

**EXHIBIT 2**  
**PART 1**

**PROOF OF CLAIM FORM**  
**MERITUS MUTUAL – MERITUS HEALTH PARTNERS**

Read the enclosed instruction sheet carefully before completing this form. Complete each section of the form and attach documentation. **All Proof of Claim Forms must be presented or postmarked to the Receiver at the specified address by the Claims Filing Deadline of 11:59 p.m. on May 15, 2017.**

**Address for Submitting Claims:** Meritus, In Receivership  
 Attention: Proof of Claims  
 Raintree Corporate Center I  
 15333 North Pima Road, Suite 305  
 Scottsdale, AZ 85260

PLEASE PRINT – ATTACH SUPPORTING INFORMATION AS NECESSARY

**SECTION ONE – Claimant Contact Information**

<b>Claimant Name &amp; Address</b>		
Full Legal Name: <u>U.S. Dept. of Health and Human Services, CMS</u>		
Social Security or EIN Number:		
Meritus Member ID #:	Date of Birth:	
Mailing Address: <u>7500 Security Blvd., WB-22-75</u>		
City: <u>Baltimore</u>	State: <u>MD</u>	Zip: <u>21244</u>
Phone: <u>410-786-9655</u>	Fax:	Email: <u>Leslie.Stafford@hhs.gov</u>
<b>Attorney Representation:</b> If Claimant is represented by an attorney, please direct all communication regarding this Proof of Claim to Claimant's attorney using the following contact information:		
Attorney's Name: <u>Marc S. Sacks, Trial Attorney, Civil Division</u>		
Attorney's Mailing Address: <u>U.S. Dept. of Justice, 1100 L. St. NW, Rm. 10058</u>		
City: <u>Washington, D.C.</u>	State:	Zip: <u>20005</u>
Phone: <u>202-307-1104</u>	Fax:	Email: <u>Marcus.S.Sacks@usdoj.gov</u>

**SECTION TWO – Information Regarding Claim**

**Company:** This claim is filed against: [check appropriate box(es) below]

- |  |   |
|--|---|
| <input type="checkbox"/> Compass Cooperative Health Plan, Inc. dba Meritus Health Partners (HMO) | <input checked="" type="checkbox"/> Compass Cooperative Mutual Health Network, Inc., dba Meritus Mutual Health Partners (PPO) |
|--|---|

**Claim Type and Amount:** [check appropriate box(es) below and indicate amount]

- |   |  |
|---|--|
| <input type="checkbox"/> Policyholder, Insured or Member                                | <input type="checkbox"/> Shareholders/Owners         |
| <input type="checkbox"/> Agent, Vendor or other Creditor for goods or services provided | <input checked="" type="checkbox"/> All other Claims |

**Amount of Claim:** \$ 94,581,998.78 plus amounts to be determined

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**Explanation of the Nature of the Claim**

Attach additional sheets for explanation as necessary. Identify Attached Documentation, if any:

See Proof of Claim summary and Exhibits.

**Security**

If you are asserting a secured claim or otherwise asserting rights to any security, you must complete this section:

Yes. I am asserting a secured claim.

If so and you hold or exercise any control over the cash, securities, trust funds, letters of credit or other assets of Meritus Mutual or Meritus Health Partners, you must explain the nature of your control and provide supporting documentation.

\_\_\_\_\_

**SECTION THREE – Affirmation of Claimant**

I affirm: (i) that I have read the foregoing Proof of Claim and understand the contents thereof; (ii) that this claim is justly due and owing; (iii) that I am entitled to file this claim; (iv) that the matters set forth above and in any accompanying statements and documents are true and correct to my own knowledge; and (v) that no payment of or on account of the aforesaid claim has been made, except as otherwise stated in my claim.

Signature of person (or authorized agent) making claims

Signature: 

Printed Name: Matthew Lynch

Title: (if applicable): Director, Insurance Program Group  
Center for Consumer Information and Insurance Oversight

Date Signed: 5/14/17

For Internal Office Use Only: POC # \_\_\_\_\_ Claim Type: \_\_\_\_\_ Postmarked Date: \_\_\_\_\_

**Attachment to Proof of Claim of the Centers for Medicare & Medicaid Services**

**Nature of Claim:** Recovery of amounts owed to the United States of America and/or any federal agency or entity (collectively, the "United States").

**Set-offs:** The United States reserves the right to amend these claims to assert subsequently discovered liabilities. The United States may hold estimated debts owed to the Estate that are subject to set-off and/or recoupment rights. The United States hereby expressly reserves its right to set-off or recoup any claim against debts owed to the Estate by the United States.

**Security for Claim:** These claims are entitled to treatment as secured claims to the extent they are subject to set-off by a claim of the Estate against the United States. The United States is a unitary creditor for purposes of set-off and recoupment.

**The Centers for Medicare & Medicaid Services' Proof of Claim Summary  
Compass Cooperative Mutual Health Network, Inc., d/b/a Meritus Mutual Health Partners**

**Superior Court of Arizona, County of Maricopa, CV2016-011872,  
*State of Arizona, ex rel. Leslie R. Hess, Interim Director of Insurance v. Compass Cooperative  
Mutual Health Network, Inc., d/b/a Meritus Mutual Health Partners***

1. The United States of America, on behalf of the United States Department of Health and Human Services' ("HHS") Centers for Medicare & Medicaid Services ("CMS") and CMS's Center for Consumer Information and Insurance Oversight ("CCIIO"), files this Proof of Claim ("Claim") against Compass Cooperative Mutual Health Network, Inc., d/b/a Meritus Mutual Health Partners (the "Debtor"), based on the following facts and circumstances.

**The Start-Up Loan and the Solvency Loan**

2. Section 1322 of the Patient Protection and Affordable Care Act (the "PPACA") authorized CMS to extend loans to qualified applicants to foster the creation of new non-profit, member-governed insurance entities known as Consumer Oriented and Operated Plans or "CO-OPs." *See generally* 42 U.S.C. § 18042. The CO-OP program is intended to improve consumer choice and plan accountability, promote integrated models of care, and enhance competition in the insurance exchanges established by the Act. 42 U.S.C. § 18042; Establishment of Consumer Operated and Oriented Plan (CO-OP) Program, 76 Fed. Reg. 77392-01. The program established two types of CO-OP loans: (1) "loans to provide assistance to [CO-OPs] in meeting [their] start-up costs" and (2) loans "to provide assistance to [CO-OPs] in meeting any solvency requirements of States in which [they] seek to be licensed to issue qualified health plans." 42 U.S.C. § 18042(b)(1).

3. On June 7, 2012, the Debtor and CMS entered into a loan agreement ("Loan Agreement") under which the Debtor received a start-up loan ("Start-up Loan") in the principal amount of \$20,890,333.00 and a solvency loan ("Solvency Loan") in the principal amount of

\$72,422,900.00. *See generally* Exhibit A (Loan Agreement, dated June 7, 2012, and Appendices 1-5); 42 U.S.C. § 18042(b)(1).

4. The Start-up Loan (which was converted to a surplus note, see Exhibit A at Second Amendment to Loan Agreement) is evidenced by a promissory note on which payments were required to commence no later than 2017. *See* Exhibit A (Loan Agreement and First Amendment to Loan Agreement, showing Debtor's name change). Between June 2014 and August 2015, CMS disbursed the funding available under the Start-up Loan to the Debtor in its entirety. *See* Exhibits A and B (Loan Agreement, dated June 7, 2012 and Start-up Loan Promissory Note dated August 12, 2015).

5. The Solvency Loan is evidenced by a promissory note on which payments were required to commence no later than 2019 and be completed within 15 years of disbursement. *See* Exhibit A at Appendix 4 (Solvency Loan Promissory Note); *see also* 42 U.S.C. § 18042(b)(3). Between March 2013 and August 2015, CMS disbursed the funding available under the Solvency Loan to the Debtor in its entirety. *See* Exhibit C (Disbursement Records).

6. On October 30, 2015, the Arizona Department of Insurance notified CMS that it issued the Debtor an Order of Supervision and suspended the Debtor's Certificate of Authority, which immediately prohibited the issuance of new and renewal health insurance plans in Arizona by the Debtor. *See* Loan Agreement § 15.1. On December 18, 2015, CMS terminated the Loan Agreement, effective December 31, 2015. *See* Exhibit D (Termination Letter). Upon the termination of the Loan Agreement, "the unpaid Principal amount of the Loans, together with all Interest accrued" became "immediately due and payable" to CMS. *Id.* at 1; *see also* Loan Agreement § 15.3.

7. The Debtor presently owes CMS a total of \$20,890,333.00 under the Start-up Loan, consisting entirely of principal.<sup>1</sup>

8. The Solvency Loan accrued interest at a rate of 0.25% per year. *See* Exhibit A (Loan Agreement § 4.3 & Appendix 6); 45 C.F.R. § 156.520(c). Between the first disbursement of the Solvency Loan on March 21, 2013 and May 15, 2017, the Solvency Loan accrued a total of \$513,028.25 interest. *See* Exhibit E (Interest Calculations).

9. The Debtor presently owes CMS a total of \$72,935,928.25 under the Solvency Loan, consisting of \$72,422,900.00 in principal and \$513,028.25 in aggregate interest to date.

10. CMS's right to collect these debts is governed by (1) the Loan Agreements; (2) applicable Federal law<sup>2</sup>; and (3) "the laws of the State of Arizona to the extent the same do not conflict with applicable Federal law." Loan Agreement § 19.2.

#### **PPACA Cost-Sharing Reduction Reconciliation Obligations**

11. The PPACA created subsidies to reduce the cost-sharing expenses of low- and middle-income individuals who purchase health insurance through a health insurance exchange ("Exchange"). *See generally* 42 U.S.C. § 18071. These subsidies are known as "cost-sharing reductions" or "CSRs."

12. At the direction of Congress, CMS and the United States Department of the Treasury ("Treasury") established a program to advance subsidy payments (including the CSR portion of advance payments) to issuers on behalf of eligible insureds. *See* 42 U.S.C. § 18082. Under this program, the Treasury advances payments of CSRs to qualified health plans (QHPs)

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<sup>1</sup> The Start-up Loan accrued interest at a rate of 0% per year. *See* Loan Agreement § 4.3 and Appendix 6; 45 C.F.R. § 156.520(c).

<sup>2</sup> The law applicable to CMS's debt collection activities generally includes, but is not limited to, 31 U.S.C. § 3711, *et seq.*; 45 C.F.R. § 156.1215; 42 C.F.R. Part 401, Subpart F; 31 C.F.R. Part 901; and applicable common law (collectively, "Federal Debt Collection Law").

based on estimates.<sup>3</sup> Issuers, in turn, are required to apply the advance payments to the cost-sharing obligations of their enrollees. 45 C.F.R. § 156.410(a).

13. Because the monthly advances of the CSR portion of advance payments are based on estimates, they are subject to annual reconciliation after issuers calculate the actual amount of CSRs provided to eligible enrollees using methodologies specified by CMS. *See id.* § 156.430(c)-(d). If, upon reconciliation, CMS determines that the CSR portion of advance payments exceeded the actual amount of CSRs provided to enrollees, the issuer must reimburse CMS (on behalf of the Treasury) for the difference. *Id.* § 156.430(e). Conversely, if CMS determines that the CSR portion of advance payments fell short of the actual amount of CSRs provided to enrollees, CMS (on behalf of the Treasury) must reimburse the issuer for the difference. *Id.*

14. Between April and June, 2016, CMS reconciled the CSR portion of advance payments made to issuers of QHPs for the 2014 and 2015 benefit years.

15. As a result of reconciliation, CMS determined that the CSR portion of advance payments for 2014 and 2015 made to the Debtor exceeded the actual amount of CSRs provided to enrollees, and therefore, the Debtor owes a principal balance to CMS of \$112,917.29 for 2015, and as of May 3, 2017, interest in the amount of \$2,717.07 and an administrative fee of \$15), for a total of amount owed of \$115,649.36. *See Exhibits F and G (Invoice and Intent to Refer Letter for this debt).* CMS's right to collect such overpayments is governed by Federal Debt Collection Law.

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<sup>3</sup> In 2014, these estimates were calculated from Exchange data showing a plan's actuarial value and expected allowed claims costs. In 2015, Exchanges calculated the advance amount using multipliers particular to the plan variation and premium for each policy. *See* 45 C.F.R. §§ 155.340(a), 155.1030(b)(3), 156.430(b).



### PPACA Reinsurance Obligations

16. Pursuant to Section 1341 of the PPACA, health insurance issuers and other contributing entities are required to make annual reinsurance contributions to the PPACA transitional reinsurance program for the 2014, 2015, and 2016 benefit years. *See* 42 U.S.C. § 18061. CMS collects these contributions and generally uses the funds to reimburse eligible insurance companies for a portion of high claims costs incurred during the applicable benefit years. *See* 45 C.F.R. § 153.230(a)-(c). For the 2015 benefit year, health insurance issuers and contributing entities were required to: (1) submit enrollment data by November 16, 2015; (2) make an initial bifurcated or single, combined reinsurance contribution payment by January 15, 2016; and (3) make a second bifurcated reinsurance contribution payment (if applicable) no later than November 15, 2016. *See* 45 C.F.R. § 153.405(b)-(c); *see also* Key Dates for Calendar Year 2016: QHP Certification in the Federally-facilitated Marketplaces; Rate-Review; Risk Adjustment and Reinsurance, at 3, *available at* <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2016-key-dates-table-2-29-16.pdf>. To the extent issuers and other contributing entities do not pay their mandatory reinsurance contribution(s) at the proper time, the deficiency constitutes a determination of a debt. 45 C.F.R. §§ 153.400(c) and 156.1215(c).

17. The Debtor submitted its enrollment count for the 2015 benefit year on November 11, 2015, and elected a bifurcated payment schedule for its contribution obligations (which resulted in total reinsurance contributions due for the 2015 benefit year of \$184,366.16). On January 14, 2016, the Debtor made an initial bifurcated payment of \$138,274.62 for the 2015 benefit year. *See* Exhibit H (ACA Transitional Reinsurance Annual Enrollment and Contributions Submissions Form, First Collection). The Debtor's second bifurcated payment of

\$46,091.54 remains outstanding and was due no later than November 15, 2016. *See* Exhibits I and J (ACA Transitional Reinsurance Annual Enrollment and Contributions Submissions Form, Second Collection and ACH Debit Retired Transaction Document). *See* 45 C.F.R. § 153.405(c)(2). CMS’s right to collect such payment is governed by Federal Debt Collection Law.

### **PPACA Risk Adjustment Obligations**

18. Section 1343 of the PPACA established a permanent risk adjustment program to mitigate the impact of adverse selection on and stabilize premiums for issuers of PPACA-compliant coverage in the individual and small group markets. *See* 42 U.S.C. § 18063.<sup>4</sup> Under the program, issuers of qualifying plans that enroll policyholders with disproportionately low actuarial risk are assessed a fee or “charge” by CMS, whereas issuers that enroll policyholders with disproportionately high actuarial risk receive a payment.

19. Issuers subject to the CMS-administered risk adjustment program are required to establish a dedicated Distributed Data Environment (“DDE”) to ensure that CMS is provided access to risk adjustment data in a timely fashion. 45 C.F.R. § 153.700(a). The submission deadline for risk adjustment data for the 2015 benefit year was May 2, 2016. Issuers that fail to establish a DDE and/or provide access to the required data such that CMS cannot apply the Federally certified risk adjustment methodology to calculate the issuer’s risk adjustment transfer amount in a timely fashion are assessed a default risk adjustment charge. *See* 45 C.F.R. § 153.740(b); *see also* FAQ #14472, *available at* [https://www.regtap.info/faq\\_view.php?i=14472](https://www.regtap.info/faq_view.php?i=14472).

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<sup>4</sup> Although the PPACA permits states to operate their own risk adjustment programs, Arizona elected not to do so. Therefore, CMS presently administers the program in Arizona. *See* 42 U.S.C. § 18041(c).

20. Issuers of risk adjustment-covered plans also must pay a user fee to CMS based on their qualifying business in states where CMS administers the program. *See* 45 C.F.R. § 153.610(f). The user fee is a product of the monthly enrollment in the risk adjustment covered plan and a per-enrollee-per-month rate specified by CMS annually in regulation.

21. CMS has calculated risk adjustment obligations for the 2015 benefit year, and as of May 3, 2017, the Debtor owes CMS \$589,820.86 in risk adjustment charges (which represents the amount of risk adjustment charges currently owed as of May 3, 2017, a charge of \$346,561.95 and \$243,258.91). As of May 3, 2017, the Debtor has currently paid the interest and administrative fee owed on the risk adjustment charges. *See* Exhibits K-N (Initial Risk Adjustment Invoices and Intent to Refer Letters) and (See Exhibit R – Account Receivables Owed by Debtor as of May 3, 2017). The Debtor also owes \$4,348.01 in risk adjustment user fees (which includes \$101.82 for interest and \$15 for an administrative fee), resulting in a total amount owed of \$594,168.87. *See* Exhibits O and P (Initial Risk Adjustment Fees Invoice and Intent to Refer Letter) and (See Exhibit R – Account Receivables Owed by Debtor as of May 3, 2017). CMS's right to collect such payments is governed by Federal Debt Collection Law.

#### **PPACA User Fees under Federally-facilitated Exchange Program**

22. CMS collects a user fee from participating issuers to fund Federally-facilitated Exchange operations. For 2014 and 2015, the user fee rate was set at 3.5 percent of the monthly premium charged by the issuer. Based on enrollment and premium projections, CMS estimated that the 2016 user fee rate will also be set at 3.5 percent of the monthly premium charged by the issuer. The Debtor owes CMS \$7.76 for user fees under the PPACA Federally-facilitated Exchange program. *See* Exhibit Q (Initial User Fees Invoice).

## Conclusion

23. As of May 3, 2017, the Debtor owes CMS \$20,890,333.00 under the Start-up note, \$72,935,928.25 under the Solvency note (including accrued interest); \$115,469.36 for reconciliation of the cost-sharing reduction portion of advance payments; \$46,091.54 under the PPACA Reinsurance Program; \$594,168.87 under the PPACA Risk Adjustment Program (which includes \$589,820.86 in risk adjustment charges and \$4,348.01 for risk adjustment user fees); and \$7.76 under the PPACA Federally-facilitated Exchange user fee program, for a total debt of \$94,581,998.78. We note that the amounts owed by the Debtor are based on the current amounts due for each of the above-referenced programs reduced for any amounts collected through payment of invoices and netting under 45 C.F.R. § 156.1215(b). (See Exhibit R – Account Receivables Owed by Debtor as of May 3, 2017).<sup>5</sup>

24. CMS will amend and/or supplement this Proof of Claim as necessary. The filing of this Claim is not: (a) a waiver or release of the United States' rights against any person, entity or property; (b) a waiver or release of any right or claim of the United States, of any nature whatsoever, under any applicable law; (c) an election of any remedy to the exclusion, express or implied, of any other remedy; (d) an admission that this Claim encompasses debts that are subject to discharge in this or any other proceeding; (e) a consent to, ratification of, or admission regarding any obligation or liability based upon or arising out of any transaction between the United States and the Debtor; (f) an admission that the Arizona court presiding over the rehabilitation proceeding has jurisdiction over the United States with respect to any matter identified in this Claim, or a waiver or release of any rights related thereto; or (g) a waiver or release of any right of the United States to a trial by jury in any proceeding as to any and all

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<sup>5</sup> Exhibit R does not include the amounts owed under the PPACA transitional reinsurance program, as these amounts are due in light of the ACH debit retiring as described in paragraph 17 above and the accompanying exhibits.

matters so triable. All such rights are hereby expressly reserved by the United States without exception and without purpose of confessing or conceding any right or claim by this filing, or by any other participation in this proceeding.

# Exhibit A

## **LOAN AGREEMENT**

**Series A-\$ 20,890,333 (Maximum) CO-OP Start-up Loan**

**Series B - \$72,422,900 (Maximum) CO-OP Solvency Loan**

**US DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
CENTERS FOR MEDICARE & MEDICAID SERVICES**

**the "Lender"**

**Compass Cooperative Health Network**

**the "Borrower",**

a non-profit corporation duly existing and operating  
under the laws of the State of Arizona

**Closing Date:**

**June 7, 2012**

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1.2 Binding Intent

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## APPENDICES

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- Apx.2 Start-Up Loan Promissory Note
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- Apx. 3 Solvency Loan Disbursement Agreement
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## **Section 1. STATEMENT OF PURPOSE**

### **1.1. Prefatory Statements**

**Whereas**, Congress has directed the Secretary of the Department of Health and Human Services ("HHS") to establish a Consumer Operated and Oriented Plan (CO-OP) Program, the purpose of which is to foster the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets through the provision of loans to qualified applicants for the purpose of financing start-up costs and insurance reserves [see the Affordable Care Act, Section 1322(a)]; and

**Whereas**, "Borrower," a not-for-profit member organization identified on the Title Page and Signature Page of this Agreement, duly existing and operating under the laws of the State/Commonwealth identified on such pages, has applied to the Centers for Medicare & Medicaid Services (the "Lender" or "CMS"), an operating division of HHS, to obtain such financing; and

**Whereas**, Lender has selected Borrower's application and agreed to provide such financing upon such terms and conditions as are more particularly described in this Agreement and its appendices (the "Appendices"); and

**Whereas**, Borrower understands and agrees that as a condition of accepting funding under this Agreement, it will adhere to all terms, conditions and other provisions of this Agreement and applicable CO-OP Program regulations.

### **1.2. Binding Intent**

**Accordingly**, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, Lender and Borrower agree to the terms hereinafter set forth in this Agreement.

## **Section 2. DEFINITIONS**

### **2.1. Defined Terms**

The following terms and words shall have the stated meanings when used in this Agreement (including the recitals). Terms not otherwise defined in this Agreement shall have the meanings attributed them in the normal course of business.

**"Accrual Period"** means, (a) initially, the period from and including the Closing Date but excluding the first Loan payment date and (b) thereafter, each subsequent period from and including a Loan payment date but excluding the next Loan payment date.

**"Affiliated Party"** means an organization other than a Pre-Existing Issuer or a Related Entity that shares common ownership or control with Borrower, including an affiliate, subsidiary or parent thereof.

"**Affordable Care Act**" means the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, enacted on March 23, 2010, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, and the Consolidated Appropriations Act, 2012, Pub. L. No. 112-74, and as from time to time hereafter amended.

"**Agreement**" means this Loan Agreement, as from time to time hereafter amended in accordance with the terms hereof, together with all attached Appendices.

An "**Appendix**" to this Agreement means any appendix, schedule, exhibit or other document attached to this Agreement and incorporated by reference herein.

"**Basic Operating Expenses**" means the ordinary and necessary expenses incurred by Borrower in can-ying out its day-to-day business activities that are permitted under Section 3 of this Agreement, including but not necessarily limited to such expenses as non-medical services provider payroll, employee benefits and pension contributions, business related transportation, travel and training expenses and other similar non-clinical personnel expenses, as well as general business and administrative expenses such as those associated with renting space for administrative operations, utilities, telecommunications, business equipment, fixtures, leasehold improvements, licenses, permitted CO-OP marketing and advertising, professional services, business insurance, and taxes other than income taxes.

"**Borrower**" shall be the entity described as Borrower on the Title Page of this Agreement.

Borrower's "**Business Plan**" means Botrnwer's formal business plan submitted in response to the CO-OP FOA, a true copy of the most-cun-ent approved version of which is attached hereto and incorporated herein by reference as Appendix 7 hereto, and as from time to time hereafter amended by mutual agreement of the pmties.

"**Business Day**" means a day which is not a Saturday, Sunday or legal holiday under the laws of the United States of America.

"**Closing Date**" means the date of execution of this document, as noted on the Title Page of this Agreement.

"**CMS**" means Centers for M dicare & Medicaid Services, an Operating Division of the United States Deptmt of Health and Human Services.

"**Contingency Funding**" means that portion of the Solvency Loan specifically reserved to offset increased costs to Borrower or changes in Bon-ower's Business Plan caused by higher than expected enrollment or claims, expansions into additional servicing areas within the same State or States in which Borrower is operating, or changes in Federal law and/or changes in State Insurance Laws or State Reserve Requirements. "**Contingency Funds**" means any and all Funds provided to Bon-ower from Lender from the Contingency Funding. All Contingency Funding available under this Agreement is included in the total amount available for the Solvency Loan indicated on the facing page of this Agreement, and is the portion thereof indicated in the Solvency Loan Disbursement Agreement (Appendix 3).

