

TO: Alliance Workgroup
FROM: Seth Terndrup and Richard Raimond
RE: Alliance Agreement Key
DATE: 6/19/18

This memo attempts to provide a brief overview of the major sections of the Alliance Agreement. This memo does not attempt to explain in detail each term of the agreement and their possible consequences. This memo serves merely as a key, if you will, to help you navigate the agreement. **THIS MEMO IS NOT A SUBSTITUTE FOR READING THE ACTUAL AGREEMENT.**

THIS MEMO AND ITS CONTENTS ARE NOT A SUBSTITUTE FOR ENGAGING YOUR OWN LEGAL COUNSEL.

THIS MEMO IS NOT LEGAL ADVICE.

THIS MEMO DOES NOT CREATE A LAWYER CLIENT RELATIONSHIP BETWEEN YOU OR YOUR ORGANIZATION AND RICHARD RAIMOND AND SETH TERNDRUP, INDIVIDUALLY OR COLLECTIVELY.

Neither of us sought or received the approval of the organizations we represent, Community Care of Southern Piedmont and Community Care of North Carolina, respectively. Consequently, CCSP and CCNC received the draft document at the same time as all other Alliance workgroup members. As such, they will be afforded the same opportunity to suggest changes to the agreement as any other member of the Alliance workgroup.

The current draft of the Alliance Agreement is the result of information and suggestions, or lack thereof, from the Alliance workgroup collectively. In cases where the workgroup was silent or unable to reach consensus, we attempted to draft terms from a legally objective position. In other words, we did not draft terms from the perspective of personal opinion or from the viewpoint of our respective organizations.

Finally, at the end of each titled section below, we indicate whether the section is primarily a legal issue or a business concern. Designating a section for legal decision-making may mean it is more appropriate for your lawyer to accept a term or suggest alternatives. These terms might be what you call legalese or boiler plate. We are not suggesting these terms are insignificant—to the contrary, they are important.

PREAMBLE. The preamble or recitals to an agreement are used to express necessary or relevant background information. The Alliance Agreement preamble states our relationship to the State Plan, our reasoning for creating an Alliance, and what we hope to accomplish.

Unless stated in the body of an agreement, the preamble is not legally binding. This Agreement does not incorporate the preamble into the agreement. Therefore, there are no binding terms in the preamble.

*Business

ARTICLE I: PURPOSE. This Article establishes the reason for forming the Alliance. As the term is capitalized, it is further used as a defined term throughout the agreement.

*Business

ARTICLE II: RULES OF CONSTRUCTION AND DEFINITIONS. Rules of Construction assist in the interpretation of an agreement's terms. For example, one of our rules defines the word "including" to be

expansive rather than limiting. That way we don't have to state "including, without limitation" we can merely use the word "including" and it is interpreted to mean without limitation and therefore not restricted to an expressed list. The definitions section is self-explanatory. When we use a defined word, that word means nothing more and nothing less than what its definition says it means.

*Rules of Construction – Legal. *Party Definitions – Business.

ARTICLE III: SCOPE. This Article briefly describes what the Alliance agreement covers – and what it does not. It reaffirms that the Alliance members will remain independent companies while using a single consistent brand for Alliance business. It further provides that the individual agreements with payers will be covered by separate SOWs to be agreed upon by the Alliance members.

*Business

ARTICLE IV: TERM. This section is meant to define the time limits of the agreement. However, another law firm previously suggested to CCNC that having a defined term and a non-compete untethered to existing work could raise anti-trust scrutiny.

*The time limits, in general, are a business decision, but the anti-trust issue is legal.

ARTICLE V: ALLIANCE COUNCIL. This Article describes the purpose and composition of the Alliance council, along with the mechanisms of when and how it will meet and vote.

*Business

ARTICLE VI: CONFLICTS OF INTEREST. The purpose of this section was to officially recognize that each member will be primarily obligated to act in the best interest of their organization, but that each member also has an obligation to act in good faith in decisions related to the alliance.

*Legal

ARTICLE VII: ROLES AND RESPONSIBILITIES OF THE PARTIES. This Article outlines the roles each Alliance member will undertake and the responsibilities applicable to all parties.

*Business

ARTICLE VIII: GEOGRAPHIC CONSIDERATIONS. This section attempts to define how the Alliance and its individual members will navigate territory issues.

*Business

ARTICLE IX: LIMITED AGREEMENT NOT TO COMPETE. This Article lists the limited restrictions on competition between Alliance Members and should be read carefully in concert with the definitions in Article II as to what constitutes "Non-Alliance" work, etc.

*Business

ARTICLE X: CUSTOMER CONTRACT EXECUTION. This section attempts to define, in some detail, a reasonable process for executing contracts. We must be able to efficiently work with customers and each other. This section also restates that CCNC will act as our customer-facing representative, and in turn, CCNC agrees to keep us reasonably informed.

*Business

ARTICLE XI: FINANCES. This Article describes any financial terms that are generally applicable to the Alliance, such as whether Alliance members are required to carry liability insurance and in what amount(s), while noting that the specifics of any given agreement with a payer will be described in the individual SOWs.

*Business

ARTICLE XII: ADDITION AND REMOVAL OF ALLIANCE MEMBERS; REMEDIES FOR BREACH. The agreement via this section makes it possible to add new members to the Alliance and effectively deal with the voluntary or forced exit of others. A new member may be added by unanimous consent of the existing members. An existing member may choose to voluntarily withdraw from the Alliance upon 90 days' notice. Any Alliance member's participation in the Alliance may be terminated for the reasons listed. The remainder of this section deals with liability.

*Addition and removal of members – business. Remedies for breach – legal.

ARTICLE XIII: CONFIDENTIALITY. This Article outlines the Alliance members' confidentiality obligations to one another and notes that if additional confidentiality protections are required as to any given payor contract, those additional obligations will be contained in the individual SOW.

*Business

ARTICLE XIV: INTELLECTUAL PROPERTY. The purpose of this section is to define how we handle new and existing intellectual property ownership.

*Legal

ARTICLE XV: TERMINATION. This Article describes how the Alliance itself may be terminated in its entirety—as opposed to how individual members may voluntarily leave the Alliance (or be removed for cause by the other members) while still leaving the Alliance intact.

*Business

ARTICLE XVI: AMENDMENTS. Amending this agreement requires unanimous consent. The amendment must be signed by all members.

*Primarily legal because any amendments must be executed as such in order to be legally enforceable.

ARTICLE XVII: FRAMEWORK AGREEMENT. This Article acknowledges the existence of the prior Framework Agreements between CCNC and the individual Networks, and terminates those agreements as to the Alliance members—with the intent that this Alliance agreement take their place.

*Business

ARTICLE XVIII: REPRESENTATIONS. This Article contains the various legal representations the Alliance members are making to one another as a part of forming the Alliance, e.g., that the individual member has the necessary board authority to sign, and the capacity, skill and experience to carry out the various SOWs that are anticipated under this agreement.

*Legal

ARTICLE XX: DISPUTES. This Article addresses how the Alliance will attempt to resolve serious disputes between members before turning to litigation, and outlines a process for mediating disputes.

*Legal

ARTICLE XXI: MISCELLANEOUS. This Article contains general boilerplate legal provisions that are contained in one form or another in most agreement, e.g., specifying what state's law will govern the contract, that this agreement supersedes any prior negotiations and discussions, and that the agreement will still be valid even if the parties don't all sign the same physical copy, etc.

*Legal