

**YALE-NEW HAVEN COMMUNITY MEDICAL GROUP**  
**PARTICIPATING PRACTITIONER AGREEMENT**

**MAY 2008**

**SIGNATURE PAGE (1)**

I, \_\_\_\_\_,  
(PRINT NAME)

a member of the Yale-New Haven Community Medical Group, with an address at

\_\_\_\_\_ (PRACTICE NAME)

\_\_\_\_\_ (STREET ADDRESS)

\_\_\_\_\_ (CITY, STATE, ZIP)

hereby agree to be bound by this Participating Provider Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year written below.

**YNHCMG:**

**PRACTITIONER:**



\_\_\_\_\_

By: Craig P. Summers, MD, FAAP

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

Title: President

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

Date: 5/1/2008

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

**Return by mail or fax to:**

Yale-New Haven Community  
Medical Group  
c/o Dept. of Physician Services  
Yale-New Haven Hospital  
20 York Street, Hunter 4  
New Haven, CT 06504

**YNHCMG COPY**

**Fax (203) 688-5343**

**YALE-NEW HAVEN COMMUNITY MEDICAL GROUP**

**PARTICIPATING PRACTITIONER AGREEMENT**

**MAY 2008**

**SIGNATURE PAGE (2)**

I, \_\_\_\_\_,  
(PRINT NAME)

a member of the Yale-New Haven Community Medical Group, with an address at

\_\_\_\_\_ (PRACTICE NAME)

\_\_\_\_\_ (STREET ADDRESS)

\_\_\_\_\_ (CITY, STATE, ZIP)

hereby agree to be bound by this Participating Provider Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the day and year written below.

**YNHCMG:**

**PRACTITIONER:**



\_\_\_\_\_

\_\_\_\_\_

By: Craig P. Summers, MD, FAAP

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

Title: President

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

Date: 5/1/2008

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

**PRACTITIONER COPY**

## **PARTICIPATING PRACTITIONER AGREEMENT**

**THIS PARTICIPATING PRACTITIONER AGREEMENT** (the "Agreement") is made and entered into this 1st day of May, 2008 (the "Effective Date"), by and between Yale-New Haven Community Medical Group, Inc., a non-stock corporation organized under the laws of the State of Connecticut ("YNHCMG") and Yale-New Haven Community Medical Group member (listed on signature page). a healthcare provider duly licensed in the State of Connecticut and in good standing as a member of the Yale-New Haven Hospital ("Hospital") Medical Staff (hereinafter "Practitioner").

- A. YNHCMG is a corporation organized for the purpose of arranging for the provision of healthcare services by health care providers to individual members, insureds or employees of Payors (as hereinafter defined), that will enter into agreements with Payors to provide physician services to Beneficiaries (as hereinafter defined), and to promote "Clinical Integration" (as herein after defined) among its members; and

Practitioner desires to provide professional services to individual members, insureds or employees of Payors in accordance with the terms and conditions of this Agreement, and to participate in Clinical Integration programs of the YNHCMG;

**NOW THEREFORE**, in consideration of the premises and mutual covenants herein contained it is mutually agreed by and between the YNHCMG and Practitioner as follows:

### **I. DEFINITIONS**

- 1.1 "Managed Care Plan" includes but is not limited to, health maintenance organizations, preferred provider organizations or other health insurance arrangements and government sponsored managed care plans.
- 1.2 "Plan Agreement" means any agreement between the Plan and a Payor pursuant to which a Payor agrees to offer one or more Managed Care Plans to Beneficiaries covered by a Program.
- 1.3. "Beneficiary" means any person enrolled in any Managed Care Plan or arrangement under the Program pursuant to which a Payor is under a legal obligation to pay or whom a Payor is under a legal obligation to indemnify for the cost of health care services provided in accordance with such plan or arrangement.
- 1.4. "Covered Services" means services provided to a Beneficiary when such services are authorized for payment under the Program.
- 1.5. "Participating Institutional Facility" means any duly licensed hospital, skilled nursing facility or other institution providing inpatient or outpatient care which has entered into a contractual arrangement to participate in the Program.
- 1.6. "Participating Practitioner" means any duly licensed physician, dentist, or podiatrist who is a member of YNHCMG and has entered into a contractual arrangement to participate in the Program.
- 1.7. "Participating Provider" means a Participating Practitioner or Participating Institutional Facility.