"**CO-OP**" means the consumer governed, private, nonprofit health insurance entity established by Borrower that satisfies the standards in section 1322(c) of the Affordable Care Act and 45 CFR Section 156.515.

"**CO-OP FOA**" means Funding Opportunity Announcement Number: OO-C00-11-001, CFDA No. 93.545, published by CMS on July 28, 2011 and as thereafter amended including on December 9, 2011, and as may be from time to time thereafter amended.

"**CO-OP Program**" means the Consumer Operated and Oriented Plan (CO-OP) Program authorized by and established under Section 1322(a) of the Affordable Care Act.

"**CO-OP Qualified Health Plan**" or "**CO-OP QHP**" means a health plan that has in effect a certification that it meets the standards established by CMS pursuant to Section 1311(c) of the Affordable Care Act, except that the plan can be deemed certified by CMS or an entity designated by CMS as described in 45 CFR 156.520(e).

"**Date of Award**" means the date that occurred 30 days after applications were due in response to the CO-OP FOA.

"**Disbursements**" means the Funds Borrower will receive from Lender in accordance with the terms and conditions of this Agreement.

"**Disbursement Agreement**" means the agreement between Borrower and Lender governing the disbursement, use and repayment of Start-Up or Solvency Loan Funds (including Contingency Funds), as applicable, initial copies of which are attached to and incorporated hereto as Appendices 1 and 7, as from time to time hereafter modified by mutual written agreement of the parties.

"**Disbursement Plan**" means the schedule for Disbursements of Start-Up or Solvency Loan Funds, as applicable, initial copies of which are attached to and incorporated hereto as of Appendices 1, 2, 3 and 7, as from time to time hereafter modified by mutual written Schedule A agreement of the parties

"**Event(s) of Default**" means the occurrence or happening, from time to time, of one or more of the events identified in Section 15.1 below.

"**Exchange**" means a governmental agency or non-profit entity that meets the applicable requirements established by CMS, pursuant to sections 1311 and 1321 of the Affordable Care Act, and makes qualified health plans available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

"**Final Solvency Loan Disbursement Date**" means the last date that any Disbursement of Solvency Loan Funds is or was made to Borrower.



**"Financing Period"** means the period measured from the Closing Date and to the date that Borrower makes the final repayment of all Principal and accrued Interest on the Loans, except for and not including any Improvements or Workout Periods.

**"Gold Benefit Level"** and **"Silver Benefit Level"** mean levels of coverage with a CO-OP QHP that provide benefits that are actuarially equivalent to 80% of the full actuarial value of benefits under the CO-OP QHP and 70% of the full actuarial value of benefits under the CO-OP QHP, respectively.

**"GAAP"** means generally accepted accounting principles applicable to a qualified nonprofit health insurance issuer, and **"GAAS"** means generally accepted auditing standards applicable to the same.

**"HIPAA"** means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, enacted on August 21, 1996, as from time to time thereafter amended.

**"Improvement Periods"** means the time during periods in which the CO-OP may be experiencing difficulties in meeting full responsibilities under this Agreement, including minor or technical Events of Default, which are deemed resolvable by Lender.

**"Interest"** or **"Interest Amount"** means, with respect to any Loan payment date, the amount of interest accrued on the Principal of a Loan from time to time during the preceding Accrual Period, including any recapitalized interest on unpaid Obligations hereunder.

**"IRC"** means the Internal Revenue Code of 1986, as codified in Title 26 of the United States Code, as from time to time amended.

**"Lender"** means the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services.

**"Loan"** means the total amount of all outstanding Start-Up Loan disbursements, or the total amount of all outstanding Solvency Loan disbursements, respectively and individually, as the context or usage requires; **"Loans"** means both of them together.

**"Loan Funds"** or **"Funds"** means the Disbursements received under this Agreement as from time to time amended for Start-Up and Solvency Loans, including accrued Interest thereon under the Maximum Amounts of Loan Principal described on the Title Page.

**"Material Adverse Effect"** means any occurrence, condition, event, change, consequence or effect that is or could reasonably be expected to be materially adverse to or otherwise detrimentally effect the business, operations, results of operations, assets, liabilities, or financial condition of Borrower or the CO-OP.

**"Maximum Disbursement Amount for Solvency Loan"** means the maximum amount that is available for Disbursement to Borrower under the Solvency Loan as more particularly described in Section 5.2 below.

**"Member"** means an individual covered under health insurance policies issued by Borrower.

**"Member Grievance"** means a written or oral expression of dissatisfaction regarding the CO-OP QHP and/or Borrower, including quality of care concerns, and shall include a complaint, dispute, request for reconsideration, or appeal made by a Member or the Member's representative. When Borrower is unable to distinguish between a grievance and an inquiry, it shall be considered a grievance.

**"Monitoring Period"** means the time during which Borrower is subject to oversight by Lender, including site visits and requests for information initiated by Lender that supplement any required periodic reports. The Monitoring Period will run simultaneously with the Performance Period.

**"Obligations"** means the Principal and Interest due on each of the Loans, together with any and all other obligations of Borrower arising under this Agreement pertaining to the Loans, whether now existing or arising in the future, as more specifically described in Section 3.3 below.

**"Organizational Change"** means any material or significant change to Borrower's corporate or governance structure, or any transfer of all or a significant portion of Borrower's assets, the implementation of which specifically requires the prior written approval of Lender in accordance with the terms of Section 18.2 of this Agreement.

**"Performance Period"** means the period beginning on the Closing Date and ending on the tenth (10<sup>th</sup>) anniversary of the date that Borrower makes the final repayment of all Principal and accrued Interest on the Loans. The Performance Period includes the Financing Period, the Improvement Period and the Workout Period, as applicable.

The **"PHSA"** means the Public Health Service Act, as codified in Title 42, Chapter 6A of the United States Code, as from time to time amended.

**"PreExisting Issuer"** means a health insurance issuer that was in existence on July 16, 2009.

**"Related Entity"** means an entity that shares common ownership, control, or governance structure (including management team or Board members) with a Pre-Existing Issuer, and satisfies at least one of the following conditions: (i) retains responsibilities for the services to be provided by the Pre-Existing Issuer; (ii) furnishes services to the Pre-Existing Issuer's enrollees under an oral or written agreement; or (iii) performs some of the Pre-Existing Issuer's management functions under contract or delegation.

**"Repayment Schedule"** means the agreed-upon plan or schedule for repayment of Start-Up or Solvency Loan Funds, as applicable, copies of which are attached to and incorporated hereto as numbered Appendices, as from time to time hereafter amended by mutual agreement of the parties

**"Reporting Period"** means the time during which the recipient must submit program and financial reports to CMS. The Reporting Period runs simultaneously with the Performance Period.

**"Risk-Based Capital Reserves"** means the amount of required capital that the Borrower must maintain to remain in compliance with State Reserve Requirements. These risks may include asset depreciation risk, credit receivables risk, underwriting risk, and off-balance-sheet risk.

**"SAP"** means Statutory Accounting Principles, the rules for insurance accounting codified by the National Association of Insurance Commissioners (NAIC) or as promulgated by a State as rules to be used in reporting an insurer's results to regulators.

**"Secretary"** shall refer to the Secretary of HHS.

**"SHOP"** means a small business health options program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more qualified health plans.

**"Social Security Act"** shall refer to the Social Security Act, as amended, as codified in Chapter 7 (§§ 301 et. seq.) of Title 42 of the United States Code.

**"Solvency Loan"** means the Loan provided to Borrower in order to meet State solvency and State Reserve Requirements that is governed by this Agreement, and the particular requirements of Appendix 4 - Solvency Loan Promissory Note.

**"Sponsor"** means an organization or individual that is involved in the development, creation, or organization of the CO-OP or provides 40 percent or more in total funding to a CO-OP (excluding any loans received from the CO-OP Program) as described in 45 CFR Part 156.

**"Start-Up Loan"** means the Loan to Borrower for costs associated with establishing a CO-OP that is governed by this Agreement, and the particular requirements of Appendix 2 - Start-Up Loan Promissory Note.

**"State"** means and includes each of the 50 sovereign States or Commonwealths within the United States of America and includes for purposes of this Agreement the District of Columbia.

**"State Insurance Laws"** means those State insurance laws and regulations that will govern Borrower in delivering the CO-OP QHP(s) for and within the particular State.

**"State Reserve Requirements"** means the financial reserve requirements that Borrower must meet under applicable State Insurance Laws for the delivery of health insurance under a CO-OP and to issue CO-OP QHPs and any non-CO-OP QHP coverage to be offered by the CO-OP. A statement of compliance from the host state will be milestone of Start-Up and ongoing operations.

**"State Solvency Payment Restriction"** means a State Insurance Law provision or regulatory action by a State insurance agency or department that enforcement or implementation of which creates an actual legal impediment or restriction on repayment of Loan funds pursuant to the terms of this Agreement.

**"Subcontract"** means any contract or other formal agreement entered into by Borrower with a third party or Affiliated Party to furnish supplies or services to Borrower in furtherance of

Bolmwer's responsibilities, obligations or undertakings under this Agreement, as more specifically described in Section 8.2 below.

"**Treasury**" means the United States Department of the Treasury.

"**Workout Period**" means the period arising after an occurrence of an Event of Default which is not cured within the time limits set forth in Section 15.1 and 15.2 below.

### **Section 3. DESCRIPTION OF FINANCING**

#### **3.1. General**

Under this Agreement, Lender is providing to Borrower funds for CO-OP Program purposes through two Loans, each of which shall be on par with the other for security purposes, and each of which shall be governed and controlled for all purposes by this Agreement, including its Appendices.

#### **3.2. Purpose of the Loan**

The Loans are being provided by Lender to Borrower for the establishment of a CO-OP. The Loans are intended to permit Borrower to offer health plans primarily in the individual and small group markets as described in 45 CFR Part 156. Borrower agrees to perform all functions necessary to design, implement and operate a CO-OP QHP as set forth in the in the CO-OP FOA and consistent with its FOA proposal and approved Business Plan. Subject to the terms and conditions of this Agreement, Lender will loan an amount not to exceed \$20, 890,333 for the Start-Up Loan and \$72,422,900 for the Solvency Loan to Borrower.

#### **3.3. Parity of Loans; Cross-Collateralization**

Borrower hereby covenants and agrees that each of the Loans and all Obligations of Borrower arising under this Agreement pertaining to the Loans, whether now existing or arising in the future, shall be and are hereby expressly cross-defaulted and cross-collateralized with each other, such that the occurrence of any Event of Default under any of the Obligations shall be a default under all of the Obligations and under all documents and instruments evidencing and/or securing the Obligations.

#### **3.4. Security for the Loans**

The Loans and other Obligations will be general obligations of Borrower. Because the intent of the Loans, and the Solvency Loan in particular, is to provide financing to Borrower that meets the definition of "risk based capital" for State Insurance Laws purposes, the Loans will have a claim on cash flow and reserves of Borrower that is subordinate to (a) claims payments, (b) Basic Operating Expenses, and (c) maintenance of required reserve funds while Borrower is operating as a CO-OP under State Insurance Laws.

#### **3.5. Permitted Use of Loan Funds**

Borrower must use the Loan Funds only for the following purposes:

- (a) Costs identified in the Business Plan and Disbursement Plans;
- (b) Costs associated with establishing the CO-OP as an operating business;

- (c) Costs associated with the initial operations of a CO-OP QHP, including but not limited to:
  - i. Renting space for issuer administrative operations;
  - ii. Renting or developing information technology systems;
  - iii. Renting or developing provider networks;
  - iv. Hiring a management team with adequate insurance expertise and other administrative personnel;
  - v. Hiring counsel and consultants to assist with State Insurance Laws and other licensure requirements;
  - vi. Negotiating, and contracting with providers and vendors;
  - vii. Hiring actuaries;
  - viii. Conducting community and prospective member education and educating CO-OP members on the rights and responsibilities of member governance;
  - ix. Developing strategic plans to build enrollment;
  - x. Establishing and participating in a private purchasing council; and
  - xi. Paying for the initial costs of operational and administrative staff.
- (d) Cost associated with establishing and maintaining capital reserves for Borrower (including Risk-Based Capital Reserves) consistent with State Reserve Requirements;
- (e) Investments permitted from Funds held in appropriate accounts approved by State regulators; and
- (f) Other expenditures as authorized in writing by Lender.

### 3.6. Prohibited Uses of Loan Funds

Notwithstanding any other provision of this Agreement to the contrary, in no event shall Borrower use any part of Loan Funds for any of the following purposes or activities:

- (a) To carry on propaganda and other activities attempting to influence legislation at the Federal, State, or local level of government;
- (b) To conduct marketing. As used herein, "marketing" means activities that promote the purchase of a specific health care plan or explain a product's benefit structure to a specific customer. However "marketing" does not include activities related to community outreach, membership development, and membership education. Loan Funds may be used to provide information to Members regarding their coverage, rights, and responsibilities;
- (c) To meet the matching requirements of any other Federal program;
- (d) To cover or pay excessive executive compensation as determined by Lender in its sole but reasonable discretion;
- (e) To fund activities unrelated to CO-OP planning and establishment, including but not limited to staff retreats and promotional giveaways;
- (f) To fund activities associated with construction of facilities, including clinical facilities;

- (g) To pay clinical expenses for Start-up Loans such as medical services provider salaries or payments, provider clinical space or administrative staff associated with clinical functions, and clinical equipment (excluding clinical information technology).
- (h) To pay for services described in section 1303(b)(1)(B)(i) of the Affordable Care Act.

Nothing in this Agreement shall be construed to allow a person to take any action prohibited by IRC Section 501(c) (29).

### 3.7. Differences in Servicing Regimes

During the Performance Period, the Loans will be managed under different sets of rules ("Servicing Regimes") corresponding to the status of the CO-OP's operations and finances. These rules are applicable during such Servicing Regimes and are generally described as follows:

- (a) Performance Period. Throughout the entire Performance Period, Borrower will be required to make repayments of Principal and Interest and other Obligations in accordance with the terms of this Agreement.
- (b) Financing Period. During the Financing Period, Borrower will be required to make repayments of Principal and Interest and other Obligations in accordance with the Repayment Schedule for each Loan, subject to applicable grace periods as hereinafter set forth in this Agreement.
- (c) Improvement Period. During any Improvement Periods, Borrower will be required to agree to an Improvement Plan with Lender until either the problem is resolved, or a more serious Event of Default occurs that triggers a transition to a Workout Period.
- (d) Workout Period. During a Workout Period, Lender will be entitled to pursue any and all remedies available to Lender under and in accordance with the terms of this Agreement. Borrower and Lender nonetheless agree to work in good faith to resolve any differences and correct any deficiencies which caused or led to the Loans to be in the Workout Period; provided that Lender shall have no obligation to take any actions to resolve any such issues if Lender has cause to believe that Borrower or a Affiliated Party has engaged in criminal or fraudulent activities, or in other deleterious activities that have caused or may cause material harm to the CO-OP's Members or the CO-OP Program.

### 3.8. Conditions Precedent for Loan Disbursement

To receive any Funds under this Agreement, Borrower must (i) meet the specific conditions and milestones for each Disbursement as set forth in its Disbursement Plans (Schedule A of Appendices I and 7); (ii) remain in compliance with the CO-OP Program Requirements set forth in Section 7 below; and (iii) continuously meet the following specific conditions:

- (a) Meet the eligibility criteria for the CO-OP as defined at 45 CFR 156.510;

- (b) Certify to Lender in writing that it possesses and has implemented policies and procedures to avoid insurance industry involvement and interference;
- (c) As a condition precedent to Closing of this Agreement, Borrower must submit an "Affirmation of Regulatory Acceptance of CO-OP Loans as Regulatory Capital," to be attached as Appendix I 0, signed by the Superintendent of the Arizona Insurance Commissioner.

To receive Contingency Funds under this Agreement Borrower must, in addition to the conditions set forth above in this Section 3.8, submit to Lender adequate documentation that Borrower meets one of the following criteria or justifications for Contingency Funding:

- (a) Borrower's enrollment levels have been higher than anticipated in its Business Plan as demonstrated by automated enrollment figures provided to Lender within 90 days of the close of the open enrollment period or within 60 days of the close of any special enrollment period;
- (b) Borrower's claim costs have been significantly higher than anticipated in its Business Plan as demonstrated by the claims history of the preceding calendar quarter;
- (c) Changes in State Solvency Requirements or other applicable State or Federal health insurance company solvency requirements have resulted in significant cost increases that were unanticipated under Borrower's Business Plan as demonstrated by State regulatory publications or a letter from the agency or official responsible in the State for the regulation of health insurance issuers.
- (d) Borrower has a viable plan to expand its service area within the State or States in which it is already operating.

Contingency Funds shall not be disbursed to Borrower until all non-Contingency Funds have been disbursed to Borrower.

In the event Borrower had previously existed as or was converted from a multiple employer welfare arrangement (as such term is defined in ERISA Section 3(40), 29 U.S.C. §1002(40)), or multiple employer trust ("MEWA"), Borrower must first deposit, credit or apply and thereafter use any and all existing solvency, reserve or risk capital funds from such MEWA for the benefit of the CO-OP and its Members before seeking any Loan Disbursements hereunder. No Loan Funds (whether Contingency Funds or otherwise) will be disbursed hereunder unless and until such existing MEWA funds are deposited, credited or applied for the benefit of the CO-OP (as verified pursuant to standard audit and accounting procedures), and the Borrower establishes a bona fide need for Start-Up or Solvency Funds despite the availability of such MEWA funds for use by the CO-OP.

#### **Section 4. START-UP LOAN - BASE PROVISIONS**

##### **4.1. Use**

Start-Up Loan Funds must only be used in accordance with the Business Plan, the Start-Up Loan Disbursement Plan and the CO-OP FOA. Start-Up Loan Funds cannot be used to pay for costs

associated with purchase of land and construction of facilities, including construction or clinical costs such as the costs of actual medical services provider salaries and contracts or payment, provider clinical space, and clinical equipment.

#### 4.2. Disbursement for Start-Up Loan

Any and all Start-Up Loan Disbursements shall be made in accordance with the terms and conditions set forth in the Disbursement Agreement attached hereto and incorporated herein by reference as Appendix 1. As a condition precedent to the making of any Disbursement, Borrower must satisfy the requirements of Section 3.8 above, including but not limited to the requirement that it demonstrate that it has met the specific conditions milestones for each such Disbursement as set forth in its Disbursement Plan (Appendix 1, Schedule A). Disbursements, at Lender's discretion, may not be provided during any Improvement or Workout Periods.

#### 4.3. Interest

The Interest rate for the Start-Up Loan and any individual Disbursement thereof shall be fixed for the life of the Loan at the amount in Appendix 6, which represents the Treasury rate on five year securities in effect on the initial Date of Award minus one percentage point ("Interest Rate"); provided, however, that in this event this Agreement is earlier terminated for cause under Section 16.3 below, the Interest Rate for the Start-Up Loan shall be fixed at the rate in Appendix 6, which is equal to the Treasury rate on five year securities based on the Date of Award. Interest on the Start-Up Loan and each individual Disbursement thereof shall accrue on a monthly basis using a 360-day year and 30-day month for actual days elapsed. Interest shall be payable according to the Repayment Schedule attached to this Agreement and incorporated herein by reference as Schedule A of Appendix I. Accrued and unpaid Interest will be capitalized on an annual basis during the period prior to the first scheduled Interest payment date, and will be capitalized on any scheduled payment date on which Borrower does not pay the full amount of the accrued Interest due.

#### 4.4. Repayment of Start-Up Loan

Borrower shall make Principal and Interest payments as described in the Start-Up Loan Promissory Note attached hereto and incorporated herein by reference as Appendix 2, with normal loan servicing activities to be contemporaneously undertaken by Lender or its designee. Principal repayments on the Start-Up Loan will be as stated in the Start-Up Loan Promissory Note for the Start-Up Loan, but in any event no later than 5 years from the respective Disbursement date of the individual Loan Disbursement installments, subject to Borrower's ability to meet State Reserve Requirements and other solvency regulations or requisite surplus note arrangements.

Unless Lender terminates this Agreement for cause under Section 16.3 below, Borrower shall be obligated to repay 100% of the Start-Up Loan amount disbursed, plus any capitalized Interest to Lender in accordance with the Repayment Schedule for the Start-Up Loan, subject to its ability to meet State Reserve Requirements and other solvency regulations, or requisite surplus note arrangements.

If Lender terminates this Agreement for cause under Section 16.3 below, Borrower shall be obligated to repay 110% of the Start-Up Loan Principal disbursed, plus any capitalized Interest



and any accrued Interest recalculated for the life of the Start-Up Loan at the higher Interest Rate as described in Section 4.3 above.

Instructions regarding the process for submitting payments to Lender are provided in Appendix 8 attached hereto and incorporated herein by reference. Changes to the process for submitting payment will be made available to Borrower as part of CO-OP Program guidance.

#### 4.5. Prepayment of Start-Up Loan

Borrower may prepay the outstanding Principal of the Start-Up Loan, in whole, or in part, at any time, without penalty, upon giving 30 days written notice to Lender of its intent to so prepay. A revised Repayment Schedule will be prepared by Lender following receipt of any acceptable partial prepayment, and will be delivered to Borrower within 30 business days thereafter.

#### 4.6. Disposition of Unused Funds

Borrower must repay any unused Start-Up Loan Funds to Lender. Every three years (as measured from the date of Disbursement of Funds), Borrower must determine the amount of Start-Up Loan Funds received for use that was not used as outlined in the Business Plan and is not anticipated to be used in the following three year period. This unused funding must be returned to Lender within 60 days of such determination unless Borrower presents plans acceptable to Lender for the anticipated use of the unused Start-Up Loan Funds in the following three years.

If Start-Up Loan Funds are not disbursed to Borrower within five years of when projected in the Business Plan, the unused Loan Funds will be defunded and cancelled.

## **Section 5. SOLVENCY FINANCING - BASE PROVISIONS**

#### 5.1. Use

Solvency Loan Funds must only be used to establish Risk-Based Capital Reserves to be held by Borrower and other capital reserves necessary to meet State Reserve Requirements and other State Insurance Laws, and then only in strict accordance with the Business Plan and Disbursement Plan. Borrower must notify Lender in writing if Borrower determines that its expenses have exceeded its premium revenue for three consecutive months, which notice shall be delivered within 30 calendar days of such determination.

#### 5.2. Structure of Solvency Loan

The Solvency Loan will be structured so as to comply with applicable State Insurance Laws and the terms of Appendix 4. Solvency Loans will be disbursed to meet the reserve level established in the Disbursement Agreement for the Solvency Loan.

#### 5.3. Disbursements for Solvency Loan

Borrower will receive Solvency Loan Disbursements under the process described in the Solvency Loan Disbursement Procedures attached hereto and incorporated herein by reference as Appendix 5. Disbursements, at Lender's discretion, may not be provided during any Improvement or Workout Periods, and may be held in escrow for the benefit of Borrower at

Lender's option prior to receipt by Borrower of all necessary and applicable State Insurance Law licenses and permits.

An initial Disbursement will be made in timing and amount as described in the Disbursement Plan (Schedule A of Appendix 3). Lender will disburse the initial installment of the Solvency Loan within 30 days of receiving a written request for Disbursement of Loan Funds in accordance with the procedures described in Appendix 5, so that Borrower can fund its required capital reserves (including Risk-Based Capital Reserves) in order to obtain licensure in a timely way.

Thereafter and until the Final Solvency Loan Disbursement Date, Borrower may draw additional Disbursements as needed (consistent with the Disbursement Agreement and the Solvency Loan Disbursement Procedures, and up to the maximum stated on the Title Page of this Agreement) for any of the following reasons:

- (a) To meet the regulatory capital requirements of the State(s) in which Borrower seeks to be licensed to issue CO-OP QHPs; and
- (b) To ensure that Borrower is in good standing under applicable State Insurance Laws and State Reserve Requirements.

