MEDICARE NEXT GENERATION ACO PROVIDER/SUPPLIER
PARTICIPATION AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into effective __________ (the “Effective Date”) by and between Trinity Health ACO, Inc., a Delaware nonprofit corporation (“Company”), and the entity or individual identified on the signature page hereof (“Next Generation Provider/Supplier”), on behalf of itself and, if applicable, its Providers (as hereinafter defined). Company and Next Generation Provider/Supplier are the only parties to this Agreement.

RECITALS

WHEREAS, Company is an accountable care organization ("ACO") and is participating in the Next Generation ACO model ("Next Gen Model") on January 1, 2017; and

WHEREAS, Next Generation Provider/Supplier is an individual provider; or a provider group, hospital, or supplier employing or contracting with primary care physicians and/or other healthcare practitioners; and

WHEREAS, ACO and Next Generation Provider/Supplier are committed to being accountable for the quality, cost and overall care of Attributed Lives; and

WHEREAS, ACO and Next Generation Provider/Supplier are committed to implementing and following processes and procedures to support that accountability and to sharing in the savings or other financial benefits that result from those efforts. Next Generation Provider/Supplier shall not be responsible for any losses incurred by the ACO until such time as the Next Generation Provider/Supplier signs an addendum hereto that identifies how any ACO losses may be shared.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1 – DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings indicated. These definitions shall apply to the Agreement and to all Attachments, Exhibits and Addendums attached hereto. All terms used herein shall have the same meaning as identified by the Center for Medicare and Medicaid Innovation ("CMMI") from time to time. Any changes to the definitions by CMMI will also be incorporated herein without the need for a written modification to this Agreement.

1.1 “Accountable Care Organization” (“ACO”) means Trinity Health ACO, Inc. and more generally refers to a legal entity that is recognized and authorized under applicable State or Federal law, is identified by a Taxpayer Identification Number (“TIN”), and is formed by one or more providers or suppliers that agree to work together to be accountable for the quality, cost and overall care of Attributed Lives.
1.2 "Attributed Life” or “Attributed Lives” means a Medicare Beneficiary who is assigned to ACO and that qualifies to be included in the Shared Savings calculation performed under the Next Gen Model.

1.3 “Center for Medicare and Medicaid Innovation” or “CMMI” refers to the federal agency that is responsible for administering the Next Gen Model.

1.4 “Clinical Model” means the written ACO guidelines, processes and procedures for quality and cost control founded on three inter-related and mutually supporting elements of: (1) quality performance measure management, (2) case management and (3) clinical data sharing.

1.5 “Health Care Services” means services for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease.

1.6 “Medicare Fee-for-Service Beneficiary” or “Medicare Beneficiary” means an individual who is: (1) enrolled in the original Medicare program under both parts A and B; and (2) not enrolled in any of the following: (i) a Medicare Advantage Plan under Part C; (ii) an eligible Health Maintenance Organization or Competitive Medical Plan under section 1876 of the Social Security Act; or (iii) a PACE program under section 1894 of the Social Security Act.

1.7 “National Provider Identifier or “NPI” means the unique ten digit identification number required for all licensed health care providers.

1.8 “Next Gen Model Agreement” means the Next Gen Model Agreement between ACO and CMMI (the “Next Gen Model Agreement”) under which ACO, on behalf of its Next Generation Provider/Suppliers, agrees to be accountable for the quality, cost, and overall care of Medicare Beneficiaries who are enrolled in the traditional Medicare fee-for-service program and who are Attributed Lives in the ACO.

1.9 "Next Generation Affiliate" refers to an entity that is not a Next Generation Provider/Supplier and has a written agreement with the ACO regarding a specific model design element. There are two types of Next Generation Affiliates, including capitation affiliates that contract with the ACO in order to participate in a capitation arrangement and SNF affiliates that are skilled nursing facilities to which Next Generation Providers/Suppliers or Preferred Providers may admit Next Gen Model Medicare Beneficiaries according to the SNF 3-day rule benefit enhancement.

1.10 “Next Generation Provider/Supplier” means an individual or group of Providers that is identified by a Medicare-enrolled TIN that alone or together with one or more other Next Generation Provider/Supplier(s) comprise(s) an ACO, and that is included on the list of Next Generation Provider/Suppliers submitted by ACO to CMMI and updated at the start of each Performance Year and at other times as specified by CMMI.
1.11 “Performance Year” shall mean the 12-month period beginning January 1 and ending December 31 of each year during the Agreement period, unless otherwise noted in the Next Gen Model Agreement.

1.12 “Physician” shall mean a doctor of medicine or osteopathy.

1.13 “Primary Care Physician” shall mean a physician who has a primary specialty designation of internal medicine, general practice, family practice or geriatric medicine, or, for services furnished in an Federally Qualified Health Centers (“FQHC”) or Rural Health Clinics (“RHC”), a physician providing primary care services included in an attestation by the ACO to CMMI.

1.14 “Primary Care Service” means the set of services identified by the following CPT codes: (1) 99201 through 99215; (2) 99304 through 99340, and 99341 through 99350, G0402 (the code for the Welcome to Medicare visit), G0438 and G0439 (codes for annual wellness visits); (3) Revenue center codes 0521, 0522, 0524, 0525 submitted by FQHCs (for services furnished prior to January 1, 2011), or by RHCs.

1.15 “Primary Care Provider” means a Provider who is either of the following: (1) a Primary Care Physician legally authorized to practice medicine by the state in which s/he performs such function or action related to Primary Care Services; or (2) a practitioner who both provides Primary Care Services and is one of the following: (i) a physician assistant; (ii) a nurse practitioner; or (iii) a clinical nurse specialist.

