

CNYCC PARTNER ORGANIZATION AGREEMENT



INSTRUCTIONS PAGE

1. Page 1 - Provide the following information: the date of signature, the name of the Partner Organization, the type of organization (e.g., hospital, physician practice), and the address of the organization;
2. Page 21 – Organizations shall provide the following information: the name of the Partner Organization, the signature of authorized person to sign the agreement, authorized person's name and title. (Please note that Organization will have the option of completing signature requirement in either written or electronic form);
3. Please scan and send the executed Standard Partner Agreement to dsripcarecollaborative@gmail.com by Friday November 6, 2015.
4. Please proceed to complete, scan, and send the attached Business Associate Agreement (BAA) and Delivery of Notice documents.





CNYCC PARTNER ORGANIZATION AGREEMENT

This Partner Organization Agreement (“Agreement”) is made and entered into this ____ day of _____, 2015 (“Effective Date”) by and between Central New York Care Collaborative, Inc., a New York not-for-profit corporation (“CNYCC”), located at 109 Otisco Street, Syracuse, NY 13204 and _____, a _____ [fill in type of entity] (“Partner Organization”) located at _____. Each may be referred to as a “Party” or collectively as the “Parties.”

Recitals

A. The New York State Department of Health (“DOH”) has: (i) approved the PPS Project Plan submitted to form a Performing Provider System (“PPS”) under the New York State Delivery System Reform Incentive Payment Program (“DSRIP”) to serve individuals enrolled in Medicaid and uninsured individuals (the “PPS Patient Population”) in the counties of Cayuga, Lewis, Madison, Oneida, Onondaga and Oswego (“Central New York Region”); and (ii) designated CNYCC as the PPS Lead.

B. Partner Organization has agreed to collaborate with CNYCC and other Partner Organizations and participate in the PPS and PPS Projects in order to implement the PPS Project Plan approved by DOH.

C. Pursuant to the PPS Project Plan, the PPS will seek to enhance access to primary and behavioral health care, improve care coordination among providers in the Central New York Region, reduce avoidable hospital usage, and evolve during the five-year term of DSRIP into an effective integrated delivery network.

D. This Agreement sets forth the Parties’ respective rights and obligations regarding participation in the PPS and the implementation of DSRIP and the PPS Project Plan.

AGREEMENT

In consideration of the forgoing, the mutual covenants contained herein and for purposes of furthering implementation of the PPS Project Plan and achieving the DSRIP Goals, the Parties agree as follows:

ARTICLE I DEFINITIONS

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the meaning set forth in Appendix A.





ARTICLE II NETWORK DEVELOPMENT AND PARTICIPATION

Section 2.1. CNYCC Obligations as PPS Lead Entity. Subject to the availability and extent of DSRIP Funds, DSRIP Requirements and the terms of this Agreement, as the PPS Lead, CNYCC shall:

- (a) Create and operate a shared, transparent governance structure and processes consistent with CNYCC's bylaws;
- (b) Comply with CNYCC's policies and procedures duly adopted by CNYCC's Board of Directors and governance committees or otherwise in accordance with CNYCC's bylaws (the "PPS Policies and Procedures");
- (c) Conduct strategic planning for PPS development and operation of an integrated delivery system;
- (d) Establish the Funds Flow Distribution Plan and provide financial management and oversight of DSRIP Funds;
- (e) Build PPS-wide capacity and manage PPS operations to implement DSRIP and the PPS Project Plan;
- (f) Develop and implement a plan and policies to promote cultural competence and health literacy consistent with DSRIP Requirements (the "Cultural Competence and Health Literacy Plan");
- (g) Develop a plan for population health management for the PPS Patient Population consistent with DSRIP Requirements (the "Population Health Management Plan"), including data exchange and analytics, and improved care coordination among Partner Organizations;
- (h) Assess community needs in accordance with DSRIP Requirements;
- (i) Promote Partner Organizations' understanding of and commitment to DSRIP Goals and PPS goals, as well as accountability for PPS performance;
- (j) Analyze options for value-based purchasing and provide analyses to Partner Organizations, consistent with applicable law;
- (k) Serve as the liaison with DOH in its oversight of the PPS and DSRIP reporting, and participate in the learning collaborative process established and operated by DOH;





- (l) Provide a mechanism for the PPS Patient Population to provide input about PPS Projects and activities; and
- (m) Develop a policy consistent with DSRIP Requirements for progressive sanctions for poor performing Partner Organizations (the “Progressive Sanctions Policy”) and a process to address disputes between and among PPS participants and CNYCC (the “Dispute Resolution Policy”) as referenced in Articles X and XI of this Agreement.

