVISIONS**

**6.1 In General.** The following provisions are in addition to those set forth on Exhibit C, the terms of which are incorporated herein by reference as if fully set forth in their entirety.

6.1.1 Amendments. This Agreement may be amended at any time during the Term by the Board of Managers Approval upon ninety (90) days’ prior written notice. Participating Hospital will be bound by the amendment without separate consent; *provided, however,* Participating Hospital may terminate this Agreement prior to the amendment effective date by providing written notice to KYOne HP within thirty (30) days after receipt of the written notice. In the absence of KYOne HP’s receipt of such written notice of termination, Participating Hospital will be deemed to have accepted each such amendment as of the stated effective date. Except as provided in this Section, no other amendment will be effective unless in writing and signed by Participating Hospital and KYOne HP.

6.1.2 Assignment and Benefit. Neither party will be entitled to assign or delegate its rights and duties under this Agreement without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of, and be enforceable by, KYOne HP and Participating Hospital, their legal representatives and their permitted successors and assigns.

6.1.3 Waiver. Any waiver of any term or provision of this Agreement must be in writing and signed by the party against whom it is to be enforced.



6.1.4 Notices. Except where this Agreement indicates that notice will be furnished in accordance with KYOne HP Policies, any notice required to be given hereunder will be in writing and must be sent by certified mail, return receipt requested, to the addresses set forth on the execution page of this Agreement or Addendum. Such notice shall be effective upon mailing.

6.1.5 Legal Authority. References to legal and regulatory citations herein will include amendments thereto.

6.1.6 Construction. With respect to the MSSP, in the event of conflict between the language of this Agreement and any Program Regulations, the language of the Program Regulations will prevail.

6.1.7 Additional Provisions. The parties acknowledge and agree that the terms and conditions contained in Exhibit D (Additional Provisions) attached hereto, are incorporated herein by reference and are part of this Agreement.

6.1.8 Entire Agreement. This Agreement (including all Recitals, Exhibit(s) and Schedules), the terms of which are incorporated by this reference) contains the entire agreement of the parties with respect to the matters addressed herein and supersedes all other agreements between the parties, whether oral or in writing, concerning such matters.

In consideration of the mutual covenants and promises stated herein and other good and valuable consideration, the undersigned have agreed to be bound by this Agreement.

*[Signature Page to Participant Agreement]*

**PARTICIPANT:**

**KentuckyOne Health Partners, LLC**

Entity Name:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

TIN: \_\_\_\_\_

Provider Number/NPI: \_\_\_\_\_

**Notice Address:**

Notice Address:

KentuckyOne Health Partners, LLC  
201 Abraham Flexner Way  
Louisville, KY 40202

**EXHIBIT A**

**DEFINITIONS**

For the purpose of this Agreement, the following terms shall have the meanings specified below.

**1.1 KYONE HP Activities** means the active and ongoing program of health care quality and efficiency initiatives developed and implemented by KYOne HP to evaluate and modify practice patterns by Participants and their respective Providers/Suppliers and to create a high degree of interdependence and cooperation among them to control costs and ensure quality, and which may include: (a) establishing evidenced-based clinical protocols and practice guidelines to improve quality and provide for the appropriate utilization of health care services; (b) coordinating and monitoring the care delivered to further these efficiency objectives; and (c) performing care management and other activities to coordinate care for Covered Persons across the continuum of care; (d) making significant investment of capital, both monetary and human, in the necessary infrastructure and capability to realize the goals of improving quality while reducing the cost of care. KYOne HP Activities also will include the evaluation of data, care delivery processes and outcomes which may include, for example, usage of electronic health care information technology, adoption and implementation of new care delivery processes, other standards and measures related to health care quality, safety and cost assessments, including, the processes and criteria designed to achieve the requirements set forth at 42 C.F.R. § 425.112 for purposes of the MSSP.

**1.2 KYONE HP Policies** means the compilation of policies and procedures, rules and regulations governing KYOne HP and KYOne HP activities as approved by the Board of Managers Approval.

**1.3 Board of Managers** means the governing body of KYOne HP, as described in the KYOne HP's Operating Agreement and other organizational documents, as amended.

**1.4 Board of Managers Approval** means the affirmative vote of the members of the KYOne HP Board of Managers required for the approval of a matter under consideration in accordance with the KYOne HP's Operating Agreement, as amended.

**1.5 Commercial Payer** means a third party Payer of Covered Services *other than* the Medicare program, which has entered into a Program Agreement with KYOne HP, including, any employer, union group, association, managed care plan, insurer, HMO, PPO, federal, state, or government Payer, including any applicable Medicaid program or any third party administrator contracting on behalf of any such entity.

**1.6 Covered Person** means those Payer enrollees and, as applicable, their eligible dependents or other persons who are entitled to health care services according to the terms of a Payer Agreement and are assigned to KYOne HP for purposes of a Program Agreement, and includes, with respect to the MSSP, Medicare fee for service beneficiaries who are assigned to the KYOne HP.

**1.7 Contracting Hospital(s)** means all hospital facilities located in the Commonwealth of Kentucky that contract with KYOne HP to obtain services to improve the quality and efficiency of hospital services rendered to Hospital patients by engaging KYOne HP in one or more written initiatives (“Hospital Initiatives”) that specifically identify the services to be provided by Participants and the Incentive Award to be paid for accomplishing the Hospital Initiative. Only eligible Participants, as defined by a Hospital Initiative, may participate and receive a distribution of amounts received by KYOne HP as an Incentive Award related to such Hospital Initiative, as determined by the applicable Contracting Hospital.

**1.8 Covered Person** means those Payer enrollees and, as applicable, their eligible dependents or other persons who are entitled to health care services according to the terms of a Payer Agreement and are assigned to KYOne HP for purposes of a Program Agreement, and includes, with respect to the MSSP, Medicare fee-for-service beneficiaries who are assigned to the KYOne HP.

**1.9 Covered Services** means those medically necessary health care services and supplies that a Payer has contracted to pay for and provide to Covered Persons.

**1.10 Encounter Data** means information, data, and/or reports about clinical encounters and Covered Services rendered which is supported by documentation in the Covered Person’s medical record.

**1.11 Incentive Award** means an amount to be paid to KYOne HP by a Payer or Contracting Hospital under a Program Agreement for an applicable Performance Year which will be used (including through the establishment of appropriate reserves), distributed, and/or paid as adopted upon Board of Managers Approval and otherwise in accordance with the KYOne HP’s Operating Agreement. The term shall have the meaning set forth at 42 C.F.R. § 425.20 for purposes of the MSSP.

