

# Repayment Mechanism Arrangements Guidance

## Appendix B: Escrow Agreement Amendment Sample

Use of the format and text as shown in the sample escrow agreement amendment may expedite CMS’ review and should minimize the potential need for revisions, but it does not guarantee CMS’ approval of the repayment mechanism documentation (particularly if it has been modified). If the Accountable Care Organization (ACO) and/or banking institution chooses to modify the sample, the ACO and/or banking institution should use Track Changes in a Word document when submitting the draft to CMS for review. Note that any changes made to the sample will lengthen the CMS review time.

Instructions:

* Complete fields marked in bracketed and bolded text as instructed.
* According to the preferences of the banking institution issuing the escrow agreement amendment, provide documentation on letterhead or security paper with the banking institution’s logo.
* Note: The ACO may also be required to increase the amount of funds held in escrow, as calculated by CMS. The banking institution may demonstrate this increase in documentation separate from an amendment to the escrow agreement.

For additional information, review the [*Repayment Mechanism Arrangements Guidance*](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/Repayment-Mechanism-Guidance.pdf).

Disclaimers: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way, unless specifically incorporated into a contract. This document is intended only to provide clarity to the public regarding existing requirements under the law.

This communication material was prepared as a service to the public and is not intended to grant rights or impose obligations. It may contain references or links to statutes, regulations, or other policy materials. The information provided is only intended to be a general summary. It is not intended to take the place of either the written law or regulations. We encourage readers to review the specific statutes, regulations, and other interpretive materials for a full and accurate statement of its contents.

### **ESCROW AGREEMENT AMENDMENT**

**THIS AMENDMENT** (“Amendment”), dated **[Date of Amendment]**, is made to the Escrow Agreement (“Agreement”) dated **[Date of execution of original escrow agreement]** by and between **[ACO Legal Entity Name]** (“Depositor”); the United States Department of Health and Human Services (“HHS”), Centers for Medicare & Medicaid Services (“CMS”) (“Recipient”); and**[banking institution name]**, as escrow agent hereunder (“Escrow Agent”), collectively, the “Parties.”

The Parties wish to amend the Agreement to reflect the term of the Medicare Shared Savings Program Accountable Care Organization Participation Agreement (“Participation Agreement”) entered into by the Depositor and Recipient.

**THEREFORE,** in consideration of the foregoing and the mutual covenants set forth below, the Parties hereby agree as follows:

1. The Account shall remain open, and this Agreement shall not terminate until (select one)

**[ ]** **[Date]**, which is 12 months following the conclusion of the last performance year of the Depositor’s Participation Agreement.
[ ]  **[Date]**, which is the last day of the Depositor’s second performance year under a two-sided model under the Participation Agreement, provided that this Agreement will automatically extend on **[Date that is last day of the ACO’s first performance year under a two-sided model]** and annually thereafter for a 12-month period, such that the term of this Agreement will eventually cover all remaining performance year(s) of the Participation Agreement under a two-sided model and end on **[final expiration date]**, which is 12 months following the conclusion of the last performance year of the Depositor’s Participation Agreement. If Escrow Agent elects not to automatically extend this Agreement for any additional period, it must provide Recipient with at least ninety (90) days advance written notice of non-extension.

2. Any conflict between the Agreement and this Amendment will be resolved in favor of this Amendment.

3. Except as set forth above, all other terms and conditions of the Agreement are not further amended and remain in full force and effect.

**IN WITNESS WHEREOF,** the parties have caused this Amendment to be executed by their duly authorized representatives as of the date first above written.

#### DEPOSITOR

 By: **[Signature]**

 Name: **[Printed Name]**

 Title: **[Title]**

#### RECIPIENT

 By: **[Signature]**

 Name: **[Printed Name]**

 Title: **[Title]**

#### [banking institution name] as ESCROW AGENT

 By: **[Signature]**

 Name: **[Printed Name]**

 Title: **[Title]**