Section 2.2. Partner Organization Obligations. As a Partner Organization in the PPS, Partner Organization shall:

- (a) Collaborate with CNYCC and other Partner Organizations in the PPS in good faith to implement DSRIP and the PPS Project Plan;
- (b) Comply with the PPS Policies and Procedures;
- (c) Appoint representative(s) to participate in PAC meetings in accordance with DSRIP Requirements and PAC procedures;
- (d) Participate in implementation of the PPS Project Plan to develop an integrated delivery system for the PPS;
- (e) Participate in implementation of the Cultural Competence and Health Literacy Plan;
- (f) Participate in implementation of the Population Health Management Plan, including but not limited to data reporting and shared care planning to assess and improve the health of the PPS Patient Population;
- (g) Provide information as reasonably requested by CNYCC and consistent with applicable law for purposes of PPS planning for value-based purchasing;
- (h) Abide by the procedures and requirements of the Progressive Sanctions Policy and Dispute Resolution Policy; and
- (i) Notify CNYCC: (i) within twenty-four (24) hours of receiving notice of any governmental audit or investigation, any legal violation or any other enforcement action related to the PPS or Partner Organization’s participation in PPS Projects or the obligations covered by this Agreement or Project Agreements; (ii) within twenty-four (24) hours of receipt of any final adverse enforcement action taken against Partner Organization for any violation of federal or state laws or regulations material to the PPS; and (iii) within five (5) working days of obtaining knowledge of any final adverse





enforcement action taken against a contractor of Partner Organization for any violation of federal or state laws or regulations material to the PPS.

ARTICLE III PROJECT DEVELOPMENT AND IMPLEMENTATION

Section 3.1. CNYCC Obligations. Subject to the availability and extent of DSRIP Funds, DSRIP Requirements and the terms of this Agreement, as the PPS Lead CNYCC shall undertake the following activities in relation to PPS Projects:

- (a) Plan and undertake the Projects listed in the PPS Project Plan, in collaboration with Partner Organizations identified as Project-specific participants by CNYCC;
- (b) Provide governance oversight, Project planning and management, and Metrics for each Project;
- (c) Develop or facilitate development or identification of Project Protocols;
- (d) Enter into Project Agreements with Partner Organizations as necessary;
- (e) Provide training for Partner Organizations to enhance capacity to conduct Projects and meet Metrics and Milestones;
- (f) Conduct Project improvement and performance activities, including but not limited to development of the RCE process and reporting on data analysis, Metrics and Milestones to improve PPS and Partner Organization performance;
- (g) Develop an information technology strategy to facilitate Project implementation by Partner Organizations and support Project activities and goals;
- (h) Provide an analysis of workforce needs and a plan for training and recruitment to assist Partner Organizations to meet those needs;
- (i) Identify and engage Community-Based Organizations to contribute to realizing Project goals;
- (j) Facilitate collaboration among Project participants, coordinate Project activities, and monitor Project performance;
- (k) Provide Partner Organizations with access to Project-related information, best practices, and standards disseminated by DOH or adopted by CNYCC; and





- (l) Report performance on Metrics and Milestones to Project participants and to DOH as required by DSRIP.

Section 3.2. Partner Organization Obligations. For each Project in which Partner Organization participates, Partner Organization shall:

- (a) Comply with Project requirements, as set forth in this Agreement, Project Agreement(s) and Project Protocols, including but not limited to reporting in accordance with the performance measures, information, and timelines specified by CNYCC;
- (b) Collaborate in good faith with other Project participants and CNYCC to achieve Project goals and Metrics;
- (c) Adopt and implement Project clinical protocols and pathways provided by CNYCC to Partner Organization, as applicable to Partner Organization's delivery of health care services and Project participation, except that such protocols and pathways shall not override the professional judgment of Partner Organization and its licensed health care professionals in treating patients in individual cases;
- (d) Participate in the RCE process established by CNYCC for the PPS, as applicable to Partner Organization's Project participation;
- (e) Act to address changes recommended by CNYCC in relation to Partner Organization's Project performance, based on data analysis or Project evaluation;
- (f) Meet Project requirements and timeframes for adoption of information technology as applicable to Partner Organization's Project participation;
- (g) Report information as reasonably required by CNYCC for workforce analysis to determine Project staff and training needs; and
- (h) Enter into written agreements with CNYCC, other Partner Organizations, Community-Based Organizations or other third parties as reasonably necessary to carry out Partner Organization's role in the Project.

ARTICLE IV DISTRIBUTION OF DSRIP FUNDS

Section 4.1. Receipt and Distribution of DSRIP Funds. CNYCC shall receive DSRIP Funds on behalf of the PPS and shall use, manage, and distribute DSRIP Funds in accordance with the Funds Flow Distribution Plan, DSRIP Requirements, this Agreement, Project Agreements, and applicable laws and regulations.





Section 4.2. Basis for DSRIP Funds Payment to Partner Organization. Payment of DSRIP Funds by CNYCC to Partner Organization shall be in accordance with: (i) this Agreement and Project Agreements, if any executed by the Parties; (ii) the Funds Flow Distribution Plan; and (iii) DSRIP Requirements. Partner Organization acknowledges that in accordance with this Section 4.2 and Section 4.3, Partner Organization may not receive DSRIP Funds, and that any such funds may not cover all the costs or expenses related to Partner Organization's participation in a PPS Project.

Section 4.3. Payments Contingent. The payment of DSRIP Funds to CNYCC will be contingent upon the PPS achieving the Milestones and Metrics for PPS performance, as well as statewide DSRIP performance. CNYCC payment of DSRIP Funds to Partner Organization shall be contingent upon: (i) availability and extent of DOH payment of DSRIP Funds to CNYCC; (ii) the submission of clinical and financial data by Partner Organization to meet CNYCC reporting obligations to DOH; (iii) Partner Organization's performance on Metrics and Milestones for any performance-based payments applicable to Partner Organization; and (iv) such other conditions and criteria set forth in the Funds Flow Distribution Plan.