In making any Disbursement request, Borrower shall deliver to Lender a written request for the Disbursement of Loan Funds in accordance with the procedures described in Appendix 5. By signing a request for Disbursement, Borrower shall be certifying that the Funds of such Disbursement will be used in compliance with the provisions of Section 3.4 regarding Permitted Uses of Loan Funds, and not in violation of the provisions of Section 3.5 regarding Prohibited Uses of Loan Funds.

In no event may the aggregate amount of Solvency Loan Disbursements exceed the Maximum CO-OP Solvency Loan award amount shown on the cover of this Agreement and described in Section 3.2 above.

Contingency Funds shall not be disbursed to Borrower unless and until all non-Contingency Funds available under this Agreement have been disbursed to Borrower, and Borrower otherwise meets the specific condition precedent requirements of Section 3.8 with respect to Contingency Funding.

#### 5.4. Final Solvency Loan Disbursement Date

While there is available funding remaining in the Solvency Loan (that is, the difference between the Maximum CO-OP Solvency Loan award amount stated on the cover of this Agreement and indicated in Section 3.2 above, and the sum of all Disbursements made as of a given date), such Funds will be available for Disbursement up to the date specified in Appendix 5 as the Final Solvency Loan Disbursement Date.

#### 5.5. Interest

The Interest rate for the Solvency Loan and any individual Disbursement thereof is fixed for the life of the loan at the amount in Appendix 6, which represents the interest rate on United States Treasury securities of similar maturity in effect on the Date of Award minus 2 percentage points,

("Interest Rate"); provided, however, that in the event this Agreement is earlier terminated for cause under Section 16.3 below, the Interest Rate for the Solvency Loan shall be fixed for the remaining life of the Loan at the rate reflected in Appendix 6, which is the interest rate on Treasury securities of similar maturity that was in effect on the initial Date of Award. Interest on the Solvency Loan shall accrue on a monthly basis using a 360-day year and 30-day month for actual days elapsed. Interest shall accrue to Principal during the Financing, Improvement and Workout Periods and be payable according to the Solvency Loan Promissory Note attached to this Agreement and incorporated herein by reference as Appendix 4. Accrued and unpaid Interest will be capitalized on an annual basis during the period prior to the first scheduled Interest payment date, and will be capitalized on any scheduled payment date on which Bon-ower does not pay the full amount of the accrued Interest due.

#### 5.6. Repayment Provisions

Bon-ower shall make Principal and Interest payments as described in Schedule A of the Solvency Loan Promissory Note, with normal loan servicing activities to be undertaken by Lender or its designee. Principal repayments of the Solvency Loan will be as stated in Schedule A of the Solvency Loan Promissory Note, but in any event no later than 15 years from the respective Disbursement date of the individual Loan Disbursement installments, subject to Bon-ower's ability to meet State Reserve Requirements and other solvency regulations or requisite surplus note arrangements.

Unless Lender terminates this Agreement for cause under Section 16.3 below, Bon-ower shall be obligated to repay 100% of the Solvency Loan amount disbursed, plus any capitalized Interest to Bon-ower in accordance with the Repayment Schedule for the Solvency Loan, subject to its ability to meet State Reserve Requirements and other solvency regulations, or requisite surplus note arrangements.

If Lender terminates this Agreement for cause under Section 16.3 below, Bon-ower shall be obligated to repay 110% of the Solvency Loan Principal disbursed, plus any capitalized Interest and any accrued Interest recalculated for the life of the Start-Up Loan at the higher Interest Rate as described in Section 5.6 above.

Instructions regarding the process for submitting payments to Lender are provided in Appendix 8 attached hereto and incorporated herein by reference. Changes to the process for submitting payment will be made available to Borrower as part of CO-OP Program guidance.

#### 5.7. Prepayment of Solvency Loan

Borrower may prepay the outstanding Principal of the Solvency Loan, in whole, or in part, at any time, without penalty, upon giving 30 days written notice to Lender of its intent to so prepay. A revised Repayment Schedule will be prepared by Lender following receipt of any acceptable partial prepayment; and will be delivered to Borrower within 30 business days thereafter.

#### 5.8. Disposition of Undisbursed Solvency Loan Funds

Should Solvency Loan Funds be set aside for future use under this Agreement (including, but not necessarily limited to Contingency Funds), but not disbursed within fifteen years of when projected in the Business Plan, the undisbursed Loan Funds will be defunded and cancelled.

#### 5.9. Accounts

Lender shall receive evidence of the establishment of a solvency fund established according to the procedure of the applicable State's insurance commissioner prior to the initial Disbursement of Solvency Loan Funds.

#### 5.10. Review and Supervision

Lender shall have the right to review and supervise the solvency fund established by Solvency Loan Funds provided under this Agreement; provided, however, that nothing in this Agreement shall be interpreted or construed to limit or supersede the authority of the responsible State's insurance commissioner in establishing the amount of solvency funds B01TOWER must maintain at any given time.

### **Section 6. PAYMENTS- DESCRIPTION**

#### 6.1. Application of Payments

All payments made by Borrower hereunder will be applied by Lender in accordance with the following procedure:

- (a) First to pay any outstanding Obligations of Borrower as defined in Section 2.1 that are due to Lender other than Interest or Principal;
- (b) Second to pay any accrued Interest then due and owing under the Loans or any other outstanding Obligations of Borrower, with payment of Interest on the Start Up Loan having priority over payment of Interest on Solvency Loan;
- (c) Third with the balance to pay outstanding Principal on the Loans, with payment of Principal on the Start-Up Loan having priority over payment of Principal on the Solvency Loan.

Payment by Borrower of a lesser amount than that which shall be then due shall be deemed to be payment on account, and shall not constitute an accord and satisfaction with respect to the underlying Obligation. The acceptance by Lender of a payment for a lesser amount which is delivered with an endorsement or statement to the effect that such lesser amount is payment in full shall be given no effect, and Lender may accept such payment without prejudice to any other rights or remedies which it may have against Borrower.

#### 6.2. Payment Due Dates

All payments due under this Agreement shall be due on the scheduled payment date, irrespective of any other provision of the Agreement or any Appendix, Attachment or Schedule hereof. Notwithstanding the foregoing, Borrower's failure to make any payment of Principal or Interest due under the Loans on the due date thereof shall not be deemed an Event of Default under Section 15.I below unless the same remains delinquent for more than 60 calendar days after the due date thereof, or unless such delinquency is due to a State Solvency Payment Restriction, State Reserve Requirements, other State Insurance Laws or other solvency regulations, or requisite surplus note arrangements. In the latter event, the provisions of Section 6.5 shall apply.

### 6.3. Outstanding Delinquencies

In the event that any payment due under this Agreement is more than 60 calendar days late, Lender shall have the right, at its sole and absolute discretion, to exercise any right or remedy specified hereunder or available under applicable law, including the right to discontinue further Loan Disbursements or terminate this Agreement. In the event any payment due under this Agreement is delinquent for more than 180 days after the due date thereof, Lender shall refer the matter to the United States Department of Justice for processing and other Federal action, in accordance with the terms of applicable Federal law.

### 6.4. Notice of Inability to Make Payment

Borrower hereby covenants and agrees to notify Lender in writing at least 90 days in advance, whenever possible, if it will be unable to make any scheduled payment due hereunder, or immediately upon becoming aware or having reason to know or reasonably suspect or anticipate that it will be unable to make a scheduled payment hereunder if less than 90 days remain prior to the date of such scheduled payment.

### 6.5. Solvency Issues Preventing Payment; Additional Obligation

If Borrower is unable to make a payment as a result of a State Solvency Payment Restriction, State Reserve Requirements, other State Insurance Laws or other solvency regulations, or requisite surplus note arrangements, and a notice is provided to Lender with sufficient documentation to verify the claim, Lender will provide Borrower with a 60-day grace period to remedy the deficiency. Should the 60-day-delayed payment be missed, the missed payment and accrued Interest thereon may, at the option of Lender, be added to the last scheduled payment due as an additional Obligation payable in full on the last scheduled payment date.

Borrower's notice under this Section 6.5 should include a citation to or specific description of the State Reserve Requirement or other legal impediment which is then preventing payment, a description of how and why such legal impediment is preventing Borrower from making payment and a statement of the expected duration of said impediment.

## **Section 7. PROGRAM REQUIREMENTS**

### 7.I. General

Borrower must at all times during the Term of this Agreement satisfy and meet all applicable requirements of the Affordable Care Act, and regulations promulgated thereunder, including but not necessarily limited to the regulations codified at 45 CFR Part 156, as well as terms of the CO-OP FOA and any and all additional CO-OP Program guidance as may be issued or released by Lender from time to time, including the following requirements:

- (a) Borrower must meet all the State Insurance Laws and other standards for licensure that other issuers of Qualified Health Plans must meet in any State where Borrower offers a QHP, including State Reserve Requirements and other solvency and licensure requirements described in Section 1324(b) of the Affordable Care Act.
- (b) Borrower cannot offer a health plan in any State until such State has in effect (or Lender has implemented for the State) the market reforms outlined in Part A of Title XXVII of

the Public Health Service Act (as amended by Subtitles A and C of Title I of the Affordable Care Act).

- (c) Within the earlier of thirty-six months following the initial Disbursement of the Start-Up Loan, or one year following the initial Disbursement of the Solvency Loan, Borrower must be licensed in the State and must offer throughout the remainder of the Term of this Agreement the following CO-OP QHPs:
  - 1. At least two CO-OP QHPs, one at the Silver Benefit Level and one at the Gold Benefit Level, in every individual market Exchange that serves the geographic regions in which Borrower is licensed and intends to provide health care coverage.
  - 11. If offering at least one plan in the small group market, Borrower must offer at least two CO-OP QHPs, one at the Silver Benefit Level and one at the Gold Benefit Level, in each SHOP that serves the geographic regions in which it offers coverage in the small group market.
- (d) Borrower must meet the standards of 45 CFR §156.515 no later than 5 years following initial Disbursement of the Start-Up Loan or 3 years following the initial Disbursement of the Solvency Loan. By that time, at least two-thirds of the policies or contracts for health insurance coverage issued by Borrower in each State in which it is licensed must be CO-OP QHPs as defined in 45 CFR §156.505 that are offered in the individual and small group markets.
- (e) Borrower may only begin offering plans and accepting enrollment in the Exchanges for new CO-OP QHPs during the open enrollment period and any other special enrollment period for each applicable Exchange.
- (f) Borrower cannot convert or sell to a for-profit or non-consumer operated entity at any time after receiving a Loan (including after full repayment of the Loans). Thus, Borrower cannot sell a substantial portion of its enrollment to a for-profit or non-consumer operated entity. Borrower cannot undertake any transaction that would result in Borrower implementing a governance structure that does not meet the governance standards in 45 CFR §156.515(b).
- (g) Borrower must use any surplus funds (revenue in excess of its expenses) to repay the Loans, lower premiums, to improve benefits, to meet State Reserve Requirements, to accumulate reasonable and sufficient reserves to provide for enrollment growth, financial stability, and stable coverage for its Members, or for other programs intended to improve the quality of health care delivered to its Members.

#### 7.2. Additional Program Requirements

- (a) Borrower must at all times during the Term of this Agreement be a duly licensed company in good standing under the laws of the State(s) in which Borrower transacts business and be, or actively endeavoring to become, duly authorized to offer health insurance and provide health insurance coverage to the general public pursuant to applicable State Insurance Laws.
- (b) The surplus reserves held by Borrower cannot be more than 10% below the RBC level stated in the Business Plan for the applicable year at any time (e.g. If the reserve level established in the Business Plan and funded by the Solvency Loan for a particular year is 300% of risk based capital ("RBC"), the surplus reserves held by Borrower shall not fall below 270% of RBC at any time during such applicable year).

- (c) Borrower must ensure that any Member Grievances, appeals of adverse decisions or of coverage decisions received by Borrower are addressed in a timely and appropriate manner, including but not necessarily limited to satisfying applicable requirements of Section 2719 of the PHSA and any applicable requirements of State Insurance Laws that do not otherwise conflict with Section 2719 of the PHSA.
- (d) Borrower must implement appropriate good practice measures to prevent, detect, correct, and report to Lender any actual or potential fraud, waste, and abuse committed by Borrower, its employees, agents, directors, officers, contractors and/or subcontractors in a manner consistent with CO-OP Program guidance.
- (e) Before implementing any Organizational Change, Borrower must receive confirmation from Lender that the proposed changes are permitted under Section 1322 of the Affordable Care Act, and regulations promulgated thereunder, including but not necessarily limited to the regulations codified 45 CFR Part 156, the CO-OP FOA and any and all additional CO-OP Program guidance as may be issued or released by Lender from time to time in accordance with the provisions of Section 17.2 below.

## **Section 8. ADMINISTRATION**

### **8.1. No Administrative Fees**

No administrative fees or loan servicing fees will be charged to Borrower.

### **8.2. CO-OP Contracts**

Borrower must ensure that all contracts or other formal agreements that Borrower enters into during the Performance Period with a third party or Affiliated Party to furnish supplies or services to Borrower in furtherance of Borrower's responsibilities, obligations or undertakings hereunder ("CO-OP Contracts") comply with Borrower's obligations under this Agreement and the CO-OP Program. In furtherance of this obligation, Borrower shall require the contracted entity under such CO-OP Contract to comply with Borrower's obligations under this Agreement and the CO-OP Program to the maximum extent practicable. Borrower shall further ensure that any Subcontract into which it enters for administrative, information technology or clinical services protects consumer control of the organization, to the maximum extent practicable.

All CO-OP Contracts into which Borrower enters for services that affect Borrower's activities that are integral to the provision of health care coverage must be approved in advance by Borrower's Board of Directors. The foregoing obligation includes but is not limited to third party administrative services, enrollment and call center services, provider services, claims payment, and grievance and appeal functions.

Notwithstanding any arrangements between or among Borrower and its Members, providers and suppliers, and contracted entities, Borrower must have ultimate responsibility for adhering to and otherwise fully complying with all CO-OP Program requirements and the terms and conditions of this Agreement.

### 8.3. Records Retention

Borrower agrees, and must require its providers, suppliers, and contracted entities performing services or functions on behalf of Borrower to agree, that U.S. Department of Health and Human Services, the Comptroller General, the HHS Office of Inspector General or their designees have the right to audit, inspect, evaluate, examine, and make excerpts, transcripts, and copies of any books, records, documents, and other evidence of Borrower, and its Members, providers and suppliers, and contracted entities related to their scope of work that pertain to:

- (a) Borrower's compliance with CO-OP Program requirements; and
- (b) The ability of Borrower to repay Loan Funds to Lender.

Borrower must comply with audit requirements of the Office of Management and Budget (OMB) Circular A-133. Information on the scope, frequency, and other aspects of the audits can be found on the Internet at <http://www.whitehouse.gov/omb/circulars>.

Borrower further agrees, and must include in its CO-OP Contracts a requirement causing its providers, suppliers, and contracted entities performing functions or services on behalf of Borrower to agree to the following:

- (a) To maintain and give the U.S. Department of Health and Human Services, the Comptroller General, the HHS Office of Inspector General, or their designees access to all books, contracts, records, documents, and other evidence related to Borrower's scope of work sufficient to enable the audit, evaluation, and inspection of Borrower's compliance with program requirements and the terms of this Agreement;
- (b) To maintain such books, contracts, records, documents, and other evidence related to Borrower's CO-OP Program throughout the last day of the Performance Period or from the date of completion of any audit, evaluation, or inspections, whichever is later, unless:
  - i. Lender determines there is a special need to retain a particular record or group of records for a longer period and notifies Borrower at least 30 calendar days before the normal disposition date; or
  - ii. There has been a termination, dispute, or allegation of fraud or similar fault committed by Borrower, its providers, suppliers, or contracted entities that perform functions or services on its behalf, in which case Borrower must retain records for an additional 6 years from the date of any resulting final resolution of the termination, dispute, or allegation of fraud or similar fault.

### 8.4. Right to Review Books and Records

Borrower shall document all uses of Loan proceeds, and maintain adequate books and, accounts, computer or other electronic payment and disbursements in accordance with generally accepted accounting principles consistently applied. The financial accounting system and/or methods employed by the Borrower must establish and leave a clear audit trail of all financial transactions and records executed and maintained. Borrower shall maintain all financial records consistent with industry standards for comparable health insurance carriers, and shall clearly identify all business revenue and disbursements by type of transaction. Borrower shall permit any representative of Lender, at any reasonable time and upon reasonable notice, to inspect, audit and examine such books and inspect the properties of Borrower. Borrower shall maintain documentation on the use of the Loan proceeds for a minimum of ten (10) years after the



completion of the inquiry response action supported by the Loan, or until the last day of the Performance Period, whichever is later. Borrower must obtain written approval from Lender prior to destroying any books or records required under this Agreement.

## **Section 9. LOAN MODIFICATION**

### **9.1. Modification at Borrower's Request**

Borrower may at any time after the initial Disbursement of a Loan request a loan modification for any or all of the following purposes:

- (a) To obtain additional Loan Funds, if funding is available; or
- (b) To materially revise the Business Plan, Disbursement Plans or Repayment Schedules.

It is understood and agreed that Disbursement Plans and Repayment Schedules will be revised and substituted by the parties in the ordinary course during the Financing Period to comport with the business realities of the CO-OP, and such revisions shall not necessarily require a written Loan Modification under this Section 9 unless the same are specifically requested by Borrower.

### **9.2. Modification Procedure**

To request a loan modification, Borrower must submit a formal request, signed by its CFO or CEO, to Lender. The request must provide, at a minimum, (i) a detailed description of the requested modification; (ii) the reason for the request; (iii) sufficient evidence of hardship or other documentation justifying the request; and (iv) a detailed description of Borrower's plan for becoming a viable CO-OP under the requested modification with the capacity to repay the Loans.

Lender will review Borrower's request and make a written determination regarding the request within 90 calendar days of receipt, which determination shall be granted, in whole or part, conditioned or denied in the sole and absolute discretion of Lender. In the event Lender has not made a written determination within such 90-day period, the request shall be deemed denied. All requests for loan modifications shall be contingent on Borrower's substantial compliance with the other material covenants, agreements, duties and obligations hereunder, and shall be subject to applicable statutory, regulatory, or other legal and administrative requirements.

The parties agree that no fees or other charges shall be required in conjunction with the submission and consideration of loan modification requests.

## **Section 10. DATA REPORTING AND MONITORING**

### **10.1. Data Reporting and Monitoring**

Borrower must submit financial reports, enrollment data, quality data, governance and election information, annual independently audited financial statements, and other reports and data required by Lender to monitor the performance of Borrower within the timeframes and formats established by Lender in CO-OP Program guidance. Instructions regarding data submission will be provided in CO-OP Program guidance.

In order to reduce duplication in data submission, Borrower consents to (i) Lender accessing any data submitted by Borrower to applicable Exchanges and State Departments of Insurance and (ii) Lender sharing any data submitted by Borrower with applicable Exchanges and State Departments of Insurance.

Borrower must submit the reports listed below in a manner and format consistent with CO-OP Program guidance until its Loans are fully repaid. Borrower shall initially follow the format reflected in the report formats as may be from time to time provided to Borrower by Lender. Lender has the discretion to start or stop the collection of these reports at any time, provided Borrower is given advance 30-day notice. Failure to submit the reports listed below may result in corrective action, the inability to access Loan Funds, and/or termination of this Agreement.

- (a) Quarterly Federal Financial Report (FFR): Borrower must submit a quarterly electronic SF 425. The report identifies cash transactions and expenditures against the authorized Funds for the Loan(s).
- (b) Quarterly Financial Report: Borrower must submit a quarterly financial report including information such as, but not limited to, a statement that Borrower is in compliance with all relevant State Insurance Laws and other licensure requirements appropriate for its stage of development or an explanation of any deficiencies and steps being taken to resolve them; financial statements including balances sheets, revenue and expense statements, and statements of cash flow, that include premium, administrative costs, salaries, claims expenses, and claims incurred but not reported (IBNR); an aging analysis of claims unpaid report and an aging analysis of premiums due and unpaid report.
- (c) Semi-annual Progress Report: Borrower must submit information such as, but not limited to: 1) progress on the goals, objectives, milestones, and activities identified in the Business Plan, Disbursement Plan, and Repayment Schedule; 2) accomplishments, barriers, and lessons learned; 3) data on Borrower's responsiveness to Member Grievance, maintenance of consumer control, and quality of care once Borrower begins providing health care coverage; 4) updated financial projections and proforma reports; 5) enrollment reports listing CO-OP subscribers by each CO-OP QHP and market segment; 6) plan loss ratio for each CO-OP QHP and market segment (SHOP, group health coverage, etc.); 7) an updated Business Plan including supporting actuarial analyses; and 8) one of the semi-annual reports submitted each year must include an independently audited financial annual report.
- (d) Annual audited financial statements performed in accordance with GAAS and prepared by an independent certified auditor.

All financial statements required hereunder must be prepared in accordance with GAAP and/or SAP. Borrower must certify (in a manner consistent with CO-OP Program guidance) that all information submitted to Lender is accurate, complete, and truthful based on its best knowledge, information, and belief. Failure to submit the reports required under this Section 10.1 may result in corrective action under Section 12 below, the inability to access Loan Funds, or other remedial or corrective actions permitted hereunder including termination of this Agreement.

#### 10.2. Ownership of Data

Lender will own any and all data submitted by Borrower. Officers, employees, and contractors of Lender may only use the information disclosed or obtained from Borrower, for the purposes

of, and to the extent necessary in (1) carrying out the CO-OP Program, including but not limited to the awarding of CO-OP Loans, CO-OP Program monitoring and oversight, and CO-OP Program integrity activities; and (2) for complying with other requirements of Federal law. This restriction does not limit Lender's Office of Inspector General's authority to fulfill the Inspector General's responsibilities in accordance with applicable Federal law. This restriction does not limit the authority of other departments of the Federal Government to conduct program oversight and program evaluation activities.

## **Section 11. PROGRAM MONITORING**

### **11.1. Program Monitoring**

Borrower will be subject to monitoring by Lender to ensure that it complies with the requirements of the CO-OP Program, the Business Plan, Disbursement Plans, Repayment Schedules, and this Agreement throughout the Performance Period. In addition, Lender will monitor Borrower's financial management, responsiveness to Member Grievances, maintenance of consumer control, and quality of care. A memorandum describing the terms of such monitoring activities in more detail is attached hereto and incorporated herein by reference as Appendix 9 hereto.

Borrower must cooperate with and facilitate any monitoring or CO-OP Program oversight conducted by Lender including audits, performance reviews, site visits, and corrective action plans. The timing and frequency of audits, site visits, and performance reviews are at Lender's sole and absolute discretion. Lender will notify Borrower at least 15 calendar days in advance of any audit or site visit, unless fraud or other malfeasance is suspected, or unless Lender otherwise determines in its reasonable discretion that it has due cause to instigate an earlier investigation.

Lender may use a range of methods to monitor and assess the performance of Borrower including but not limited to:

- Section 1. Analysis of data submitted to Lender by Borrower including aggregated annual and quarterly reports
- Section 2. Site visits
- Section 3. Analysis of member and/or provider complaints
- Section 4. Background checks of personnel
- Section 5. Audits.

### **11.2. Enhanced Oversight**

Borrower may be placed on an enhanced oversight plan ("EOP") if Borrower fails to meet the milestones in its Disbursement Plan repeatedly, consistently underperforms relative to the Business Plan, or repeatedly fails to meet the requirements of this Agreement. Under an EOP, Lender conducts stronger and more frequent review of Borrower's operations and financial status, and may provide technical assistance to improve Borrower's performance.

## Section 12. IMPROVEMENT PLAN

### 12.1. Improvement Period

Borrower shall enter an Improvement Period if, based upon the monitoring activities described in Section 11, Lender (i) has determined that Borrower has not complied with CO-OP Program requirements, has not achieved required performance levels under any previous approved and implemented corrective action plan (CAP), has failed to meet milestones in the Disbursement Plan, has failed to meet its Repayment Schedule, or has not otherwise met the terms and conditions of this Agreement in any material respect; and (ii) Lender believes that the violation is nonetheless resolvable.