1.16 "Preferred Provider" refers to an ACO selected Medicare provider with whom the ACO has a relationship based upon high quality care and care coordination for Medicare Beneficiaries associated with the ACO. The ACO may allow certain benefit enhancements that are available to aligned beneficiaries when receiving care from Next Generation Provider/Suppliers to also be available through Preferred Providers; provided that the ACO has a written agreement with the Preferred Provider and has supplied CMMI with the Preferred Provider list according to CMMI instructions.

1.17 "Provider" refers to an individual or entity that: (1) is a Medicare enrolled provider or supplier other than a DMEPOS supplier; (2) is identified by a National Provider Identifier (NPI) or CMS Certification Number; (3) bills for items and services it or he/she furnishes to Medicare Beneficiaries under a Medicare billing number assigned to the TIN of an Next Generation Provider/Supplier and (4) is included on the list of Next Generation Provider/Suppliers submitted by ACO to CMMI.

1.18 “Quality Measures” means the measures defined by CMMI and applicable to the Next Gen Model.

1.19 “Shared Savings” means a specified percentage of total savings achieved, as determined by CMMI. Shared Savings are determined by CMMI through reconciling expenditures against the benchmark.
“Taxpayer Identification Number” (“TIN”) means a Federal taxpayer identification number or employer identification number.

SECTION 2 - OBLIGATIONS OF NEXT GENERATION PROVIDER/SUPPLIERS, AND PROVIDERS

2.1 Accountability. Next Generation Provider/Suppliers, Next Generation Affiliates,Preferred Providers and Providers agree to become and remain accountable for the quality, cost and overall care of Attributed Lives. Toward that end, Next Generation Provider/Suppliers, Next Generation Affiliates, Preferred Providers and Providers will comply with and implement the Clinical Model to: (1) promote evidence based medicine; (2) promote patient engagement; (3) develop and implement infrastructure and reporting on quality and cost metrics to enable monitoring and feedback of performance in order to evaluate performance and improve care over time; and (4) coordinate care.

Notwithstanding anything to the contrary, until such time as may be determined by the ACO Board of Managers, no Next Generation Provider/Supplier, Next Generation Affiliate, Preferred Provider, or Provider shall be responsible for any losses incurred by the ACO. Accepting losses associated with the ACO will be documented by an addendum to this Agreement and must be signed by both Parties to be effective.

2.2 Authority to Bind Next Generation Provider/Supplier and Providers. Next Generation Provider/Supplier hereby represents and warrants that it has binding authority on behalf of its Providers identified on Exhibit 1 to enter into this Agreement on their behalf. All Providers are bound by the terms and conditions of this Agreement and materials it incorporates by reference, including but not limited to, all applicable terms and conditions of the Next Gen Model Agreement, duly adopted policies and procedures and all applicable program requirements. By way of example, the Next Gen Model Agreement requires Providers to participate exclusivity, quality measure reporting, continuous care improvement objectives, voluntary alignment, beneficiary freedom of choice, benefit enhancements, coordinated care reward, participation in evaluation, shared learning, monitoring and oversight activities, the ACO compliance plan and the audit and record requirements. Next Generation Provider/Suppliers will be responsible for, cause and make best efforts to ensure each of their Provider’s compliance with the terms of this Agreement and each Provider’s performance hereunder.

2.2.1 Each Provider, identified by NPI, whose services are billed to Medicare through the TIN of an Next Generation Provider/Supplier and who are identified on the exhibit attached hereto, will participate in ACO as a Provider.

2.2.2 Next Generation Provider/Supplier will notify ACO as soon as reasonably possible, but no later than one week from the event, if any Provider becomes disassociated with the Next Generation Provider/Supplier’s TIN for any reason. Next Generation Provider/Supplier shall notify ACO of any Providers being added to its TIN no less than thirty (30) days before the addition. Next Generation Provider/Supplier understands that
ACO has a reporting obligation to CMMI to advise of any changes in NPIs included in Next Generation Provider/Supplier’s TIN(s) within thirty (30) days and that Next Generation Provider/Supplier’s timely notification is essential to ACO’s compliance.

2.2.3 To the extent that any Provider identified by an NPI linked to Next Generation Provider/Supplier’s TIN may be excluded from ACO for any reason, disciplinary or otherwise, Next Generation Provider/Supplier will cooperate in de-linking or disassociating that Provider’s NPI from the Next Generation Provider/Supplier TIN for purposes of billing Medicare and/or other payors as required by CMMI.

2.2.4 Next Generation Provider/Supplier will comply with all terms and obligations in the Next Gen Model Agreement between ACO and CMMI.

2.2.5 The Parties acknowledge that CMMI prohibits simultaneous participation in more than one shared savings program, project or demonstration. As a result, Next Generation Provider/Suppliers who participate in the Next Gen Model under this Agreement may not simultaneously participate in other CMS or CMMI shared savings programs, projects or demonstrations, while a party to this Agreement, except as expressly permitted by CMS or CMMI. Next Generation Provider/Supplier warrant for itself and its Providers that it is not now participating and will not participate in any CMMI or CMS shared savings programs, projects or demonstrations while party to this Agreement that would violate applicable CMS or CMMI rules or regulations.

2.3 Provision of Services. Next Generation Provider/Supplier will provide Attributed Lives with professional and/or facility services, as appropriate, in accordance with Medicare program statutes, regulations and policies as well as the policies and procedures set forth by CMMI.

2.4 Attributed Life Medicare Benefit. As directed by CMMI, Attributed Lives will remain free to use their Medicare benefits as they choose and, to the extent permitted by Medicare, to self- refer to any provider, regardless of Next Generation Provider/Supplier status. Without limiting this freedom, and in accordance with regulatory authorities, Next Generation Provider/Supplier will cooperate with ACO’s policies and procedures with regard to clinical coordination of care.

