### **Terms for a Participation Agreement: Checklist[[1]](#footnote-1)**

**Scope of Services**

* The agreed upon scope of shared programs, products and services that would be provided under the Participation Agreement, including:
* A schedule of purchase prices, as applicable
* A minimum level of programs, services and products in which the member must participate, as applicable
* A “right of first refusal” with respect to the purchase or development of programs, products and services not included within the defined scope

**Agreements of the Participating Members**

Each participating member agrees:

* To fill all needs with respect to the agreed upon programs, products and services through the centralized functions of the PCA-HCCN
* As an alternative, the PCA-HCCN may require that each participating member participate in a minimum level (rather than all) of the programs, services and products offered and/or developed by the PCA-HCCN – each program, service and product will, in turn, be described in separate addendums to the ”master” Participation Agreement
* To comply with all policies and procedures developed by the PCA-HCCN, as well as the terms and conditions of all grant awards related to (and/or supporting) the shared programs, products and/or services
* If the PCA-HCCN provides the agreed upon scope through vendor contracts (either in whole or in part), to authorize the PCA-HCCN to draft, negotiate and execute such contracts
* If the PCA-HCCN provides the agreed upon scope through vendor contracts (either in whole or in part), to comply with the terms and conditions of such vendor contracts
* To pay a pro-rata share of the costs related to specific programs, products and/or services, as applicable and necessary
* To authorize the PCA-HCCN to hire staff as necessary to provide support services related to the shared programs, products and/or services (and, as necessary, to fire such staff)

**Agreements of the PCA-HCCN**

The PCA-HCCN agrees:

* To provide the agreed upon scope of programs, products and/or services through internal development, contracts with vendors, or a combination of the two
* To serve as the central point of communication and coordination with vendors vis-à-vis shared programs, products and services, as well as related training programs
* To take all necessary steps to establish the shared programs, products and/or services, including, as necessary, the hiring of staff and consultants
* To ensure that participating members receive appropriate and necessary training as applicable to the specific program, product and/or service

**Termination**

* Circumstances under which a member can terminate its participation in specific programs, products and/or services
* A statement that termination of participation would not result in termination of membership in the PCA-HCCN (assuming that the program, product or service is available solely to PCA-HCCN members)
* Financial and other obligations of a member that terminates participation, including penalties for early termination without just cause (and defined circumstances which would constitute just cause)

**Disclaimers**

* A provision under which the PCA-HCCN disclaims any warranties with respect to the shared programs, products and services
* A provision under which the PCA-HCCN does not guarantee the financial liability or viability of its members

**Insurance and Indemnification**

* Bilateral insurance and indemnification obligations
* If a member contracts with the PCA-HCCN to furnish the services of one or more of its personnel to the PCA-HCCN (and the other members), a statement that the parties will execute (or have executed) a separate vendor agreement protecting the member vis-à-vis actions of the PCA-HCCN and the other members is recommended

**Other**

* Acknowledgment that the governing Board and CEO of each member retains all authorities placed in them by applicable regulations, including Section 330 requirements
* Bilateral confidentiality provisions

1. The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The sample documents offer general guidance based on federal law and regulations and do not necessarily apply to all PCAs-HCCNs under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel. [↑](#footnote-ref-1)