### 12.2. Improvement Plan

During the Improvement Period, Borrower shall be placed under the requirements of an Improvement Plan that may consist of one, several, or all of the following in Lender's sole and absolute discretion:

- (a) Warning notice: Borrower may receive a letter from Lender warning Borrower of a specific performance issue.
- (b) Corrective Action Plan ("CAP"): Borrower may be placed on a CAP, which will be a plan developed by Borrower and approved by Lender to correct any failure to meet a CO-OP Program requirement or term and condition of this Agreement. The CAP include the following aspects:
  - 1. If placed on a CAP, Borrower must submit, for Lender approval, a CAP by the deadline indicated on the notice of violation.
  - ii. The CAP must specify what actions Borrower will take to correct the failure and remain in compliance with CO-OP Program requirements and the terms and conditions of this Agreement.
  - iii. Borrower must implement the CAP as approved by Lender.
  - iv. Failure to submit, obtain approval for, or implement a CAP, or failure to achieve the required level of performance upon completion of the CAP, may result in termination of this Agreement or other corrective actions provided for in this Agreement.
- (c) EOP: Borrower may be placed on a EOP, under which Lender shall conduct stronger and more frequent review of Borrower's operations and financial status.
- (d) Technical Assistance: Lender may identify and provide resources to assist Borrower improve performance, meet program requirements, or fulfill the terms and conditions of the loan agreement. Lender may require Borrower to take specific actions to protect the interests of the Federal government.
- (e) Discontinuance of Loan Disbursements: If Borrower fails to comply with CO-OP Program requirements or the terms and conditions of this Agreement, Lender may withhold further Disbursement of Loan Funds until such time as Borrower has corrected the failure and is in full compliance with CO-OP Program Requirements and the terms and conditions of this Agreement.

## Section 13. COVENANTS

### 13.1. Affirmative Covenants

Borrower covenants and agrees that, from the Closing Date until the date that Principal and Interest on each Loan and all other Obligations shall have been indefeasibly paid in full and the commitment of Lender under Section 3.I to make the Loans has terminated:

#### 13.1.1. Payment of Obligations

Borrower and its Affiliated Parties will comply with and pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, its obligations of whatever nature. This includes:

- (a) Material taxes, assessments and governmental charges or levies imposed on it or its income or profits or on any of its property
- (b) Any other contractual obligations arising outside of this Agreement, in each case before the same shall become delinquent or in default, except where:
  - i. The validity or amount thereof is being contested in good faith by appropriate proceedings
  - ii. Borrower or such Affiliated Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP and SAP.
  - iii. The failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. Borrower and its Affiliated Parties shall file on a timely basis all Federal, state and local tax and information returns, reports and any other information statements or schedules required to be filed by or in respect of it where the failure to file could reasonably be expected to have a Material Adverse Effect.

#### 13.1.2. Notice of Material Adverse Effect

Borrower will promptly furnish written notice to Lender of:

- (a) The occurrence of any default or event of default under any contractual agreement of Borrower or a Affiliated Party; or
- (b) The instigation or pendency of any litigation, including:
  - i. Any litigation or proceeding of which Borrower has knowledge that may exist at any time in which Borrower or a Affiliated Party is a named party and which, if adversely determined could reasonably be expected to have a Material Adverse Effect, and the outcome, when resolved, of any such litigation or proceeding;
  - ii. The commencement of any formal investigation of which Borrower becomes aware by any Governmental Authority that involves an allegation of a material violation of law by Borrower or an Affiliated Party, and the outcome, when resolved, of any such investigation; and
  - iii. Any litigation or proceeding of which Borrower has knowledge affecting Borrower or any Affiliated Party in which (i) the amount involved is \$100,000 or more, or (ii) injunctive or other similar equitable relief is sought.

- (c) Proposed Change of Public Accountants. A proposed change of Borrower's accounting firm, including the name of the new accounting firm, which firm shall be an nationally recognized accounting firm reasonably acceptable to Lender;
- (d) Disabling Event. The occurrence of any Disabling Event of which it has knowledge;
- (e) Material Adverse Effect. Any development or event of which Borrower has knowledge that has had or could reasonably be expected to have a Material Adverse Effect;
- (f) Licensure Status. Any change in licensure status or any adverse action or determination made by State insurance regulators against Borrower.

Each notice pursuant to this Section 13.1.1.2 shall be accompanied by a certificate of a responsible officer of Borrower setting forth details of the occurrence referred to therein and stating what action, if any, Borrower proposes to take with respect thereto.

#### 13.1.3. Existence; Conduct of Business

Borrower will, and will cause each of its Affiliated Parties to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and take all reasonable action to maintain all material rights, licenses, permits, privileges and franchises necessary or desirable in the normal conduct of the business of Borrower and its Affiliated Parties; provided, however, that in so doing, Borrower and its Affiliated Parties shall not make or attempt to make any Organization Changes without the prior written consent of Lender as required under Section 18.2 below.

#### 13.1.4. Books and Records; Inspection

Borrower will, and will cause of each of its Affiliated Parties to, keep or cause to be kept complete, accurate and appropriate books and records in accordance with the requirements of this Agreement, including but not necessarily limited to the requirements of Sections 8, IO and 11 above.

#### 13.1.5. Compliance with Laws

Borrower will, and will cause each of its Affiliated Parties to comply with any and all applicable laws, statutes, regulations or ordinances of the United States of America and each State in which it transacts business, as well as any Federal Government agency or other state or local governmental agency, or other administrative or regulatory agencies, board or court that are applicable to the conduct of the activities that are the subject of this Agreement and or its status as a non-profit insurance company, including but expressly not limited to the requirements of the Public Health Service Act and HIPAA privacy rules and regulations, and will further take all action, or refrain from taking any action, which may be required for unconditional compliance with the same.

#### 13.1.6. Notice of Formation of Affiliated Parties

Prior to the formation or acquisition of any new Affiliated Party, Borrower will provide Lender with a minimum written notice of such formation or acquisition at least 30 days prior to such formation or acquisition, together with any and all such additional information related to such Affiliated Party as may thereafter be reasonably requested by Lender.

#### 13.1.7. Use of Proceeds

Borrower shall use the Funds and proceeds of the Loans solely for the purposes permitted under Sections 3.4 above and applicable law.

#### 13.1.8. Indemnification

Borrower will indemnify and hold harmless Lender and its officers and employees from and against any and all damages, losses or liabilities, including litigation costs, fees, and settlement costs, arising out of, or in any way connected with the use of the Loan Funds and the repayment of the Loans. Borrower will further indemnify and hold harmless Lender and its officers and employees from and against any and all damages, losses or liabilities, attributable to any actions taken by Lender in good faith to carry out the transactions contemplated by this Agreement, to safeguard Lender's interest or to ascertain, determine or carry out Lender's obligations under this Agreement or any law or contract applicable to this Agreement. Borrower will further indemnify, defend and hold harmless its Members and its officers, directors, incorporators, managing partners or other similar key or controlling persons (the foregoing other than the Members being collectively referred to as "Controlling Persons") from and against any and all suits, claims, actions, costs and expenses (including attorney's fees) arising out of or by reason of such Member or Controlling Person being or having been such Member or Controlling Person of the CO-OP, except in relation to matters involving malfeasance, intentional fraud or criminal activity or other misconduct committed by such indemnified party. The CO-OP may obtain and maintain commercial reasonable liability insurance policies to meet the foregoing indemnification obligations.

#### 13.1.9. Discrimination

Borrowers must comply with all applicable Federal laws relating to nondiscrimination including, but not limited to:

- (a) Title VI of the Civil Rights Act of 1964;
- (b) Section 504 of the Rehabilitation Act of 1973;
- (c) The Age Discrimination Act of 1975; and
- (d) Title II, Subtitle A of the Americans with Disabilities Act of 1990.

#### 13.1.10. Maintenance of Property.

Borrower will, and will cause its Affiliated Parties to, keep and maintain all property useful and necessary to the conduct of the business of Borrower and its Affiliated Parties in good working order and condition, ordinary wear and tear and casualty excepted.

#### 13.2. Negative Covenants

Borrower covenants and agrees that, from the Closing Date and until the date that Principal and Interest on each Loan and all other Obligations hereunder shall have been paid in full and the commitment of Lender under Section 3.1 to make the Loans has terminated:

##### 13.2.1. Indebtedness

Borrower will not, nor will it permit any of its Affiliated Parties to, create, issue, incur, assume, become liable in respect of or suffer to exist any indebtedness that was not otherwise specifically identified and provided for under the Business Plan, without the express prior written consent of

Lender, which consent may be withheld, conditioned or delayed in Lender's sole and absolute discretion.

#### 13.2.2. Liens

Unless otherwise specifically identified or provided for under the Business Plan, Borrower will not, nor will it permit any of its Affiliated Parties to, create, incur, assume or suffer to exist any lien on any real or personal property now owned or hereafter acquired by Borrower that has a market value in excess of \$100,000 nor assign, transfer, convey or sell any income or revenues (including accounts receivable) or rights in respect thereof, without the express prior written consent of Lender, which consent may be withheld, conditioned or delayed in Lender's sole and absolute discretion.

#### 13.2.3. Investments

Borrower will not, nor will it permit any of its Affiliated Parties to, acquire, make or enter into, or hold, any investments that are inconsistent with or in violation of State investment guidelines or rules for or pertaining to insurance providers.

#### 13.2.4. Use of Proceeds

Borrower shall not use Loan Funds or and proceeds of the Loans for any of the purposes specified in Section 3.5 above, or as otherwise contrary to or in violation of applicable law.

#### 13.2.5. Non-Discrimination

Borrower shall not discriminate, with respect to its CO-OP QHPs, on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation.

#### 13.2.6. Screening of Key Personnel

Individuals that are debarred from Federal programs are not permitted to participate in the CO-OP Program. Borrower must therefore conduct on-going checks to ensure that all employees, contractors, and subcontractors are not excluded or debarred from Federal programs. In addition, to other sources, Borrower must consult the list of excluded individuals and entities (LEIE) database available at [www.oig.hhs.gov/exclusions/](http://www.oig.hhs.gov/exclusions/) and the excluded parties list system (EPLS) available at [www.epls.gov](http://www.epls.gov) to identify individuals and entities excluded from Federal programs.

### **Section 14. REPRESENTATIONS AND WARRANTIES**

#### 14.1. Representations and Warranties of Borrower

Borrower represents and warrants to Lender that as of the Closing Date:

- (a) Borrower is duly formed or incorporated and in good standing under, and/or otherwise duly qualified and authorized to do business in, the State of Arizona.
- (b) Borrower has full right and authority to enter into and perform under this Agreement; and that all persons signing on behalf of Borrower were authorized to do so by appropriate corporate or organizational action.
- (c) Borrower has taken all other actions necessary to authorize the execution and delivery of this Agreement and assume the obligations hereunder.



- (d) The execution and delivery of this Agreement will not violate any applicable law, nor lead to default under or conflict with any of its other agreements.
- (e) To the best of its knowledge and belief after full and adequate investigation, Borrower is in full compliance with all applicable laws in all material respects.
- (f) To the best of its knowledge and belief after full and adequate investigation, Borrower is not part of an action, suit, claim, arbitration, or legal, administrative, or other investigation before any governmental authority, arbitrator or board; it is not in default with respect to any order or award of any arbitrator, government department, commission or agency; it is not in default under any term of its other agreements or instruments to which it is bound.
- (g) Borrower has no other obligations or liabilities than those disclosed in the Business Plan and the financial statements delivered to Lender.
- (h) Borrower has consistently maintained and will continue to maintain its books and records with full, true, and correct entries in accordance with applicable GAAP, SAP and all applicable other financial reporting laws.
- (i) Borrower has filed all tax returns required and correctly reported all income and other amounts required, paid all taxes, interest, and penalties, if any. To the best of its knowledge and belief after full and adequate investigation, there are no actions, audits, assessments, reassessments, suits, proceedings, investigations, or claims pending or threatened against Borrower in respect of any taxes.
- (j) Borrower has good and marketable title to all real properties and all other properties and assets owned by it, in each case free from liens (including, without limitation, liens for taxes), encumbrances, claims and defects that would affect their value or interfere with their usage.
- (k) There has been no change in the financial status of Borrower since the date of its application and response to the CO-OP FOA that would adversely affect its ability to do business or to perform its obligations hereunder.
- (l) Upon execution, this Agreement shall be a legal and fully binding agreement duly enforceable against Borrower.
- (m) Borrower intends to become a CO-OP and believes that it can develop a viable and sustainable CO-OP.
- (n) None of Borrower's or any of its Affiliated Parties' funds or other assets constitute property of, or are beneficially owned, directly or indirectly, by any person subject to trade restrictions under U.S. law ("Embargoed Person"), including but not limited to:
  - i. the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq.,
  - ii. the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq. (the "Trading With the Enemy Act"),
  - iii. any of the foreign assets control regulations of the Treasury (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control Regulations") or any enabling legislation or regulations promulgated thereunder or executive order relating thereto (which for the avoidance of doubt shall include but shall not be limited to (i) Executive Order No. 13224, effective as of September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order") and (ii) the USA PATRIOT Act), with the result that the investment in Borrower or any of its Affiliated Parties (whether directly or

indirectly), is prohibited by applicable law or any Loan made by Lender is in violation of applicable law.

- (o) No Embargoed Person has any interest of any nature whatsoever in Borrower or any of its Affiliated Parties with the result that the Investment in Borrower or any of its Affiliated Parties (whether directly or indirectly), is prohibited by applicable law or any Loan made by Lender is in violation of applicable law.
- (p) None of Borrower's or any of its Affiliated Parties' funds have been derived from any unlawful activity with the result that the investment in Borrower or any of its Affiliated Parties (whether directly or indirectly), is prohibited by applicable law or any Loan made by Lender is in violation of applicable law.
- (q) Neither Borrower, any of its Affiliated Parties, or any of their respective Affiliated Parties
  - 1. is a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or
  - ii. engages in any dealings or transactions, or be otherwise associated, with any such "blocked person."
- (r) For purposes of determining whether a representation with respect to any indirect ownership is true under this section, neither Borrower nor any Affiliated Party shall be required to make any investigation into (a) the ownership of publicly traded stock or other publicly traded securities or (b) the ownership of assets by a collective investment fund that holds assets for employee benefit plans or retirement arrangements.

## **Section 15. DEFAULT; EVENTS OF DEFAULT**

### **15.1. Events of Default**

As used in this Agreement, the term "Event(s) of Default" means the occurrence or happening, from time to time, of one or more of the following:

- (a) Borrower, for reasons other than a States Solvency Payment Restriction, fails to pay any installment of Principal or Interest on a Loan or other Obligation for more than 60 days after the date the same is due, and such delinquent payment is not subsequently recapitalized in accordance with the terms hereof.
- (b) Any representation or warranty made by Borrower under or pursuant this Agreement or any Related Documents shall prove to have been false or misleading in any material respect as of the date on which such representation or warranty was made.
- (c) Borrower defaults in the performance or observance of any covenant contained in this Agreement or any of the Appendices hereof, or shall breach any of its representations, warranties or other duties contained in this Agreement or any of the Appendices hereof, and, in each case such default continues for at least 30 calendar days after written notice thereof from Lender to Borrower; provided, however, that such condition shall not constitute an Event of Default hereunder if Borrower commences action to cure such default with such 30 day period in a manner approved by Lender and thereafter diligently pursues such cure to completion.
- (d) If, in the sole judgment of Lender, Borrower ceases to be solvent, admits in writing its inability to pay its debts, declares bankruptcy or instigates or prosecutes any case, proceeding or other action under any existing or future law of any jurisdiction, domestic

or foreign relating to bankruptcy, insolvency, reorganization or relief with respect to Bonower, or seeking reorganization, a arrangement, adjustment, winding-up liquidation, dissolution, composition or other relief with respect to Borrower or Bonower's debts, or the making by Bonower of an assignment or any other anangement for the general benefit of creditors under any state statute.

- (e) Bonower has been notified by Lender of a failure to be in compliance with any provision of this Agreement or the CO-OP Program, has been given an opportunity to correct the non-compliance through an Improvement Plan, and has failed to correct the failure and comply with the Improvement Plan.
- (f) Bonower makes, or anyone acting on Bonower's behalf makes, a materially false or misleading representation to Lender or any branch; department or agency of the United States Government.
- (g) Borrower defaults on any loan or agreement with another creditor, if Lender believes the default may materially affect Bmrnwer's ability to pay the obligation under this Agreement.
- (h) Bonower fails to pay any taxes when and as due.
- (i) Bonower implements or makes an Organizational Change in violation of the terms of Section 18.2 below.
- (j) Borrower becomes the subject of a civil or criminal action that Lender believes may materially affect Bonower's ability to pay the obligation under this Agreement.
- (k) Borrower does not otherwise preserve or account to Lender's satisfaction for any of the material provisions of this Agreement.
- (l) Bonower has its State license to operate the CO-OP and/or to offer health insurance coverage suspended, terminated or revoked.

#### 15.2. Notice of Events of Default

Upon the occurrence or happening of one or more of Events of Default identified in Section 15.1 above, Borrower must promptly notify Lender of the same in writing (but in any event not later than 10 business days after the occurrence or happening of such Event of Default), describing in such notice the circumstances sunounding the Event(s) of Default and any proposed or plans of Bmrnwer to remedy or cure such default. Borrower shall have a period of 30 days following the delivery of such notice to Lender to remedy any non-monetary default, and shall thereafter be obligated to diligently take and pursue (or refrain for taking or pursuing, as the case may be), all actions necessary to remedy such default. Failure to comply with the provisions of this Section 15.2 shall entitle Lender to declare any or all outstanding payments of Principal and Interest and other Obligations to be immediately due and payable, at its option, and to proceed to pursue and enforce any and all rights and remedies hereinafter set forth in this Agreement or available under operative law.

#### 15.3. Rights and Remedies of Lender

Upon the occurrence of an Event of Default which is not cured within the time limits set fo11h in Section 15.1 and 15.2 above, Bo1rnwer and the Loans hereunder shall automatically be deemed to be within a Workout Period. At Lender's option, Lender may thereafter declare, among other things, that:

- (a) All obligations of Lender are immediately terminated.

- (b) The unpaid Principal amount of the Loans, together with all Interest accrued thereon, and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, are immediately due and payable, without further notice or cure opportunities to Borrower, which notice and rights to cure in such Workout Period are hereby irreparably waived.
- (c) Borrower must immediately repay any unused Loan Funds to Lender following the resolution of any outstanding debts and run out of outstanding claim obligations, consistent with State Insurance Laws.

It is understood and agreed that Lender may pursue any and all such remedies and any and all such other further rights or remedies available under applicable law as and to the extent it deems appropriate in its sole and absolute discretion, and no failure of Lender to take any or all of such actions shall be deemed a waiver of future rights to take further actions, or give rise to any other claims of waiver or estoppel.

All sums expended by Lender under this Section 15.3 shall be deemed to be disbursement of the account of Borrower, and all such sums shall be deemed additional Obligations of Borrower hereunder.

No action taken by Lender pursuant to this Section shall relieve Borrower from its other obligations pursuant to this Agreement. Borrower must further comply with all State Insurance Laws relevant to its termination from the CO-OP Program at its sole cost and expense, and shall not be entitled to use any Loan Funds or proceeds for such purposes unless and only to the extent that such use is mandated by a State Solvency Payment Restriction.

## **Section 16. TERMINATION RIGHTS**

### **16.1. Termination of Agreement by Borrower**

Provided that Borrower strictly adheres to the procedures hereinafter set forth in this Section 16.1, Borrower shall have the right to terminate this Agreement if it no longer believes that it can create a viable and sustainable CO-OP and Lender approves the termination.

#### **16.1.1. Borrower's Termination Request**

To request a termination of this Agreement, Borrower must first submit a formal request signed by its CFO or CEO. The request must, at a minimum:

- (a) Assert that Borrower no longer believes that it can create a viable and sustainable CO-OP;
- (b) Explain with particularity the facts and circumstances which formed the basis of Borrower's conclusion;
- (c) Provide evidence and documentation in support of such assertion; and
- (d) Describe what efforts Borrower has made to attempt to create a viable and sustainable CO-OP.

The request must also include an affidavit signed by the CFO, CEO, and two-thirds of the directors on Borrower's Board of Directors indicating that they collectively no longer believe

that BoJTower can create a viable and sustainable CO-OP. The request must also include a description of BoJTower's plan to protect Lender' assets, subject to State Insurance Laws, and repay its Loan(s) should Lender approve its request.

#### 16.1.2. Lender Response

Lender will review the response and provide a determination within 90 calendar days after receipt of BoJTower's termination request, which determination may be withheld, conditioned or delayed in the sole and absolute discretion of Lender. In the event Lender has not made a written determination within such 90-day period, the request shall be deemed denied.

#### 16.1.3 BoJTower's Duties Upon Voluntary Termination

If Lender agrees to permit Borrower to terminate this Agreement in accordance with the procedures set forth in this Section 16.1:

- (a) BoJTower must comply with all applicable Federal requirements and State Insurance Laws relevant to its termination from the CO-OP Program.
- (b) BoJTower forfeits all unused Loan Funds received under the Disbursement Plans and the CO-OP Program. Any unused disbursed Loan Funds must be repaid to Lender within 60 calendar days following the resolution of any outstanding debts and payment or other accommodation of outstanding claim obligations, consistent with applicable Federal requirements and State Insurance Laws.
- (c) Any remaining Principal and Interest must be repaid in accordance with Borrower's Repayment Schedules. If BoJTower intends to dissolve, all Principle and Interest must be repaid prior to dissolution consistent with State Insurance Laws unless and only to the extent that such payment is otherwise prevented, restricted or delayed by a State Solvency Payment Restriction.

#### 16.2. Termination for Program Viability Reasons

Lender may elect to terminate this Agreement if it determines in its sole and absolute discretion that Borrower will not be likely to be able to establish a viable and sustainable CO-OP that serves the interests of its community and the goals of the CO-OP Program in accordance with the following procedure:

- (a) Lender shall provide Borrower with a written notice of its intent to terminate under this provision. The request will provide an explanation for Lender's determination that termination of this Agreement is in the best interests of the CO-OP Program.
- (b) BoJTower may submit a formal response, signed by Borrower's CFO or CEO, to Lender's request within 30 calendar days from the date of receipt of Lender's initial notice. The response must include, at a minimum, documentation demonstrating the viability of Borrower's Business Plan and a justification for why BoJTower should be permitted to continue participating in the CO-OP Program.
- (c) Lender will review the response and provide a determination within 60 calendar days, which response may be withheld, conditioned, delayed or denied in Lender's sole and absolute discretion.
- (d) Lender may terminate this Agreement without BoJTower's consent if Lender determines in its sole and absolute discretion that the documentation and justification

provided by Borrower is insufficient or inadequate to persuade or convince Lender that Borrower can establish a viable and sustainable CO-OP that serves the interests of its community and the goals of the CO-OP program. In such event, Lender will provide a notice of termination to Borrower that provides an explanation for the termination.

If this Agreement is terminated under this Section 16.2, Borrower shall:

- (a) Immediately cease its operations under the CO-OP Program and thereafter comply with all applicable Federal requirements and State Insurance Laws relevant to its termination from the CO-OP Program.
- (b) Forfeit all unused Loan Funds received under the Disbursement Plans and the CO-OP Program. Any unused Loan Funds must be repaid to Lender within 60 calendar days following the resolution of any outstanding debts and payment or other accommodation of outstanding claim obligations, consistent with applicable Federal requirements and State Insurance Laws.
- (c) Notify the Internal Revenue Service of the termination and any other program non-compliance that may result in the termination of a Borrower's tax-exempt status under IRC Section 501 (c) (3) or (29).
- (d) Inform State regulators of any action by Lender to terminate Borrower's participation in the program; and
- (e) Notify the relevant Exchanges that the health plans offered by the CO-OP in the relevant Exchanges are no longer deemed to be CO-OP QHPs.
- (f) Repay any remaining Principal and Interest in accordance with Borrower's Repayment Schedules. If Borrower intends to dissolve, all Principal and Interest must be repaid prior to dissolution consistent with applicable Federal requirements and State Insurance Laws, unless and only to the extent that that such payment is otherwise prevented, restricted or delayed by a State Solvency Payment Restriction

### 16.3. Termination for Cause by Lender

Lender may terminate the Loan Agreement upon written notice to Borrower in Lender's sole discretion if the organization, its providers and suppliers, or contracted entities performing services on its behalf:

- (a) Fail to meet quality and performance standards, including implementation milestones, enrollment targets, consumer governance and responsiveness requirements, as specified in this Agreement, or any other contractual obligation with Lender;
- (b) Engage in improper use of Federal funds;
- (c) Fail to reinvest profits for the benefit of its Members;
- (d) Engage in material noncompliance, or demonstrate a pattern of noncompliance with reporting requirements and other CO-OP Program requirements;
- (e) Fail to submit an approvable CAP, fail to implement an approved CAP, or fail to improve performance after the implementation of a CAP;
- (f) Violate any applicable laws, rules, or regulations that are relevant to Borrower's operations; or

- (g) Knowingly submit to Lender false, inaccurate, or misleading data or information related to the CO-OP application, governance information, quality data, financial data, and enrollment data.