Section 4.4. Use of DSRIP Funds.

- (a) CNYCC shall use DSRIP Funds solely for DSRIP purposes in accordance with DSRIP Requirements and the Funds Flow Distribution Plan. Such purposes may include use of DSRIP Funds for administrative and other costs of PPS development and management and all other actions to fulfill the obligations set forth in the DSRIP Agreement, this Agreement, Project Agreements, and DSRIP Requirements.
- (b) Partner Organization shall use DSRIP Funds provided by CNYCC for specified purposes, including but not limited to the provision of services, capital improvements and equipment, as set forth in this Agreement, Project Agreement(s), applicable Project Protocols and the Funds Flow Distribution Plan ("Specified Purpose Funds"), solely for such purposes.

Section 4.5. Return of DSRIP Funds. Partner Organization shall return DSRIP Funds provided by CNYCC to Partner Organization in the event that: (i) CNYCC has provided Specified Purpose Funds to Partner Organization, and Partner Organization fails to expend the funds for such purpose in the applicable timeframe; or (ii) DOH or the New York State Office of Medicaid Inspector General ("OMIG"), or CNYCC in consultation with DOH or OMIG, determines that Partner Organization's use of the DSRIP Funds constituted fraud, waste or abuse. Partner Organization shall repay such DSRIP Funds within 30 days' written notice from CNYCC stating the basis for the repayment demand, unless Partner Organization has submitted the matter to the dispute resolution process set forth in Article XI herein, and the process has not concluded. In the event of a determination of fraud, waste or abuse by DOH or OMIG, Partner Organization may not submit the matter for dispute resolution.





Section 4.6. Record Keeping. The Parties shall keep records of expenditures of DSRIP Funds in accordance with Article XIII of this Agreement.

ARTICLE V FINANCIAL SUSTAINABILITY ASSESSMENT

Section 5.1. Financial Sustainability. Partner Organization shall provide Financial Information as reasonably requested by CNYCC to assess the financial condition of Partner Organization. In the event CNYCC determines that Partner Organization is at risk of financial failure, CNYCC shall monitor the financial performance and sustainability of Partner Organization as required by DSRIP, until such time as CNYCC determines that Partner Organization is no longer at risk of financial failure or the termination of this Agreement, whichever is sooner. In no event shall this Article or performance hereunder be construed or relied upon by Partner Organization or any third party to establish any liability of CNYCC for the financial condition or financial failure of Partner Organization or the debts or financial obligations of Partner Organization.

ARTICLE VI INFORMATION TECHNOLOGY AND SYSTEMS

Section 6.1. CNYCC Obligation to Facilitate Data Exchange and Use. CNYCC shall promote the secure exchange and use of clinical information and data between and among CNYCC and Partner Organizations consistent with HIPAA and other applicable privacy laws and regulations. In this regard CNYCC shall:

- (a) Assess the current data exchange capacity of Partner Organizations and system-wide interoperability, and develop an IT strategy to facilitate secure data exchange among Partner Organizations to support DSRIP goals and Project management and activity;
- (b) Work with HealtheConnections or such other RHIO designated by CNYCC to determine policies and functionality of data exchange through the RHIO for Partner Organizations;
- (c) Provide or arrange for training to facilitate connection to the RHIO for Partner Organization, as needed;
- (d) Provide information to Partner Organization about consent policies and practices for Medicaid beneficiaries;
- (e) Provide direction to Partner Organization about interoperability, connectivity, and functionality requirements of PPS' IT systems and assist in vendor selection to meet those requirements;





- (f) Develop a population health management platform to enable care coordination and data analysis, and provide training to Partner Organization to facilitate access and use; and
- (g) Establish PPS Policies and Procedures for security and privacy for the exchange of PHI to carry out the PPS Project Plan, consistent with HIPAA, state privacy laws and the DEAA.

Section 6.2. Partner Organization Obligations to Cooperate in and Implement Data Exchange and Use. Partner Organization shall:

- (a) Cooperate in and provide information to assess Partner Organization's capabilities to conduct secure data exchange with CNYCC and other Partner Organizations as a condition of Partner Organization's access to PHI for PPS Project participation, including access to confidential data derived from the Medicaid database maintained by DOH ("Medicaid Confidential Data");
- (b) Take steps as needed to participate in the HIE for secure messaging and data exchange, including but not limited to entering into an agreement with a RHIO, paying the cost, if any, to connect to the RHIO, as well as making staff available for training, and implementing consent practices, in accordance with RHIO and PPS Policies and Procedures;
- (c) Use secure messaging and share data with CNYCC and other Partner Organizations, as required for Project participation;
- (d) Assign a security and privacy officer responsible for overseeing compliance with PPS Policies and Procedures concerning data security and privacy;
- (e) Implement and maintain data management standards required by PPS Policies and Procedures, as applicable and necessary for Project implementation by Partner Organization; and
- (f) Comply with PPS Policies and Procedures for exchanging PHI and other information with CNYCC and Partner Organizations, including but not limited to, PPS Policies and Procedures to promote the secure exchange of information and compliance with HIPAA, state privacy laws and requirements to protect the confidentiality of Medicaid Confidential Data. Partner Organization shall execute the Business Associate Agreement attached hereto as Appendix B (the "Business Associate Agreement") as a condition of executing this Agreement.

