

CCWJC Issue	CCNC Proposed Response
1. Is the Alliance a “thing” or is it a relationship with CCNC?	This is a go forward relationship that is intended to define the way that CCNC with the Alliance Networks will operate in all future agreements
2. Would be helpful to include “version #” on the Alliance as revisions are made	Agree
3. Would like to look at a “worst case” pro forma – what does our revenue look like if WellCare and/or Aetna are not selected?	Completed pro-forma with 1 of 3 and reduced non-Medicaid revenues to be presented to CCWJC board
4. Clarification – what is the max length of the transition under section 5 (Termination)?	180 days
<p>5. Section 23 – discussion about insurance and what is reasonable for networks to have</p> <ul style="list-style-type: none"> ○ Insurance limits – re-consider limits and products stated in the contract; help us understand where these limits/products written in the original draft Alliance came from. ○ Ex: Our umbrella policy is \$1M (not \$5M as stated in the folder). ○ The name of products and sub categories of coverages varies depending on the carrier. ○ Could a more general statement, as written in other agreements, be used? 	<p>Updated insurance limits below:</p> <ul style="list-style-type: none"> a. Professional Liability – \$1,000,000 per occurrence/\$3,000,000 aggregate b. Cyber Coverage - \$3,000,000 per occurrence c. Directors and Officers liability - \$1,000,000 d. General Liability - \$1,000,000 per occurrence e. Automobile <ul style="list-style-type: none"> i. \$500,000.00 for bodily injury and property damage; ii. \$500,000.00 for uninsured/under insured motorist coverage; iii. \$2,000.00 for medical payment coverage. f. Worker’s Compensation - the greater of: <ul style="list-style-type: none"> i. \$1,000,000 per occurrence/\$3,000,000 aggregate; or ii. the amount required by state law g. Umbrella - \$1,000,000 each occurrence and aggregate
6. Advisory v. governance? The Agreement vests the decision-making power in only CCNC when it comes to the ultimate decision-maker on the appropriateness of non-Alliance and local	The Advisory Board will be modified to be referred to as the Alliance Review Committee. This committee will have responsibility for reviewing and approving all local work with input from CCNC Inc. regarding whether a prospective scope of work is (1) in competition

<p>work. Please clarify why Advisory instead of Governance and the role of the Advisory Board.</p>	<p>with current contracts or (2) requires infrastructure support (i.e. IT systems, analytics, etc.) to prevent running afoul of franchise limitations. In the event that the work is deemed competitive or requires infrastructure by CCNC Inc., the scope of work may not be able to be approved without modification and approval by CCNC Inc.</p>
<p>7. Would like to explore the Network's ability to review and approve CCNC-Third Party contracts prior to agreeing to do the work</p>	<p>Section 10: ...CCNC agrees not to execute any agreements that bind Network before presenting those terms that bind Network to Network, for review and approval by Network's Board or other decision-maker as applicable. Network must approve a proposed agreement within ten (10) business days (Revised) of being presented with the terms that bind Network. If any material changes are made to a proposal after Network has approved it, Network must be provided an additional ten (10) days to review and approve the agreement with the proposed new terms. For clarity, payment terms to Network, including any profit-sharing and any risk/loss-sharing, are deemed terms that bind Network and must be shared with Network as part of the review and approval process. If such approval is not received by CCNC within this time period, CCNC will have the right to enter into a contract with the Interested Third Party that does not include Network, and may offer participation to other members of the Alliance or to subcontracting entities.</p> <p>The intent of this obligation is that the Alliance partner would be able to review all contractual terms subject to confidentiality.</p>
<p>8. Section 10 – five days to review and approve a CCNC-Third Party contract does not seem sufficient enough time – consider up to 3 weeks to allow time for legal</p>	<p>Revised to 10 business days</p>
<p>9. Section 10 – need to further define the nature of the information that will be provided to network for review</p>	<p>Network will have the opportunity to review all aspects of the proposed agreement under Section 10</p>