**1.12 Incentive Award Methodology** means the methodology adopted upon Board of Managers Approval by which KYOne HP will use (including through the establishment of appropriate reserves), distribute, and/or pay funds received from an Incentive Award under each respective Program Agreement. The Incentive Award Methodology will be adopted upon Board of Managers Approval no later than ninety (90) days following the commencement of the each respective Program Agreement which may result in a Incentive Award, and the methodology, once so adopted, may only be changed upon Board of Managers Approval and otherwise in accordance with the Operating Agreement.

**1.13 Marketing Materials and Activities** means all requirements related to marketing that are imposed under a Program and an applicable Program Agreement, and will have the meaning set forth at 42 C.F.R. § 425.20 for purposes of the MSSP.

**1.14 Medicare Shared Savings Program (or MSSP)** means the program authorized in accordance with Section 3022 of the Patient Protection and Affordable Care Act.

**1.15 Participant** means the party to this Agreement and in the plural may mean other “Participants” which have executed a Participant Agreement with KYOne HP, and the term will have the meaning set forth at 42 C.F.R. § 425.20 for purposes of the MSSP.

**1.16 Participating Hospital(s)** means [REDACTED], including without limitation [REDACTED], and any other Affiliate of [REDACTED] that provides hospital services. For purposes of this Agreement, “Affiliate” means: (i) any person or entity directly or indirectly owning, controlling or holding the power to vote fifty percent (50%) or more of any class of the voting securities of [REDACTED]; (ii) any person or entity that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with [REDACTED]; or (iii) any person or entity that is a general partner in, or trustee of, or serves in a similar capacity with respect to, [REDACTED]. For this purpose, “Controlled” means both (i) ownership of a majority interest in an organization; and (ii) voting rights or privileges, whether direct or indirect, that give the right to elect or appoint a majority of voting members of the governing body of an organization, including without limitation through the existence of a chain of ownership of majority interests or of voting rights or privileges which result in such control or the possession of the power, direct or indirect, to direct or cause the direction of the management and policies of an organization, whether through the ownership of voting securities, by contract or otherwise.

**1.17 Payer** means CMS in the case of the MSSP, and any Commercial Payer entity or Contracting Hospital with which KYOne HP has entered into a Program Agreement.

**1.18 Payer Agreement** means a contract between a Payer and a Participant and/or Provider/Supplier which sets forth the health care benefits a Covered Person is entitled to receive and the terms and conditions upon which the Payer will pay the Participant and/or Provider/Supplier in connection with the provision of Covered Services. The term Payer Agreement includes all coverage, payment and other requirements applicable to the Medicare program, Parts A and B, but it does not include Program Agreements.

**1.19 Performance Standards** means criteria or metrics for measuring clinical quality, patient satisfaction, resource utilization, and cost effectiveness (including Shared Savings) with regard to the performance of KYOne HP Activities in inpatient, outpatient and other settings, as set forth in an applicable Program Agreement, including, those defined in connection with the Programs, Program Regulations, applicable Provider Manuals or as set forth in KYOne HP Policies.

**1.20 Performance Year** means the time period specified in an applicable Program Agreement upon which KYOne HP’s performance is assessed for purposes of determining the existence of an Incentive Award or a Shared Loss Payment Obligation. The term shall have the meaning set forth at 42 C.F.R. § 425.20 for purposes of the MSSP.

**1.21 Primary Care Physician** means the physicians in the practice specialties of general practice, family practice, internal medicine, geriatric medicine, unless otherwise defined in an applicable Payer Agreement. The term shall have the meaning set forth at 42 C.F.R. § 425.20 for purposes of the MSSP.

**1.22 Primary Care Services** means the set of services identified by specified HCPCS codes at 42 C.F.R. § 425.20 under the definition of primary care services for purposes of the MSSP, or as otherwise defined in the applicable Payer Agreement.

**1.23 Program Agreements** means: (i) the contract(s) between KYOne HP and one or more Payers, including Medicare or a Commercial Payer, entered into by KYOne HP, pursuant to which KYOne HP, Participants and Providers/Suppliers agree to work together to manage and coordinate care, and become accountable for the quality, cost and overall care of Covered Persons assigned to KYOne HP under an applicable Program; or (ii) the written agreement with one or more Contracting Hospitals to undertake Hospital Initiatives whereby KYOne HP and its Participants will assist the applicable Contracting Hospital in improving the quality and efficiency of services provided to such Contracting Hospital's patients; and pursuant to which KYOne HP may receive compensation, including if applicable an Incentive Award, or incur a Shared Loss Obligation.

**1.24 Program Regulations** means the final rule issued by CMS under Section 3022 of the Affordable Care Act, 42 C.F.R. Part 425, and any amendments or additional regulations promulgated thereunder which apply with respect to the MSSP.

**1.25 Provider Manual** means the compilation of policies and procedures, rules and regulations which are developed by a Payer which are applicable to KYOne HP, Participants, and/or Provider/Supplier under an applicable Payer Agreement.

**1.26 Provider/Supplier** means each licensed person or entity, who may or may not be affiliated with a Participant, who has executed a separate participation agreement with KYOne HP (or an addendum thereto) and who has received Board of Managers Approval, and the term will have the meaning set forth at 42 C.F.R. § 425.20 for purposes of the MSSP.

**1.27 Shared Loss Payment Methodology** means the methodology adopted upon Board of Managers Approval to satisfy financial obligations KYOne HP may have under each applicable Program Agreement to raise capital and/or otherwise satisfy KYOne HP's Shared Loss Payment Obligation under the applicable Program Agreement. The Shared Losses Payment Methodology will be adopted upon Board of Managers Approval no later than ninety (90) days following the commencement of the each respective Program Agreement which may result in a Shared Loss Payment Obligation, and the methodology, once so adopted, may only be changed upon Board of Managers Approval and otherwise in accordance with the Operating Agreement.

**1.28 Shared Loss Payment Obligation** means an amount to be paid by KYOne HP to a Payer under an applicable Program Agreement. Whether or not a Program Agreement will include a Shared Loss Payment Obligation will be determined only upon Board of Managers Approval and otherwise in accordance with the Operating Agreement. The term will have the meaning set forth at 42 C.F.R. § 425.20 for purposes of the MSSP.