Lender may further immediately terminate this Agreement if Lender has cause to believe that Borrower or a Affiliated Party engages in, or has engaged in, criminal or fraudulent activities or activities that cause material harm to the CO-OP's Members or the CO-OP Program. In such event, Lender shall have the additional right, at its option, to suspend or debar Borrower from further participation in any Government program administered by Lender and notify other departments and agencies of such suspension and default.

If this Agreement is terminated under this Section 16.3, Borrower shall:

- (a) Immediately cease its operations under the CO-OP Program consistent with all applicable Federal requirements and State Insurance Laws relevant to its termination from the CO-OP Program.
- (b) Forfeit all unused Loan Funds received under the Disbursement Plans and the CO-OP Program. Any unused Loan Funds must be repaid to Lender within 60 calendar days following the resolution of any outstanding debts and payment or other accommodation of outstanding claim obligations, consistent with applicable Federal requirements and State Insurance Laws.
- (c) Notify the Internal Revenue Service of the termination and any other program non-compliance that may result in the termination of a Borrower's tax-exempt status under IRC Section 501 (c)(3) or (29).
- (d) Inform State regulators of any action by Lender to terminate Borrower's participation in the program; and
- (e) Notify the relevant Exchanges that the health plans offered by the CO-OP in the relevant Exchanges are no longer deemed to be CO-OP QHPs.
- (f) Repay any remaining Principal and Interest must be repaid in accordance with Borrower's Repayment Schedules and the terms of this Agreement. If Borrower intends to dissolve, all Principal and Interest must be repaid prior to dissolution consistent with applicable Federal requirements and State Insurance Laws, unless and only to the extent that such payment is otherwise prevented, restricted or delayed by a State Solvency Payment Restriction.

#### 16.4. Borrower's Right to Appeal

Borrower has the right to appeal Lender's decision to terminate this Agreement. In order for such appeal to be timely, Borrower must submit a formal request for appeal signed by the CEO or CFO to Lender within 30 days of Borrower's receipt of the notice of termination. Borrower's failure to file its request for appeal within such 30 day period may be deemed a waiver of all termination appeal rights in Lender's sole and absolute discretion. Borrower's appeal request must include, at a minimum, Borrower's statement of justification for why Lender should not terminate this Agreement and its proposal plan for promptly and adequately curing the condition that resulted in the decision to terminate.

## **Section 17. ACCOMMODATIONS AND DISPUTES**

### **17.1. Accommodations for Changes in Law**

In the event of statutory and regulatory changes to the law that may necessitate an Organization Change or other structural change in Borrower, Borrower and Lender agree to promptly enter negotiations in good faith for the purposes of transferring the Loan(s) to a new legal structure or other accommodation, consistent with Borrower's obligation to repay any disbursed Loan Funds.

### **17.2. Disputes**

Disputes under this Agreement shall be decided in accordance with applicable Federal law and any applicable HHS policies.

## **Section 18. ASSIGNMENTS; ORGANIZATIONAL CHANGES**

### **18.1. Assignments**

Except for any Organizational Changes permitted under Section 18.2 below, Borrower may not assign this Agreement in whole or in part, whether by merger, acquisition, consolidation, reorganization or otherwise, nor otherwise delegate any of its obligations under this Agreement, without the express, prior written consent of Lender, which consent may be withheld, conditioned, granted or denied in Lender's sole and absolute discretion. If Borrower attempts to make an assignment or otherwise delegate its obligations hereunder in violation of this provision, such assignment or delegation shall be deemed void *ab initio* and of no force or effect, and Borrower shall remain legally bound hereto and responsible for all obligations under this Agreement. Borrower shall further be thereafter subject to such compliance actions as are otherwise described herein, or that may otherwise be provided for under applicable law.

### **18.2. Condition Precedent to Organizational Changes**

In the event that Borrower seeks to (i) implement or make any material or significant changes to its corporate or governance structure or (ii) otherwise transfer all or a significant portion of its' assets to an Affiliated Party or other third party (an "Organizational Change") during the Performance Period of this Agreement, Borrower must request and receive the prior written approval of Lender (which consent may be withheld, conditioned, granted or denied in Lender's sole and absolute discretion), confirming that the proposed change(s) or transaction(s) is or are permitted under Section 1322 of the Affordable Care Act, and the regulations promulgated thereunder, including but not necessarily limited to the regulations codified in 45 CFR Part 156, or any other CO-OP Program guidance as may be issued or released by Lender from time to time, before proceeding with such Organizational Change. The procedure applicable to such prior approval is as follows:

- (a) Borrower must notify Lender at least 30 Business Days in advance of any proposed Organizational Changes.
- (b) Lender will review the proposed Organizational Change(s) and provide a determination to Borrower within 21 Business Days thereafter.



- (d) In the event Lender has not approved Borrower's request within such 21-Day period, the request shall be deemed denied, and Borrower shall not thereafter implement the proposed Organizational Change(s) unless Lender otherwise subsequently so approves such request in writing.

In no event will any Organizational Change be permitted which causes or effectuates, or purports to cause or effectuate, a conversion or sale of a substantial portion of Borrower's or an Affiliated Party's assets or enrollments to a for-profit or non-consumer operated entity, nor will any Organizational Change be permitted that would result in Borrower or an Affiliated Party implementing a governance structure that does not meet the governance standards codified 45 CFR §156.5 IS(b), as from time to time hereafter amended.

### 18.3. Future Indebtedness

Except to the extent specifically identified in the Business Plan or otherwise specifically required by State Insurance Laws, Borrower shall not create or grant any mortgage, security interest, lien or other encumbrance upon its assets, or those of any Affiliated Party, that would have priority over or purport to have priority over or pari passu with the rights of Lender hereunder without the express, advanced written consent of Lender, which consent may be conditioned on the receipt by Lender of a commercially reasonable subordination agreement acknowledging Lender's priority position. Any failure of Borrower to comply with the provisions of this Section 18.3 may result in corrective action under Section 12 above, the inability to access further Loan Funds, or other remedial or corrective actions permitted hereunder including termination of this Agreement.

## Section 19. MISCELLANEOUS

### 19.1. Notices

All notices specifically required under this Agreement shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, or sent by facsimile to the addresses or facsimile numbers specified on the signature pages to this Agreement. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when the appropriate confirmation of receipt has been received; provided, that notices not given on a Business Day between 9:00 a.m. and 5:00 p.m. local time where the recipient is located shall be deemed to have been given at 9:00 a.m. on the next Business Day for the recipient. Lender or Borrower may change its address or facsimile number for notices and other communications.

### 19.2. Governing Law, Choice of Law and Forum

This Agreement will be governed by the laws and common law of the United States, including without limitation such regulations as may be promulgated from time to time by HHS, without regard to any conflict of laws statutes or rules, and by the laws of the State of Arizona to the extent the same do not conflict with applicable Federal law. The parties further agree that they consent to the jurisdiction of the Federal Courts located within such State and the courts of appeal therefrom, and waive any claim of lack of jurisdiction or *forum non conveniens*.

### 19.3. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement. The parties may sign facsimile copies of this Agreement, which shall each be deemed originals.

### 19.4. Integration

This Agreement, together with the Appendices attached hereto, represents the entire integrated agreement and understanding between the Parties with respect to matters set forth herein, and the Parties acknowledge that they have not relied upon any representations by any other party apart from those set forth in this Agreement. No amendment or modification of this Agreement shall be binding or valid unless expressed in a written document executed by both parties hereto. All Appendices that form or constitute a part of this Agreement are incorporated herein by reference.

### 19.5. Binding Precedence

In the event of any conflict, inconsistency, ambiguity or difference between the provisions of this Agreement, and the provisions of any other related or collateral document, the provisions of this Agreement shall prevail, and any conflicting provisions in the related documents shall be deemed modified to eliminate the conflict; provided, however, that the foregoing shall not apply with respect to the terms of any applicable law, rule or regulation pertaining to the CO-OP Program. In the event of conflict between the provisions contained in the numbered Sections of this Agreement and the provisions contained in the Appendices, the provisions of the Appendices shall prevail over those in the numbered Sections. In the event of a conflict between any provision of this Agreement as originally drafted and the provisions of any subsequent amendment, the provisions of the amendment shall control and prevail.

### 19.6. Statutory References; Accounting Terms

Unless otherwise stated, any reference in this Agreement to any act or statute or section thereof shall be deemed to be a reference to such act or statute or section, as amended, restated or replaced from time to time. All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP and SAP.

### 19.7. Treatment of Certain Information; Confidentiality

Borrower acknowledges that this Agreement and all documents related thereto are subject to and governed by the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and may be subject to full or partial release thereunder.

### 19.8. No Waiver

No term or condition of this Agreement shall be deemed waived, and no breach shall be deemed excused, unless such waiver or excuse is in writing and is executed by the party against whom such waiver or excuse is claimed. No delay or omission of Lender to exercise any right or power arising upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or an acquiescence therein; and every power and remedy given by this Agreement to Lender may be exercised from time to time and as often as may be deemed expedient in the sole discretion of Lender.

#### 19.9. Further Assurances

Borrower agrees to take whatever steps are necessary to fulfill the responsibilities assigned to it in this Agreement, and further agree to cooperate with Lender in that regard. Borrower further agrees to cooperate with any reasonable requirements of any Lender for access to relevant books and records, including, without limitation, books and records described in Sections 8, 10 and 11 above.

#### 19.10. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is determined to be invalid, unenforceable or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intention of the parties, and the remainder of the Agreement shall be in full force and effect.

#### 19.11. No Third Party Beneficiaries

This Agreement is entered into by and between Lender and Borrower and for their benefit only. Except as specifically provided herein, there is no intent by any party to create or establish third party beneficiary status or rights in any third person, and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.

#### 19.12. Right of Set-Off

Notwithstanding any other provisions of this Agreement to the contrary, in the event any Event of Default is not cured or another accommodation permissible under this Agreement is not otherwise reached within applicable notice and cure periods, Lender shall have at its disposal the full range of available rights, remedies and techniques to collect delinquent debts, such as those found in the Federal Claims Collection Standards and applicable Treasury regulations, as appropriate, including demand letters, administrative offset, salary offset, tax refund offset, private collection agencies, cross-servicing by the Treasury, and litigation.

#### 19.13. Borrower Authority

The individual who executes and delivers this Agreement on behalf of Borrower represents and warrants to Lender that (i) that he or she is duly authorized to do so; (ii) that Borrower is a duly organized corporation or validly formed partnership or other legal entity in good standing under the laws of the jurisdiction of its incorporation or formation; (iii) that Borrower is qualified to do business and is in good standing in the jurisdiction in which Borrower is authorized to conduct business and has the power and authority to enter into this Agreement; and (iv) that all corporate or partnership action requisite to authorize Borrower to enter into this Agreement has been duly taken.

#### 19.14. Survival

All matters that relate to the expiration or earlier termination of this Agreement, or that relate to the representations, warranties and indemnities contained in this Agreement, as well as any rights and obligations of the parties pertaining thereto, shall survive the expiration or earlier termination of this Agreement and shall be given full force and effect notwithstanding any expiration or termination of this Agreement.

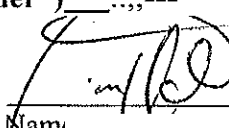
#### 19.15. Construction of Language

The Table of Contents and the Article and Section headings of this Agreement are for reference only, and shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof. All references in this Agreement to designated "Articles," "Sections" and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this Agreement as originally executed. The words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision. Any words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

#### 19.16. Borrower's Authorized Representative

Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such person or persons from time-to-time to act on the Borrower's behalf pursuant to a written certificate signed by Borrower and furnished to Lender and any loan servicer acting on Lender's behalf.

IN WITNESS WHEREOF, Lender and Borrower have executed this Agreement as of the date indicated by each signature.

<p>Address:</p> <p>U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, 200 Independence Avenue, SW, Washington, D.C., 20201</p> <p>Attention: Kevin Kendrick Telephone No.: (301) 492-4134 E-Mail: Kevin.kendrick@cms.hhs.gov</p>	<p><b>U.S. Department of Health and Human Services, Centers for Medicare &amp; Medicaid Services ("Lender")</b></p> <p>Per: </p> <p>Name _____ Dept _____ Center for Consumer Information and Insurance Oversight</p> <p>Date: ---- "14-'11-'/11" ----</p>
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<p>Address:</p> <p>Compass Cooperative Health Network</p> <p>1496 North Higley Road Suite 102 - #300 Gilbert, AZ 85234</p> <p>Attention: Kathleen Oestreich Project Officer</p> <p>Telephone No.: (520) 404-9639</p> <p>E-Mail: Kathy@eastwickstrategy.com</p>	<p><b>[Borrower]</b></p> <p>Per: Name: Kathleen Oestreich Title: Interim CEO</p> <p><b>Date:-----</b></p>
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IN WITNESS WHEREOF, Lender and Borrower have executed this Agreement as of the date indicated by each signature.

<p>Address:</p> <p>U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, 200 Independence Avenue, SW, Washington, D.C., 20201</p> <p>Attention: Kevin Kendrick Telephone No.: (301) 492-4134 E-Mail: Kevin.kendrick@cms.hhs.gov</p>	<p><b>U.S. Department of Health and Human Services, Centers for Medicare &amp; Medicaid Services (" Lender")</b></p> <p>Per: _____ Name: Timothy Hill Deputy Director, Center for Consumer Information and Insurance Oversight</p> <p>Date: _____</p>
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<p>Address:</p> <p>Compass Cooperative Health Network</p> <p>1496 North Higley Road Suite 102 - #300 Gilbert, AZ 85234</p> <p>Attention: Kathleen Oestreich Project Officer</p> <p>Telephone No.: (520) 404-9639</p> <p>E-Mail: Kathy@eastwickstrategy.com</p>	<p><b>[Borrower]</b></p> <p>Per: _____ Name: Kathleen Oestreich</p> <p>Title: Interim CEO</p> <p>Date: <u>6/6/2012</u></p>
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**Appendix 1**  
**START-UP LOAN DISBURSEMENT AGREEMENT**

DISBURSEMENT AGREEMENT  
FOR START-UP LOAN FUNDS

This Disbursement Agreement ("Agreement") dated June 7, 2012 ("Closing Date"), by and between the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services ("CMS") and Compass Cooperative Health Network ("Borrower"),

WITNESSETH THAT:

WHEREAS, CMS and Borrower have entered into a Loan Agreement ("Loan Agreement") contemporaneously herewith for the purposes of fostering the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets through the provision of loans to qualified applicants for the purpose of financing start-up costs and insurance reserves [see the Affordable Care Act, Section 1322(a)]; and

WHEREAS, pursuant to the terms of the Loan Agreement, CMS has agreed to make a Start-up Loan to Borrower in the maximum principal sum of \$20,890,333; and

WHEREAS, CMS contemplates that there will be multiple loan disbursements ("Disbursements") and such Disbursements may occur at irregular intervals related to Borrower's bona fide CO-OP business requirements; and

WHEREAS, CMS and Borrower wish to enter into this Agreement to memorialize their understanding about the timing and procedures related to the Disbursements and to further ensure that Disbursements are made only for the uses intended under the Loan Agreement and the CO-OP Program authorized under the Affordable Care Act.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, CMS and Borrower agree to the terms hereinafter set forth in this Agreement.

**I. Disbursement Guidelines**

*(i) Disbursement.* Disbursements will be made according to the following schedule of "Draws:"

**For First Draw:** Within approximately one week of the Closing Date, and upon receipt of a complete cost breakdown, in form and content reasonably acceptable to CMS, and certified by Borrower, showing all costs estimated for completing all Start-Up activities, the first Disbursement will be made in the amount of \$2,840,904.

**For Subsequent Draws:** The next fourteen (14) draws will be conditioned on the submission of evidence of Borrower's successful completion of the milestones and achievement of ongoing activities as described in Borrower's Business Plan (a copy of which is attached to the Loan Agreement as Appendix 7 thereof) and the disbursement schedule ("Disbursement Plan") attached hereto and incorporated herein by reference as Schedule A, in accordance with CO-OP Program (as such term is defined in the Loan Agreement) guidance. Prior to any Draw, Borrower must notify CMS of all successfully completed milestones and describe its projected ongoing activities prior to receiving any further subsequent Disbursements.



**For Emergency Draws:** This Draw will be disbursed if Borrower encounters eligible costs not outlined in B01Tower's Business Plan. These costs must comply with eligible use of Funds provisions outlined in Section 3.5 of the Loan Agreement.

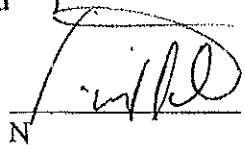
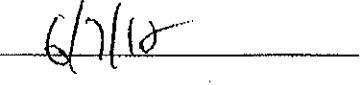
**For Final Draw:** This Draw will be disbursed after all milestones have been met and ongoing activities accomplished as described in Borrower's Business Plan and the Disbursement Plan in accordance with CO-OP Program guidance.

**(ii) Failure to Meet Milestones.** Borrower must notify CMS in writing (consistent with CO-OP Program guidance) at least 30 calendar days in advance, when possible, if it will be unable to meet a milestone.

## II. Funding Requests

**Method of Disbursement.** If no Event of Default (as such term is defined in the Loan Agreement) has occurred that has not been cured within applicable grace and cure periods, and all of the terms and conditions of this Agreement have been complied with to the satisfaction of CMS, CMS shall pay to Borrower, via wire transfer, the principal amount of funding Draw requested, subject to and in accordance with the terms and conditions set forth in the Loan Agreement. Notwithstanding the foregoing, CMS reserves the right to partially or incrementally fund Borrower's Draw request(s) in circumstances where Borrower has not successfully completed milestones or adequately accomplished or achieved ongoing activities to the satisfaction of CMS.

IN WITNESS WHEREOF, CMS and Borrower have executed this Agreement as of the date indicated by each signature.

<p>Address:</p> <p>U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, 200 Independence Avenue, SW, Washington, D.C., 20201</p> <p>Attention: Kevin Kendrick Telephone No.: (301) 492-4134 E-Mail: Kevin.kendrick@cms.hhs.gov</p>	<p><b>U.S. Department of Health and Human Services, Centers for Medicare &amp; Medicaid Services</b> ("Lend")</p> <p>Per:  N De uty Director, Center for Consumer Information and Insurance Oversight</p> <p>Date: </p>
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Appendix 1 - Schedule A  
START-UP DISBURSEMENTS  
AND MILESTONES

Excel Spreadsheet Attached

CO-OP Start-up Loan Disbursement Schedule

Consider budget, 3 field disbursement schedule below. List proposed milestones, the associated start-up loan, each quarter. Each quarter, disbursements are to be made on the 15th of each month. Milestones that must be completed before (predecessor tasks) and after (successor tasks) each milestone. See Attachment 5 for the list of milestones and the list of categories. Please note that funding cannot be used for marketing activities. Therefore, marketing milestones should not be included in the detailed disbursement schedule.

For each milestone, funding associated with any contract, should be segregated as a separate column next to the milestone. For non-core contracts, the CO-OP must submit this contract to CSES for review and approval prior to the disbursement of any funding associated with the milestone. For non-core contracts, the associated funding amount should be provided in the "Cost" column.

If a milestone will take multiple quarters to complete, it should be listed with a sequential numbering (for example, 1.2a in Quarter 1, 1.2b in Quarter 2, and 1.2c in Quarter 3). Funding should be linked to the milestone per quarter as relevant for the specific milestone based on necessary funding for the completion of the milestone. For example, if one milestone has associated funding of \$200,000 with 1, and will take three quarters to complete, the \$200,000 should be divided amongst the quarters as relevant to funding required for completion.

CO-OP Name	Compass Cooperative Health Network (CCHN)	Quarter	Total Funding (Non-Core Contract)	Total Core Contracts	Total Estimated by Quarter
Date	06/02/2012	Q1 2012	\$0	\$0	\$0
Start-up Loan Amount	\$20,890,333	Q2 2012	\$1,248,999	\$354,433	\$1,598,423
Total Funding from Milestones (Non-Core Contracts)	\$14,676,975	Q3 2012	\$1,586,914	\$723,100	\$2,320,014
Total Funding from Core Contracts	\$6,213,358	Q4 2012	\$1,389,038	\$658,100	\$2,247,138
		Q1 2013	\$2,549,426	\$696,200	\$3,235,626
		Q2 2013	\$1,952,126	\$686,200	\$2,638,326
		Q3 2013	\$1,628,493	\$821,300	\$2,449,793
		Q4 2013	\$1,614,293	\$621,300	\$2,235,593
		Q1 2014	\$2,519,361	\$1,262,725	\$3,782,086
		Q2 2014	\$0	\$0	\$0
		Q3 2014	\$0	\$0	\$0
		Q4 2014	\$133,333	\$0	\$133,333
		Q1 2015	\$0	\$0	\$0
		Q2 2015	\$0	\$0	\$0
		Q3 2015	\$0	\$0	\$0
		Q4 2015	\$0	\$0	\$0
Total			\$14,676,975	\$6,213,358	\$20,890,333

Task#	Core Contract Milestone	Short Task Description	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING:
8a	Disburse funds for application fees	Develop CO-OP project plan	Contract detailed project plan using loan funding as start date	Invoices for services			Business Structure	Q2 2011	Q2 2012	\$100,000	\$0
1a	Establish bank accounts	Establish bank accounts needed for the CO-OP	Project plan				Business Structure	Q2 2012	Q3 2012	\$50,000	\$0
2	Establish legal representation	Retain legal firm that will provide legal support	Letter from firm confirming retainer				Business Structure	Q2 2012	Q2 2012	\$25,000	\$0
3	Additional capital funding for CO-OP operation	Identify other sources of capital funding available to CO-OP	List of identified sources of additional funding				Business Structure	Q2 2012	Q2 2012	\$100,000	\$0
4a	Establish physical facilities	Core contract Lease office space, set-up utilities, purchase equipment and furniture, move into facility	Office lease, utility statements, purchase receipts				Business Structure	Q2 2012	Q3 2012	\$40,000	\$0
5a	Obtain insurance	Obtain all insurances required to operate the CO-OP (i.e. liability, DCO, etc.)	Insurance policy statements				Business Operations	Q2 2012	Q1 2014	\$65,690	\$10,000
6a	Establish computer network system	Core contract: Agreements with Vendors, Purchase and install hardware and software to support the CO-OP's daily business functions	Receipts for servers, computers, printers and software, set contracts with IT Design Team				Business Operations	Q2 2012	Q3 2012	\$279,700	\$0
7a	Establish HIPAA systems security plan	Develop systems security plan compliant with HIPAA	Security plan				Business Operations	Q2 2012	Q3 2012	\$150,000	\$0