- 1.8 "Payor" means a person or legal entity that has entered into a Plan Agreement to participate in the Program for the purpose of arranging for the provision by contract of health care services to its Beneficiaries and making payment for health care services rendered to Beneficiaries by Participating Providers. Payors may enter into such agreements through duly licensed third-party administrators that have been authorized and empowered to act as their attorney-in-fact to enter into Plan Agreements on their behalf.
- 1.9. "Program" means collectively the Managed Care plans and/or arrangements with which the YNHCMG has contracted to arrange to provide health care services together with the compensation schedule applicable to each such plan or arrangement, which are made available and updated regularly either in hard copy mailed to the Participating Provider or on the YNHCMG website at [www.ynhcmg.org](http://www.ynhcmg.org)., YNHCMG may designate additional plans or arrangements to be included within the meaning of "Program" by notifying practitioner at least sixty (60) days prior to implementing any such plan or arrangement. The notification shall describe the plan or arrangement in reasonable detail and shall include a compensation schedule. Unless Practitioner objects in writing to YNHCMG within thirty (30) days after receipt of such notification, Practitioner shall be deemed to have agreed to the inclusion of such additional Managed Care plan or arrangement within the Program and to have accepted the compensation schedule proposed therefore, and this Agreement shall be deemed to be amended in such respect effective on the date specified in such notice. A description of such plan or arrangement and the compensation schedule shall be made available either in hard copy mailed to the Participating Provider or on the YNHCMG website at [www.ynhcmg.org](http://www.ynhcmg.org). If Practitioner objects in a timely manner to inclusion of such Managed Care plan or arrangement in the Program or to the compensation schedule, Practitioner shall not be a Participating Provider with respect to such Managed Care plan or arrangement.
- 1.10 "Clinical Integration" and "Clinical Integration Program" means protocols, programs, procedures or other means adopted by the YNHCMG to: (i) coordinate the delivery of medical care by Participating Providers to Beneficiaries and other patients of the Participating Providers; (ii) to develop and implement case management policies and procedures; (iii) to adopt and implement pharmacy management policies, procedures and programs; (iv) to provide performance reporting to Participating Providers involved in the Clinical Integration Program; and (v) to contract with Payors for participation in the Clinical Integration Program in contracts which recognize and reward the financial value of Clinical Integration, all of which shall be adopted, and may be amended or modified by the YNHCMG from time to time. A more detailed description of the Clinical Integration Program is attached to this Agreement as Appendix A.

## **II. MASTER AGREEMENT**

This Agreement is intended to serve as a Master Agreement governing the relationship between YNHCMG and Practitioner with respect to the Program and the Clinical Integration Program. Practitioner's agreement to participate in the Program and the Clinical Integration Program pursuant to this Agreement, including any amendment pursuant to Section 1.9 hereof, shall obligate Practitioner to provide Covered Services pursuant to this Agreement to Beneficiaries of all Payors participating in the Program. The Clinical Integration Program and the Program are sometimes jointly referred to herein as the "Programs".

## **III. PRACTITIONER OBLIGATIONS**

- 3.1. Services. Practitioner agrees to provide to Beneficiaries all Covered Services on the same basis and in accordance with the same standards offered to all other patients of Practitioner, which standards shall be consistent with accepted standards of medical care in the New Haven area and consistent with the Clinical Integration Program. Practitioner shall not unlawfully differentiate or

discriminate in the provision of Covered Services to Beneficiaries. If Practitioner has described himself or herself as, and if he or she is designated by a Beneficiary as, a primary care physician (or equivalent) under any program or plan, Practitioner agrees to serve as such pursuant to such program or plan. Participating Providers who are enrolled in the Clinical Integration Program agree, in addition, to only refer patients to other Participating Providers enrolled in the Clinical Integration Program, except in circumstances where the care of the patient requires otherwise, or where a Participating Provider with the skills and expertise required to treat a specific patient cannot be found among the Participating Providers enrolled in the Clinical Integration Program.

- 3.2. Compensation. Practitioner shall only be entitled to compensation for Covered Services rendered by Practitioner hereunder pursuant to: (i) the Plan Agreement; or (ii) any applicable sharing of revenue between YNHCMG and Practitioner derived from Practitioner's participation in the Clinical Integration Program. Practitioner hereby expressly agrees to provide Covered Services to Beneficiaries pursuant to any Agreement under which Practitioner has agreed to accept reimbursement in accordance with the compensation schedule set forth in the Plan Agreement and made available either in hard copy mailed to the Participating Provider or on the YNHCMG website at [www.ynhcmg.org](http://www.ynhcmg.org). YNHCMG may from time to time amend or modify or add a Rider to the Plan Agreement by providing Practitioner with sixty (60) days' written notice of such amendment, modification or Rider. Practitioner shall be deemed to have agreed to such amendment, modification or Rider and to provide Covered Services to Beneficiaries pursuant to any Agreement which provides for compensation pursuant to such amendment, modification or Rider, unless Practitioner objects in a timely manner in writing to such amendment modification or Rider. In the event that Practitioner does timely object to any such amendment, modification or Rider, Practitioner shall not be considered to be a Participating Provider with respect to the Managed Care Agreement to which said amendment, modification or Rider pertains.
- 3.3. No Recourse Against Beneficiaries. Practitioner hereby agrees that in no event, including, but not limited to nonpayment by Payor, YNHCMG or the Corporation's insolvency or YNHCMG breach of this Agreement, shall Practitioner bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against Beneficiaries or persons other than YNHCMG acting on their behalf for Covered Services provided pursuant to this Agreement, unless otherwise permitted in any Master Agreement between YI-IN-CMG and a payor. This provision shall not prohibit collection of supplemental charges, deductibles, coinsurance or other copayments made in accordance with the terms of the applicable benefit plan agreement between Payor and Beneficiaries. Practitioner further agrees that: (a) this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the Beneficiaries and that; (b) this provision supersedes any oral or written agreement to the contrary now existing or hereafter entered into between Practitioner and any Beneficiary or person acting on their behalf.
- 3.4 Billing and Collection. Practitioner shall be responsible for complying with the applicable plan's procedures for verifying the enrollment and eligibility status of a beneficiary and for billing and collecting for Covered Services and noncovered services rendered to a Beneficiary.
- 3.5 Claims: Billing Records. When submitting claim forms for Beneficiaries, the Practitioner agrees to use appropriate procedure codes to identify services rendered to Beneficiaries as defined by the standards of CPT-4 and/or ICD-9-CM and to comply with the YNHCMG's policies, rules or regulations. Practitioner shall permit any Payor to bill and process forms for any third party claims or third party Payors, and shall execute any documents reasonably required or appropriate for this purpose. Practitioner further shall make available to any plan administrator designated by the YNHCMG to facilitate claims processing ("Administrator") the Beneficiary billing records required by the Administrator and/or any Payor pursuant to the Program and shall obtain any

appropriate consent from the Beneficiary to do so on forms provided by the Administrator or Payor.