**1.29 Specialist** means any specialty other than Primary Care.

**EXHIBIT B**  
**COMPLETED PARTICIPANT QUESTIONNAIRE**

## EXHIBIT C

## ADDITIONAL PROVISIONS

All references to Catholic Health Initiatives (“CHI”) in this Exhibit C shall include KYOne HP.

**1. General Terms and Conditions.**

**1.1 CHI Standards of Conduct.**

Participant recognizes that it is essential to the core values of Catholic Health Initiatives (CHI) that all persons and entities contracting with CHI at all times conduct themselves in compliance with the highest standards of business ethics and integrity and applicable legal requirements as reflected in the *CHI Standards of Conduct*, as may from time to time be amended by CHI. As of the date of the Agreement, the *CHI Standards of Conduct* are set forth in *Our Values & Ethics at Work Reference Guide* (E@W Guide), which is available at the following website:

<http://www.catholiceathinit.org/body.cfm?id=37940>

Participant acknowledges that Participant has electronically accessed, obtained or otherwise received a copy of the E@W Guide and has read and understands the same, and hereby agrees that, so long as the Agreement remains in effect, Participant shall act in a manner consistent with, and shall at all times abide by, such *Standards of Conduct*, to the extent the same are applicable to Participant in the performance of the Agreement.

**1.2 Ethical and Religious Directives.**

Participant agrees that his/her performance under the Agreement shall be in accordance with the *Ethical and Religious Directives for Catholic Health Care Services*, Fifth Edition, as promulgated by the United States Conference of Catholic Bishops, as amended from time to time, and as interpreted by the local bishop (the “*Directives*”). As of the date of the Agreement, the *Directives* are available at the following website:

<http://usccb.org/about/doctrine/ethical-and-religious-directives/>

In the event that CHI determines in good faith that Participant has breached its obligations pursuant to Sections 1.1 or 1.2 of this Exhibit, CHI may, upon notice to Participant, immediately terminate the Agreement.

**1.3. Invalidity/Excluded Provider Assurances.** In the event a government, administrative, or legislative amendment is made to the provisions of the Social Security Act, or in the event of a court decision or government statement that would render the Agreement illegal, or give rise to the reasonable belief by either party that the Agreement may be in violation of any law, the parties shall attempt in good faith to renegotiate the provisions of the Agreement. If an agreement cannot be reached within thirty (30) days, the Agreement may be immediately terminated by either party. In addition, in an effort to comply with the requirements of Section 1128(b) of the Social Security Act, and the regulations promulgated thereafter, CHI and Participant mutually certify and warrant as follows:

1.3.1 that the goods or services being furnished and the charges for same, are in compliance with the requirements of Medicare, Medicaid, and state law.

1.3.2 that Participant, or any individual assigned by Participant to provide services pursuant to the Agreement, is not and at no time has been excluded from participation in any federally funded health care program, including Medicare or Medicaid. Participant hereby agrees to notify CHI immediately of any threatened, proposed, or actual exclusion of Participant or any individual providing services to CHI, from any federally funded health care program, including Medicare or Medicaid. In the event that Participant or any individual providing services to CHI, is excluded from participation in any federally funded health care program during the term of the Agreement, or if at any time after the Start Date it is determined that Participant or any individual providing services to CHI, is in breach of this Section, the Agreement shall automatically terminate as of the date of such exclusion or breach. Participant further agrees that any individual employed or contracted by Participant who is excluded from participation in any federally funded health care program during the term of the Agreement shall automatically be deemed ineligible or removed from providing any additional services to CHI pursuant to the Agreement.

1.3.3 that Participant shall indemnify and hold harmless CHI against all actions, claims, demands, and liabilities, and against all loss, damage, costs, and expenses, including reasonable attorneys’ fees, arising directly or indirectly, out of any violation of this Section by Participant, or due to the exclusion of Participant or any individual providing services on



behalf of Participant to CHI from a federally funded health care program, including Medicare or Medicaid.

1.3.4 that Participant will not now, or at any time in the future, knowingly employ or otherwise knowingly do business with firms, individuals, or entities under suspension or exclusion from Medicare or Medicaid.

1.3.5 that the parties will cooperate by furnishing information about past, present, or future transactions, to whatever extent may be necessary, in order to establish compliance with Medicare and Medicaid requirements by CHI and Participant.

1.4. **Recordkeeping.** If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of the Agreement, Participant shall make available, upon written request by the Secretary of the Department of Health and Human Services (the Secretary), or upon request by the Comptroller General of the United States General Accounting Office (the Comptroller General), or any of their duly authorized representatives, a copy of the Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs of the services provided by Participant under the Agreement. Participant further agrees that, in the event Participant carries out any of its duties under the Agreement through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract shall contain a provision requiring the related organization to make available until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract upon written request to the Secretary, the Comptroller General, or any of their duly authorized representatives, a copy of such subcontract and such organization's books, documents, and records as are necessary to verify the nature and extent of such costs

1.5. **Access to Books.** The parties agree that, if the Agreement is determined to be a contract within the purview of Section 1861(b)(1)(I) of the Social Security Act and the regulations promulgated in implementation thereof at 42 CFR Part 420, Participant, its agents, employees, officers, and directors agree to make available to the Secretary of the Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, and their duly authorized representatives access to the books, documents, and records of the respective party and such other information as may be required by the Secretary or the Comptroller General to verify the nature and extent of the cost of services provided by Participant. If Participant, its agents, employees, officers, or directors refuse to make the books, documents, and records available for said inspection, and if, as a result, CHI is denied reimbursement for said services, then Participant agrees to indemnify CHI for CHI's loss or reduction in reimbursement. The obligation of Participant to make records available shall extend for four (4) years after the furnishing of the latest service under the Agreement or any renewal.

1.6. **No Kickback.** Nothing in the Agreement shall be construed as an offer for payment by one party to the other of cash or other remuneration, directly or indirectly, in exchange for patient referrals or arrangements or recommendations for any item or service.