2.5 Verification of Professional Qualifications of Next Generation Provider/Suppliers, Preferred Providers and Providers. Next Generation Provider/Supplier and Providers shall be a participating provider in Medicare, in good standing to provide services to Medicare Beneficiaries and licensed and in good standing to practice their professions in each state in which they practice and provide services to Attributed Lives. Nothing in this Agreement supersedes any of the terms and conditions of Next Generation Provider/Supplier’s enrollment in the Medicare program. ACO, may, in its discretion, require additional reasonable verification of professional qualifications, such as, by way of example and not limitation, validation of licensure in good standing, hospital privileges, and ACO may delegate such functions to a qualified entity.
2.6 **Nondiscrimination.** Next Generation Provider/Supplier, and Providers shall not discriminate or differentiate in treatment or access to health care on the basis of race, age, gender, gender identity medical history, religion, marital status, sexual orientation, color, national origin, place of residence, health status, creed, ancestry, disability, veteran status, type of illness or condition, or source of payment for services. Next Generation Provider/Supplier and Providers shall not avoid or discriminate against Attributed Lives that may be generally characterized as "at-risk" in any manner.

2.7 **Cooperation with Case Management.** Next Generation Provider/Supplier shall make reasonable efforts to cooperate with ACO’s case management protocols, which may include placing in-office case managers at Next Generation Provider/Supplier’s practice and/or requiring Next Generation Provider/Supplier to coordinate with hospital or other facility case managers regarding the care of Attributed Lives.

2.8 **Implementation of Protocols.** Next Generation Provider/Supplier shall make reasonable efforts to implement such cost and quality control protocols or other interventions as may be adopted by ACO regarding the care of Attributed Lives.

2.9 **Exercise of Professional Judgment.** Nothing in the Clinical Model shall be interpreted to interfere in any manner with the exercise of Provider’s professional judgment.

2.10 **Audit and Evaluation.** Next Generation Provider/Supplier acknowledges that CMMI, DHHS, or other federal agencies have the right to monitor, investigate, audit, inspect or evaluate any books, contracts, records, documents or other evidence of the performance of services or functions related to the Next Gen Model, quality, determination of amounts due by CMMI and/or the ability to bear the risk of losses or repay them to CMMI. Next Generation Provider/Supplier, and Providers agree to cooperate and assist those parties and ACO in conducting such monitoring, investigation, audit, inspection or evaluation. Next Generation Provider/Supplier agrees to maintain for ten (10) years from the final date of this Agreement all books, contracts, records, documents or other evidence of the performance of services or functions related to Next Gen Model participation. If there is a termination, dispute or allegation of fraud or similar fault against the Next Generation Provider/Supplier, or Provider, Next Generation Provider/Supplier agrees to maintain such materials for an additional six (6) years (or sixteen (16) years total).

2.11 **Compliance.** Next Generation Provider/Supplier agrees on behalf of itself and its Next Generation Professionals, to participate in the Next Generation ACO Model, engage in Company clinical integration activities, comply with the terms and conditions identified in that certain Participation agreement between CMMI and Company (the "CMMI Participation Agreement") and to comply with all applicable laws and regulations including but not limited to federal criminal laws; the False Claims Act (31 U.S.C. 3729 et seq., the anti-kickback statute (42 U.S.C. 1320a-7b(b), the civil monetary penalties law (42 U.S.C. 1320a-7a) and the physician self-referral law (42 U.S. C. 1395nn). By signing below, the undersigned further acknowledges it has received a copy of the CMMI
Participation Agreement. By way of example, the CMMI Participation Agreement requires Next Generation Professionals to participant exclusivity, quality measure reporting, continuous care improvement objectives, voluntary alignment, beneficiary freedom of choice, benefit enhancements, coordinated care reward, participation in evaluation, shared learning, monitoring and oversight activities, the Company's compliance plan and the audit and record retention requirements.

Next Generation Provider/Supplier, and Providers shall comply with the provisions set forth in the Business Associate Agreement attached hereto as Exhibit 2 implementing the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and shall observe all relevant statutory and regulatory provisions regarding the appropriate use of data and confidentiality and privacy of individual health information as they apply to Next Generation Provider/Supplier, and Providers, and which may be modified from time to time. Next Generation Provider/Supplier, and Providers will implement all necessary requirements of HIPAA in the manner and time frame required by HIPAA.

2.12 **Required Disclosures to ACO.** In addition to such disclosures as may be required elsewhere in this Agreement, Next Generation Provider/Supplier shall notify ACO as soon as reasonably possible (but no later than seven days) in writing of the occurrence of, and shall upon request provide ACO with additional documentation or information regarding, any of the events indicated below:

2.12.1 The voluntary surrender or termination of any of Next Generation Provider/Supplier’s, or a Provider’s licenses, certifications, accreditations; or

2.12.2 Next Generation Provider/Supplier becoming aware that it is under investigation or has been sanctioned by the government or any licensing authority (including without limitation the imposition of program exclusion, debarment, civil monetary penalties, corrective action plans, and revocation of Medicare billing privileges); or

2.12.3 The occurrence of an act of nature or any event beyond Next Generation Provider/Supplier’s, or a Provider’s reasonable control which substantially interrupts all or a portion of Next Generation Provider/Supplier’s, or a Provider’s business or practice, or that has a materially adverse effect on Next Generation Provider/Supplier’s, or a Provider’s ability to perform its or his/her obligations hereunder; or

2.12.4 Next Generation Provider/Supplier’s, and/or, as applicable, a Provider’s, failure to maintain the insurance coverage required under Section 6 of this Agreement.

2.13 **Reports to ACO.** Next Generation Provider/Supplier shall make available, upon request, encounter data, medical records and other information specific to Medicare covered services rendered to Attributed Lives as necessary for the administration of this Agreement as required by regulation, CMMI or as reasonably requested by ACO.