Partner Organization acknowledges that it may be required to undertake specific steps to enhance its privacy and/or security practices as a condition of receiving PHI and/or





Medicaid Confidential Data to participate in PPS Projects, including but not limited to the adoption of dual factor authentication and other steps identified by the security assessment process required by DOH for access to Medicaid Confidential Data.

ARTICLE VII WORKFORCE STRATEGY

Section 7.1. Obligation of PPS for Workforce Strategy. In order to develop and implement a Workforce Strategy as required for DSRIP implementation, CNYCC shall:

- (a) Retain consultants as reasonably determined necessary by CNYCC to collect and analyze information from Partner Organizations to assess the current PPS-wide workforce ("Workforce") and develop the Workforce Strategy;
- (b) Develop a training and recruitment plan for the Workforce and oversee implementation of such plan;
- (c) Provide Workforce training targeted to identified needs to facilitate the workforce transition required by DSRIP and PPS Projects;
- (d) Retain consultants as reasonably determined necessary by CNYCC to prepare an analysis of compensation and benefits across the Workforce, including the impact of the anticipated Workforce transition to meet DSRIP goals; and
- (e) Collect and report information with respect to the impact of DSRIP implementation on aggregate Workforce expenditures.

Section 7.2. Partner Organization Implementation. Partner Organization shall participate in implementing the Workforce Strategy and collaborate with CNYCC to achieve the Workforce Strategy goals, including but not limited to:

- (a) Provide data and information to consultant(s) retained by CNYCC and to CNYCC regarding Partner Organization's workforce, including but not limited to recruitment and redeployment needs, anticipated costs of workforce transition, titles, workforce expenditures, and anticipated new hires, consistent with applicable law;
- (b) Provide copies of labor agreements, human resource policies, and other documents relevant to Workforce planning and transition to CNYCC or to consultant(s) retained by CNYCC, consistent with applicable labor agreement provisions, if any;





- (c) Make workforce available for training in-person, online or via webinar, consistent with applicable labor agreements, if any, and Partner Organization's operational needs; and
- (d) Provide Partner Organization's workforce with information prepared for the Workforce related to DSRIP, the Workforce transition and training, including written and digital materials and online and webinar training.

ARTICLE VIII PPS COMPLIANCE PROGRAM

Section 8.1. CNYCC Compliance Program. CNYCC shall develop and implement a compliance program to prevent, detect, and address compliance issues that arise with respect to PPS Projects and operations ("Compliance Program").

Section 8.2. Partner Organization Participation. Partner Organization shall comply with CNYCC's Compliance Program, including designation of an individual to oversee Partner Organization's implementation of the Compliance Program; provided, however, that nothing in this Agreement or the Compliance Program shall diminish or eliminate the obligation of Partner Organization to maintain a compliance program for its own operations and activities in accordance with laws and regulations applicable to Partner Organization.

Section 8.3. Confidentiality. Each Party shall treat all information shared with the other Party about compliance matters as confidential to the extent permitted by existing law and regulation. The exchange, receipt and use of compliance-related information by the Parties shall be governed by Article XII.

ARTICLE IX TERM AND TERMINATION

Section 9.1. Term. This Agreement shall terminate on December 31, 2020, or at any prior date determined by DOH for DSRIP termination, unless the Agreement is terminated earlier in accordance with the provisions of this Article.

Section 9.2. Termination by Partner Organization. In the event that Partner Organization reasonably determines that performance of its obligations under this Agreement is no longer financially feasible, Partner Organization may terminate this Agreement by delivering written notice to CNYCC at least ninety (90) days before the end of any DSRIP Year. In such event, termination in accordance with this Article IX shall take effect at the end of the DSRIP year in which notice is provided, or earlier upon the written agreement of the Parties. Partner Organization may terminate this Agreement immediately upon written notice to CNYCC if DOH withdraws its approval for CNYCC to participate in DSRIP.





Section 9.3. Termination by CNYCC. CNYCC may terminate this Agreement in the event that Partner Organization breaches a material term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from CNYCC regarding the breach (or such other longer cure period as CNYCC deems reasonable under the circumstances). In addition, CNYCC may terminate this Agreement upon twenty-four (24) hours' written notice to Partner Organization if: (a) the process to sanction Partner Organization under the terms of the Progressive Sanctions Policy has concluded with a decision to exclude Partner Organization from the PPS; or (b) any license, certification or government approval of Partner Organization material to its performance under this Agreement is suspended, terminated, revoked, or surrendered;

Section 9.4. Termination for Exclusion. Either Party may terminate this Agreement immediately if and when the other Party is excluded from Medicare or Medicaid or any federal or state health care program.

Section 9.5. Effect and Process in the Event of Termination. In the event of termination of this Agreement for any reason: (i) the Parties shall work together to assure that there is no interruption in needed services to members of the PPS Patient Population and Partner Organization's patients; (ii) Partner Organization shall return any unexpended Specified Purpose Funds provided by CNYCC to Partner Organization. DSRIP Funds provided to Partner Organization as a bonus payment for past performance shall not be subject to return by Partner Organization. Upon termination of the Agreement, Partner Organization shall no longer be entitled to receive any distribution of DSRIP Funds from CNYCC.