- 3.6. Medical Records. Practitioner shall maintain adequate medical records relating to the provision of Covered Services and noncovered service to Beneficiaries, in such form, containing such information, and to be retained as required by applicable state law. Upon appropriate request by the Administrator or YNHCMG and subject to the limitations of applicable law, Practitioner shall forward to the Administrator or YNHCMG as applicable, in a prompt manner, any clinical information pertaining to a Beneficiary. If Practitioner participates in the Clinical Integration Program, Practitioner agrees to maintain and make available medical records pertaining to a Beneficiary in a format suitable for data export and/or through web-based information sharing programs developed by YNHCMG to facilitate the Clinical Integration Program.
- 3.7. Confidentiality and Access. The parties agree that all Beneficiaries' medical records shall be treated as confidential in order to comply with all federal and state laws regarding the confidentiality of patient records. Subject to the foregoing, Practitioner shall permit the Payor, Administrator or YNHCMG and/or appropriate federal and state regulatory agencies to have reasonable access to Beneficiaries' medical records and upon request to inspect and copy at reasonable times any relevant accounting, administrative or medical records maintained by Practitioner pertaining to Payor's, Beneficiaries', YNHCMG's and/or the Administrator's participation in this Agreement, including the books and records of Practitioners relating to Covered Services and noncovered services provided to Beneficiaries, and any copayment received by Practitioner from such Beneficiaries therefore. Practitioner shall notify the Administrator or YNHCMG of the receipt of any request by any attorney, courts of law or administrative bodies for information relating to the provision of Covered Services or noncovered services to Beneficiaries. The obligations set forth in this Section 3.7 shall survive the termination of this Agreement. If required, the YNHCMG and Practitioner agree to execute reciprocal Business Associate Agreements to comply with relevant HIPAA regulations.
- 3.8. Insurance. Practitioner agrees to purchase and maintain, at his or her expense, or cause to have purchased and maintained, professional liability insurance, comprehensive general liability insurance and other insurance of the types and in the amounts set forth in the Yale-New Haven Community Medical Group and Yale-New Haven Hospital Department of Physician Services New Member Credentialing Policy & Procedure and Re-credentialing Policy & Procedure. In the event the Hospital changes the amount of any such coverage required of members of its Medical Staff, this Section 3.8 shall be deemed to have been amended in conformity therewith. Practitioner shall cause his or her insurance company to furnish YNHCMG, the Administrator and any Payor certificates of insurance with respect to such coverages upon request, and will provide them notice of any change in such coverages. Practitioner will notify YNHCMG promptly whenever a Beneficiary files a claim or a notice of intent to commence action against Practitioner in connection with the provision of Covered Services. Upon request by YNHCMG, Practitioner shall prove full details of the nature, circumstances and disposition of such claims.
- 3.9. Quality Assurance and Utilization Control. Practitioner agrees to participate and cooperate in and comply with the quality assurance and utilization control programs established by each Managed Care Plan included in the Programs. Each party agrees to make its best efforts to insure that activities conducted pursuant to any quality assurance and utilization control program shall be conducted, to the extent possible, in such a manner as to be subject to and obtain the benefits of applicable laws conferring immunity on peer review committees and their members, and rendering peer review documents and information confidential and nondiscoverable. Practitioner understands and agrees that amounts payable to Practitioner by Payors contracting through YNHCMG for Covered Services will be forfeited to the extent that

such services are determined in accordance with any applicable quality assurance and utilization control program to be or to have been medically unnecessary.