	The intent of this obligation is that the Alliance partner would be able to review all contractual terms subject to confidentiality.
<p>10. Section 10 – requires CCNC to provide CCWJC with the “terms” in the CCNC-Third Party contract “that bind [CCWJC].” It further explains that “payment terms to Network, including any profit-sharing and any risk/loss-sharing, are deemed terms that bind Network and must be shared with Network as part of the review and approval process.”</p> <ul style="list-style-type: none"> ○ Is this additional language intended to be an exclusive definition of the “terms that bind” (as in, this payment information and nothing else) or is this additional language supposed to be only an example of a term that would bind CCWJC? ○ Are the “performance obligations” noted in Section 5.b.v. considered “terms that bind” CCWJC, and would therefore be provided for Network review before we agree to do the work? Are these “obligations” the same as the “Performance Expectations” discussed in Section 16? ○ Propose merging all of the relevant information to be provided by CCNC as part of a contract review into Section 10 so that there is a single, definitive list that uses common terminology. ○ Are any proposed changes to a geographic boundary made as part of a CCNC-Third Party contract, as noted in Section 9, considered “terms that bind” CCWJC? 	<p>Network will have the opportunity to review all aspects of the proposed agreement under Section 10</p> <p>The intent of this obligation is that the Alliance partner would be able to review all contractual terms subject to confidentiality.</p>
<p>11. Section 11 requires CCWJC to submit “all proposed contracts” that CCWJC intends to sign. This broad language would cover a contract with a utility provider, an employee, etc. We do not think CCNC intends to review <u>all</u> CCWJC contracts and if this is true, please edit language to clarify which contracts CCNC needs to review.</p>	<p>All proposed contracts is intended to include those contracts that would require support or infrastructure from CCNC Inc. and the Alliance. The scope of this would include work that is being conducted or considered for care management services or provider services activities.</p>

<p>12. The nature of the contracts that are subject to review (Section 5.b.vi) – the Alliance Agreement seems to contemplate local and non-Alliance work. This should be clearly spelled out in the Agreement so we have a shared understanding – would like to further discuss the nature of contracts that are subject to review as CCWJC is a dba to WCMSCHF which has other programs and funding streams.</p>	<p>The scope of this review is subject to proposed or current contracts that would require support or infrastructure from CCNC Inc. and the Alliance in order to perform. This would include any work that is being considered for care management or provider services activities.</p> <p>Work being conducted by a separate, non-Alliance partner would not be included so long as CCNC Inc. or Alliance infrastructure is not being utilized.</p>
<p>13. Local work – clarify the local work that would be grandfathered in and for how long (i.e., forever?)</p>	<p>All proposed agreements including those contracts that would require support or infrastructure from CCNC Inc. and the Alliance.</p> <p>This would include any work that is being considered for care management services or provider services activities. Grandfathered work would be any current work that is being conducted until the end of the then current term of the agreement.</p> <p>New or updated agreements would not be grandfathered.</p>
<p>14. Section 12 – Support for CCPN: this section explains that the Networks will provide support to CCPN; what legal language ensures that CCPN will use the Networks for support?</p>	<p>Per the CCPN (Denise) operating agreement CCPN has the right of first refusal</p>
<p>15. Further explain the role of CCNC liaison to the Board</p>	<p>The intent of this representative is to demonstrate CCNC Inc.’s commitment to be available to the Alliance partner board in order to improve communication and transparency and work on strategic planning as requested.</p>
<p>16. Section 9 – consider including a provision requiring CCNC to notify the Network when it assigns work to any entity other than the Network within the Network’s traditional geographic area.</p>	<p>Agree</p>