2.14 **Data Reporting.** Next Generation Provider/Supplier shall provide and report such data
from its Electronic Health Records ("EHR") system or medical records as ACO may reasonably require to monitor the cost and quality of services, including care management services, provided to Attributed Lives. Next Generation Provider/Supplier will cooperate in connecting its information systems to ACO, or ACO’s designee, in order to facilitate the exchange of clinical and cost related data in furtherance of the requirements of the Next Gen Model. If requested by ACO, Next Generation Provider/Supplier agrees to enter into an agreement with a designed health information exchange provider ("HIE"), to forward clinical information from Next Generation Provider/Supplier’s EHR to a data repository, analytics, or case management system provider designated by ACO ("Data Repository"). Next Generation Provider/Supplier authorizes ACO to direct HIE to forward clinical information to the Data Repository and authorizes Data Repository to de-identify protected health information sent by Next Generation Provider/Supplier aggregate that de-identified data with other de-identified data and use the aggregated, de-identified data for Data Repository’s data reporting, analytics purposes, and other data purposes. Next Generation Provider/Supplier authorizes ACO to seek individually identifiable health information ("IIHE") regarding Attributed Lives from any sources to be directed through the Data Repository for ACO purposes.

2.15 Notices to Medicare Beneficiaries. Next Generation Provider/Supplier, and Providers shall cooperate with ACO to: (1) notify Medicare Beneficiaries at the point-of-care that they are participating with the ACO in the Next Gen Model; (2) post signs in their facilities to notify Medicare Beneficiaries that they are participating with ACO in the Next Gen Model; and (3) make available standard written notices regarding participation in ACO (which may include data use declination.)

Next Generation Provider/Suppliers will cooperate and participate in the patient experience of care survey required by the Next Gen Model as provided by ACO’s certified vendor.

2.16 Delegation Prohibited. Next Generation Provider/Supplier shall not delegate or subcontract any of its duties under this Agreement to a Provider or entity who is not an Next Generation Provider/Supplier without the approval of ACO which approval shall not be unreasonably withheld.

2.17 Marketing. CMMI requires all marketing materials to be submitted to it for approval and ACO will make all such requests. Next Generation Provider/Supplier may not create or distribute any marketing or other materials that reference ACO, Next Generation Provider/Supplier’s participation in Next Gen Model. If Next Generation Provider/Supplier wishes to create, use or modify such marketing materials, it must submit first to ACO for approval by CMMI and shall not use any materials that do not have CMMI approval as obtained by ACO.

SECTION 3 - ADDITIONAL OBLIGATIONS OF PROVIDERS

3.1 Notice. ACO expects CMMI to provide notification to ACO of Attributed Lives regularly throughout the calendar year. If requested by ACO, Next Generation
Provider/Supplier’s Providers with Attributed Lives will inform Attributed Lives of their attribution to the ACO.

3.2 **Attributed Lives Data Use Declination.** Next Generation Provider/Supplier with Attributed Lives acknowledges that the Next Gen Model program requires that Attributed Lives be given an opportunity to decline to have personal data shared with ACO. Next Generation Provider/Supplier with Attributed Lives agrees to provide each Attributed Life, at their first primary care office visit annually, ACO approved information materials to advise such Attributed Life of data sharing and their ability to decline to allow data to be shared with the ACO. If an Attributed Life declines to allow data sharing, Next Generation Provider/Supplier agrees to maintain and provide proof to ACO that such Attributed Life(ves) has properly opted-out of the data sharing.

3.3 **Authority.** The undersigned has full power and authority to bind the participant to the terms and conditions of this Agreement and further represents he/she has the authority to bind the ACO providers/suppliers who bill pursuant to a Medicare billing number assigned to the ACO Participant to the terms and conditions of this Agreement.

3.4 **Current Medicare Enrollment Information.** ACO Participant acknowledges it is required to and hereby agrees to timely update its Medicare enrollment information, including the addition and deletion of ACO Professionals and ACO Providers/suppliers billing through Participant’s TIN, on a timely basis and in accordance with Medicare program requirements and to notify the Company of any such changes within thirty (30) days after the change.

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**SECTION 4 - ACO OBLIGATIONS**

4.1 **Compliance with ACO Program Rules.** ACO will comply with all applicable rules and regulations governing the administration of an ACO program qualified to participate in the Next Gen Model. If, for any reason, ACO ceases to qualify as an eligible participant in the Next Gen Model, ACO shall, as soon as reasonably possible, notify all Next Generation Provider/Suppliers.

4.2 **Review of Clinical Data.** In conjunction with the CMMI review of clinical data collected from Next Generation Provider/Suppliers and provided by ACO to CMMI, ACO shall organize, analyze and review such data to ensure that CMMI distributions of shared savings are accurate given program parameters. Constraints by law on ACO to appeal distribution decisions of CMMI shall also apply to Next Generation Provider/Suppliers and such constraints shall prohibit Next Generation Provider/Suppliers from taking action against ACO that would be prohibited if ACO were to take such action against CMMI.

4.3 **No Inducement to Forego Medically Necessary Services.** Nothing in this Agreement shall be
construed to offer an inducement to Next Generation Provider/Supplier, or a Provider to forego providing medically necessary services to Attributed Lives.

4.4 **Compliance.** ACO shall comply with and abide by all applicable federal, state and local rules and regulations, as applicable, including but not limited to, federal laws such as the False Claims Act, Anti-Kickback Laws, Civil Monetary Penalties, and Stark.