Section 9.6. Termination from Project Participation. If Partner Organization fails to carry out a material obligation with respect to a Project, CNYCC may send Partner Organization a notice stating the failure to perform and providing Partner Organization with a thirty (30) day period to meet such Project obligation (or such other longer cure period as CNYCC deems reasonable under the circumstances). If Partner Organization does not meet its obligation within the specified time period, CNYCC shall have the right to suspend or terminate Partner Organization's participation in the Project and/or initiate the Progressive Sanctions Policy process with respect to Partner Organization.

Section 9.7. Suspension from Project Participation and PPS Operations Due to Legal or Patient Safety Risks. If CNYCC reasonably determines that Partner Organization has failed to comply with applicable law or regulation or its obligations under this Agreement and that such failure poses a substantial and immediate risk of legal noncompliance by CNYCC or other Partner Organizations or a risk of harm to patients cared for in a PPS Project, CNYCC shall have the right to immediately suspend Partner Organization from participation in a Project or PPS operations by delivering written notice to Partner Organization stating the reason for the suspension. CNYCC shall have the discretion to continue such suspension until such noncompliance is remedied to the reasonable satisfaction of CNYCC.





ARTICLE X

SANCTIONS FOR POOR PERFORMING PARTNER ORGANIZATIONS

Section 10.1. Progressive Sanctions Policy. Consistent with DSRIP Requirements, CNYCC shall adopt a Progressive Sanctions Policy to establish a process for progressive sanctions of Partner Organizations for poor performance, including but not limited to exclusion from the PPS. The Progressive Sanctions Policy shall provide that a Partner Organization will be offered training, technical assistance or peer-to-peer counseling before a sanction may be imposed.

ARTICLE XI

DISPUTE RESOLUTION

Section 11.1. Dispute Resolution Process. CNYCC shall adopt a Dispute Resolution Policy to establish a process to resolve disputes that arise between Partner Organizations or between CNYCC and Partner Organization(s). CNYCC shall provide Partner Organization with a copy of the Dispute Resolution Policy.

Section 11.2. Rights and Obligations of Partner Organization. Partner Organization shall have the right to initiate the dispute resolution process under the Dispute Resolution Policy for any dispute within the scope of such policy. Partner Organization shall participate in the dispute resolution process set forth in the Dispute Resolution Policy if notified that it is a party to a dispute that is within the scope of the Dispute Resolution Policy.

ARTICLE XII

DATA USE AND CONFIDENTIALITY

Section 12.1. Sharing PHI. Partner Organization agrees that in order to implement the PPS Project Plan, Partner Organization may need to share PHI with CNYCC and other Partner Organizations. CNYCC and Partner Organization shall enter into the Business Associate Agreement attached hereto as Appendix B. Partner Organization may also be required to enter into separate data use agreements as a condition of Project participation. The Parties agree that they will only use and share PHI in a manner consistent with (i) HIPAA; (ii) all other applicable state and federal laws and regulations; (iii) DSRIP program guidance issued by DOH or CMS; and (iv) the Business Associate Agreement. To the extent legally required, or required by PPS Policies and Procedures, Partner Organization shall seek any necessary consent from patients with respect to any data to be shared for DSRIP purposes.

Section 12.2. Sharing Confidential Information. The Parties acknowledge that, in addition to sharing PHI in accordance with the terms of the Business Associate Agreement, they may need to share other Confidential Information, as defined in Appendix A. The Parties shall share Confidential Information in accordance with this Article XII.





Section 12.3. Obligations of Confidentiality and Restrictions on Use. A Party receiving Confidential Information from the other Party (the “Receiving Party”) shall not: (a) use the Confidential Information of the Party making the disclosure (the “Disclosing Party”), except as necessary to perform its obligations or exercise its rights under this Agreement or to carry out the PPS Project Plan or DSRIP Requirements; or (b) disclose or otherwise allow access to the Confidential Information of the Disclosing Party to third party, except as permitted under Section 12.4 or Section 12.5. The Receiving Party shall protect the Confidential Information of the Disclosing Party with at least the same level of care as it protects its own Confidential Information of similar nature, but not less than a reasonable level of care.

Section 12.4. Disclosure of Confidential Information to Representatives. The Receiving Party may disclose the Disclosing Party’s Confidential Information to the Receiving Party’s officers, directors, employees, professional advisors, and other agents and representatives to the extent such disclosure is necessary for the performance of their obligations under this Agreement; provided, however, that the Receiving Party shall cause such Confidential Information to be held in confidence by any such recipient.

Section 12.5. Compelled Disclosure. If a Receiving Party is requested by a court or state or federal regulatory body to disclose Confidential Information in any legal or administrative proceeding or determines that a disclosure is affirmatively required by applicable laws, the Receiving Party shall promptly notify the Disclosing Party of such request or determination so that the Disclosing Party may take, at its expense, such steps as are necessary to protect the Confidential Information. If the Receiving Party is thereafter required to disclose the Confidential Information to the court or regulatory body compelling such disclosure or to which such disclosure is required to be made, only the part of such Confidential Information as is required by applicable laws shall be disclosed.