- 3.10. Fees. Practitioner agrees to pay to YNHCMG an initial non-refundable membership fee and annual assessments in accordance with the Bylaws of YNHCMG or any resolution adopted by YNHCMG's Board of Directors. In addition, YNHCMG may request that Practitioners participating in the Clinical Integration program, from time to time, consider adopting enhancements and/or additions to the information technology systems utilized in their respective practices. YNHCMG shall use reasonable efforts to minimize the need for substantial payments for any such enhancements and/or additions, and to seek third-party contributions for such payments.
- 3.11. Referrals and Admissions. If a Beneficiary requires a referral for additional or ancillary medical services, Practitioner shall refer such Beneficiary to a Participating Practitioner or Participating Institutional Facility in accordance with applicable quality assurance and utilization control procedures under the Programs.
- 3.12. Liability and Indemnity. Neither party to this Agreement, nor any of their respective agents, shall be responsible or liable to third parties for any act or omission of the other party, including, without limitation, acts or omissions which arise in connection with the Clinical Integration Program. No member of YNHCMG's, or any Payor's quality assurance and/or utilization control committee, disease management committees, case management committees and/or personnel, or other program intended to further the goals of the Clinical Integration Program, and neither YNHCMG, any Payor, nor any of their respective directors, employees, or agents shall be liable to Practitioner for any action taken or recommendation made within the scope of any Payor's or YNHCMG's quality assurance and utilization control program and/or its Clinical Integration Program.
- 3.13. Practitioner/Patient Relationship. Practitioner shall maintain an independent physician-patient relationship with all Beneficiaries who are his/her patients and shall exercise his/her independent professional judgment consistent with accepted standards of medical care in rendering treatment to such patients. Practitioner shall be responsible to such patients for all treatment rendered by him or her.
- 3.14. Use of Name and YNHCMG or Services. Practitioner agrees to allow YNHCMG and any entity designated by the YNHCMG to list Practitioner's name, specialty, address, telephone and fax number(s), description of Practitioner's facilities and services, and other identifying information in advertising and promoting the Practitioner, the Programs or any plan or arrangement included in the Programs, provided, however, that such advertising shall be done in accordance with all applicable state and federal laws and regulations. In addition, Practitioner agrees that any information provided by Practitioner to Yale-New Haven Hospital ("Hospital") in connection with Practitioner's credentialing by the Hospital, may be shared by the Hospital with YNHCMG, provided however, that all such information shall be held and used by YNHCMG in accordance with all relevant confidentiality and privacy laws and regulations.
- 3.15. Representations and Warranties of Practitioner. Practitioner represents and warrants that, at all times during the term of this Agreement, he/she is and will be currently licensed, certified, and/or registered, in accordance with applicable state law, to perform the services contemplated by this Agreement, and that his/her license, certification, and/or registration has not been terminated, relinquished, suspended or restricted in any manner.
- 3.16. Compliance with Laws, Policies, Rules and Regulations.

Practitioner agrees to be bound by and comply with all applicable state and federal laws or regulations, and the rules and by-laws of the YNHCMG, each as amended and in effect from time to time. Practitioner shall disclose immediately to YNHCMG any allegation of malpractice, professional misconduct, or grounds for licensure revocation or suspension raised against him/her by any governmental agency, professional organization of physicians or health care facility. If Practitioner is the subject of any allegation by any governmental agency, professional organization of physicians, or health care facility that he/she has committed an act or engaged in conduct for which his or her professional license may be revoked or suspended by the applicable state licensing authority (whether or not such authority revokes or suspends such license), or is otherwise disciplined by such authority or by any governmental agency, professional organization of physicians, or health care facility, or is found guilty of a criminal offense or gross misconduct, either as a practitioner or as a citizen, or fails to maintain the insurance coverage required by Section 3.8 hereof, or ceases to be a member in good standing of the Hospital's Medical Staff, YNHCMG may immediately terminate this Agreement. Practitioner hereby authorizes any such governmental agency, professional organization, health care facility or authority to disclose to the YNHCMG upon request all records pertaining to any matter described in the preceding two sentences. Copies of the YNHCMG's and the Hospital's policies, rules and regulations shall be provided to and be available for examination upon request of Practitioner.

- 3.16.1 YNHCMG may, from time to time, develop or amend policies, rules or regulations in connection with the administration of the Programs. YNHCMG shall deliver copies of such policies, rules, or regulations to Practitioner and, thirty (30) days after such delivery, such policies, rules or regulations shall become binding upon Practitioner and shall become a Rider to this Agreement unless objected to in writing within such thirty (30) day period. If the YNHCMG and Practitioner are unable to agree to such proposed policies, rules, or regulations, Practitioner may provide services pursuant to this Agreement in accordance with such proposed policies, rules and regulations as Practitioner may approve; provided, however, that on giving Practitioner thirty (30) days written notice thereof, YNHCMG may terminate this Agreement (either as to one or more plan or program, if such disagreement relates to only one or more thereof), if the proposed amendment to which Practitioner objects is of a material nature. In the event such policies, rules or regulations are inconsistent with the terms of this Agreement, the terms of this Agreement shall prevail.
- 3.17 Grievance Procedures. Practitioner shall cooperate with YNHCMG and Payors in resolving any Beneficiary complaints that may arise relating to the provision of Covered Services to Beneficiaries. Practitioner agrees that any complaints received by YNHCMG, Payor or Practitioner with respect to the provision of Covered Services shall be resolved in accordance with the applicable procedure in the Plan Agreement.
- 3.18 Nonexclusive Agreement. Nothing contained in this Agreement shall prevent Practitioner from rendering medical or other health care services on a fee-for-service basis or pursuant to other contractual arrangements, including contracts with other payors.
- 3.19 Participation in Clinical Integration/Disease Management Committees. Each Practitioner participating in the Clinical Integration Program agrees to become involved in a disease management or Clinical Integration committee and/or program established by YNHCMG from time to time, relating to the area of specialty for such Practitioner. In the event that YNHCMG does not have a disease management program involving the specialty of the Practitioner, Practitioner shall make himself/herself available for consultation in case management programs involving other specialties, on an as needed basis. In addition, such Practitioners agree to participate and cooperate in all aspects of YNHCMG's monitoring and performance assessment

of the Clinical Integration Programs.