4.5 **Privacy and Security of Shared Information.** ACO shall manage all data received from Next Generation Provider/Supplier which includes protected health information, in a manner that is compliant with state and federal privacy and security laws, rules and regulations, as they are applicable and as they may change from time to time. ACO will develop policies and procedures that will require ACO to protect the privacy and security of health information shared with ACO by Next Generation Provider/Supplier consistent with the Business Associate and Qualified Service Organization Addendum attached hereto as **Exhibit 2** and ACO shall comply with that Addendum. ACO also agrees to manage data supplied to Next Generation Provider/Supplier in accordance with the ACO Data Use Policy(ies) and/or contract amendment as may be implemented at a later date.

4.6 **Support Services.** ACO will provide support services to Next Generation Provider/Supplier to facilitate efficient participation in the Next Gen Model. Such support may include, but is not limited to, data reporting software and support, training, data analysis, data reporting and clinical leadership.

4.7 **No ACO Liability for Claims.** Next Generation Provider/Supplier, and Provider(s) agree and acknowledges that CMS, and not ACO, has the full and final responsibility and/or liability for payment of claims for services provided to Attributed Lives.

**SECTION 5 - RECORDS**

5.1 **Covered Person Records.** Next Generation Provider/Supplier, and Provider shall prepare and maintain, and protect the confidentiality, security, accuracy, completeness and integrity of, all appropriate medical and other records related to the provision of Medicare covered services to Attributed Lives (including, but not limited to, medical, encounter, financial, accounting, administrative and billing records) in accordance with: (i) applicable state and federal laws and regulations including, but not limited to, applicable confidentiality requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); and (ii) ACO and CMS billing, reimbursement, and administrative requirements. Such records shall include such documentation as may be necessary to monitor and evaluate the quality of care and to conduct medical or other health care evaluations and audits to determine, on a concurrent or retrospective basis, the medical necessity and appropriateness of care provided to Attributed Lives.

Subject to applicable laws regarding confidentiality, Next Generation Provider/Supplier, and Providers hereby authorize ACO to release any and all information,
records, summaries of records and statistical reports specific to Next Generation Provider/Supplier, or Providers, including but not limited to utilization profiles, encounter data, treatment plans, outcome data and other information pertinent to Next Generation Provider/Supplier’s, or Providers’ performance of services and professional qualifications to federal or state governmental authority(ies) with jurisdiction, or any of their authorized agents, and accreditation agencies, without receiving Next Generation Provider/Supplier’s, or Providers’ prior consent.

5.2 Inspection and Access. Subject to applicable confidentiality laws and within ten (10) business days following a request by ACO, Next Generation Provider/Supplier, and Providers shall provide ACO or its designees and, if required by law or contract, authorized state and/or federal agencies, or CMMI, access during regular business hours for: (i) inspection and copying of all records maintained by Next Generation Provider/Supplier, and Providers related to Next Generation Provider/Supplier, or Providers’ provision of Medicare covered services to Attributed Lives (including, but not limited to, medical, financial, accounting, administrative and billing records); (ii) assessing the quality of care or investigating grievances and complaints of Medicare Fee-for-Services Beneficiaries that are Attributed Lives; and (iii) inspection of Next Generation Provider/Supplier, and Providers’ facilities for quality assurance, utilization review, verification of professional qualifications, claims payment verification, fraud and abuse investigation and other activities reasonably necessary for the efficient administration of the ACO, and as necessary for compliance with federal and state law or CMMI requirements.

5.3 Sharing With Other Providers. Subject to all applicable state and federal laws and regulations regarding privacy and confidentiality, Next Generation Provider/Supplier, and Providers shall also cooperate with ACO in permitting maximum sharing of medical records specific to Medicare covered services with Providers providing services to Attributed Lives. Next Generation Provider/Supplier, and Providers shall make the records available to and communicate as appropriate with each provider treating the Attributed Life, as needed, for the purpose of facilitating the delivery of appropriate Health Care Services to each Attributed Life and carrying out the purposes and provisions of this Agreement.

5.4 Survival. The provisions of this Section 5 shall survive termination of the Agreement.

SECTION 6 - INSURANCE AND INDEMNIFICATION

6.1 Professional Insurance. Next Generation Provider/Supplier who is not a hospital or ambulatory service center or an FQHC enjoying the privileges of Federal Tort Claim Act immunity, at its sole cost and expense, shall procure and maintain such professional liability insurance as is necessary to insure Next Generation Provider/Supplier, and each of its respective Providers, employees, agents and representatives. The Parties acknowledge Next Generation Provider/Supplier’s current policy provides coverage limits of not less
than $300,000 per occurrence, $900,000 in annual aggregate and this coverage satisfies the requirement in the preceding sentence. Upon request, Next Generation Provider/Supplier, or Provider, as appropriate, agree to submit to ACO a certificate of insurance as evidence of such coverage. In the event any such professional liability policy is a "claims made" policy, Next Generation Provider/Supplier will purchase a "tail" policy, effective upon the termination of the primary policy, or obtain replacement coverage which insures for prior acts, insuring for losses arising from occurrences during the term of this Agreement, which tail policy or prior acts coverage shall have the same policy limits as the primary policy and shall extend the claims reporting period for the longest period for which coverage is available. Next Generation Provider/Supplier agrees to provide ACO with immediate, and in no event less than thirty (30) days’ prior, written notice of any cancellation, non-renewal or change to such policy. The Parties acknowledge Next Generation Provider/Supplier currently has a policy that provides coverage limits of not less than $300,000 per occurrence, $900,000 in annual aggregate.