Section 12.6. Exceptions. The obligations of confidentiality and restrictions on use as set forth in this Agreement shall not apply to any Confidential Information that: (a) is in the public domain or is otherwise publicly known, without any breach hereof; (b) was previously known prior to disclosure by the Disclosing Party hereunder to the Receiving Party free of any obligation to keep it confidential; (c) was rightfully received by the Receiving Party from a third party whose disclosure would not violate a confidentiality obligation owed by such third party to the Disclosing Party and which disclosure was not in breach of the Agreement; (d) was subsequently and independently developed by the Receiving Party without reference to such Confidential Information disclosed under the Agreement; or (e) was expressly approved for release by written authorization of the Disclosing Party.

Section 12.7. Obligations Upon Termination. Upon expiration or termination of this Agreement for any reason, each Party shall promptly return, or destroy in a secure manner, any Confidential Information of the other Party and shall retain no copies thereof, except as required by law or to verify or document performance under this Agreement for audit purposes and to enforce its rights and defend itself from any claims or causes of





action related to this Agreement or the other Party. Each Party shall extend the protections of this Agreement to any Confidential Information retained pursuant to this Section 12.7 and limit further uses and disclosures to those purposes permitted by this Section 12.7.

ARTICLE XIII RECORD RETENTION AND AUDITS

Section 13.1. Obligation to Maintain Records. The Parties shall maintain and retain operational, financial, administrative, medical records, and other documents related to the subject matter of this Agreement (“Records”) in accordance with applicable law, DSRIP Requirements, and PPS Policies and Procedures.

Section 13.2. Sufficiency of Records. The Records shall be sufficient to support confirmation that all data submitted by Partner Organization to CNYCC and by CNYCC to DOH for any and all reports required by DOH, CMS and DSRIP is accurate and complete.

Section 13.3. Records of Expenditures of DSRIP Funds. The Parties shall maintain Records of expenditures of Specified Purpose Funds and other DSRIP Funds as required by applicable law, DSRIP Requirements, and PPS Policies and Procedures.

Section 13.4. Availability of Records. To the extent it will not cause a violation of privacy rights of third parties or applicable law, and provided that neither Party shall have an obligation to waive applicable attorney-client, auditor-client or other legal privilege, each Party shall at all times during the term of this Agreement and thereafter make its Records available to the other Party upon reasonable request, provided that the requesting Party shall give the other Party at least ten (10) days’ prior written notice of its need for any such Records, and any inspection of such Records conducted at a Party’s place of business shall be conducted without material interference to the operations of such Party.

Section 13.5. Regulatory Audit. In the case of an audit performed by or on behalf of any state or federal regulatory body (“Regulatory Audit”), each Party will provide to the regulatory body or to the other Party for delivery to the regulatory body such Records, and access to such Party’s facilities, as may be reasonably required by such Regulatory Audit, subject to applicable law.

Section 13.6. CNYCC Audits. CNYCC (or a third party engaged by CNYCC) may audit Partner Organization’s Records from time to time to confirm compliance with this Agreement. Upon CNYCC’s request, Partner Organization will provide to CNYCC or to such third party Records reasonably requested by CNYCC or such third party and access to Partner Organization’s facilities to the extent reasonably required by CNYCC or such third party, in each case within the scope of such audit. All such audits will be conducted during regular business hours, and CNYCC will provide reasonable prior notice to Partner





Organization of such audits, which shall include a description of the scope of the audit. CNYCC shall be responsible for reasonable costs associated with any such audit.

ARTICLE XIV REPRESENTATIONS AND WARRANTIES

Section 14.1. Representations and Warranties of CNYCC. CNYCC hereby represents and warrants to Partner Organization that:

- (a) Neither CNYCC, nor any of its employees, agents, or contractors who will perform services pursuant to this Agreement, are excluded from participation in Medicare or Medicaid or any other federal or state health care program;
- (b) CNYCC has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated herein, and to perform its obligations in accordance with the terms of this Agreement;
- (c) All necessary action required to have been taken by CNYCC or on its behalf has been taken to authorize the execution and delivery of this Agreement, and performance of its obligations hereunder; and
- (d) The execution, delivery and performance of CNYCC's obligations under this Agreement do not and will not: (i) violate or conflict with any provision of CNYCC's certificate of incorporation or bylaws; (ii) violate any applicable laws or DSRIP Requirements; or (iii) conflict with, result in a breach of, constitute a default under, or require the consent of any counterparty (which consent has not been obtained) to any agreement to which CNYCC is a party or by which it is bound.