- 3.20 Business Associate Agreement. Each Practitioner agrees to sign and return to YNHCMG a Business Associate Agreement (“BAA”) in the form attached hereto as Appendix B. In the event that this Agreement between the Practitioner and YNHCMG is terminated for any reason, the terms of the BAA shall continue in full force and effect, and survive the termination of this Agreement, to the extent necessary to comply with applicable State of Connecticut and federal confidentiality and privacy laws.

#### **IV. RESPONSIBILITIES OF YNHCMG**

- 4.1 Payment. YNHCMG shall use its reasonable best efforts to arrange to have the Practitioner paid for Covered Services rendered by Practitioner in accordance with the rates set forth in the Plan Agreement and made available either in hard copy mailed to the Participating Provider or on the YNHCMG website at www.ynhcmg.org. YNHCMG shall also use its reasonable best efforts to have the Practitioner paid for Covered Services' rendered hereunder within no more than forty five (45) calendar days of receipt of Practitioner's billing, providing such bills are accurate, complete and itemized in accordance with Connecticut law (so-called “Clean Claims”). To the extent that YNHCMG is legally authorized for the same, to negotiate for, and receive payment incentives for Practitioner’s participation in the Clinical Integration Program, the Board of Directors of YNHCMG shall apportion such payment incentives among the Clinical Integration Program participants in a manner that rewards those Practitioners whose performance adheres to the Clinical Integration Program dictates. No member of YNHCMG who does not participate in the Clinical Integration Program shall be entitled to receive any share of payment incentives received by YNHCMG for performance under the said Program.
- 4.2 Marketing of the Plan. YNHCMG agrees to market the Programs developed and initiated by the YNHCMG, whether such Programs are developed by itself or in concert with others (including the Hospital) by entering into contracts with Payors which promote the Programs. The Payors shall, at the request of the YNHCMG, and where appropriate, identify Practitioner in informational material concerning the Programs provided to Beneficiaries.
- 4.3 Support Materials and Programs. YNHCMG will provide Practitioner with a list of Participating Providers and Payors, and will regularly update this list. Additionally, YNHCMG will provide Practitioner, directly or through Payors, with programs and materials that serve, support, and educate Practitioner and Practitioner's office staff in the operation and participation in all such Programs. YNHCMG shall develop, implement, monitor, and operate the Clinical Integration Program in such a manner as shall assist Practitioner and Practitioner’s office in adoption of and adherence to all Clinical Integration Program aspects.
- 4.4 Administrative Services. YNHCMG shall perform *or* contract for the performance of all administrative, financial and accounting services and provide personnel and facilities as necessary to implement and operate YNHCMG, including the Clinical Integration Program.
- 4.5 Agency: Negotiating Authority. Subject to Section 3.2 hereof, Practitioner hereby constitutes and appoints YNHCMG to be Practitioner's agent for purposes of contracting for services rendered by Practitioner to Beneficiaries, and authorizes YNHCMG to act on his/her behalf in negotiating (where such negotiation is authorized pursuant to relevant federal and state antitrust laws) and accepting fee schedules and the terms and conditions of risk constraints and clinically integrated programs and/or otherwise to serve as a messenger of offers to and from managed care plans pursuant to which Covered Services will be rendered by Practitioner to Beneficiaries. This

authority extends only to managed care plans and arrangements which are included in the Program.

- 4.6 Information. YNHCMG agrees to provide promptly to Practitioner all information received from each Payor regarding fee or charge levels, required billing formats or procedures, definitions of Covered Services, deductibles and copayment amounts, if any, to be paid by Beneficiaries, and such other information as may be necessary or reasonably requested by Practitioner in order to facilitate the provision of Covered Services to Beneficiaries.
- 4.7 Limitation of Responsibility. Practitioner agrees and acknowledges that YNHCMG will enter into one or more agreements with Managed Care Plans with Payors and others pursuant to which certain functions described in this Article IV will be arranged for and on behalf of YNHCMG and may be delegated by the YNHCMG to be performed by other entities.

#### **V. INDEPENDENT CONTRACTORS**

None of the provisions of this Agreement or of the Programs is intended to create, nor shall be deemed or construed to create any relationship among YNHCMG, the Hospital, Practitioners, Managed Care Plans or Payors other than that of independent entities contracting solely for the purpose of effecting the provisions of this Agreement and of the Program. Neither YNHCMG, the Hospital, nor Payors shall be responsible for, or have control over the means, method or manner of a Practitioner's delivery of Covered Services hereunder. Except as provided in Section 4.5, neither of the parties, nor any Payor or their respective agents shall be construed to be the agent, partner, co-venturer, employee or representative of any of the other parties or of any Payor.

#### **VI. AMENDMENT**

Except as otherwise provided in Sections 9., 3.2, 3.16.2.. and this Article VI, no amendment to this Agreement shall be valid unless agreed to in writing by both parties to this Agreement. Notwithstanding the foregoing, YNHCMG may amend this Agreement in order to comply with federal laws and/or applicable state laws. Practitioner shall be deemed to have accepted any amendments referred to in the preceding sentence thirty (30) days after mailing of such amendment by YNHCMG to Practitioner, unless Practitioner provides written notice of objections to such amendment. If Practitioner and the YNHCMG are unable to agree to any such amendment, either of them may terminate this Agreement immediately.