6.2 Hospital Insurance. Next Generation Provider/Supplier who is a hospital or ambulatory service center, at its sole cost and expense, shall procure and maintain such policies of insurance as are necessary to insure Next Generation Provider/Supplier and its Providers, employees, agents and representatives with coverage limits of not less than one million dollars ($1,000,000) per occurrence, three million dollars ($3,000,000) in annual aggregate, and five million dollars ($5,000,000) excess coverage in the performance of any act relating to this Agreement. Upon request, Next Generation Provider/Supplier agrees to submit to ACO a certificate of insurance as evidence of such coverage. In the event any such liability policy is a "claims made" policy, Next Generation Provider/Supplier will purchase a "tail" policy, effective upon the termination of the primary policy, or obtain replacement coverage which insures for prior acts, insuring for losses arising from occurrences during the term of this Agreement, which tail policy or prior acts coverage shall have the same policy limits as the primary policy and shall extend the claims reporting period for the longest period for which coverage is available. Next Generation Provider/Supplier agrees to provide ACO with immediate, and in no event less than thirty (30) days’ prior, written notice of any cancellation, non-renewal or change to such policy.

SECTION 7 - TERM & TERMINATION

7.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue in effect for an Initial Term ending on December 31, 2018 after which it shall continue for any additional periods of time in which ACO participates in the Next Gen Model unless one Party gives notice of intention not to renew no less than ninety (90) days before the last day of the term.

7.2 Termination without Cause.

7.2.1 This Agreement may be terminated without cause by the mutual written agreement of the Parties.
7.2.2 This Agreement may be terminated by either Party by providing not less than ninety (90) days written notice to the other party.

7.3 Termination with Cause. Either Party may terminate this Agreement upon a material breach by the other Party, by providing sixty (60) days’ prior written notice to the Party alleged to be in breach identifying, with specificity, such breach, but only in the event that the alleged breaching Party fails to cure same within the sixty (60) day notice period.

7.3.1 This Agreement shall terminate immediately with cause on the date of notice from the ACO, should CMMI terminate the Next Gen Model Agreement.

7.4 Immediate Termination.

7.4.1 Notwithstanding the foregoing, ACO may terminate this Agreement, or an individual Provider’s participation hereunder, immediately upon written notice to the Next Generation Provider/Supplier or in the event that Next Generation Provider/Supplier, or an individual Provider performing services hereunder who bills under the Next Generation Provider/Supplier’s TIN number, is convicted of a fraud or felony or is suspended, debarred or excluded from participation in a federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) or if Next Generation Provider/Supplier’s or any Provider’s license is suspended or revoked; and

7.4.2 ACO may terminate or suspend any Next Generation Provider/Supplier’s status as a Next Generation Provider/Supplier, or individual provider’s participation hereunder, upon written notice to Next Generation Provider/Supplier, or Provider in the event that: (i) the Next Generation Provider/Supplier does not timely de-link or disassociate a terminated Provider’s NPI from their TIN; (ii) a final disciplinary action by a state licensing board or other governmental agency that impairs the Next Generation Provider/Supplier, or Provider’s ability to practice; or (iii) ACO reasonably determines that the Next Generation Provider/Supplier or Provider’s continued participation would jeopardize ACO’s fulfillment of its contractual or program obligations; or (iv) CMS notifies ACO that ACO is required to remove the Next Generation Provider/Supplier from the Model. ACO Participant further acknowledges Company may require participant to take action against its ACO Professionals or ACO Provider/suppliers related to non-compliance with the requirements of the Next Gen Model or other program integrity requirements.

7.5 Effect of Termination. Following the effective date of termination of this Agreement, the provisions of this Agreement shall be of no further force or effect, except as otherwise provided in this Agreement, and except that each Party to this Agreement shall remain liable for any obligations or liabilities arising from the activities carried out by such Party prior to the effective date of termination. In order to receive Shared Savings or financial incentives for any Performance Year, Next Generation Provider/Supplier or must be actively participating in ACO and no Next Generation Provider/Supplier will be entitled to Shared Savings or financial incentives for the Performance Year in which notice of
termination is given or subsequent Performance Years unless: (1) Next Generation Provider/Supplier is terminated without cause by ACO; (2) Next Generation Provider/Supplier provided notice of non-renewal pursuant to Section 7.1; (3) Next Generation Provider/Supplier provided notice of non-renewal for the following Performance Year pursuant to Section 7.2.2 and actively participated in the ACO until the end of the Performance Year when the notice was provided. Next Generation Provider/Supplier acknowledges that certain reporting obligations may apply to ACO and Next Generation Provider/Supplier related to Next Generation Provider/Supplier participation in the ACO post termination. Accordingly, Next Generation Provider/Supplier agrees to cooperate in good faith with ACO post termination to satisfy any applicable reporting requirements. This Section shall survive termination of this Agreement. Eligible professionals participating in an accountable care organization like ACO are required by CMS to participate in the Physician Quality Reporting System ("PQRS") through the Medicare Shared Savings Program. All ACO Providers/suppliers earn the PQRS incentive as a group practice under the Medicare Shared Savings Program by reporting required clinical quality measures through the ACO Group Practice Reporting Option ("GPRO") web interface and the success of the ACO's remaining professionals depends, in part, on ACO Participant's cooperation with ACO for purposes of reporting PQRS related all years (or portions thereof) in which ACO Participant was participating in the ACO. Accordingly, following termination of this Agreement, ACO Participant hereby agrees to work cooperatively and in good faith with Company regarding any close out processes or procedures that are necessary to submit information required by CMS including the timely and accurate submission of PQRS related to the calendar year in which ACO Participant terminates its participation in ACO and in a manner that will not jeopardize the incentive payments that may be available to other professionals participating in the ACO.