CONTINGENT FUNDING											
Task#	Milestone	Short Task Description	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	Contingent Funding
9a	Yes	Finalize staffing schedule. Engage Temporary Staff	Core Contract, interim agreements; Develop plan for hiring management and staff for CO-OP, hire interim management	Staffing schedule, interim management contracts for CEO CFO CHRO, Prem Contract for President	15, 21	15, 21	Business Operations	7/1/2012	03/2012	\$37,500	\$64,733
9b		Select bids for accounting system	Identify at least 3 vendors to provide accounting system and support and conduct competitive bid	Bidder list and RFP	1		Business Operations	7/2/2012	03/2012	\$115,000	\$0
11a		Develop provider network strategy	Develop provider network contracting strategy	Provider network plan	24		Business Operations	7/2/2012	6/2/2012	\$169,700	\$0
12		Establish Interest Policy	Develop and finalize a Conflicts of Interest Policy	Final Conflict of Interest Policy (Board approval of conflict of interest policy)			Business Operations	02/2012	7/2/2012	\$75,000	\$0
13		Consultant Contracts	Finalize consulting contracts for various initiatives including network management, technology, branding, public relations, product design, among others	Signed contracts			Business Operations	7/2/2012	7/2/2012	\$216,100	\$0
<b>Total Funding for 2012</b>											
1b		Develop CO-OP project plan	Construct detailed project plan using lean funding as start date	Project plan	10		Business Structure	7/2/2012	03/2012	\$1,233,990	\$354,403
4b		Additional capital funding for CO-OP creation	Identify other sources of capital funding available to CO-OP	List of identified sources of additional funding			Business Structure	02/2012	03/2014	\$50,000	\$0
5b	Yes	Establish physical facilities	Core Contract, Lease; Rent office space; set-up utilities; purchase equipment and furniture; move into facility	Office lease, utility statements, purchase receipts	7		Business Operations	7/2/2012	01/2014	\$56,814	\$90,000
6b		Obtain insurance	Obtain all insurance required to operate the CO-OP (i.e., liability, D&O, etc.)	Insurance policy statements	2, 3		Business Operations	7/2/2012	03/2012	\$50,000	\$0
7b		Establish computer network system	Core Contract; Agreements with vendors; Purchase and install hardware and software to support the CO-OP's day business functions	Receipts for servers, computers, printers and software	11		Business Operations	03/2012	03/2012	\$50,000	\$0
8b		Establish HIPM systems security plan	Develop systems security plan compliant with HIPM	Security plan	1		Business Operations	7/2/2012	03/2012	\$70,000	\$0
9b	Yes	Finalize staffing schedule Engage Temporary Staff	Core Contract, interim agreements; Develop plan for hiring management and staff for CO-OP, hire interim management	Staffing schedule, interim management contracts for CEO CFO CHRO, Prem Contract for President	15, 21		Business Operations	7/2/2012	03/2012	\$37,500	\$0
9c		Select implementation accounting system vendor	Select most competitive vendor consistent with CO-OP's business requirements	Contract	3		Business Operations	7/2/2012	03/2012	\$50,000	\$0
11b		Develop provider network strategy	Develop provider network contracting strategy	Provider network plan	24		Business Operations	7/2/2012	03/2012	\$50,000	\$0
14a		Clinical Care Guidelines	Develop and complete Clinical Care Guidelines for Core Models	Completed Guidelines	20		Plan Operations	03/2012	04/2012	\$37,200	\$0
15a	Yes	Hire plan management staff	Core Contract; employment contracts; Hire plan management staff	Resumes and employment contracts for plan management staff (CEO, CFO, CTO, COO, CMO and employment of Directors)	5		Business Operations	03/2012	01/2014	\$0	\$353,400
16		Develop plan for achieving licensure	Develop plan for achieving licensure	Licensure plan	17a		licensure and Certification	03/2012	03/2012	\$100,000	\$0
17a		Implement licensure plan	Begin implementation of plan for achieving licensure	Application for licensure	16		licensure and Certification	03/2012	04/2012	\$50,000	\$0
18a		Develop compliance and reporting plan	Develop plan for ensuring compliance with Federal, State, and Exchange requirements and reporting potential violations as well as fraud and abuse	Compliance and reporting plan			Business Operations	03/2012	04/2012	\$37,500	\$0
19		Develop quality assurance plan	Develop quality assurance plan	Quality assurance plan	4		Business Operations	03/2012	03/2012	\$75,000	\$0
20		Develop Care Models to be included in PCP Care Models	Develop Care Models to be included in PCP Care Models	Models Completed	14		Plan Operations	03/2012	03/2012	\$75,000	\$0
21a		Focus Groups	Provide Focus Groups - discuss external, payment models, clinical analytics and peer analysis	Summary of focus group feedback			Plan Operations	03/2012	04/2012	\$37,500	\$0

Tasks	CONTINGENT FUNDING - Core Contract Milestone	Short Task Description	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING - Core Contract
223		Conduct procurement process for operations outsourcing	Identify at least 3 potential vendors for operations outsourcing (e.g. data storage) as well as review criteria for vendor selection	Disciplinary vendor selection process, RFP and evaluation criteria that all employees will have access to, will indicate on chart - status of employee.	27	34	Plan Operations	03/2012	04/2012	\$50,000	\$0
23		Finalize HR Staff and Training	Complete hiring of HR and Training Staff	Employment contracts	19		Business Operations	03/2012	03/2012	\$25,000	\$0
24		Develop provider network	Sign contracts and recruitment of providers for participation in CO-OP network	Signed provider contracts and updated provider file (CO-OP)	11		Business Operations	03/2012	01/2013	\$100,000	\$0
24a		Implement clinical integration strategy	Implement the programs, systems and processes needed to support the integrated clinical care model	Polices, procedures, list of tools and systems to support integrated care management			Business Operations	03/2012	01/2013	\$75,000	\$0
26a	Yes	Implement systems/IT strategy	Core Contract with Vendor. Implement/build the systems required to support the CO-OP's health plan management functions	Operational systems and related documentation			Business Operations	03/2012	01/2013		\$279,700
27		Develop outsourcing plan	Identify other operational components to be outsourced	Outsourcing plan		34	Plan Operations	03/2012	03/2012	\$75,000	\$0
28		Develop education communications plan	Develop plan to create CO-OP branded community awareness of non-profit CO-OPs	Educational communications plan			Member Communications and Customer Service	03/2012	03/2012	\$100,000	\$0
37		Develop web site	Establish and test website	Operational website	29		Member Communications and Customer Service	03/2012	03/2012	\$11,800	\$0
38		Develop customer service and community outreach plans	Develop plans that will guide customer service and community outreach delivery, tools and services levels	General Plans for Customer Service and Community Outreach	38, 39		Member Communications and Customer Service	03/2012	03/2012	\$179,000	\$0
Total Funding for Q3 2012										\$1,698,914	\$723,108
39	Yes	Establish physical facilities	Core Contract with Vendor. Establish physical facilities, purchase equipment and furniture.	Office lease, utility statements, purchase receipts			Business Operations	02/2012	01/2014	\$27,200	\$66
40		Finalize Care Guidelines	Develop and finalize Clinical Care Guidelines for Care Models	Completed Guidelines	29		Plan Operations	03/2012	04/2012	\$32,600	\$0
120	Yes	Implement management staff	Core Contract with Vendor. Implement management staff	Resumes and employment contracts for plan management staff (CEO, CFO, CTO, COO, CMO and employment of Directors)	9	23	Business Operations	07/2012	04/2014	\$0	\$365,400
170		Implement business plan	Implement business plan for achieving insurance	Application for licensing			Licensure and Certification	02/2012	04/2012	\$15,000	\$66
180		Develop compliance and reporting plan	Develop plan for ensuring compliance with Federal, State, and Exchange requirements and reporting potential violations as well as fraud and abuse	Compliance and reporting plan			Business Operations	07/2012	04/2012	\$27,200	\$66
21b		Focus Groups	Provider Focus Groups- discuss care models, payment models, clinical analytics and peer analysis	Summary of focus group feedback			Plan Operations	03/2012	04/2012	\$37,900	\$0
220		Conduct procurement process for operations outsourcing	Identify at least 3 potential vendors for operations outsourcing (e.g. data storage) as well as review criteria for vendor selection	Disciplinary vendor selection process, RFP and evaluation criteria		34	Plan Operations	03/2012	04/2012	\$100,000	\$0
24a		Develop provider network	Sign contracts and recruitment of providers for participation in CO-OP network	Signed provider contracts and updated provider directory	11		Business Operations	03/2012	01/2013	\$100,000	\$0
260	Yes	Implement clinical integration strategy	Implement the programs, systems and processes needed to support the integrated clinical care model	Polices, procedures, list of tools and systems to support integrated care management			Business Operations	03/2012	01/2013	\$75,000	\$0
260	Yes	Implement systems/IT strategy	Core Contract with Vendor. Implement/build the systems required to support the CO-OP's health plan management functions	Operational systems and related documentation	7		Business Operations	03/2012	01/2013		\$279,700
37		Develop Materials/ Policies and Procedures	Implement employee training policies and procedures	Training Materials	9		Business Operations	04/2012	04/2012	\$55,000	\$0
38		Develop vendor management and monitoring plan	Develop vendor management and monitoring plan to ensure high performance	Vendor monitoring plan		30	Plan Operations	04/2012	04/2012	\$150,000	\$0
39	Yes	Contract with vendor for outsourced operations services	Core contract with vendor, contract with vendor for outsourced operations services	Vendor contract	22, 27		Plan Operations	04/2012	04/2012	\$150,000	\$150,000

CONTINGENT FUNDING.

Task#	Short Task Description	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING:
35a	Vendor management, monitoring and communications	Implement active vendor management and monitoring processes/procedures with all vendors	Quantity results from vendor performance review process	32		Plan Operations	01/2012	03/2013	\$37,500	Core Contract
36	Achieve licensure	Complete licensure process with the State Insurance Department	License	17	61	Licensure and Certification	04/2012	04/2012	\$75,000	\$0
37a	Implement education communications plan	Engage with general business community to create brand and community awareness of non-profit CO-OPs	Documentation of communication	29		Member Communications and Customer Service	01/2012	02/2013	\$50,000	\$0
38a	Implement community outreach plan	Engage with community leaders representing small business, individuals, the uninsured and other stakeholders to educate and build awareness of the CO-OP and its mission	Document tabin of communication meetings	31		Member Communications and Customer Service	01/2012	03/2013	\$37,500	\$0
39a	Develop community outreach materials	Develop material that is targeted to educate and build awareness of the CO-OP	Develop Web site and handout material	31		Member Communications and Customer Service	01/2012	02/2013	\$50,000	\$0
40a	Develop patient education/therapy content	Develop material to be handed out post enrollment and pre-reflective data to promote healthy lifestyles and patient/physician communication	Web site and handout material	73		Member Communications and Customer Service	01/2012	01/2013	\$100,000	\$0
41a	Develop and implement disaster recovery plan	Develop disaster recovery plan to safeguard Co-Operations and data in the event of a catastrophic event	Disaster recovery plan			Business Operations	01/2012	01/2013	\$37,500	\$0
42a	Implement quality assurance plan	Integrate elements of the QA plan into all aspects of system development, policies/procedures and training	Documentation	19		Business Operations	01/2012	02/2013	\$88,800	\$0
43a	Develop underwriting/rating models, policies and procedures	Develop underwriting/rating models, policies and procedures	Models, policies and procedures			Business Operations	01/2012	01/2013	\$55,400	\$0
48a	Develop benefit plans	Develop benefit plans and plan rules ensuring compliance with Exchange requirements for OHPs	Proposed benefit plans and rules. Approved benefit plans and rules	51		Plan Operations	01/2012	02/2013	\$100,000	\$0
5d	Establish physical facilities	Core Contract-Lease/Rent office space; setup utilities, purchase equipment and furniture, move into facility	Office lease, utility statements, purchase receipts	7		Business Operations	02/2012	01/2014	\$1,389,033	\$654,109
15c	Hire plan management staff	Core Contract: employment contracts, Hire plan management staff	Resumes and employment contracts for plan management staff (CEO, CFO, CTO, COO, CMO and employment of Directors)	9	23	Business Operations	03/2012	01/2014	\$0	\$195,900
24c	Develop provider network	Begin discussions and recruitment of providers or participation in CO-OP network	Signed provider contracts and updated provider directory	11		Business Operations	03/2012	01/2013	\$138,000	\$0
25c	Implement clinical integration strategy	Implement the programs, systems and processes needed to support the integration of clinical care	Policies, procedures, list of tools and systems to support integrated case management			Business Operations	03/2012	01/2013	\$200,000	\$0
26c	Implement systems/IT strategy	Core Contract with Vendor: Implement/build the systems required to support the CO-OP's health plan management functions	Operational systems and related plan documentation	7		Business Operations	03/2012	01/2013	\$435,300	\$0
32a	Policies and procedures, training	Implement employee training policies and procedures	List of individuals completing training			Business Operations	01/2013	03/2013	\$175,000	\$0
35b	Vendor management, monitoring and communications	Implement active vendor management and monitoring processes/procedures with all vendors	Quarterly results from vendor performance review process			Plan Operations	01/2012	03/2013	\$67,500	\$0
37b	Implement education communications plan	Engage with general business community to create brand and community awareness of non-profit CO-OPs	Documentation of communication	29		Member Communications and Customer Service	01/2012	02/2013	\$50,000	\$0
38b	Implement community outreach plan	Engage with community leaders representing small business, individuals, the uninsured and other stakeholders to educate and build awareness of the CO-OP and its mission	Documentation of communication meetings	31		Member Communications and Customer Service	01/2012	03/2013	\$50,000	\$0

Task#	CONTINGENT FUNDING Milestone	Short Task Description	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING Care Contract
39b		Develop community outreach materials	Develop materials that is targeted to educate and build awareness of the CO-OP	Documentation Required Web site and hardcopy material	31		Member Communication and Customer Service	04 2012	02 2013	\$112,500	\$0
40b		Develop patient educational/therapy content	Develop material to be handed out post-enrollment and pre-effective date to promote healthy lifestyles and patient/physician communication	Web site and hardcopy material	73		Member Communication and Customer Service	04 2012	01 2013	\$200,000	\$0
41b		Develop and implement disaster recovery plan	Develop disaster recovery plan to safeguard CO-OP Operations and data in the event of a catastrophic event	Disaster recovery plan			Business Operations	04 2012	01 2013	\$111,200	\$0
42b		Implement quality assurance plan	Integrate elements of the QA plan into all aspects of system development, policies/procedures and training	Documentation	19		Business Operations	04 2012	02 2013	\$100,000	\$0
43b		Develop underwriting/rating models, policies and procedures	Develop underwriting/rating models, policies and procedures	Models, policies and procedures			Business Operations	04 2012	01 2013	\$200,000	\$0
44		Develop policies and procedures	All policies and procedures developed and approved	Policies and procedures manual	20		Business Operations	01 2013	01 2013	\$200,000	\$0
45a		Care Effectiveness Assessments	Develop Clinical Analytical and Care Model Effectiveness assessments with U of Arizona College of Public Health	Alliance Agreement Completed			Plan Operations	01 2013	02 2013	\$50,000	\$0
46a		Hospital Partner Care Model Strategy	Development of Hospital Partner Care Model Strategy to align hospitals with care models and goals of Compass	Completed Plan	44	66	Plan Operations	01 2013	02 2013	\$87,500	\$0
47a		Apply to participate in the Exchange	Achieve certification to participate in the Exchange	Confirmation application submission for certification/Certification			Licensure and Certification	01 2013	02 2013	\$300,000	\$0
48b		Develop benefit plans	Develop benefit plans and plan rules ensuring compliance with Exchange requirements for CHIP's	Proposed benefit plans and rates, Approved benefit plans and rates	61	51	Plan Operations	04 2012	02 2013	\$100,000	\$0
49		Develop provider communication strategy	Develop provider network training and communication strategy	Web site/hardcopy material	52		Subscriber/Member Provider Network	01 2013	01 2013	\$112,500	\$0
52		Finalize Provider Network	Agreement with Core Providers in Primary Network Area	Contacts, Provider directory	49		Establishment of Provider Networks	01 2013	01 2013	\$225,000	\$0
51a		Develop grievance and appeal processes	Enhance and appeal processes in place and training has been designed	Policies and procedures manual			Member Communications and Customer Service	01 2013	02 2013	\$50,000	\$0
<b>Total Funding for Q1 2013</b>											
5e	Yes	Establish physical facilities	Core Contract: lease Rent office space, set-up utilities, purchase equipment and furniture, inventory facility	Office lease, utility statements, purchase receipts		7	Business Operations	02 2012	01 2014	\$2,549,426	\$686,200
15d	Yes	Hire plan management staff	Core Contract: employment contracts. Hire plan management staff	Resumes and employment contracts for plan management staff (CEO, CFO, CTO, COO, CMO and employment of Directors)	5	23	Business Operations	03 2012	01 2014	\$0	\$199,900
34		Finalize clinical integration strategy	Finalize the implementation programs, systems and processes needed to support the integrated clinical model	Policies, procedures, list of goals and systems to support integrated care management			Business Operations	02 2013	02 2013	\$175,000	\$0
35	Yes	Finalize testing of implementation strategy	Core Contract with Vendor: implement/build the systems required to support the CO-OP's health plan management functions	Final test results and testing of operational systems and related documentation	7, 26	75	Business Operations	02 2013	02 2013	\$435,200	\$0
32b		Policies and procedures training	Implement employee training policies and procedures	List of individuals completing training			Business Operations	01 2013	03 2013	\$15,000	\$0
35c		Vendor management, monitoring and communications	Implement active vendor management and monitoring processes/procedures with all vendors	Quarterly results from vendor performance review process			Plan Operations	04 2012	03 2013	\$37,500	\$0
37c		Implement education communications plan	Engage with general business community to create brand and community awareness of non-profit CO-OPs	Documentation of communication meetings	29		Member Communications and Customer Service	04 2012	02 2013	\$60,000	\$0



Task #	Case Contract Milestone	Short Task Description	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING:
38c		Implement community outreach plan.	Engage with community leaders representing small business, individuals, the uninsured, and brokers and other stakeholders to educate and build awareness of the CO-OP and its mission.	Documentation of communication meetings	31		Member Communications and Customer Service	04 2012	0 3 2012	\$25,000	Contingent
39c		Develop community outreach materials	Develop material that is targeted to educate and build awareness of the CO-OP	Documentation of communication meetings	31		Member Communications and Customer Service	04 2012	02 2013	\$27,500	
42c		Implement quality assurance plan	Integrate elements of the QA plan into all aspects of system development, policies/procedures and training	Documentation of results	19		Business Operations	04 2012	02 2013	\$25,000	
45b		Care Effectiveness Assessments	Develop Clinical Analytical and Care Model effectiveness assessments with U of Arizona College of Public Health	Affiliation Agreement Completed			Plan Operations	0 1 2013	02 2013	\$50,000	
48b		Hospital Partner Care Model Strategy	Development of Hospital Partner Care Model Strategy to align hospitals with care models and needs of Compass	Completed Plan	44	65	Plan Operations	01 2013	02 2013	\$87,500	
47b		Apply to participate in the Exchange	Achieve certification to participate in the Exchange	Confirmation application submission for certification			Licensure and Certification	01 2013	02 2013	\$75,000	
48c		Develop benefit plans	Develop benefit plans and priorities ensuring compliance with Exchange requirements	Proposed benefit plans and rates, approval letters	33		Plan Operations	04 2012	02 2013	\$100,000	
53		Approvals from Department of Insurance	Approval of plan rates and benefit plans by Department of Insurance	Approval letters	45		Plan Operations	02 2013	02 2013	\$75,000	
54		Develop summary of benefits	Develop summary of benefits	Approved summary of benefits			Member Communications and Customer Service	02 2013	02 2013	\$75,000	
55		Exchange certification	Deemed certified to participate in the Exchange	Certification			Licensure and Certification	02 2013	02 2013	\$75,000	
56		Meet Federal, state and Exchange reporting requirements	Establish and test Federal, State and Exchange reporting requirements	Approvals			Plan Operations	02 2013	02 2013	\$75,000	
57a		Provider network training	Begin implementation of provider network training plan	Documentation of training meetings	52	67	Establishment of Provider Network	02 2013	04 2013	\$75,000	
58a		Ongoing provider communication	All lines of communication (web, newsletters, meetings, 800 numbers) with providers are open	Communication tracking log			Establishment of Provider Network	02 2013	04 2013	\$75,000	
59a		System interoperability	Systems checks for interoperability in operation	Documentation of test results			Plan Operations	03 2013	04 2013	\$100,000	
60a		System tests	All information technology systems tested and in operation	Documentation of test results		76	Plan Operations	02 2013	03 2013	\$100,000	
61b		Develop grievance and appeal processes	Grievance and appeal processes in place and training has been designed	Processes and procedures manual			Member Communications and Customer Service	01 2013	02 2013	\$50,000	
62a		Member communication materials	Develop member communication content and distribution channels	Communication materials		73	Member Communications and Customer Service	02 2013	03 2013	\$125,000	
64a		Hire customer service staff	Begin implementation of customer service staffing plan	Resumes for hired service staff		65	Member Communications and Customer Service	02 2013	0 3 2013	\$88,500	
65a		Train customer service staff	Train customer service staff on the full range of products, systems and procedures	Documentation of training meetings, training materials	65		Member Communications and Customer Service	02 2013	04 2013	\$50,000	
67a		Provider network maintenance and training	Maintain provider recruitment effort and communication with participating providers	Changes to provider directory and training materials	57		Establishment of Provider Network	02 2013	04 2013	\$25,000	
68		Comprehensive Outreach Plan	Develop comprehensive Outreach and Education Plan for complex clinical members	Member Outreach Plan			Plan Operations	02 2013	02 2013	\$50,000	

Task#	CONTINGENT FUNDING: Core Contract Milestone	Short Task Description	Objectives/Milestones	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING: Core Contract SO
69	Yes	Develop materials for Clinical Care Training	Training of Clinical Care guidelines (i.e. Millman Care Guidelines) with Hospital and Provider	46		Plan Operations	02/2013	02/2013	\$60,000	\$0
70	Yes	File Application for Accreditation	Complete Application for State Accreditation with State Insurance Department			Plan Operations	02/2013	02/2013	\$50,000	\$0
<b>Total Funding for Q2 2013</b>										
51	Yes	Establish physical facilities	Core Contract Lease: Rent office space, set-up utilities, purchase equipment and furniture, move into facility		7	Business Operations	02/2012	01/2014	\$1,952,126	\$686,200
15e	Yes	Hire plan management staff	Core Contract: employment contracts, hire plan management staff	9	23	Business Operations	03/2012	01/2014	\$85,226	\$50,000
32c		Policies and procedures training	Implement employee training policies and procedures			Business Operations	01/2013	03/2013	\$59,000	\$0
35d		Vendor management, monitoring and communications	Implement active vendor management and monitoring processes/procedures with vendors			Plan Operations	04/2012	03/2013	\$50,000	\$0
36a		Implement Broker education communications plan	Engage with broker and insurance community to create brand and community awareness of non-office CO-OPs	29		Member Communications and Customer Service	03/2013	04/2013	\$50,000	\$0
38d		Implement community outreach plan	Engage with community leaders representing small businesses, individuals, the uninsured, brokers, and other stakeholders to educate and build awareness of the CO-OP and its mission	31		Member Communications and Customer Service	04/2012	03/2013	\$50,000	\$0
57b		Provider network training	Begin implementation of provider network training plan	52	67	Establishment of Provider Network	02/2013	04/2013	\$100,000	\$0
58b		Ongoing provider communication	Build lines of communication (web, newsletters, meetings, 800 number) with providers are			Establishment of Provider Network	02/2013	04/2013	\$100,000	\$0
59b		System interoperability	Systems checks for interoperability		76	Plan Operations	02/2013	04/2013	\$75,000	\$0
59c		System tests	All information Technology systems tested and in operation			Plan Operations	02/2013	04/2013	\$75,000	\$0
52b		Member communication materials	Development of member communication content and distribution channels		73	Member Communications and Customer Service	02/2013	03/2013	\$150,000	\$0
64b		Hire customer service staff	Begin implementation of customer service staffing plan		65	Member Communications and Customer Service	02/2013	03/2013	\$150,000	\$0
65b		Train customer service staff	Train customer service staff on the full range of products, systems and procedures	64		Member Communications and Customer Service	02/2013	04/2013	\$75,000	\$0
67b		Provider network, maintenance and training	Maintain provider recruitment effort and ongoing communication with participating providers	57		Establishment of Provider Network	02/2013	04/2013	\$75,000	\$0
71a		Outsourced vendors fully functional	All Non-IT systems fully loaded and tested	60		Plan Operations	03/2013	04/2013	\$107,600	\$0
73a		Update patient literacy material	Keep material current with evolving information and evidence-based practice	40		Member Communications and Customer Service	03/2013	04/2013	\$100,000	\$0
74a		Finalize clinical integration strategy	Analyze the programs, systems and processes needed to support the integrated clinical care model			Business Operations	03/2013	04/2013	\$150,000	\$0
75a	Yes	Finalize systems/IT strategy	Finalize contract with vendors and contract staff; completion of build-out of systems required to support the CO-OP's health plan management functions	95		Business Operations	03/2013	01/2014	\$436,300	\$436,300