1.7. **Intentionally Omitted.**

1.8. **Jeopardy.** Notwithstanding anything to the contrary herein contained, in the event the performance by either party of any term, covenant, condition, or provision of the Agreement jeopardizes the licensure of CHI, its participation in or payment or reimbursement from Medicare, Medicaid, Blue Cross, or other reimbursement or payment programs, or its full accreditation by TJC or any other state or nationally recognized accreditation organization, or its tax-exempt status, any of its property or financing (or the interest income thereon, as applicable), or will prevent or prohibit any physician, or any other health care professionals or their patients from utilizing CHI or any of its services, or if for any other reason said performance should be in violation of any statute, ordinance, or be otherwise deemed illegal, or be deemed unethical by any recognized body, agency, or association in the medical or CHI fields, CHI may at its option (i) terminate the Agreement immediately; or (ii) initiate negotiations to resolve the matter through amendments to the Agreement and, if the parties are unable to resolve the matter within thirty (30) days, terminate the Agreement immediately.

1.9. **Confidential Information**

1.9.1 **Non-Public Information.** Participant shall treat all non-public information obtained as part of the Agreement as confidential and shall not, without written authorization from CHI, release or share such information with any third party, except as may be required by law. Participant agrees that, before reporting any actual or perceived violation of law to any governmental entity, even if required by law to do so, it will first discuss any potential legal or compliance matter with CHI's Corporate Responsibility Officer and CHI Legal Counsel and, unless otherwise required by law, provide CHI an opportunity to investigate and appropriately report any compliance matter brought to its attention by Participant. Further, Participant agrees that it will cause any financial benefit received as a result of reporting any violation or perceived violation of law based on such non-public information to be donated to an organization determined by the IRS to be qualified under Internal Revenue Code Section 501(c)(3).

1.9.2 **Disclosure.** The parties shall hold in confidence the information contained in the Agreement and each of them hereby acknowledges and agrees that all information related to the Agreement, not otherwise known to the public, is confidential and proprietary and is not to be disclosed to third persons without the prior written consent of

each of the parties except: To the extent necessary to comply with any law, rule, or regulation, including without limitation any rule or regulation promulgated by the SEC or valid order of any governmental agency or any court of competent jurisdiction; as part of its normal reporting or review procedure, to its auditors and its attorneys; to the extent necessary to obtain appropriate insurance, to its insurance agent; or as necessary to enforce its rights and perform its obligations under the Agreement.

1.10 **Assignment.** Participant may not assign, encumber, or transfer the Agreement in whole or in part nor grant a license or concession in connection therewith without the prior written consent of CHI. This prohibition shall include any act that has the effect of an assignment or transfer which occurs by operation of law.

1.11 **Endorsements.** Neither party shall use the name of the other party in any promotional or advertising material unless such party has received the prior written consent of the party whose name is to be used. Both parties shall deal with each other publicly and privately in an atmosphere of mutual respect and support, and each party shall maintain good public and patient relations and efficiently handle complaints and inquiries with respect to the services provided under the Agreement.

1.12 **Independent Contractors.** The parties are independent contractors. Neither is authorized or permitted to act as an agent or employee of the other. Nothing in the Agreement shall in any way alter the freedom enjoyed by either party, nor shall it in any way alter control of the management, assets, and affairs of either party. Neither party, by virtue of the Agreement, assumes any liability for any debts or obligations of a financial or legal nature incurred by the other party.

1.13 **Waiver.** The waiver by either party of a breach or violation of any provision of the Agreement shall not operate as or be construed to be a waiver of any subsequent breach hereof.

1.14 **Choice of Law.** The Agreement shall be construed and governed by the laws of the state where KYOne HP is located applicable to agreements made and to be performed wholly within that state irrespective of its choice-of-law principles.

1.15 **Intentionally Omitted.**

1.16 **Partial Invalidity.** If any provision of the Agreement is found to be invalid or unenforceable by any court or other lawful forum, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of the Agreement, unless such invalidity or unenforceability would defeat an essential business purpose of the Agreement.

1.17 **Survival.** Except as otherwise expressly provided in the Agreement, all covenants,

agreements, representations, and warranties, expressed or implied, shall survive the termination of the Agreement, and shall remain in effect and binding upon the parties until they have fulfilled all of their obligations under the Agreement, and the statute of limitations shall not commence to run until the time such obligations have been fulfilled.

1.18. **No Third Party Beneficiaries.** There are no third party beneficiaries to the Agreement.

1.19. **Headings.** Headings are included for the purpose of convenience only and shall not affect the interpretation of any provision of the Agreement or any exhibit.

1.20. **Authority.** Any entity signing this Agreement on behalf of any other entity hereby represents and warrants in its individual capacity that it has full authority to do so on behalf of the other entity. Any individual signing this Agreement on behalf of an entity hereby represents and warrants in his/her individual capacity that he/she has full authority to do so on behalf of such entity.

## **2. Compliance with All Laws, Regulations, and Standards.**

2.1. **Compliance.** The parties intend and in good faith believe that the Agreement complies with the provisions of the Taxpayer Bill of Rights 2, the Internal Revenue Code, specifically including the provisions regarding private benefit and private inurement that apply to CHI as a 501(c)(3) corporation, the Stark law, the Anti-Kickback Statute, and all other federal and state laws (collectively, the laws). If either party holds a reasonable belief that the Agreement is contrary to any provision of the laws or the regulations promulgated thereunder, or any memorandum, case law, or other authority, then the parties agree to attempt in good faith to renegotiate the provisions to their mutual satisfaction. If an agreement can not be reached within thirty (30) days, either party may immediately terminate the Agreement.

2.2. **Reorganization or Discontinuation of Services.** In the event that CHI, alone or as a member of a health care system, elects to merge, discontinue, downsize, integrate, restructure or otherwise materially alter the services for which Participant is engaged in, CHI may first request mutual discussions with Participant in this regard, which discussions shall continue for a thirty (30) day period subsequent to the CHI's request ("discussion period"). After the expiration of the discussion period, CHI may elect to terminate this Agreement by providing Participant with at least thirty (30) days advance written notice prior to the effective date of the termination.

2.3 **Violation of Law; Tax-Exempt Status.** If, in the opinion of CHI, any term of this Agreement violates federal, state or local law or regulation, could jeopardize the federal tax-exempt status of CHI, or the tax-exempt status of the bonds of the CHI, or could

result in prohibition of any referral or payment to CHI, then the terms of this Agreement shall be changed as necessary so that, in the opinion of CHI, such federal, state, or local law or regulation is no longer violated, such federal tax-exempt status is no longer threatened or such prohibition would no longer result, as the case may be.