Section 14.2. Representations and Warranties of Partner Organization. Partner Organization hereby represents and warrants to CNYCC that:

- (a) Neither Partner Organization nor any of its subsidiaries, parent entities, employees, agents, or contractors are excluded from participation in the Medicare or Medicaid programs or any other federal or state health care program;
- (b) Partner Organization's ability to provide health care services in New York State or any other jurisdiction is not now revoked, limited, suspended, or otherwise restricted in any manner;
- (c) Partner Organization and its subsidiaries, employees, agents, and contractors shall hold and maintain all licenses, certifications,





- accreditations, and approvals from federal and state agencies and accrediting bodies required to provide services pursuant to this Agreement;
- (d) Partner Organization has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated herein, and to perform its obligations in accordance with the terms of this Agreement;
 - (e) All necessary action required to have been taken by Partner Organization or on its behalf has been taken to authorize the execution and delivery of this Agreement, and performance of its obligations hereunder; and
 - (f) The execution, delivery and performance of Partner Organization's obligations under the Agreement does not and will not: (i) violate or conflict with any provision of its governing documents; (ii) violate any applicable laws or DSRIP Requirements; or (iii) conflict with, result in a breach of, constitute a default under, or require the consent of any counterparty (which consent has not been obtained) to any agreement to which Partner Organization is a party or by which it is bound.

ARTICLE XV INSURANCE

Section 15.1. Required Insurance. Each Party shall, at its own cost and expense, have in effect insurance coverage of such amounts and types usually maintained by entities such as the Parties, or as otherwise reasonably required by CNYCC, including but not limited to comprehensive general liability insurance, workers compensation, and errors and omissions coverage.

Section 15.2. Professional Liability Insurance. With respect to the insurance required by Section 15.1, Partner Organization shall maintain professional liability insurance with minimum coverage in the amount of \$1,000,000/\$3,000,000.

Section 15.3. D & O Insurance. With respect to the insurance required by Section 15.1, CNYCC shall maintain Directors and Officers liability insurance.

Section 15.4. Certificates of Insurance. Upon request, each Party will provide the other with certificate(s) of insurance for the policies required in this Article. Each Party will notify the other immediately in writing of any change in such insurance coverage or if any such insurance is canceled or threatened to be canceled and the termination date thereof.

Section 15.5. Notice of Proceedings. Partner Organization shall deliver to CNYCC written notification of any administrative or legal proceeding relating to the services and care provided to any patient within the PPS Patient Population arising from





or related to PPS Projects or Protocols at the same time the proceeding is reported to the Partner Organization's insurance carrier.

ARTICLE XVI INDEPENDENT CONTRACTORS

CNYCC and Partner Organization understand and agree that the Parties intend to act and perform their respective obligations under this Agreement and DSRIP as independent contractors and that neither CNYCC nor Partner Organization is an employee, partner, or joint venture of the other. Each Party will have direct responsibility for payment of wages, other compensation and employee benefits, and other obligations imposed on a Party for its respective personnel. Neither Party is the agent or legal representative of the other Party for any of the other Party's employees or otherwise, and neither Party shall have the right to assume or create any obligations or make any promises or representations on behalf of or in the name of the other Party, except as expressly agreed in writing by the Parties.

ARTICLE XVII INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 17.1. Indemnification. Each Party agrees to indemnify the other Party and its officers, directors, employees, agents, and subsidiaries for any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees and costs asserted or incurred in connection with the indemnifying Party's: (a) failure to perform its obligations under this Agreement; (b) negligent acts or omissions in carrying out services and obligations under this Agreement, or (c) violation of any law, statute, regulation, rule, or standard of care related to carrying out the indemnifying Party's obligations under this Agreement. This indemnification obligation will survive the termination of this Agreement. Neither Party shall indemnify the other Party for the negligent acts or omissions of any other Partner Organization or Participant Organization.

Section 17.2. No Liability for Liabilities of Others. Partner Organization's participation in the PPS or PPS Projects shall not make CNYCC liable for the debts, financial obligations, or liabilities of Partner Organization, nor shall such participation make Partner Organization liable for the debts, financial obligations or liabilities of CNYCC or other Partner Organizations or Participant Organizations.

ARTICLE XVIII LEGAL COMPLIANCE

Section 18.1. Compliance with Laws and Policies. In carrying out the terms of this Agreement, both Parties shall comply with all applicable: (i) federal, state and local laws, regulations, and rules; (ii) DSRIP Requirements, including but not limited to any requirements imposed on CNYCC under the DSRIP Agreement; and (iii) PPS Policies and Procedures, as amended from time to time.





Section 18.2. Accuracy of Data. Partner Organization agrees that all data, reports and documentation submitted by Partner Organization under this Agreement shall be accurate, complete and consistent with applicable law. Partner Organization understands that CNYCC will rely on the information submitted by Partner Organization in seeking and distributing DSRIP Funds and that knowingly submitting inaccurate or incomplete information would violate federal and state laws and regulation and DSRIP Requirements.

ARTICLE XIX MARKETING AND TRADEMARKS

Section 19.1. Trademarks and Trade Names. Each Party retains control of its trademarks, and neither Party will use the trademarks of the other Party in advertising or promotional materials or otherwise without the prior written consent of the other Party, except as set forth in Section 19.2. Each Party shall comply on an ongoing basis with the standards set by the other Party with respect to the use of such Party's trademarks, and each Party shall have the right to demand the other Party's prompt compliance with such standards at any time.

Section 19.2. Use of Name. CNYCC may list Partner Organization in any CNYCC or PPS marketing information or brochures, provided that CNYCC shall not use Partner Organization's trademarks in advertising or promotional materials without Partner Organization's prior written consent. Any description of Partner Organization's services for public release must be approved in writing by Partner Organization prior to public release by CNYCC. Partner Organization may state in its marketing materials that Partner Organization is a member of the PPS, provided that any further use of the CNYCC name or trademarks shall require the prior written consent of CNYCC.