Task #	CONTINGENT FUNDING: Core Contract Milestone	Short Task Description on Regional Network	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING: Core Contract
76	Yes	Finalize arrangements with core providers in regional network, including surrounding states	Contracts with members of Private Group	52		Establishment of Provider Network	03/2013	03/2013	\$75,000	\$75,000	\$0
77	Yes	Finalize arrangements with provider to deliver national network of provider services	Contracts with Provider	52		Establishment of Provider Network	03/2013	03/2013	\$75,000	\$75,000	\$0
87a	Yes	Core Contract UM Partner, OM Partner, Submit RFPs for UM and OM Contractors. Invoicing and execute contracts.	Contracts with UM Partner, OM Partner			Business Operations	03/2013	01/2014			\$115,100
90a		Training of Clinical Care Guidelines	List of completed training members			Plan Operations	03/2013	01/2014		\$15,567	\$0
Total Funding for 03 2013	Yes	Establish physical facilities	Core Contract, Leasehold office space, setup utilities, purchase equipment and furniture.		7	Business Operations	02/2012	01/2014		\$1,628,493	\$821,300
86	Yes	Hire plan management staff	Core contract, employment contracts, Hire plan management staff	9	23	Business Operations	03/2012	01/2014		\$0	\$195,300
86b		Implement broker education	Engage with broker and insurance community to create brand and community awareness of non-ERISA CO-OPs	23		Member Communications and Customer Service	03/2013	04/2013		\$50,000	\$0
87c		Provider network training	Begin implementation of provider network training plan	52	67	Establishment of Provider Network	02/2013	04/2013		\$100,000	\$0
88a		Ongoing provider communication	Activities of communication (web, newsletters, meetings, etc.) with providers are open			Establishment of Provider Network	02/2013	04/2013		\$125,000	\$0
89a		System interoperability	Systems interoperability			Plan Operations	02/2013	04/2013		\$44,000	\$0
89c		System tests	All Information Technology systems tested and in operation			Plan Operations	02/2013	03/2013		\$125,000	\$0
89c		Train customer service staff	Train customer service staff on the full range of products, systems and procedures.	64	80	Member Communications and Customer Service	02/2013	04/2013		\$125,000	\$0
89c		Provider network maintenance and training	Maintain provider recruitment and ongoing communication with participating providers	57		Establishment of Provider Network	02/2013	04/2013		\$15,000	\$0
91b		Outsource vendors fully functional	All Mgmt systems fully loaded and tested			Plan Operations	03/2013	04/2013		\$75,000	\$0
92a		Update patient literacy material	Keep material current with evolving information and evidence-based practice	30		Member Communications and Customer Service	03/2013	04/2013		\$100,000	\$0
94b	Yes	Finalize technical integration strategy	Finalize the programs, systems and processes needed to support the integrated clinical care model	95		Business Operations	03/2013	04/2013		\$250,000	\$0
95b	Yes	Finalize systems IT strategy	Core Contract with Vendors and contact staff. Completion of build-out of systems required to support the CO-OP's health plan management functions.			Business Operations	03/2013	01/2014		\$435,300	\$0
96		Enroll individuals and groups	Process enrollment information provided by the Exchange, brokers/navigators or consumers		79,80,81	Plan Operations	04/2013	04/2013		\$75,000	\$0
99		Implement member communications strategy	Send member welcome packages that include all necessary information	72		Member Communications and Customer Service	04/2013	04/2013		\$75,000	\$0
80		Respond to member inquiries	Customer service to fully operational and taking calls and responding to correspondence from members with questions	65		Member Communications and Customer Service	04/2013	04/2013		\$50,000	\$0

Task#	CONTINGENT FUNDING	Short Task Description	Objectives/Milestones	Documentation Required	Predecessor Tasks	Successor Tasks	Category	Start Date	Due Date	Cost	CONTINGENT FUNDING: Core Contract
81	Core Contract Milestone	Distribute ID cards	Provide ID cards to members effective 1/1/14	Count of cards distributed	78		Member Communications and Customer Service	04/2013	04/2013	\$50,000	\$0
82		Monitor enrollment	Review initial sales results against sales budget and targets	Enrollment count	76	53	Business Operations	04/2013	04/2013	\$60,000	\$0
83		Adjust business strategies	Adjust operations and sales strategies based on initial enrollment experience	Corrective actions (if necessary)	80		Business Operations	04/2013	04/2013	\$87,400	\$0
87b	Yes	Engage UM and DM Partners	Core Contract: UM Partner, DM Partner, Submit RFPs for UM and DM contractors, finalize and execute contracts	Contract with UM Partner, DM Partner			Business Operations	03/2013	01/2014	\$135,100	\$135,100
80b		Training of Clinical Care Guidelines	Training of Clinical Care guidelines (i.e. Milliman Care Guidelines) with Hospitals and Providers	List of completed training members			Plan Operations	03/2013	01/2014	\$16,667	\$0
<b>Total Funding for Q4 2013</b>											
5h	Yes	Establish physical facilities	Core Contract - Lease Rent office space; set-up utilities, purchase equipment and furniture, move into facility	Office lease, utility statements, purchase receipts		7	Business Operations	02/2012	01/2014	\$1514,293 \$189,022	\$821,300 \$50,000
15g	Yes	Hire plan management staff	Core Contract: employment contracts, Hire plan management staff	Resumes and employment contracts for plan management staff (CEO, CFO, CTO, COO, CMO and employment of Directors)	5	23	Business Operations	03/2012	01/2014	\$0	\$195,500
75c	Yes	Finalize systems/IT strategy	Core Contract: with Vendors and contract staff; Completion of build-out of systems required to support the CO-OP's health plan management functions	System Operating and completed documentation	95		Business Operations	03/2013	01/2014	\$301,725	\$301,725
86	Yes	Engage Health Plan Operations	Core Contract: with health plan partner; Identify health plan partner RFP for management of member churn, TPA, functions of enrollment, claims, medical management, wellness	Contract with health plan partner			Business Operations	01/2014	01/2014	\$676,000	\$676,000
87c	Yes	Engage UM and DM Partners	Core Contract: UM Partner, DM Partner, Submit RFPs for UM and DM contractors, finalize and execute contracts	Contract with UM Partner, DM Partner			Business Operations	03/2013	01/2014	\$135,100	\$135,100
88		Launch of CO-OP	Start-up completed - funds to support first quarter operations, including additional salary, business insurance other operating expenses.	Initial Performance Reports			Business Operations	01/2014	01/2014	\$2,263,572	\$0
89		Implement member-elected Operational Board	Scheduled Election, meeting and vote for Board of Directors	Results from Election			Member Communications and Customer Service	01/2014	01/2014	\$50,000	\$0
90c		Training of Clinical Care Guidelines	Training of Clinical Care guidelines (i.e. Milliman Care Guidelines) with Hospitals and Providers	List of completed training members			Plan Operations	03/2013	01/2014	\$16,667	\$0
<b>Total Funding for Q1 2014</b>											
89		Implement member-elected Operational Board	Scheduled Election, meeting and vote for Board of Directors	Results from Election	83		Member Communications and Customer Service	04/2014	04/2014	\$2,618,381 \$33,333	\$1,262,726 \$0
85		Implement transitional Board of Directors	Transitional plan and implementation of plan	Documentation			Member Communications and Customer Service	04/2014	04/2014	\$100,000	\$0
<b>Total Funding for Q4 2014</b>											
100		Implement member-elected Operational Board	Scheduled Election, meeting and vote for Board of Directors	Results from Election			Member Communications and Customer Service	04/2015	04/2015	\$133,333 \$50,000	\$0 \$0
<b>Total Funding for Q4 2015</b>											
										\$50,000	\$0

**Appendix 2**

**START-UP LOAN PROMISSORY NOTE**

**U.S. Department of Health and Human Services,  
Centers for Medicare & Medicaid Services**

**CO-OP Loan Borrower's Start-Up Loan, Series A, Dated June 7, 2012**

**PROMISSORY NOTE**

**Loan #: Start Up Loan Series A**

**This 7th day of June, 2012**

**By: Kathleen Oestreich**

**Title: Interim CEO**

Compass Cooperative Health Network  
1496 North Higley Road  
Suite 102 - #300  
Gilbert, AZ 85234

**( "Borrower" )**

Borrower promises, agrees and covenants to pay to the order of the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (and its successors) the amounts specified in Schedule A below (this amount is called "Principal"), plus interest.

Payments made hereunder shall be applied first to any unpaid "Obligations" (as such term is defined in the Loan Agreement) other than Principal and interest, then to accrued and unpaid interest due and the remainder to the unpaid balance of Principal.

Borrower agrees to pay Principal and interest in the installments listed in Schedule A below, as may be amended from time to time.

Borrower hereby waives the rights of presentment (meaning the right to require CMS to demand payment) and notice of dishonor (meaning the right to require CMS to give notice to other persons that amounts due hereunder have not been paid).

This Note is attached to and expressly incorporated by reference in the Loan Agreement dated June 7, 2012 (as amended, supplemented or otherwise modified and in effect from time to time, the "Loan Agreement"), by and among Borrower and CMS, and evidences the "Start-Up Loan" made by CMS thereunder.

The terms and conditions of the Loan Agreement are hereby incorporated in their entirety by reference as though fully set forth herein.

<p>Address:</p> <p>Compass Cooperative Health Network</p> <p>1496 North Higley Road Suite 102 - #300 Gilbert, AZ 85234</p> <p>Attention: Kathleen Oestreich Project Officer</p> <p>Telephone No.: (520) 404-9639</p> <p>E-Mail: <a href="mailto:Kathyo@eastwickstrategy.com">Kathyo@eastwickstrategy.com</a></p>	<p><b>[Borrower]</b> <i>Kathleen Oestreich</i></p> <p>Per: _____ Name: Kathleen Oestreich</p> <p>Title: Interim CEO</p> <p>Date: <u>6/6/2012</u></p>
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<b>SCHEDULE A:</b>			
<b>RECORD OF START-UP DISBURSEMENTS AND PRINCIPAL DUE</b>			
<b>DISBURSEMENT DATE</b>	<b>DISBURSEMENT AMOUNT ("PRINCIPAL")</b>	<b>DATE FOR REPAYMENT OF PRINCIPAL AND INTEREST</b>	<b>SERIES DESIGNATION</b>
TBD	TBD	TBD	A-01

No interest or principal payments are due before 5 years from the disbursement for which they constitute an instance of repayment. All interest will accrue on a monthly basis using a 360 day year and a 30 day month for actual days elapsed. Any accrued interest during the grace period will be capitalized into the outstanding principal balance on an annual basis until repayment is due. A single lump sum payment of principal and interest will be made at the end of 5 years from the date of a specific disbursement.



Appendix 3

SOLVENCY LOAN DISBURSEMENT AGREEMENT

DISBURSEMENT AGREEMENT  
FOR SOLVENCY LOAN FUNDS

This Disbursement Agreement ("Agreement") dated ("Closing Date"), by and between the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services ("CMS") and Compass Cooperative Health Network ("Borrower"),

WITNESSETH THAT:

WHEREAS, CMS and Borrower have entered into a Loan Agreement ("Loan Agreement") contemporaneously herewith for the purposes of fostering the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets through the provision of loans to qualified applicants for the purpose of financing start-up costs and insurance reserves [see the Affordable Care Act, Section 1322(a)]; and

WHEREAS, pursuant to the terms of the Loan Agreement, CMS has agreed to make a Solvency Loan to Borrower in the maximum principal sum of \$72,422,900, of which \$6,583,900 is Contingency Funding; and

WHEREAS, CMS contemplates that there will be multiple loan disbursements ("Disbursements") at irregular intervals related to levels of enrollment or claims, or as necessary to remain compliant with State insurance law solvency requirements; and

WHEREAS, CMS and Borrower wish to enter into this Agreement to memorialize their understanding about the timing and procedures related to the Disbursements and to further ensure that Disbursements are made only for the uses intended under the Loan Agreement and the CO-OP Program authorized under the Affordable Care Act.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, CMS and Borrower agree to the terms hereinafter set forth in this Agreement.

**I. Disbursement Guidelines**

(i) **Disbursement.** Whenever the Borrower desires to obtain Solvency Loan Funds, the Borrower shall submit to the CMS an updated Disbursement Schedule and adhere to procedures described in the Loan Agreement, Section 5.3 and in Appendix 5 thereof.

(ii) **Failure to Meet Milestones.** The Borrower must notify CMS (Consistent with CO-OP Program guidance) at least 90 days in advance, whenever possible, if it will be unable to make any scheduled payment due hereunder, or immediately upon becoming aware or having reason to know or reasonably suspect or anticipate that it will be unable to make a scheduled payment hereunder if less than 90 days remain prior to the date of such scheduled payment.

**II. Funding Requests**

(i) **Method of Disbursement.** If no Event of Default (as such term is defined in the Loan Agreement) has occurred that has not been cured within applicable grace and cure periods, and all of the terms and conditions of this Agreement have been complied with to the satisfaction of

CMS, CMS shall pay to Borrower, via wire transfer, the principal amount of funding Draw requested, subject to and in accordance with the terms and conditions set forth in the Loan Agreement.

IN WITNESS WHEREOF, CMS and Borrower have executed this Agreement as of the date indicated by each signature.

<p>Address:</p> <p>U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, 200 Independence Avenue, SW, Washington, D.C., 20201</p> <p>Attention: Kevin Kendrick Telephone No.: (301) 492-4134 E-Mail: Kevin.kendrick@cms.hhs.gov</p>	<p><b>U.S. Department of Health and Human Services, Centers for Medicare &amp; Medicaid Services ("Lender")</b></p> <p>Per: <b>Na,ffill</b> Deputy Director, Center for Consumer Information and Insurance Oversight</p> <p>Date: <b>f[---+---]</b> (./..d_</p>
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<p>Address:</p> <p>Compass Cooperative Health Network</p> <p>1496 North Higley Road Suite 102 -#300 Gilbert, AZ 85234</p> <p>Attention: Kathleen Oestreich Project Officer</p> <p>Telephone No.: (520) 404-9639 E-Mail: KathyO@eastwickstrategy.com</p>	<p><b>[Borrower]</b></p> <p>Per: _____ Name: Kathleen Oestreich Title: Interim CEO</p> <p><b>Date: -----</b></p>
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CMS, CMS shall pay to Borrower, via wire transfer, the principal amount of funding Draw requested, subject to and in accordance with the terms and conditions set forth in the Loan Agreement.

IN WITNESS WHEREOF, CMS and Borrower have executed this Agreement as of the date indicated by each signature.

<p>Address:</p> <p>U.S. Deptment of Health and Human Services, Center for Medicare and Medicaid Services, 200 Independence Avenue, SW, Washington, D.C., 20201</p> <p>Attention: Kevin Kendrick          Telephone No.: (301) 492-4134          E-Mail: Kevin.kendrick@cms.hhs.gov</p>	<p><b>U.S. Department of Health and Human Services,          Centers for Medicare &amp; Medicaid Services          ("Lender")</b></p> <p>Per: _____          Name: Timothy Hill          Deputy Director, Center for Consumer Information and Insurance Oversight</p> <p>Date: _____</p>
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<p>Address:</p> <p>Compass Cooperative Health Network</p> <p>1496 North Higley Road          Suite I 02 - #300          Gilbert, AZ 85234</p> <p>Attention: Kathleen Oestreich          Project Officer</p> <p>Telephone No.: (520) 404-9639</p> <p>E-Mail: Kathy@eastwickstrategy.com</p>	<p><b>[Borrower]</b></p> <p>Per: _____          Name: Kathleen Oestreich</p> <p>Title: Interim CEO</p> <p>Date: <u>6_16_12_0_1_2_</u></p>
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## Schedule A- Scheduled Solvency Disbursements

<b>Date</b>	<b>Amount</b>	<b>Reason / Justification</b>
TBD	TBD	Initial Solvency Draw

Any Solvency Disbursements beyond this amount requires notice to CMS and successful completion of the procedures described in the Loan Agreement, Section 5.3, and Appendix 5, Solvency Loan Disbursement Procedures.

**Appendix4**  
**SOLVENCY LOAN PROMISSORY NOTE**

**U.S. Department of Health and Human Services,  
Centers for Medicare & Medicaid Services  
CO-OP Loan Borrower's Solvency Loan, Series B, Dated June 7, 2012**

**PROMISSORY  
NOTE**

The Solvency Loan provided pursuant to the Loan Agreement of which this Promissory Note is a part, and is incorporated into as Appendix 4, is a Surplus Note. Accordingly, Borrower promises, agrees and covenants to pay to the order of Lender, the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (and its successors) the amounts specified in Schedule A below (this amount is called "Principal"), plus interest. Notwithstanding any conflicting provisions contained in the Loan Agreement, payment shall be on the terms and subject to the conditions set forth in this Surplus Note. Interest shall not compound and shall be computed annually for the twelve (12) months ending on the anniversary of each disbursement on the basis of a year of twelve thirty-day months.

Payments made hereunder shall be applied first to any unpaid "Obligations" (as such term is defined in the Loan Agreement) other than Principal and interest, then to accrued and unpaid interest due and the remainder to the unpaid balance of Principal.

Borrower agrees to pay Principal and interest in the installments listed in Schedule A below, as may be amended from time to time.

PROVIDED, HOWEVER, that payment of Principal and interest shall be subject to the following conditions:

1. This surplus note shall not be a liability or claim against Borrower or any of its assets, except as provided in this Surplus Note. This Surplus Note does not confer any rights upon the Lender, as Note Holder, other than the right to receive payment of principal and interest on the terms and subject to the conditions set forth in this Surplus Note.
2. This Surplus Note shall be repaid only out of the surplus earnings of Borrower and, as to each payment, only with the prior approval of the Arizona Insurance Commissioner or his designee. Subject to the approval requirements set forth herein, Borrower at its option may repay all or any part of this Surplus Note at any time after issuance at the outstanding principal amount plus the interest accrued thereon to the date of repayment.
3. By acceptance of this Surplus Note, the Note Holder agrees that the payment of principal and interest hereunder is expressly subordinated to claims of creditors and members of Borrower. If Borrower is dissolved and there are insufficient assets to pay in full the principal amount of and interest on all outstanding Surplus Notes, then Borrower shall pay on the Surplus Notes pro rata on the basis of the outstanding principal amount of each Surplus Note and the interest

accrued thereon. Regardless of the issuance date of this Surplus Note or any other surplus note of Borrower this Surplus Note shall be of equal rank with any other surplus note, unless such other surplus note is expressly subordinated to this Surplus Note.

Subject to the conditions for payment, repayment, discharge, and retirement of this Promissory Note set forth above, Borrower may, at its option, prepay this Promissory Note in whole or in part at any time without penalty.

No recourse under or upon any obligation, covenant, or agreement contained in this Promissory Note, or for any claim based thereon or otherwise in respect thereof, shall be had against any member, officer, or director, as such, past, present, or future, of Borrower or of any successor corporation, either directly or through any trustee, receiver, or any other person; it being expressly understood that this Promissory Note is solely a corporate obligation of Borrower, and that any and all personal liability, and any and all rights and claims against every such member, officer, or director, as such, are hereby expressly waived and released by every holder hereof by the acceptance of this Promissory Note and as a part of the consideration for the issue hereof.

The obligation of Borrower under this Promissory Note may not be offset or be subject to recoupment with respect to any liability or obligation owed to Borrower. No security agreement or interest, whether existing on the date of this Note or subsequently entered into, applies to the obligation under this Note.

No modification of this obligation is effective and no other agreement may modify or supersede the terms of this obligation, whether existing on the date of this Note or subsequently entered into, unless the modification or agreement is approved in writing by the Commissioner.

Borrower hereby waives the rights of presentment (meaning the right to require CMS to demand payment) and notice of dishonor (meaning the right to require CMS to give notice to other persons that amounts due hereunder have not been paid).

This Note is attached to and expressly incorporated by reference in the Loan Agreement dated June 7, 2012, as amended, supplemented or otherwise modified and in effect from time to time (the "Loan Agreement"), by and among Borrower and CMS, and evidences the "Solvency Loan" made by CMS thereunder.

The terms and conditions of the Loan Agreement are hereby incorporated in their entirety by reference as though fully set forth herein.





<b>SCHEDULE A:</b>				
<b>RECORD OF SOLVENCY DISBURSEMENTS AND PRINCIPAL DUE</b>				
DISBURSEMENT DATE	DISBURSEMENT AMOUNT ("PRINCIPAL")	DATE FOR FIRST INTEREST PAYMENT	DATE FOR FINAL PRINCIPAL AND INTEREST PAYMENT	SERIES DESIGNATION
TBD	TBD	TBD	TBD	B-01

For each drawdown of the Solvency Loan, payment of principal and interest is calculated as follows: for disbursements made on or after 2014 but no later than 2018, the interest-only period begins in 2019 and ends 5 years from the date of the disbursement. During this period, interest payments are due annually, starting in 2019. For disbursements made after 2018, the interest-only period begins one year after the disbursement date, and ends 5 years after the disbursement date. During this period, 5 annual interest payments are due, starting in the first year of the interest-only period. The amortization period begins 6 years after each disbursement, and ends 15 years thereafter. During this period, 10 equal, annual payments that include principal and interest are due each year based on the remaining unpaid principal balance.

For disbursements made prior to 2014, there will be no interest only period. The amortization period will begin in 2019 and run through final repayment, 15 years after disbursement.

## Appendix 5

### Solvency Loan Disbursement Procedures

#### I. INITIAL INSTALLMENT

For Borrower to receive the initial installment disbursement of Solvency Loan funds Borrower shall provide to Lender a written request that conforms to the following requirements:

- a. The request is in writing and specifies a fixed dollar sum.
- b. The request, by explicit terms, states that the signatories to the request thereby certify as follows:
  - 1) The stated sum represents an amount sufficient to meet reserve capital and solvency requirements, as determined by a State insurance regulator or regulatory entity, as the case may be, for the purpose of becoming licensed, and/or authorized, to engage in the business of insurance as an issuer of health insurance policies that include, at a minimum, all business lines specified in the Business Plan, within the entire geographical area specified in the Business Plan;
  - 2) The stated sum is sufficient for the purpose satisfying any risk based capital reserve requirement imposed under this Agreement with Borrower, including the reserve level established in the Disbursement Agreement to meet the initial reserve level, and
  - 3) The determination as to the necessity and sufficiency of the request has been developed, reviewed, and approved, with all appropriate actuarial certification and/or attestation, and in a manner consistent with industry standards and sound business practice.
- c. The request must be signed by both the Borrower's CEO and CFO.
- d. The request must include evidence acceptable to Lender that the sum requested is not excessive for purposes of initial licensure as a health insurance issuer and is in all other respects consistent with sound business practice and fair dealing, and the spirit and purpose of this Agreement.
- e. After the initial Solvency Loan disbursement, Lender shall provide promptly to Borrower Schedule A to Appendix 4 to accurately record the making of the initial disbursement, and the schedule of its repayment, consistent with all terms of this Agreement.

## II DISBURSEMENT SUBSEQUENT TO THE INITIAL INSTALLMENT

Borrower may draw additional disbursements of Solvency Loan Funds as needed, subsequent to the initial disbursement, and consistent with all terms, conditions, requirements, and limitations of this Agreement, up to the maximum amount stated on the Title Page of the Agreement, for either of the following purposes:

- I. To meet the regulatory capital requirements of a State in which Borrower seeks to be or remain licensed to issue CO-OP QHPs; and
2. To ensure that Borrower is in good standing under applicable State Insurance Laws and State Reserve Requirements, as well as in compliance with all terms of this Agreement.