2.4 **Equal Employment Opportunity.**

CHI is an Equal Employment Opportunity and Affirmative Action employer. The parties hereby incorporate by reference the provisions of Executive Order 11246, as amended, and 41 C.F.R. 60-1.4(a); the Rehabilitation Act of 1973, as amended, and 41 C.F.R.60-741.5(a); the Vietnam Era Veterans' Readjustment Assistance Act, as amended, and 29 C.F.R. 60-250.5(a); and Executive Order 13496 and 29 C.F.R. Part 471, Appendix A to Subpart A. By acceptance of this contract, Participant represents and warrants that unless exempted under the terms of these applicable laws, it will comply with the foregoing Executive Orders, statutes, rules and regulations and all amendments thereto.

2.5 **Insurance.** Participant shall, at its sole cost and expense, procure, keep, and maintain throughout the Term of the Agreement, insurance coverage in the minimum amounts of: One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate for commercial general liability; and with participation in the excess liability fund thereunder; One Million Dollars (\$1,000,000) per each and every occurrence for automobile liability; and applicable state statutory limits for workers' compensation. In addition to the coverages specifically listed herein, Participant shall maintain any other usual and customary policies of insurance applicable to the work being performed by Participant pursuant to the Agreement. Said policy(ies) shall cover all of Participant's services hereunder. By requiring insurance herein, CHI does not represent that coverage and limits will necessarily be adequate to protect Participant and such coverage and limits shall not be deemed as a limitation on Participant's liability under the indemnities granted to Participant in the Agreement, including any exhibits.

## EXHIBIT D

### BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“**Agreement**”) is made and entered into by and between [REDACTED] (“**Participant**”) and [REDACTED] (“**CIN**”). This Agreement is effective as of [REDACTED], 2013 (“**Effective Date**”).

### RECITALS

WHEREAS, CIN is organized to participate (i) as an accountable care organization (“**ACO**”) under the “Medicare Shared Savings Program” (“**MSSP**”) and in “Commercial Shared Savings Programs” pursuant to which, CIN will enter into one or more “**Program Agreements**” with the Centers for Medicare & Medicaid Services (“**CMS**”) and commercial payers, and (ii) in arrangements with hospitals under Program Agreements whereby CIN and its Participants will assist the hospitals in improving the quality and efficiency of services provided to hospital patients (“**Hospital Initiatives**”), (the MSSP, Commercial Shared Savings Programs and Hospital Initiatives, collectively referred to as “**Programs**”); and

WHEREAS, Participant has entered into a contract with CIN as a Participant to provide, or arrange for the provision of, health care services for the patients assigned to CIN (“**Participant Agreement**”); and

WHEREAS, the parties to this Agreement have a relationship whereby (i) Participant provides CIN access to its Protected Health Information (as defined below) (“**PHI**”), and the PHI of its Provider/ Suppliers (as defined in the Participant Agreement) who have entered into addenda to the Participant Agreement, to allow CIN to assist Participant in improving the quality and efficiency of health care services rendered to Participant’s patients (thus qualifying as Health Care Operations under 45 CFR 164.501); and (ii) Participant shall perform services for CIN to assist CIN in conducting CIN Activities for other Participants and Provider/Suppliers to improve the quality and efficiency of patient care services, which may require Participant to access the PHI of others; and

WHEREAS, Participant and CIN acknowledge that each party has certain obligations under the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as amended, including those provisions of the American Recovery and Reinvestment Act of 2009 (“**ARRA**”), specifically the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”), and their implementing regulations, to maintain the privacy and security of PHI. The parties intend this Agreement to satisfy those obligations including, without limitation, the requirements of 45 CFR 164.504(e).

NOW THEREFORE, in consideration of the mutual promises below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## AGREEMENT

### I. DEFINITIONS

- a) “**Administrative Safeguards**” shall mean the administrative actions, policies and procedures to manage the selection, development, implementation and maintenance of security measures to protect ePHI and to manage the conduct of Business Associate’s or Covered Entity’s workforce in relation to the protection of such ePHI.
- b) “**Breach**” shall have the same meaning as the term "breach" at 45 CFR 164.402.
- c) “**Business Associate**” shall have the meaning defined in 45 CFR 160.103. CIN shall be the Business Associate for all Participants and Provider/Suppliers so long as CIN conducts CIN Activities under Program Agreements with Payors. The term “**Business Associate**” shall also include Participant and its Provider/Suppliers to the extent that it or they perform services for CIN in conducting CIN Activities for other Participants and Provider/Suppliers.
- d) “**Covered Entity**” shall mean the health care provider, individual or entity identified as “**Participant**” herein. The term Covered Entity shall include Participant and its Provider/Suppliers to the extent it or they disclose PHI to Business Associate in conducting of CIN Activities.
- e) “**Data Aggregation Services**” shall mean, with respect to PHI created or received by Business Associate in its capacity as a business associate of Covered Entity, the combining of such PHI by Business Associate with PHI received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the Health Care Operations of the respective covered entities.
- f) “**Designated Record Set**” shall mean a group of records maintained by or for Covered Entity that consists of the following: (a) medical records and billing records about Individuals (as defined herein) maintained by or for a health care provider; (b) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used in whole or in part, by or for Covered Entity to make decisions about Individuals. For these purposes, the term “record” means any item, collection, or group of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.
- g) “**Data Use Agreement**” shall mean that certain agreement entered into by Business Associate and the CMS governing the use and re-use of PHI provided by CMS to Business Associate in its capacity as an ACO.
- h) “**HIPAA**” shall mean the Health Insurance Portability and Accountability Act of 1996, the implementation regulations promulgated thereunder by the U.S. Department of Health and Human Services, the HITECH (as defined below) and

any future regulations promulgated thereunder, all as may be amended from time to time.

- i) “**HITECH**” shall mean the Health Information Technology for Economic and Clinical Health of 2009 as codified at 42 U.S.C. 17921 et seq.
- j) “**Individual**” shall have the same meaning as the term “individual” is defined in 45 CFR 160.103, and any amendments thereto, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- k) “**Participating Provider**” shall mean the status of Covered Entity in relation to Business Associate as an ACO and shall be evidenced by a Participant Agreement entered into by both parties hereto.
- l) “**Physical Safeguards**” shall mean the physical measures, policies and procedures to protect Covered Entity’s or Business Associate’s electronic information systems and related buildings and equipment, from natural and environmental hazards and unauthorized intrusion.
- m) “**Privacy Rule**” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- n) “**Protected Health Information**” and/or “**PHI**” shall have the same meaning as the term “protected health information” is defined in 45 CFR 160.103, limited only to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information and PHI shall include any PHI transmitted or maintained in electronic media (“**ePHI**”).
- o) “**Required By Law**” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- p) “**Secretary**” shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.
- q) “**Security Incident**” shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- r) “**Security Rule**” shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164, Subparts A and C.
- s) “**Technical Safeguards**” shall mean the technology and the policy and procedures for its use that protect ePHI and control access to it.
- t) “**Underlying Agreement**” means the written contract for services between Covered Entity and Business Associate generally described as the Participant Agreement.