#### **VII. TERM AND TERMINATION**

- 7.1 Term. The initial term of this Agreement is twenty-four (24) calendar months from the Effective Date, unless sooner terminated in accordance with Sections 3.16.1, 3.16.2., 7.3 - 7.6, or Article VI hereof. The Agreement shall automatically renew at the end of the initial term and continue in effect from year to year thereafter unless sooner terminated in accordance with this paragraph or with Sections 3.16.1, 3.16.2, 7.3. - 7.6, or Article VI hereof. Either party may terminate this Agreement at or after the initial twenty-four (24) month term by giving at least ninety (90) days written notice to other party. The parties also may terminate this Agreement at any time by mutual written agreement.
- 7.2 Obligations After Termination. Except as otherwise provided herein or in any Rider hereto, following the Effective Date of termination of this Agreement, the provisions of this Agreement shall be of no further force or effect; provided, however, that each party to this Agreement shall remain liable for any obligations or liabilities arising from activities carried on by such party prior to the effective date of termination, and the provisions relating to confidentiality of medical records (Section 3.7.), proprietary information (Section 8.3.), and nonrecourse against Beneficiaries (Section 3.3.), shall survive termination of this Agreement. Notwithstanding the

effective date of termination of this Agreement, the terms and conditions of Payor Agreements may require that the Practitioner continue to provide Covered Services to Plan Beneficiaries for a period of time that exceeds the effective date of termination.

- 7.3 Material Breach. Either party may terminate this Agreement by thirty (30) days' written notice in writing to the other party if the other party materially breaches this Agreement in any manner and said material breach is not cured to the satisfaction of the non-breaching party during said thirty (30) day period. For the purposes of this Agreement, failure by Practitioner to participate fully in the Clinical Integration Programs, after Practitioner has agreed to become a participant in the Clinical Integration Program, shall be deemed to constitute a Material Breach. Full participation in the Clinical Integration Programs, for purposes of this subsection 7.3, shall mean the minimum participation established by the YNHCMG Board of Directors, from time to time, enabling a Practitioner to participate in any managed care program benefit provided by a managed care plan, through the terms of a contract of physician services entered into by YNHCMG on behalf of the Practitioner.
- 7.4 Violation of Law. The provisions of this Agreement are severable, and if any provision of this Agreement is held to be invalid, illegal or otherwise unenforceable, in whole or in part, in any jurisdiction, said provision or part thereof shall, as to that jurisdiction be ineffective to the extent of such invalidity/ illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction. This Agreement may be terminated immediately upon written notice by either party in the event that any court or governmental agency determines that this Agreement taken as a whole violates any law or regulation, or otherwise orders that either party hereto cease operation.
- 7.5 Bankruptcy, etc. This Agreement may be terminated immediately upon written notice by either party in the event that either party ceases operations, becomes insolvent or makes an assignment for the benefit of creditors, or is subject of a bankruptcy petition or petition for dissolution, liquidation or the winding up of business affairs, or for the appointment of a trustee or receiver to take possession of the assets of a party hereto.
- 7.6 Death, Disability This Agreement shall be terminated immediately upon the death or disability of the Practitioner. For purposes of this paragraph, disability means inability of the Practitioner to fulfill all obligations hereunder for a continuous period of ninety (90) days.
- 7.7 Incentive Payments. If a Managed Care Plan Agreement provides for incentive or additional payments to Practitioner in the event certain designated utilization and quality improvement targets are achieved, or certain Clinical Integration Program benchmarks are achieved, Practitioner agrees that his/her rights to any such payment not yet determined to be due for any contract period shall be forfeited if this Agreement is terminated by YNHCMG pursuant to Section 3.16.1., 3.16.2., 7.3., 7.4 or 7.5. Otherwise Practitioner's rights to such payments shall be pro-rated based on the amount which would have been payable to Practitioner, times a fraction, the numerator of which shall be the number of months Practitioner was a participant in the Program which generated such payments, and the denominator of which shall be the total number of months which the Program was in operation and for which such payment was generated.
- 7.8 Continuity of Care. Upon termination of this Agreement, Practitioner agrees to execute documents and take such actions as may be necessary or appropriate to facilitate transfer of all Beneficiaries under the care of the Practitioner to other Participating Practitioners designated by the YNHCMG or the appropriate Payor.

## VIII. MISCELLANEOUS

- 8.1 Entire Agreement. This Agreement constitutes the entire understanding relating to the subject matter hereof between the parties.
- 8.2 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
- 8.3 Governmental Access to Records. To the extent that the provisions of Section 185-61(c) (1) (I) of the Social Security Act [42 U.S.C. 1935x (v) (1)] or any other federal, state, or local governmental regulations are applicable to this Agreement, the parties agree to make available, upon the written request of the Secretary of the Department of Health and Human Services or upon the request of the Comptroller General, or any of their duly authorized representatives, this Agreement, and other books, records and documents that are necessary to certify the nature and extent of costs incurred by them for services furnished under this Agreement, or any other matter pertaining to the operation of the arrangements called for herein. The obligations hereunder shall extend for four (4) years after finishing of such services. The parties shall notify each other or any such request for records.
- 8.4 Governing Law. This Agreement shall be governed in all respects by the laws of the State of Connecticut. If any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.
- 8.5 Assignment. This Agreement, being intended to secure the professional services of Practitioner, is not transferable or assignable by either party without the prior written consent of the other party.
- 8.6 Section. Headings. All Section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provisions of this Agreement.
- 8.7 Notices.. Any notice or other communication required by this Agreement to be in writing shall be deemed to have been received by the person or entity to whom his addressed two (2) business days after it is deposited in the United States mail, postage prepaid, and addressed as follows:

**To the YNHCMG:**

300 George Street  
4<sup>th</sup> Floor, #62  
New Haven, CT 06511  
Attn: Executive Director

**To the PRACTITIONER:**

(Address listed on signature page)

## APPENDIX A

### **Yale-New Haven Community Medical Group, Inc. Clinical Integration Program Summary**

The Clinical Integration Program among the member physicians of the Yale-New Haven Community Medical Group, Inc. ("YNHCMG") provides the infrastructure, and describes, monitors, and evaluates a range of activities to: (a) improve clinical quality and efficiency; (b) reduce operational/clinical redundancy and cost; (c) develop clinical case management practices to be implemented by specific specialties and across specialties; (d) develop pharmacy management programs; (e) provide education, training and information systems and software to Practitioners and their office staffs seeking to enable the sharing of clinical data by independent medical practices; and (f) promote these objectives across the continuum of patient care, in single and multi-specialty sites of service.

YNHCMG members achieve the objectives of the Clinical Integration Program through the following means:

1. Development and implementation of clinical practice guidelines such as, disease management protocols, complex case management protocols and medical testing protocols, in the practice environment, and, when appropriate, in collaboration with the Hospital, the Yale Medical Group and other appropriate entities.
2. Development, operation and utilization of information systems geared to support the Clinical Integration Program.
3. Monitoring participation in the Clinical Integration Program and measuring, against benchmarks, the efficacy of the Program.
4. Educating and assisting Physician members with participation in existing and newly developed protocols, and taking appropriate measures to deal with Physician members who do not participate.

## APPENDIX B

### Yale-New Haven Community Medical Group

#### **Business Associate Agreement**

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This Business Associate Agreement (“Agreement”), effective May 1, 2008 (the “Effective Date”), is entered into by and between Yale-New Haven Community Medical Group, Inc. (the “Business Associate”) with an address at 300 George Street, New Haven CT 06511 and Yale-New Haven Community Medical Group Member (listed in the signature page and considered for the purposes of this Agreement the “Covered Entity”), with an address listed on the signature page (each a “Party” and collectively the “Parties”).

The Business Associate is Healthcare Provider Membership Association providing healthcare services and the Covered Entity is a Healthcare Provider and member of the Yale-New Haven Community Medical Group. The Parties have a prior Provider Agreement dated 5/1/2008 (the "Provider Agreement") under which the Business Associate regularly uses and/or discloses Protected Health Information (“PHI”) in its performance of the Services described below. Both Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Regulation”) under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). This Agreement sets forth the terms and conditions pursuant to which PHI that is provided by, or created or received by, the Business Associate from or on behalf of the Covered Entity, will be handled between the Business Associate and the Covered Entity and with third parties during the term of their Provider Agreement and after its termination. The Parties hereby agree as follows:

#### **1. DEFINITIONS.**

1.1 Health Care Operations. Health Care Operations shall have the meaning set out in its definition at 45 C.F.R. § 164.501, as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.2 Privacy Officer. Privacy Officer shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.3 Security Officer. Security Officer shall have the meaning as set out in its definition at 45 C.F.R. § 164.308(a)(2) as such provision is currently drafted and as it is subsequently updated, amended or revised.

1.4 Protected Health Information (PHI). "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501 and 45 CFR 160.103, including Electronic Protected Health Information, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

1.5 Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

1.6 Privacy Rule. "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.

1.7 Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 160 and part 164, subpart C.

1.8 Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

1.9 Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

## **2. PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Services. Pursuant to the Provider Agreement, Business Associate provides services described therein ("Services") for the Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Provider Agreement. All other uses not authorized by this Agreement are prohibited. Business Associate may disclose PHI for the purposes authorized by this Agreement only, (i) to its employees, subcontractors and agents, in accordance with Section 3.1(e), (ii) as directed by the Covered Entity, or (iii) as otherwise permitted by the terms of this Agreement.

## **3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

3.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- a. use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise required by law.
- b. use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. report to the designated Privacy Officer of the Covered Entity, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware within 15 days of the Business Associate's discovery of such unauthorized use and/or disclosure.
- d. implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the covered entity.
- e. report to the designated Security Officer of the Covered Entity, in writing, of any security incident of which it becomes aware.
- f. establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of PHI that the Business Associate reports to the Covered Entity.
- e. require all of its subcontractors and agents that receive or use, or have access to, PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate pursuant to section 3 of this Agreement.
- g. agree to provide access, at the request of Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.
- h. agree to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner.

- i. agree to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available, to the Covered Entity, or to the Secretary, in a time and manner negotiated or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule, subject to attorney-client and other applicable legal privileges.
- j. agree to document such disclosures of Protected Health Information and information 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 Protected Health Information in accordance with 45 CFR 164.528.
- k. within 45 days of receiving a written request from the Covered Entity, provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528.
- l. subject to Section 4.3 below, return to the Covered Entity or destroy, within 30 days of the termination of this Agreement, the PHI in its possession and retain no copies (which for purposes of this Agreement shall mean destroy all backup tapes).
- m. disclose to its subcontractors, agents or other third parties, and request from the Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- n. authorize the termination of the Provider Agreement by the Covered Entity, if the Covered Entity determines that the Business Associate has violated a material term of this Agreement.