7.6 Remedial Actions. When necessary, the Company shall take steps to address non-compliance by Next Generation Provider/Supplier or any Next Generation Professional with the requirements of this Agreement, including adherence to the Compliance Plan and evidence-based clinical guidelines. Such steps may include program implementation assistance, education, and mentoring to the Next Generation Provider/Supplier and/or the applicable Next Generation Professional. Next Generation Provider/Supplier agrees to work in good faith with the Company to improve performance and correct any areas of non-compliance with the requirements of this Agreement. Next Generation Provider/Supplier understands, however, that, if Next Generation Provider/Supplier or any Next Generation Professional fails to adhere to the Compliance Plan, the evidence-based clinical guidelines, or the patient-centeredness processes, or is deficient in meeting the CMS quality performance standards, the Company may use progressive remedial processes and sanctions to improve compliance and performance. Such measures may include adoption and implementation of corrective action plans, the assessment of sanctions, the loss of the ability to receive shared savings, and the potential for expulsion. The Governing Body shall adopt specific policies and procedures regarding non-compliance issues. Next Generation Provider/Supplier acknowledges the remedial action may be taken against Next Generation Provider/Supplier or Next Generation Professionals. Next Generation Provider/Supplier further acknowledges Company may
require participant to take action against its Next Generation Professionals related to non-compliance with the requirements of the Next Generation Model or other program integrity requirements.

SECTION 8 - GOVERNANCE

8.1 Board of Managers. Next Generation Provider/Supplier acknowledges the ACO is governed by a Board of Managers who are appointed by Trinity Health Corporation but whom comprise a representative from each ACO chapter.

SECTION 9 - SHARED SAVINGS QUALIFICATIONS AND DISTRIBUTIONS

Next Generation Provider/Suppliers will be able to earn a share of the savings achieved by the ACO based on the following terms and conditions:

9.1 Qualification. Next Generation Provider/Suppliers must satisfy the qualifications established by the ACO Board of Managers to be eligible for any distribution.

9.2 Distributions. When ACO qualifies for Shared Savings, the ACO Board of Managers will determine the distribution formula which shall include a methodology for recoupment of ACO expenses.

SECTION 10 - GENERAL PROVISIONS

10.1 Entire Agreement. This Agreement, including the any Exhibits or other attachments as well as any documents incorporated by reference herein, constitutes the entire agreement of the Parties regarding the subject matter hereof and supersedes any oral or written understandings or agreements prior to the execution of this Agreement.

10.2 Confidentiality.

10.2.1 Confidentiality of Proprietary Information. The Parties each acknowledge that each may disclose confidential and proprietary information (by way of example and not limitation, policies and procedures, records, formulas) to the other in the course of performance of this Agreement. All information so disclosed by one Party to the other which is not otherwise publicly available shall be deemed confidential and shall not be disclosed by the receiving Party to any third party without the prior written consent of the Party who disclosed the information to such receiving Party. Upon termination of this Agreement for any reason, each party shall return to the other all electronic and printed materials containing confidential or proprietary information received from the other, that it is not required to retain pursuant to this Agreement or law or certify to the other that those materials have been destroyed.

10.2.2 Survival. The obligations of this Section 10.2 shall survive termination of this Agreement for any reason.
10.3 **Successors and Assigns.** This Agreement shall not be assigned by either Party without the written consent of the other Party, which consent shall not be unreasonably withheld, provided that ACO may assign its rights and obligations under the Agreement to an entity that it controls or is controlled by or is under common control with ACO.

10.4 **Amendments.** This Agreement may be amended or modified in writing as mutually agreed upon by the Parties, or as provided in this Agreement. In addition, ACO may unilaterally modify any provision of this Agreement and its Exhibits, Attachments and Riders upon thirty (30) days prior written notice to Next Generation Provider/Supplier or immediately upon receipt by Next Generation Provider/Supplier if such modification is made to comply with federal or state laws or other regulatory bodies.

10.5 **Independent Contractor Relationship.** None of the provisions of this Agreement between or among ACO, Next Generation Provider/Supplier, Providers, or CMMI create a relationship other than that of independent entities contracting solely for the purposes of effecting the provisions of this Agreement. Except as explicitly provided otherwise in this Agreement, neither the Parties, nor CMMI, shall be construed to be the agent, partner, employee, or representative of any of the other Parties or of CMMI. Next Generation Provider/Supplier, and Providers hereby agree that while compliance with applicable CMMI and ACO standards, policies and procedures is a condition of participation in the ACO, Next Generation Provider/Supplier, and Providers shall at all times render independent medical judgment.

10.6 **No Third-Party Beneficiaries.** Except as specifically provided herein by express language, no person or entity shall have any rights, claims, benefits, or powers under this Agreement, and this Agreement shall not be construed or interpreted to confer any rights, claims, benefits or powers upon any third party.

10.7 **Section Headings.** All Section headings contained herein are for convenience or reference only and are not intended to limit, define or extend the scope of any provisions of this Agreement.

10.8 **Severability.** In the event any part of this Agreement shall be determined to be invalid, illegal or unenforceable under any federal or state law or regulation, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform with the law and, in any event, the remaining parts of this Agreement shall be fully effective and operative so far as reasonably possible to carry out the contractual purposes and terms set forth herein.

10.9 **Waiver of Breach.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach or violation of this Agreement.

10.10 **Notices.** Notices and other communications required by this Agreement shall be deemed to
have been properly given if mailed by first-class mail, postage prepaid, or hand delivered to the following address:

10.11 **Counterparts, Signatures:** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument and shall be effective when ACO has executed its counterpart. Any signature delivered by facsimile machine, or by .pdf, .tif, .gif, .peg or other similar attachment shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be executed by the duly authorized officers to be effective as of the Effective Date indicated above.