- u) “**Unsecured PHI**” shall have the same meaning as the term “unsecured protected health information” at 45 CFR 164.402.
- v) Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning ascribed to them in HIPAA, the Privacy Rule, the Security Rule, or HITECH or any future regulations promulgated or guidance issued by the Secretary.

## II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a) **Use and Disclosure.** Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- b) **Safeguards to be in Place.** Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. Additionally, Business Associate shall comply with 45 CFR 164, Subpart C to the same extent such provisions apply to Covered Entity.
- c) **Duty to Mitigate.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any access, use, or disclosure of PHI by Business Associate in violation of the requirements of this Agreement or the Privacy or Security Rule. Business Associate shall communicate, in writing, to Covered Entity, within three (3) business days of discovery of such access, use or disclosure, a description of the event and the actions taken by Business Associate to mitigate any harm.
- d) **Business Associate’s Agents and Subcontractors.** In accordance with 45 CFR 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of Business Associate agrees, in writing, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including implementation of reasonable and appropriate safeguards to protect PHI.
- e) **Duty to Provide Access.** To the extent Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, to the PHI in the Designated Record Set, in the form and format requested including electronically if the Designated Record Set is electronically maintained, to Covered Entity or, as directed by Covered Entity, to the Individual or another person properly designated by the Individual, in order to meet the requirements under 45 CFR 164.524. Any denial by Business Associate of access to PHI shall be the responsibility of, and sufficiently addressed by, Business Associate, with written notice to Covered Entity including, but not limited to, resolution of all appeals and/or complaints arising therefrom.
- f) **Amendment of PHI.** Business Associate agrees to make any amendment(s) to PHI in its possession contained in a Designated Record Set that Covered Entity

directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity, or an Individual, and within a reasonable time and manner.

- g) **Duty to Make Internal Practices Available.** Business Associate agrees to make its internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI, and any PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's and/or Business Associate's compliance with the Privacy or Security Rule.
- h) **Documenting Disclosures/Accounting.** Business Associate agrees to document any disclosures of PHI and information in its possession related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate agrees to provide to Covered Entity information collected in accordance with this Section, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- i) **Reporting Disclosures to Covered Entity.** In addition to the duty to mitigate under Section II(c), Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it, or its officers, employees, agents or subcontractors become aware, including any Security Incident of which it becomes aware, as soon as practicable but no longer than three (3) business days after the discovery of such use or disclosure. Notwithstanding the foregoing, Covered Entity agrees that this Agreement shall constitute notice for reporting by Business Associate to Covered Entity of unsuccessful Security Incidents, which are not reasonably considered by Business Associate to constitute an actual threat to an information system of Business Associate.
- j) **Notification of Breach.** Business Associate shall notify Covered Entity within three (3) business days after it, or any of its employees or agents, reasonably suspects that a Breach of Unsecured PHI, may have occurred. Business Associate shall exercise reasonable diligence to become aware of whether a Breach of Unsecured PHI may have occurred and, except as stated to the contrary in this Section, shall otherwise comply with 45 CFR 164.410 in making the required notification to Covered Entity. Business Associate shall cooperate with Covered Entity in the determination as to whether a Breach of Unsecured PHI has occurred and whether notification to affected Individuals of the Breach of Unsecured PHI is required by 45 CFR 164.400 et seq., including continuously providing Covered Entity with additional information related to the suspected Breach as it becomes available. In the event that Covered Entity informs Business Associate that (i) Covered Entity has determined that the affected Individuals must be notified because a Breach of Unsecured PHI has occurred and (ii) Business Associate is in a better position to notify the affected Individuals of such Breach, Business



Associate shall immediately provide the required notice (1) within the time frame defined by 45 CFR 164.404(b), (2) in a form and containing such information reasonably requested by Covered Entity, (3) containing the content specified in 45 CFR 164.404(c), and (4) using the method(s) prescribed by 45 CFR 164.404(d). In addition, in the event that Covered Entity indicates to Business Associate that Covered Entity will make the required notification, Business Associate shall promptly take all other actions reasonably requested by Covered Entity related to the obligation to provide a notification of a Breach of Unsecured PHI under 45 CFR 164.400 et seq. Business Associate shall indemnify and hold Covered Entity harmless from all liability, costs, expenses, claims or other damages that Covered Entity, its related corporations, or any of its or their directors, officers, agents, or employees, may sustain as a result of Business Associate's breach of its obligations under this Section, including reasonable attorney's fees and any criminal or civil penalties, fines or assessments levied against Covered Entity, as the result of acts or omissions of Business Associate, by a court or administrative agency having jurisdiction over the matter.

- k) **Delegation of Obligations.** To the extent Business Associate is delegated to carry out Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligations.

### **III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- a) **General Use and Disclosure Provisions.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the purposes set forth in III(b), if such use or disclosure of PHI would not violate the Privacy or Security Rule if done by Covered Entity.
- b) **Specific Use and Disclosure Provisions.**
1. Business Associate may use and disclose PHI to perform services for Covered Entity, including specific services, as set out in the Underlying Agreement, and any additional services necessary to carry out those specific services in the Underlying Agreement, including any reporting requirements by CMS necessary to maintain its status as an ACO.
  2. Business Associate may use PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
  3. Business Associate may disclose PHI in its possession for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate, provided that such disclosures are Required By Law, or Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that

such PHI will be held confidentially and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. With respect to its status as an ACO, Covered Entity acknowledges and agrees, Business Associate shall make any required reports to CMS to comply with the requirements of CMS in accordance with its agreement with CMS and applicable regulatory requirements.

4. Business Associate may de-identify any and all PHI in its possession obtained from Covered Entity with Covered Entity's prior written consent, and use such de-identified data, in accordance with all de-identification requirements of the Privacy Rule.
5. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1). Covered Entity shall be furnished with a copy of all correspondence sent by Business Associate to a federal or state authority.
6. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity.
7. Any use or disclosure of PHI by Business Associate shall be in accordance with the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this Agreement and the Underlying Agreement, as well as Business Associate's agreement with CMS.