### **3.2 Specific Use and Disclosure Provisions**

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

**3.3 Responsibilities of the Covered Entity.** With regard to the use and/or disclosure of PHI by the Business Associate, the Covered Entity hereby agrees:

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. to inform the Business Associate of any changes in the form of notice of privacy practices (the "Notice") that the Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520, and provide the Business Associate a copy of the Notice currently in use.
- c. to notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- d. to not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.
- e. to inform the Business Associate of any changes in, or withdrawal of, the consent or authorization provided to the Covered Entity by individuals pursuant to 45 C.F.R. §164.506 or §164.508.
- f. to inform the Business Associate of any opt-outs exercised by any individual from marketing and/or fundraising activities of the Covered Entity pursuant to 45 C.F.R. § 164.514(e).
- g. to notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 C.F.R. part 160 and 164 that may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement, including, but not limited to, restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by the Covered Entity.
- h. that Business Associate may make any use and/or disclosure of PHI permitted under 45 C.F.R. § 164.512 except uses or disclosure for research are not permitted without prior approval by the covered entity.

#### **4. REPRESENTATIONS AND WARRANTIES**

4.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other Party:

- a. that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.
- b. that neither the execution of this Agreement, nor its performance hereunder, will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, or give any governmental entity the right to suspend, terminate, or modify any of its governmental authorizations or assets required for its performance hereunder. Each Party represents and warrants to the other Party that it will not enter into any agreement the execution and/or performance of which would violate or interfere with this Agreement.

c. that it is not currently the subject of a voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary petition, and is not aware of any claim for the filing of an involuntary petition.

d. that all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement including, without limitation, the requirement that modifications or limitations that the Covered Entity has agreed to adhere to with regards to the use and disclosure of PHI of any individual that materially affects and/or limits the uses and disclosures that are otherwise permitted under the Standard will be communicated to the Business Associate, in writing, and in a timely fashion.

e. that it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

f. that neither the Party, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect.

## **5. TERMS AND TERMINATION**

5.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 5. In addition, certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 8.3 herein.

5.2 Termination by the Covered Entity. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this Agreement and any related agreements if the Covered Entity makes the determination that the Business Associate has breached a material term of this Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with 30 days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. In the event that mutually agreeable terms cannot be achieved within 45 days, Business Associate must cure said breach to the satisfaction of the Covered Entity within 60 days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this Agreement.

5.3 If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

5.4 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under the Provider Agreement or this Agreement, or that the Covered Entity has breached a material term of this Agreement, Business Associate may provide thirty (30) days notice of its intention to terminate this Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as the Provider Agreement is in effect.

5.5 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Provider Agreement dated 5/1/2008 between the Parties.

5.6 Effect of Termination. Upon the event of termination pursuant to this Section 5, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(I), if it is feasible to do so. Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify the Covered Entity in writing. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's 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. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to the 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.

## **6. CONFIDENTIALITY**

6.1 Confidentiality Obligations. In the course of performing under this Agreement, each Party may receive, be exposed to or acquire Confidential Information, including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this Agreement and is provided for elsewhere. The Parties including their employees, agents or representatives: (i) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement; (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under this Agreement; and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each Party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party; (b) which is later publicly released by either Party in writing; (c) which is lawfully obtained from third parties without restriction; or (d) which can be shown to be previously known or developed by either Party independently of the other Party.

## **7. INDEMNIFICATION**

7.1 Indemnification. The Parties agree to indemnify, defend and hold harmless each other and each other's

respective employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “indemnified party,” against all actual and direct losses suffered by the indemnified party and all liability to third parties arising from or in connection with any breach of this Agreement or of any warranty hereunder or from any negligence or wrongful acts or omissions, including failure to perform its obligations under the Privacy Regulation, by the indemnifying party or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, the indemnifying party shall reimburse any indemnified party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any indemnified party by reason of any suit, claim, action, proceeding or demand by any third party which results from the indemnifying party’s breach hereunder. The Parties’ obligation to indemnify any indemnified party shall survive the expiration or termination of this Agreement for any reason.

## **8. MISCELLANEOUS**

8.1 Covered Entity. For purposes of this Agreement, Covered Entity shall include all entities covered by the joint notice of information practices (or privacy notice), which includes Test Company.

8.2 Business Associate. For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a covered entity under the Privacy Regulation, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.504(a), as the Business Associate for purposes of this Agreement.

8.3 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 5.6, 8.5, 8.9, 9.0 and Section 3.1 solely with respect to PHI Business Associate retains in accordance with Section 5.6 because it is not feasible to return or destroy such PHI, shall survive termination of this Agreement indefinitely.

8.4 Amendments; Waiver. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

8.5 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 the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

8.6 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party’s address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

Privacy Officer  
Yale-New Haven Community Medical Group, Inc.  
300 George Street, 4<sup>th</sup> Floor #62  
New Haven, CT 06511

If to Covered Entity, to:

(Address listed on signature page)

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

8.7 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

8.8 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

8.9 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

9.0 LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

IN WITNESS WHEREOF, each of the signed Parties (see signature page) has caused this Agreement to be duly executed in its name and on its behalf effective as of May 1, 2008.