The procedure for requesting disbursements of Solvency Loan Funds subsequent to the initial disbursement is to submit to Lender a written request that conforms to the following requirements:

- a. The request specifies a fixed dollar sum.
- b. The request, by explicit terms, states that the signatories to the request thereby certify that:
  - 1) The stated sum represents an amount necessary to satisfy State reserve capital and solvency requirements in a State in which Borrower is licensed and/or authorized to engage in the business of insurance as an issuer of health insurance policies that include business lines specified in the Business Plan, and/or
  - 2) The stated sum is sufficient and necessary to maintain any additional risk based capital reserve requirement imposed under this Agreement;
  - 3) The subsequent disbursement is necessary due to change in circumstances, such as: enrollment growth; unanticipated claims experience; network growth or change; change to State law or other regulatory requirements, or other cause, and
  - 4) The determination as to the necessity and sufficiency of the request has been developed, reviewed, and approved, with all appropriate actuarial certification and/or attestation, and in a manner consistent with industry standards and sound business practice.
- c. The request is signed by both the Borrower's CEO and CFO.
- d. Any Contingency Funds shall be requested using the procedures specified in this Section II.
- e. After any subsequent Solvency Loan disbursement, Lender shall provide promptly to Borrower a superseding Schedule A to Appendix 4, revised so as to accurately record the making of that subsequent disbursement, and the schedule of its repayment, in addition to all prior disbursements, including the initial disbursement.

f. Notwithstanding any other provision of the Loan Agreement to the contrary, no Solvency Loan Funds shall be disbursed to Borrower later than fifteen (15) years after the date of the initial draw of solvency funds, exclusive of the day of the initial draw. The date that is the last day of the fifteenth year following the date of the initial draw referenced in the preceding sentence is the Final Solvency Loan Disbursement Date (FSLDD).

## Appendix 6

### Interest Rates

Loan Interest Rate Start-Up: 0.00%

Loan Interest Rate Solvency: 0.25%

Post Default Interest Rate Start-Up: 0.71%

Post Default Interest Rate Solvency: 2.25%

For an explanation on Interest Rate calculation refer to Section 4.3 for Start-Up Loans and Section 5.5 for Solvency Loans.

**Appendix 7**  
**Business Plan**

[Incorporated by reference; original on file]

## **Appendix 8**

### **Payment Instructions**

At least 90 days prior to the first payment due date CMS will contact Borrower to provide payment instructions for the first payment and subsequent payments. Those instructions and the contact information below are subject to change over time upon reasonable notice and without formal amendment to the Agreement.

CMS and Borrower contact information for payment arrangements is as follows:

Address:

U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Attention: Reed Cleary

Telephone Number: (301) 492-4390

E.-Mail: [reed.cleary@cms.hhs.gov](mailto:reed.cleary@cms.hhs.gov)

Address:

Compass Cooperative Health Network  
1496 North Higley Road  
Suite 102 - #300  
Gilbert, AZ 85234

Attention: Kathleen Oestreich  
Project Officer

Telephone No.: (520) 404-9639

E-Mail: [Kathy@eastwickstrategy.com](mailto:Kathy@eastwickstrategy.com)



## Appendix 9

### Administration of Compliance Monitoring

Lender will monitor and assess the performance of Borrower in meeting the terms and parameters of the Loan Agreement and to ensure that the Borrower uses Federal funds in a manner consistent with section 1322 of the Affordable Care Act, the provisions of 45 CFR part 156 subpart F. To meet these requirements, Lender will monitor Borrower's:

1. Financial management;
2. Responsiveness to Member Grievances;
3. Maintenance of consumer control; and
4. Quality of care.

Borrower must, upon written request, submit financial reports, enrollment data, quality data, governance and election information, annual independently audited financial statements in accordance with any State financial reporting requirements, the employment contracts of the senior management of the CO-OP including the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, and the senior Executive Vice-President and other data required by Lender to monitor the performance of Borrower.

Lender may use a range of methods to monitor and assess the performance of Borrower including but not limited to any of the following:

1. Analysis of specific financial data required by the Loan Agreement and provided by Borrower, including aggregated annual and quarterly reports;
2. Site visits;
3. Analysis of Member Grievances and/or provider complaints;
4. Background checks of CO-OP personnel; and/or
5. On-site review of financial systems and documents up to and including Agreed Upon Procedures and/or Audits.

Borrower must cooperate with and facilitate any monitoring or program oversight conducted by Lender including audits, performance reviews, site visits, and corrective action plans. The timing of audits, site visits, and performance reviews are at Lender's discretion. Lender will notify Borrower 15 calendar days in advance of any audit or site visit, unless fraud or other malfeasance is suspected.

To maintain compliance with provisions of the CO-OP Program, Borrower will submit to Lender the following periodic reports on or prior to the specified due dates, or upon written request from Lender, during the Performance Period, as defined in section 2 of this Loan Agreement:

<b>Report/ Information</b>	<b>Data/Collection Period</b>	<b>Date(s) Due</b>
Quarterly Federal Financial Report (FFR) - SF 425	Quarterly	30 days following the last day of the quarter
Quarterly Financial Report	Quarterly	30 days following the last day of the quarter
Semi-annual Progress Report	Semi-annually	90 days following the last day of the second and fourth quarters

The Quarterly Financial Report must include information such as, but not limited to:

1. A statement that Borrower is in compliance with all relevant State licensure requirements appropriate for its stage of development or an explanation of any deficiencies and steps being taken to resolve them, and
2. Financial statements including a balance sheet, income statement, and statement of cash flows.

The Semi-annual Progress Report must provide information such as, but not limited to:

1. Progress on the goals, objectives, milestones, and activities identified in Borrower's Business Plan and the Loan Agreement;
2. Accomplishments, barriers, and lessons learned;
3. Data on the Borrower's responsiveness to Member Grievances, maintenance of consumer control, and quality of care once enrollment begins;
4. An updated Business Plan including supporting actuarial analyses; and
5. One of the semi-annual reports must include audited financial statements by an independent auditor.

In addition to the requirements above, Borrower must maintain documentation of the following provisions and provide evidence of compliance upon request from Lender during the Performance Period:

1. Section 501(c)(29) private nonprofit member organization status, if such status has been sought and obtained;
2. Offering of at least one CO-OP QHP at the silver level of benefits and one at the gold level of benefits in every individual Exchange that serves the geographic area in which it is licensed and intends to provide health care coverage;
3. If offering at least one plan in the small group market outside the Exchange, offering of a CO-OP QHP at both the silver and gold benefit levels in each SHOP that serves the geographic regions in which the organization offers coverage in the small group market; and
4. At least two-thirds of the contracts written by a CO-OP must be CO-OP QHPs offered in the individual and small group markets of the States in which the CO-OP is licensed.

Borrower agrees, and must require its providers, suppliers, and contracted entities performing services or functions on behalf of Borrower to agree, that Lender, the Comptroller General, the OIG or their designees have the right to audit, inspect, evaluate, examine, and make excerpts, transcripts, and copies of any books, records, documents, and other evidence of Borrower, and its members, providers and suppliers, and contracted entities related to their scope of work that pertain to Borrower's compliance with CO-OP Program requirements, and the ability of Borrower to repay loan funds to Lender. Lender will own any and all data submitted by Borrower.

Appendix 10  
Affirmation of State Regulatory Acceptance  
of CO-OP Loans as Regulatory Capital



**Department of Insurance  
State of Arizona**

*Financial Affairs Division*  
Telephone: (602) 364-3999  
Facsimile: (602) 364-3989

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**JANICE K. BREWER**  
Governor

2910 North 44<sup>th</sup> Street, Suite 210  
Phoenix, Arizona 85018-7269  
[www.id.state.az.us](http://www.id.state.az.us)

**CHRISTINA URIAS**  
Director of Insurance

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May 31, 2012

Mr. David Edwards  
Chairman & Vice President - Legal  
Gaen Healthcare Advisors LLC  
8770 W. Bryn Mawr Ave., Suite 1300  
Chicago, IL 60631

**RE: Compass Cooperative Health Network ("Compass CO-OP")**

Dear Mr. Edwards:

You asked our Department to review a form of promissory note ("Solvency Surplus Note") in connection with a loan program ("Solvency Loan") offered by the US Department of Health and Human Services, Centers for Medicare & Medicaid Services ("CMS"), providing for the funding of a consumer operated and oriented health plan in Arizona pursuant to Section 1322 of the Affordable Care Act. You asked us to determine whether the Solvency Surplus Note the Compass CO-OP intends to issue qualifies as a "surplus note" under Arizona Revised Statutes (A.R.S.) § 20-725. We have discussed same with Mr. Kevin Kendrick of CMS.

Based on our review of the Solvency Surplus Note, Solvency Loan, and our discussions with Mr. Kendrick, we believe that should Compass CO-OP issue the Solvency Surplus Note, it will qualify as a surplus note under A.R.S. § 20-725, and as such, the funds related to the Solvency Surplus Note could be used as surplus for reserve and solvency purposes. We discussed the following with Mr. Kendrick:

- (i) the use of Solvency Surplus Note proceeds is not permitted for initial capitalization or "start up" costs;
- (ii) the Solvency Surplus Note proceeds must be invested in eligible assets qualified under Arizona insurance statutes that meet the liquidity needs of Compass CO-OP;
- (iii) an Arizona court-appointed receiver for Compass CO-OP (acting in lieu of the department or agency), enforcing or implementing a state insurance law provision or taking a regulatory action, is within the definition of State Solvency Payment Restriction;
- (iv) the Department's approval authority over any proposed payments under the Solvency Surplus Note; and
- (v) the requirement that the Solvency Surplus Note comply with SSAP No. 41.

Surplus notes are recognized as surplus because of their highly restrictive nature. The holder of the surplus note agrees to the lowest priority for repayment in the event of a receivership, and payments under a surplus note can only be made from earned surplus upon the prior approval of the Department.

The Department will require compliance with SSAP No. 41, and it is our position that SSAP No. 41 does not permit the recapitalization of interest. Under the terms of the Solvency Surplus Note, interest may accumulate; however, the Compass CO-OP shall not record interest as a liability nor an expense until the Director grants specific approval for any individual interest payment. Further, Compass CO-OP shall not report unapproved interest through operations, shall not represent interest as an addition to principal or notional amount of the Solvency Surplus Note, and shall not accrue further interest, i.e. interest on interest.

Compass CO-OP does not currently have a certificate of authority in Arizona nor have they filed an application with us so we cannot issue a formal approval to allow Compass CO-OP to issue the Solvency Surplus Note. Please be aware that we are only issuing this letter prior to Compass CO-OP applying for an Arizona certificate of authority because of the unique provisions under the Affordable Care Act that require Compass CO-OP to seek our determination.

Please let me know if you have any questions. Thank you.

**Siaoo**

Kurt Regner  
Assistant Director  
Financial Affairs Division

cc: Gerrie Marks, Deputy Director  
Cary Cook, Chief Financial Compliance Officer  
Alex Shafer, Assistant Director, Life & Health Division  
Leslie Hess, Deputy Receiver/Legal Analyst

## **AMENDMENT TO LOAN AGREEMENT**

### **I. Purpose**

The purpose of this Amendment is to amend the Loan Agreement dated June 7, 2012 (“Agreement”), between Compass Cooperative health Network (“Borrower”) and the Centers for Medicare and Medicaid Services (“Lender”) (Lender and Borrower together are “the Parties”), pursuant to Section 19 of the Agreement, and in particular Section 19.4 thereof, to reflect a change of Borrower’s name.

### **II. Modifications**

Accordingly, the Parties hereby agree to the following specific modifications to the Agreement:

- a. Each reference in the Agreement to “Compass Cooperative Health Network” shall be replaced and superseded by “Compass Cooperative Mutual Health Network, Inc.”
- b. Each and every reference in the Agreement to “Borrower” shall be deemed to refer to, and shall refer to, Compass Cooperative Mutual Health Network, Inc.

### **III. Effective Date and Counterparts**

This Amendment shall take effect on the date on which Lender executes this Amendment, and shall be retroactive to the date the name change it reflects became legally effective. This Amendment may be executed in counterparts.

### **IV. No Other Change**

Except as expressly modified herein, all other terms and conditions of the Agreement shall remain in full force and effect, and are hereby ratified, endorsed and reaffirmed by the Parties hereto, as witnessed by their respective signatures below. In conjunction therewith, each Party

hereby expressly agrees to abide by and be legally bound by the covenants, terms and conditions of the Agreement, as the same be modified hereby. In the event of a conflict between any provision of the Agreement as originally drafted and the provisions of this Amendment, the provisions of this Amendment shall control.


IN WITNESS WHEREOF, Lender and Borrower have executed this Amendment as of the date indicated by each signature.

**For Lender:**

Per: \_\_\_\_\_  
Name: James T. Kerr  
Title: Deputy Director, Center for Consumer  
Information and Insurance Oversight

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

**For Borrower:**

  
Per: \_\_\_\_\_  
Kathleen Oestreich  
Title: Chief Executive Officer

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



## SECOND AMENDMENT TO LOAN AGREEMENT

### I. Purpose

The purpose of this Second Amendment ("Amendment") is to amend the Loan Agreement dated **June 7, 2012** ("Agreement"), between **Meritus Mutual Health Partners, f/k/a Compass Cooperative Health Network** ("Borrower"), and the Centers for Medicare & Medicaid Services ("Lender") (Lender and Borrower together are "the Parties"), through a written amendment consistent with Section 19.4 thereof. This Amendment shall serve the purpose of, among other things, replacing Appendix 2 of the Agreement with that Appendix 2 attached as Attachment 1 hereto, for the purpose of enabling the outstanding balance of the Start-up Loan to be treated as the proceeds of a surplus note pursuant to National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41 (SSAP 41). The Parties intend that this Amendment is necessary to advance the Parties' mutual interest, and that the Director of Insurance of the State of Arizona acknowledges the promissory note contained in Appendix 2 of the Agreement as a surplus note within the meaning of SSAP 41, and thus accept the proceeds of the Start-Up Loan (designated as "Series A" on the facing page of the Agreement) provided pursuant to the Agreement as an asset for purposes of determining and acknowledging regulatory capital and surplus.

### II. Amendment

Accordingly, the Parties hereby agree to amend the Agreement as follows:

1. By replacing the version of Appendix 2 to the Agreement that existed prior to the execution of this Amendment with that new Appendix 2 attached as Attachment 1 to this Amendment.
2. In the Definition section, under the defined terms "Interest" or "Interest Amount," inserting a period after the phrase "Accrual Period" and deleting the remainder of the text.
3. Deleting the text of the section entitled "4.3 Interest" in its entirety and replacing it with the following text:

The Interest rate for the Start-Up Loan and any individual Disbursement thereof shall be fixed for the life of the Loan at the amount in Appendix 6, which represents the Treasury rate on five year securities in effect on the initial Date of Award minus one percentage point ("Interest Rate"); provided, however, that in the event this Agreement is earlier terminated for cause under Section 16.3 below, the Interest Rate for the Start-Up Loan shall be fixed at the rate in Appendix 6, which is equal to the Treasury rate on five year securities based on the Date of Award. Interest on the Start-Up Loan and each individual Disbursement thereof shall, subject to all terms and limitations in the Start-up Loan Promissory attached hereto and incorporated herein by reference as Appendix 2, accrue on a monthly basis using a 360-day year and 30-day month for actual days elapsed. Interest shall be payable according to the Repayment Schedule attached to this Agreement and incorporated herein by reference as Schedule A of Appendix 2.

4. Deleting the text of the second paragraph of the section entitled "4.4 Repayment of Start-Up Loan" in its entirety and replacing it with the following text:

Unless Lender terminates this Agreement for cause under Section 16.3 below, Borrower shall, subject to all terms and limitations in the Start-up Loan Promissory attached hereto and incorporated herein by reference as Appendix 2.1 be obligated to repay 100 percent of the Start-Up Loan amount disbursed, plus any Interest due to Lender in accordance with the Repayment Schedule for the Start-Up Loan, subject to its ability to meet State Reserve Requirements and other solvency regulations, or requisite surplus note arrangements.

5. Deleting in its entirety the last sentence of the section entitled "5.5 Interest".
6. Deleting the text of paragraph (a) of the section entitled "15.1 Events of Default" in its entirety and replacing it with the following text:

Borrower, for reasons other than a State's Solvency Payment Restriction, fails to pay any installment of Principal or Interest on a Loan or other Obligation for more than 60 days after the date the same is due, subject to any applicable surplus note limitations in the Start-up Loan Promissory Note or the Solvency Loan Promissory Note attached hereto and incorporated herein by reference as Appendices 2 and 4, respectively, and such delinquent payment is not subsequently recapitalized in accordance with the terms hereof.

7. Replacing all occurrences of the phrase "capitalized interest," in section 5.6 or otherwise throughout the Agreement, with the phrase "interest due."

8. Deleting in its entirety the second sentence of the text below the table in Schedule A to Appendix 2.

### III. Execution and Effective Date

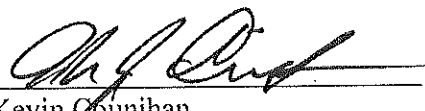
This Amendment may be executed by the Parties in any order and is effective upon execution by the last of the two Parties to so execute. This Amendment may be executed in counterparts.

### IV. No Other Change

Except as expressly modified herein, all other terms and conditions of the Agreement shall remain in full force and effect, and are hereby ratified, endorsed and reaffirmed by the Parties hereto, as witnessed by their respective signatures below. In conjunction therewith, each Party hereby expressly agrees to abide by and be legally bound by all covenants, terms and conditions of the Agreement, as the same be modified hereby. In the event of a conflict between any provision of the Agreement as originally drafted and the provisions of this Amendment, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, Lender and Borrower have executed this Amendment as of the date indicated by each signature.

**For Lender:**

Per:   
Name: Kevin Counihan  
Title: Director, Center for Consumer Information and Insurance Oversight  
Marketplace CEO

Date: 9/30/15

**For Borrower:**

Per: \_\_\_\_\_  
Name: Tom Zumbobel  
Title: Chief Executive Officer

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

**ATTACHMENT 1**

**Appendix 2**

**START-UP LOAN PROMISSORY NOTE**

**U.S. Department of Health and Human Services,  
Centers for Medicare & Medicaid Services**

**CO-OP Loan Borrower's Start-Up Loan, Series A, Dated June 7, 2013**

**PROMISSORY NOTE**

**Loan #: Start Up Loan Series A  
This 30<sup>th</sup> day of September, 2015  
By: Tom Zuintobel  
Title: Chief Executive Officer  
Meritus Mutual Health Partners  
2005 W. 14<sup>th</sup> Street, Suite 113, Tempe, AZ 85281  
("Borrower")**

The Start-up Loan provided pursuant to the Loan Agreement of which this Promissory Note is a part, and is incorporated into as Appendix 2, is a Surplus Note. Accordingly, Borrower promises, agrees, and covenants to pay to the order of Lender, the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (and its successors) the amounts specified in Schedule A below (this amount is called "Principal"), plus interest. Notwithstanding any conflicting provisions contained in the Loan Agreement, other than Section 3.4 of the Loan Agreement which is incorporated herein by reference. Payment shall be on the terms and subject to the conditions set forth in this Surplus Note. Interest shall not compound and shall be computed annually for the twelve (12) months ending on the anniversary of each disbursement on the basis of a year of twelve thirty-day months.

Borrower agrees to pay Principal and interest in the installments listed in Schedule A below, as may be amended from time to time.

PROVIDED, HOWEVER, that payment of Principal and interest shall be subject to the following conditions:

1. This surplus note shall not be a liability or claim against Borrower or any of its assets, except as provided in this Surplus Note. This Surplus Note does not confer any rights upon the Lender, as Note Holder, other than the right to receive payment of principal and interest on the terms and subject to the conditions set forth in this Surplus Note.
2. Principal and interest due under this Surplus Note are payable only in compliance with the Statements of Statutory Accounting Principles No. 41 and No. 72, the provisions of Section 20-725, Arizona Revised Statutes, and with the prior written approval of the Director of Insurance of the State of Arizona. Borrower shall pay any amounts due and owing to the extent provided. No payments, however, whether principal or interest, shall be made if thereby the surplus of the Borrower is reduced below the minimum (or stated amount above that minimum) statutory requirements of the State of Arizona. Subject to the approval requirements set

forth herein, Borrower at its option may repay all or any part of this Surplus Note at any time after issuance at the outstanding principal amount plus the interest accrued thereon to the date of repayment.

3. By acceptance of this Surplus Note, the Note Holder agrees that the payment of principal and interest hereunder is expressly subordinated to claims of creditors and members of Borrower, including a) policyholders of Borrower; b) claimant and beneficiary claims of policies issued by Borrower; c) all other classes of creditors other than surplus note holders; d) Operating expenses of Borrower, and e) reserve and solvency requirements as determined by applicable State law. If Borrower is dissolved and there are insufficient assets to pay in full the principal amount of and interest on all outstanding Surplus Notes, then Borrower shall pay on the Surplus Notes pro rata on the basis of the outstanding principal amount of each Surplus Note and the interest accrued thereon, unless and only to the extent that such payment is otherwise prevented, restricted or delayed by a State Solvency Payment Restriction. Regardless of the issuance date of this Surplus Note or any other surplus note of Borrower this Surplus Note shall be of equal rank with any other surplus note, unless such other surplus note is expressly subordinated to this Surplus Note.

Subject to the conditions for payment, repayment, discharge, and retirement of this Promissory Note set forth above, Borrower may, at its option, prepay this Promissory Note in whole or in part at any time without penalty.

The obligation of Borrower under this Promissory Note may not be offset or be subject to recoupment with respect to any liability or obligation owed to Borrower. No security agreement or interest, whether existing on the date of this Note or subsequently entered into, applies to the obligation under this Note.

No modification of this obligation is effective and no other agreement may modify or supersede the terms of this obligation, whether existing on the date of this Note or subsequently entered into, unless the modification or agreement is approved by the Director of Insurance of the State of Arizona.

Borrower hereby waives the rights of presentment (meaning the right to require CMS to demand payment) and notice of dishonor (meaning the right to require CMS to give notice to other persons that amounts due hereunder have not been paid).

This Note is attached to and expressly incorporated by reference in the Loan Agreement dated **June 7, 2012**, as amended, supplemented or otherwise modified and in effect from time to time, the "Loan. Agreement"), by and among Borrower and CMS, and evidences the "Solvency Loan" made by CMS thereunder.

The terms and conditions of the Loan Agreement are hereby incorporated in their entirety by reference as though fully set forth herein.

Address: 2005 W. 14<sup>th</sup> Street, Suite 113  
Tempe, AZ 85281

Attention:  
Telephone No.: 602.957.2113 x\_\_\_\_  
E-mail:

Meritus Mutual Health Partners

Per: \_\_\_\_\_  
Name: Tom Zumtobel

Title: Chief Executive Officer

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



# **Exhibit B**

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
200 Independence Avenue SW  
Washington, DC 20201



**OFFICE OF INSURANCE PROGRAMS**

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August 12, 2015

Compass Cooperative Health Plan, Inc.  
Attn: Tom Zumtobel  
2005 West 14<sup>th</sup> St, Suite 113  
Tempe, AZ, 85281

**Re: Amended Schedule A to Appendix 2 – Series A Start-up Loan,  
Promissory Note**

Dear Borrower:

Consistent with the Loan Agreement in force between Compass Cooperative Health Plan, Inc. and CMS, dated June 7, 2012, (Agreement), and the Promissory Note attached to, and incorporated into, the Loan Agreement as Appendix 2, CMS is providing the accompanying revised Schedule A, which fully reflects all loan disbursements made through the date of this letter, and which is attached in final form to this letter as Attachment 1 for illustrative purposes. Accordingly, the amended Schedule A to the Start-up Loan's Promissory Note is hereby incorporated into the Agreement as Schedule A to Appendix 2, and as of the date of this letter supersedes any preceding version of Schedule A to Appendix 2 to the Loan Agreement.

This act constitutes a revision and substitution by the Parties in the ordinary course of business during the Financing Period, to comport with the business realities of Compass Cooperative Health Plan, Inc. Accordingly, this event does not require a Loan Modification or other amendment to the Agreement.

Sincerely,

A handwritten signature in cursive script that reads "Meghan Elrington-Clayton".

Meghan Elrington-Clayton  
CO-OP Team

Attachment

## **Attachment 1**