<p>17. Section 19.b – propose a more detailed approach to the provision of financial information and a list in the Agreement detailing the particular financial information to be provided by CCNC.</p>	<p>Network will have the opportunity to review all aspects of the proposed agreement under Section 10 of the Alliance agreement</p> <p>The intent of this obligation is that the Alliance partner would be able to review all contractual terms subject to confidentiality. Pricing information would need to be held in the strictest of confidence and with respect to potential conflicts of interest that may exist.</p>
<p>18. Last sentence in Recital H – who determines if a performance metric has been “missed” – CCNC or the Interested Third Party? Who determines what an “equitable share” of a payment is, and how is that determined?</p> <ul style="list-style-type: none"> ○ We are assuming that this language (like most in the Agreement) is based on the assumption that it will be CCWJC that “misses” the metric or causes the Interested Third Party to withhold payment. What happens if CCNC fails to deliver in some manner and causes the Interested Third Party to withhold some of all of the payment? Does CCWJC still get paid by CCNC? Does CCNC still determine the “equitable” division of the payment? Should there be a separate provision that addresses the situation in which an Interested Third Party withholds payment? Who would resolve the situation if CCNC is at fault? Would this fall to the Advisory Board? 	<p>Generally, the third party would notify CCNC of non-compliance. However in instances where a network performance is hindered by CCNC performance, the network will not be penalized.</p> <p>In instances where the network fails to meet its individual performance obligations, CCNC Inc. would propose the use of a Corrective Action Plan and in instances with repeated non-compliance may be required to seek further contractual steps up to termination.</p>
<p>19. The Agreement does not contain an indemnification clause – recommend adding since this is intended to be an ongoing relationship and it will only provide more protection against the other party’s negligent conduct.</p>	<p>We purposely did not include an indemnification clause in the agreement with the intent to provide all parties proper recourse. However, we are open to reviewing balanced indemnification clauses.</p>
<p>20. Please clarify the intent of Section 27, which gives CCNC the power to transfer the Agreement to an Affiliate. In what circumstances could this happen? Would the Network be able to</p>	<p>CCNC Inc. may assign or subcontract this Agreement or any performance thereof to any Affiliate without prior authorization. No other assignments or subcontracting of this Agreement are allowed without written authorization of the other Party, and any such</p>

<p>have the option to leave the Alliance if an assignment occurs that is not agreed upon?</p>	<p>attempt to assign or subcontract the Agreement or any portion thereof shall be void ab initio.</p>
<p>21. Section 6.a – further discussion re: terms if CCNC breaches the agreement? Could CCWJC have the option to immediately stop work on an Alliance contract or to work out a less term period (180 days)?</p>	<p>Subject to the termination provision in the agreement, it is our intent and expectation that adequate transition time should be provided to ensure compliance with the Interested Third Party agreement, unless instances of gross negligence or fraud.</p>
<p>22. CCWJC Attorney: “Section 5.b.i. notes that the non-breaching party has the right to terminate the Agreement if the other party causes a significant data breach. My impression is that the Agreement contemplates that the non-breaching party has the right to immediately terminate the Agreement in this scenario. I recommend that “immediately” be added to this section (third line from the bottom on page 4).”</p>	<p>RJR: Our form MSA provides for immediate termination in the event of a data breach, so this change would be consistent with our other agreements.</p> <p>As to the other five (5) types of breach giving rise to the ability of the non-breaching Party to terminate, we can add language in the alternative for the Parties to choose whether a given breach permits the non-breaching Party to terminate immediately or requires, e.g., 30 days’ written notice and the ability to cure as follows:</p> <p>5(b)(ii): <i>Confidentiality Breach</i>: Our form MSA provides for immediate termination, so language might read: “If a Party, including any of its employees, subcontractors, or agents, causes or allows a significant data breach, the non-breaching Party will have the right to terminate this Agreement immediately.”</p> <p>5(b)(iii): <i>Misuse of Intellectual Property</i>: “If a Party uses Intellectual Property from the other Party, including from any agent or subcontractor, for any non-Alliance business, or allows that Intellectual Property to be used by any third party for any non-Alliance business, then the Party that owns that Intellectual Property will have the right to terminate this Agreement immediately.”</p> <p>5(b)(iv): <i>Entering into Unapproved Contract with Competitor</i>: “If CCNC makes such a determination, and communicates that determination to Network with the required specificity, and Network enters into</p>

	<p>that contract, CCNC will have the right to terminate this Agreement immediately.”</p> <p>5(b)(v): <i>Failure to Perform</i>: (This section is addressed in response to Q.24, below.)</p> <p>5(b)(vi): <i>Debarment or Exclusion</i>: (This section already contains a suggested timeline for notice, cure and termination.)</p>
<p>23. CCWJC Attorney: “The conclusions in the sub-sections under Section 5.b. need to be edited (sub-sections 5.b.i. through 5.b.vi.). Each of these sub-sections ends with similar “boilerplate” language concerning “forfeiture” and “remedies”, etc. However, some of this boilerplate language is either missing or has not been edited. For example, sub-section 5.b.i. refers to “[t]his forfeiture” but does not mention anything being forfeited. The language is probably supposed to refer to the right to terminate being forfeited, but that language has not been included in the sub-section. Happy to help with suggested edits for these sub-sections.”</p>	<p>RJR: The boilerplate language deals with two (2) issues here: (1) whether the fact a non-breaching Party chooses not to terminate the Agreement for a given breach means that it forfeits the right to later terminate the Agreement based upon a subsequent breach; and (2) whether termination for a given type of breach is intended to be the terminating Party’s sole remedy.</p> <p>If the Parties want to treat each of the 6 instances the same, we can add language to the introductory sentence stating, e.g.:</p> <p>“Termination for Cause. The following causes shall give rise to a right for the non-breaching Party to terminate this Agreement. If the non-breaching Party chooses not to terminate this Agreement at or within the prescribed time as detailed below as to any given breach, such choice will not waive its right to terminate for cause as to any subsequent breach of this Agreement. This right to terminate is not the only remedy available to a Party for a given breach and all rights at law and in equity will remain available to a Party seeking redress for such breach.”</p> <p>If the Parties want to treat some causes of breach differently than others, we can add a variation on the above language to each individual subsection, e.g.,</p>