**TRINITY HEALTH ACO, INC.**

By: __________________________
Its: __________________________
Date: ______________

**NEXT GENERATION PROVIDER/SUPPLIER**

By: __________________________
Its: __________________________
Date: ______________

TIN: _______________
# TABLE OF EXHIBITS

**EXHIBIT 1**: List of NPI Numbers  
**EXHIBIT 2**: Business Associate Addendum
EXHIBIT 1

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EXHIBIT 2
BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This Business Associate Agreement Addendum ("BAA") is attached to and supplements that certain Medicare Next Generation ACO Provider/Supplier Participation Agreement (the "Agreement") and documents the business associate obligations of Trinity Health ACO, Inc. ("Business Associate") and the obligations of Next Generation Provider/Supplier in its capacity as the "Covered Entity."

A. HIPAA and HITECH Dominance. In the event of a conflict or inconsistency between the terms of any other agreement between the parties and this language, this BAA language controls. This language is intended to comply with the Health Insurance Portability and Accountability Act of 1996 as well as the Health Information Technology for Economic and Clinical Health Act (found in Title XIII of the American Recovery and Reinvestment Act of 2009), as amended, and all final regulations issued pursuant to such Acts ("HIPAA" and "HITECH").

B. Business Associate. Furthermore, Business Associate acknowledges that to the extent that it is a "Business Associate", it will comply with the business associate provisions of HITECH in the performance of such services as of the date that compliance is required under HITECH.

C. Protected Health Information. This BAA applies to all PHI in the Business Associate's possession and/or under its control that was collected, created, received, maintained by or transmitted to or from the Covered Entity.

D. Agents and Subcontractors. Business Associate will require that its agent(s) and subcontractor(s) agree to the same restrictions and obligations as Business Associate. Business Associate also will require its agent(s) and subcontractor(s) to agree to implement reasonable administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of all the Covered Entity’s PHI.

E. Permissible Uses of PHI.

1. Using and Disclosing PHI. Business Associate may use or disclose PHI as permitted by this BAA or as required by law. Business Associate may use PHI to directly perform services pursuant to this BAA, including data aggregation services.

   Furthermore, the Business Associate may only use or disclose PHI to the extent that the Covered Entity is permitted to use and disclose PHI and, only if, the Covered Entity has delegated that use or disclosure to the Business Associate.
2. Minimum Necessary. The Covered Entity will provide Business Associate with the minimum amount of PHI required by Business Associate to perform services pursuant to this BAA.

3. Business Associate Management Uses of PHI. Business Associate may use or disclose PHI as necessary for its proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

F. Security and Reporting

1. Safeguards. Business Associate agrees to implement reasonable administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of all PHI.

2. Reports. Business Associate will (i) report to Covered Entity any use or disclosure of PHI not permitted by this BAA; (ii) any successful security incident of which Business Associate becomes aware; and (iii) in summary form, upon request of Covered Entity, any unsuccessful security incident of which Business Associate becomes aware. If the definition of “Security Incident” in the HIPAA regulation is modified to remove the requirement for reporting “unsuccessful” security incidents, section (iii) above will no longer apply as of the effective date of such regulation modification.

G. HITECH. Each party will comply with each obligation applicable to such party under HITECH as of the date that compliance with such obligation is required under the same. In furtherance thereof:

1. Each provision that is required to be included in business associate agreements pursuant to HIPAA and HITECH and is not already set forth in this BAA is hereby incorporated into this BAA by reference;

2. Business Associate agrees to notify the Covered Entity promptly if it discovers a breach involving PHI and to comply with the applicable provisions of HITECH with respect to that breach.

3. Business Associate will document certain disclosures of PHI and information related to such disclosures and provide an accounting of such disclosures in accordance with HIPAA and HITECH.

H. Patient Rights With Respect To PHI. To the extent that Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate acknowledges that under HIPAA patients have the right to access and review their PHI; amend their health records; and request restrictions on the use and disclosure of PHI.

I. Notification of Restrictions to Use or Disclosure of PHI. Covered Entity will notify Business Associate of any restrictions to the use or disclosure of PHI that Covered
Entity has agreed to in accordance HIPAA and HITECH to the extent that such restrictions or confidential communication may affect Business Associate’s use or disclosure of such PHI.

J. Notice of Patient Contact. Business Associate will notify the privacy officer of Covered Entity if a patient contacts Business Associate in connection with the patient's PHI.

K. Amendment. Upon enactment of any law, regulation, court decision or relevant government publication and/or interpretive policy affecting the use or disclosure of PHI, the parties agree to amend this BAA to comply with the same.

L. Access for Audit. Business Associate will make its internal practices, books and records relating to the use and disclosure of any PHI available to any authorized government investigators for purposes of determining the Covered Entity’s compliance with HIPAA.

M. Termination of Relationship

1. Covered Entity - Termination and Cure. In the event of Business Associate’s material failure to comply with this BAA, the Covered Entity may terminate its relationship with Business Associate upon 30-days advanced written notice to Business Associate; provided, however, that Business Associate has not cured the material failure to comply within 30-days after receiving written notice from the Covered Entity.

2. Business Associate - Termination and Cure. In the event of Covered Entity’s material failure to comply with this BAA, the Business Associate may terminate its relationship with Covered Entity upon 30-days advanced written notice to Covered Entity; provided, however, that Covered Entity has not cured the material failure to comply within 30-days after receiving written notice from Business Associate.

3. PHI Obligations upon Termination or Expiration. Unless Business Associate is required by law to maintain PHI, Business Associate will return (and not retain any copies of) all PHI in its possession or under its control within 30 days after the termination/expiration of this BAA. If Business Associate is unable to return PHI, then Business Associate will notify the Covered Entity of the reasons for being unable to return PHI in writing and must, at a minimum, maintain PHI as required by this BAA and HIPAA for so long as the Covered Entity’s PHI exists.

N. Survival. The respective rights and obligations of the parties under this BAA, including without limitation the obligations of the Business Associate under Section Termination of Relationship, shall survive termination of the BAA to the extent necessary to fulfill their purposes.