#### **IV. OBLIGATIONS OF COVERED ENTITY**

- a) Covered Entity shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices ("NPP") maintained in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Covered Entity agrees to amend its NPP to identify itself as a Participating Provider in CIN.
- b) Covered Entity shall notify Business Associate in a timely manner of any changes in, or revocation of, permission by an Individual to use or disclose PHI to the extent that such change may affect Business Associate's permitted or required use or disclosure of PHI.
- c) Covered Entity shall notify Business Associate in a timely manner of any restriction to the use and/or disclosure of PHI, which the Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- d) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- e) Covered Entity agrees to comply with any terms imposed upon Business Associate as an ACO to use, re-use, disclose or provide access to any PHI provided by CIN to it as a Participating Provider of CIN which PHI CIN receives or creates for CMS pursuant to the Data Use Agreement. Business Associate shall provide such terms to Covered Entity in the Participating Provider Agreement.

## V. TERMINATION

- a) **Term.** The term of this Agreement shall be effective as of the Effective Date and shall terminate upon termination of the Underlying Agreement, upon termination of Business Associate's Program Agreement with CMS, and when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions of Section (V)(c)(2).
- b) **Termination for Cause.** Upon either party's knowledge of a material breach by the other party, such party shall either:
  - 1. Provide an opportunity for the breaching party to cure the breach, end the violation, or terminate this Agreement if the breaching party does not cure the breach or end the violation within thirty (30) days;
  - 2. Immediately terminate the Agreement if the breaching party has breached a material term of this Agreement and cure is not possible; or
  - 3. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary to the extent such report is Required By Law.
- c) **Effect of Termination.**
  - 1. Except as provided in paragraph V(c)(2) of this Agreement, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to

Covered Entity notification in writing of the conditions that make return or destruction infeasible. Upon verification that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. If it is infeasible for Business Associate to obtain, from a subcontractor or agent, any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

d) **Judicial or Administrative Proceedings.** Notwithstanding any other provision herein, Covered Entity may terminate the applicable Underlying Agreement, effective immediately, upon a finding or stipulation that Business Associate violated any applicable standard or requirement of the Privacy Rule or the Security Rule or any other applicable laws related to the security or privacy of PHI, relating to the Underlying Agreement, in any criminal, administrative or civil proceeding in which the Business Associate is a named party.

## VI. MISCELLANEOUS

- a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended and for which compliance is required.
- b) **Amendment.** No change, amendment, or modification of this Agreement shall be valid unless set forth in writing and agreed to by both parties, except as set forth in Section VI(m) below.
- c) **Indemnification.** Business Associate shall indemnify Covered Entity for any and all claims, inquiries, costs or damages, including but not limited to any monetary penalties, that Covered Entity incurs arising from a violation by Business Associate of its obligations hereunder. Covered Entity shall indemnify Business Associate for any and all claims, inquiries, costs or damages, including but not limited to any monetary penalties, that Business Associate incurs arising from a violation by Covered Entity of its obligations hereunder. Any limitation of liability contained in the Underlying Agreement shall not apply to the indemnification requirement of this provision. This provision shall survive the termination of this Agreement.
- d) **Survival.** The respective rights and obligations of Business Associate under this Agreement shall survive the termination of this Agreement.

- e) **Interpretation.** Any ambiguity or inconsistency in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule, the Security Rule, and HITECH.
- f) **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and its respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- g) **Notices.** Any notices to be given to either party under this Agreement shall be made in writing and delivered via US mail or express courier to the address given below, and/or via facsimile to the facsimile number listed below.

If to CIN: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Fax: \_\_\_\_\_

If to Participant: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Fax: \_\_\_\_\_

- h) **Headings.** The section headings are for convenience only and shall not be construed to define, modify, expand, or limit the terms and provisions of this Agreement.
- i) **Governing Law and Venue.** This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of \_\_\_\_\_, without giving effect to its conflict of law provisions.
- j) **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.
- k) **Effect on Underlying Agreement.** If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Agreement shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.
- l) **Relationship of the Parties.** In the performance of the work, duties and obligations described in this Agreement or under any other agreement between

the parties, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

- m) **Modification.** The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA, HITECH and other applicable state and federal laws relating to the security or confidentiality of PHI as determined solely by Business Associate. Either party may unilaterally amend this Agreement to bring the Agreement into full compliance with the change in law or regulation by providing notice of amendment to the other party and such amendment shall be deemed effective unless the other party provides written objection to the amendment within ten (10) days of its receipt. If there is a written objection then the parties shall in good faith try to come to a resolution within the sooner of sixty (60) days of the date of the written objection or the effective date of the change in law or regulations. If the change in law or regulation is effective immediately, then the Business Associate, in its sole discretion, may unilaterally amend this Agreement to comply with the change in law upon written notice to Covered Entity.

Covered Entity acknowledges and agrees that CMS may impose compliance requirements on Business Associate to maintain its status as an ACO. Covered Entity agrees to cooperate with Business Associate in maintaining its status as an ACO including agreeing to amend this Agreement if necessary and if such amendment does not result in a violation of law.

## **VII. ENFORCEMENT**

Business Associate acknowledges that, in the event it violates any applicable provision of the Security Rule or any term of this Agreement that would constitute a violation of the Privacy Rule, Business Associate will be subject to and will be directly liable for any and all civil and criminal penalties that may result from such violation.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date reflected above.



(CIN)



(PARTICIPANT):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT E**

**MEDICARE SHARED SAVINGS PROGRAM (“MSSP”)  
ADDITIONAL PROVISIONS**

**1. MSSP SPECIFIC PROVISIONS**

**In addition to the other provisions of this Agreement, in the event that Participating Hospital participate in the Medicare Shared Savings Program (“MSSP”), Participating Hospital agree to be bound by and comply with the provisions of this Exhibit E which pertain specifically to the MSSP.**

**1.1 Meaningful Commitment to KYOne HP Mission, KYOne HP Activities, and Performance Standards.** Participating Hospital agree to demonstrate a meaningful commitment to KYOne HP’s mission by devoting time, effort and resources to performing KYOne HP Activities and using Participating Hospital’s best efforts to meet and be held accountable for meeting applicable Performance Standards, including the processes required by 42 C.F.R. § 425.112 of the Program Regulations.