	<p>“If the non-breaching Party chooses not to terminate this Agreement immediately, such choice will not waive its right to terminate for cause as to any subsequent significant data breach. This right to terminate is not the only remedy available to a Party for a significant data breach and all rights at law and in equity will remain available to a Party seeking redress for a significant data breach.”</p>
<p>24. CCWJC Attorney: “Section 5.b.v – there is a sentence that reads “When a Party receives notice that it has breached a performance obligation.” – we are under the impression that this Agreement is supposed to set out a process through which a Network is notified of a failure to meet a “performance obligation” but do not see it in written in the Agreement. Could we define how Networks will be notified of and allowed to respond to an alleged failure to perform in this Agreement?”</p>	<p>RJR: As a starting point, the procedural language might read something like:</p> <p>“When a Party receives written notice that it has breached a performance obligation, it shall have thirty (30) days in which to cure its failure and to ensure that it meets both those performance obligations that it missed and any further obligations that become due during this cure period. If the breaching Party fails to cure its missed performance obligations and/or perform any further obligations that become due during the cure period, the non-breaching Party may terminate this Agreement immediately by further written notice to the breaching Party.”</p>
<p>25. Recommend adding “or any other entity” to the language in Section 9.b. and editing the language so that it reads: “. . . to any other Alliance Network, CCNC Program network, or any other entity unless Network refuses . . .”</p>	<p>The intent behind this language “CCNC will not offer work in the State-defined geography of Network to any other Alliance Network or CCNC Program network unless Network refuses to accept that work, subject to any requirements for coverage from an Interested Third Party” it to provide assurances that a subcontractor would not be offered work prior to an Alliance Network refusing. This is intended to also offer the right to CCNC Inc. in the event that an Alliance Network refuses prior to offering to a subcontractor. Maintaining business within the Alliance is the priority.</p>
<p>26. PHI and PII are used in the Agreement, but are never defined.</p>	<p>RJR: The definitions we use as taken from HIPAA and similar regulations are as follows:</p>

	<p>Protected Health Information (“PHI”) means Individually Identifiable Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media; or (iii) transmitted or maintained in any other form or medium. <i>See</i> 45 C.F.R. § 160.103.</p> <p>Personally Identifiable Information (“PII”) means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. <i>See</i> Office of Management and Budget’s (“OMB”) memo M-10-23 (June 25, 2010).</p> <p>As the HIPAA definition of PHI refers to IHI, we would further need to include the definition of the latter, as follows:</p> <p>Individually Identifiable Health Information is information that is a subset of health information, including demographic information collected from an individual, and: (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (A) that identifies the individual; or (B) with respect to which there is a reasonable basis to believe the information can be used to identify the individual. <i>See</i> 45 C.F.R. § 160.103.</p>
27. There is an ellipsis in Section 5.b.iv. that needs to be removed.	RJR: Done
28. There is an extra period (or maybe a missing sentence) in Section 9.b. (six lines up from the end of the section).	RJR: Done
29. “including Network” at the end of the first sentence in Section 10 looks like it might need additional wording.	RJR: Suggest changing language from:

	<p>“CCNC will have the sole right to negotiate with Interested Third Parties the specific terms of any agreement involving the Alliance, including Network.”</p> <p>to:</p> <p>“CCNC will have the sole right to negotiate on behalf of all Alliance members (including Network) with Interested Third Parties regarding the specific terms of any agreement involving Alliance members.”</p> <p>Does this make the intent clearer?</p>
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