**1.2 Certifications.** At the end of each Performance Year, an individual with legal authority to bind Participating Hospital’s organization will be required to certify to the best of his or her knowledge, information and belief: (a) that Participating Hospital are in compliance with the requirements of the MSSP, and (b) regarding the accuracy, completeness, and truthfulness of all data and information that is generated or submitted by Participating Hospital, including any quality data or other information relied upon by CMS in determining KYOne HP’s eligibility for, and the amount of a Incentive Award or the amount of Shared Loss Payment Obligation or other monies owed to CMS.

**1.3 Compliance with Applicable Laws and Regulations.** KYOne HP, Participating Hospital agree to comply with all applicable Federal laws including: (a) Federal Criminal Law; (b) the False Claims Act; (c) the anti-kickback statute (42 U.S.C. 1320a-7b(b)); (d) the civil monetary penalties law (42 U.S.C. 1320a-7a); (e) the physician self-referral law (42 U.S.C. 1395nn); (f) the Program Regulations; and (g) as necessary to protect the tax exempt status of other Participants which are tax exempt entities.

**1.4 Beneficiary Inducement.** KYOne HP, Participating Hospital and other individuals or entities performing functions or services related to KYOne HP Activities, are prohibited from providing gifts or other remuneration to beneficiaries as inducements for receiving items or services *except as* permitted by applicable law, including applicable waivers provided under the MSSP as implemented by KYOne HP Policies.

**1.5 Prohibitions Related to Referrals.** Participating Hospital are prohibited from (a) conditioning the participation of any individual or entity performing activities for KYOne HP on referrals of federal healthcare program business for federal health care program beneficiaries who are not assigned to KYOne HP, (b) requiring that Medicare Covered Persons be referred only to other Participants or to any other provider or supplier (except that Participating Hospital may require referrals by Participating Hospital’s employees/contractors operating within the scope of their contractual arrangement to Participating Hospital’s organization, so long as the



employees/contractors remain free to make referrals without restrictions or limitation if: (i) the beneficiary expresses a preference for a different provider, practitioner or supplier; (ii) the beneficiary's Payer determines the choice of provider, practitioner or supplier; or the (iii) referral is not in the beneficiary's best medical interests in the judgment of the referring party).

**1.6 Marketing.** For purposes of the MSSP, Participating Hospital agree to only use Marketing Materials and Activities that are approved by KYOne HP and CMS, and discontinue immediately the use of Marketing Materials or Activities that are disapproved by KYOne HP or CMS.

**1.7 Beneficiary Notification of MSSP Participation.** Participating Hospital must: (a) notify MSSP Covered Persons using standardized written notices at the point of care and by posting signs that Participating Hospital are participating in the Program; (b) inform Covered Persons of their right to opt out of data sharing (as set forth in Section 1.8 below); (c) comply with other KYOne HP Policies and the Program Regulations; and (d) as applicable, use standardized written notices approved by KYOne HP and CMS in settings in which Covered Persons receive Primary Care Services.

**1.8 Beneficiary Notification Regarding MSSP Access to Clinical Data.** Before requesting claims data about a particular MSSP Covered Person, Participating Hospital must inform the Covered Person that KYOne HP may request such claims data and each Covered Person will have a meaningful opportunity to "opt-out" and decline having his/her claims data shared with KYOne HP. Participating Hospital must also comply with any data use agreement entered into by the KYOne HP, the Program Regulations and other applicable law relative to beneficiary-identifiable data.

**1.9 Additional Acknowledgment and Agreements Relative to MSSP.** CMS will assess and monitor the performance of KYOne HP, Participating Hospital and Participating Hospital's Providers/Suppliers, under the MSSP, including to (a) assess the avoidance of at-risk beneficiaries, and (b) monitor compliance with quality Performance Standards. KYOne HP will not qualify to share in savings under the MSSP in any year in which it fails to fully and completely comply with the quality Performance Standards. KYOne HP will not be eligible to share in any savings generated under certain circumstances set forth in 42 C.F.R. 425.500 of the Program Regulations, and Participating Hospital cannot earn a Physician Quality Reporting System incentive outside of the MSSP.

**1.10 Additional MSSP Requirements for Maintenance of Records.** Participating Hospital agree: (i) to maintain all books, contracts, records, documents, data and other information related to this Agreement or MSSP Program Agreement for a minimum period of 10 years from (ii) the end of the term of an applicable MSSP Program Agreement, or (b) the date of completion of any audit, evaluation, or inspection by the CMS; provided, however, Participating Hospital agree to retain such records for an additional six (6) years in the event that (y) CMS determines there is a special need to retain a particular record or group of records for a longer period; or (z) there has been a termination, dispute, or allegation of fraud or similar fault against KYOne HP, Participating Hospital, or other individuals or entities performing functions or services related to KYOne HP Activities. Further, CMS, the Department of Health and Human Services ("DHHS"), the Comptroller General, and the Federal Government or their designees

have the right to audit, inspect, investigate, and evaluate any books, contracts, records, data, documents and other information created or used by KYOne HP, Participating Hospital, and other individuals or entities performing KYOne HP Activities that pertain to: (a) KYOne HP's compliance with the MSSP; (b) the quality of services performed and the determination of amount due to or from CMS; and (c) the ability of KYOne HP to bear the risk of potential losses and to repay any losses to CMS.

**1.11 Non-Exclusion.** In addition to the other assurances provided by the parties, each party to this Agreement or an Addendum represents and warrants that it is not and at no time has been excluded from participation in any federally funded health care program, including Medicare and Medicaid, and each party represents and warrants that it will not employ or contract with any individual or entity (or an entity that employs or contracts with such an individual), excluded from participation in any federal health care program, including Medicare and Medicaid.

**1.12 Exclusive MSSP Participation; Accuracy of Information.** Participating Hospital represent and warrant that Participating Hospital are not participating in another Medicare initiative that involves shared savings payments, and that all information submitted to KYOne HP by Participating Hospital on the Application Questionnaire is true and correct as of the stated date. In addition, if Participating Hospital provide Primary Care Services, Participating Hospital agree that Participating Hospital will not participate in any other MSSP, accountable care organization, or any other Medicare initiative that involves shared savings payments, *other than* the KYOne HP's accountable care organization.

**1.13 Construction.** In the event of conflict between the language of this Agreement and any Program Regulations, the language of the Program Regulations shall prevail with respect to the terms applicable to the Medicare Shared Savings Program.