ARTICLE XX NOTICE

Section 20.1. Delivery of Notice. Except as otherwise specified herein, all notices under this Agreement shall be in writing and shall be delivered: (i) by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) via overnight delivery service with proof of mailing and receipt; or (iv) fax in accordance with the contact information provided on the attached Delivery of Notice page of the Agreement.

Section 20.2. Change of Notice Recipient. Each Party may designate in writing a new address to which any notice shall be delivered.

ARTICLE XXI AMENDMENTS

Section 21.1. Amendment. This Agreement shall not be amended, altered, or modified, except by a written agreement executed by the Parties; provided, however, that





if changes to DSRIP Requirements mandated by CMS or DOH require amendment of this Agreement, CNYCC may amend this Agreement to the extent necessary to comply with such DSRIP Requirements and shall promptly provide written notice to Partner Organization of such amendments.

Section 21.2. Changes to PPS Policies and Procedures. CNYCC will provide notice to Partner Organization of any change to the PPS Policies and Procedures reasonably in advance of the effective date of such change.

ARTICLE XXII GENERAL PROVISIONS

Section 22.1. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

Section 22.2. Binding Effect. Subject to provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 22.3. Entire Agreement. This Agreement, including the Appendices, constitutes the entire Agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, except that if CNYCC and Partner Organization have entered into a Project Agreement, such agreement shall not be superseded, but shall be interpreted as an addendum to this Agreement.

Section 22.4. Waivers; Amendments. No failure or delay by either Party in exercising any right or power under this Agreement or in enforcing any provisions of this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. This Agreement may be waived, amended or modified only pursuant to an agreement or agreements in writing entered into by the Parties.

Section 22.5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New York without regard to its conflicts of law rules. The Parties irrevocably consent and submit to the exclusive personal and subject matter jurisdiction of the Supreme Court of the State of New York for Onondaga County and waive any objection based on venue or *forum non conveniens* with respect to any action instituted therein arising from this Agreement.

Section 22.6. Headings. Article and Section headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a





part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions of the Agreement.

Section 22.7. Limitation on Benefits of this Agreement. It is the express intent of the Parties that no person or entity other than the Parties shall be entitled to bring any action to enforce any provision of this Agreement against either of the Parties, and that the Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties to this Agreement or their respective successors and assigns as permitted hereunder.

Section 22.8. Non-Discrimination. Access to services under this Agreement will be based solely on criteria of prognosis and need for care and not on the basis of race, age, sex, color, religion, national origin, marital status, sexual orientation, disability, sponsorship, source of payment or other similar criteria.

Section 22.9. Non-Exclusivity. Nothing in this Agreement shall prohibit either Party from affiliating or contracting with any other entity for any purpose whatsoever.

Section 22.10. PPS Participation. Partner Organization shall have the right to participate in a PPS other than the Central New York Region PPS; provided that Partner Organization shall disclose to CNYCC all other PPSs in which it participates.

Section 22.11. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 22.12. Survival. It is the express intention and agreement of the Parties that the Articles and Sections pertaining to Indemnification, Data Use and Confidentiality, Record Retention, and Marketing in this Agreement shall survive termination of this Agreement.

Section 22.13. Waiver of Trial by Jury. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY DISPUTE, CLAIM OR CONTROVERSY CONCERNING, ARISING OUT OF OR RELATING TO THIS AGREEMENT, ITS EFFECT, THE BREACH HEREOF, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 22.14. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging shall be effective as delivery of a manually executed counterpart of this Agreement.





IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

You have the option to sign this Agreement by hand or electronically. If you will sign this Agreement electronically, you must read the information below, follow the instructions, and check the box "I accept" to acknowledge the intent to use an electronic signature.

"I agree, and it is my intent, to sign this Agreement and affirmation by entering my name, preceded and followed by the forward slash (/) symbol (e.g., /John Doe/) and by electronically submitting this Agreement to CNYCC. I understand that my signing and submitting this Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Agreement and this affirmation."

☐ I accept

PARTNER ORGANIZATION

By: _____

Name: _____

Title: _____

**CENTRAL NEW YORK CARE
COLLABORATIVE, INC.**

By: _____

Name: _____

Title: Executive Director





Appendix A

Defined Terms

1. **“CMS”** means the Center for Medicare and Medicaid Services.
2. **“Community-Based Organization”** means any organization that participates in the PPS and provides social services, counseling, housing or health care services to the PPS Patient Population that could improve health outcomes or contribute to population health management.
3. **“Compliance Program”** means the program established by CNYCC to prevent, detect, and address compliance issues that arise with respect to PPS Projects and operations.
4. **“Confidential Information”** means information of a Party, regardless of the form or media in which it is disclosed, which (a) is identified in writing or other manner as confidential, restricted, proprietary or (b) based upon the nature of the information or the circumstances under which it was disclosed, accessed, or learned, a reasonable person would understand is confidential, including but not limited to, (i) Financial Information and business plans and data of a Party; (ii) personal data, information, documents and policies relating to human resource operations, workforce members and procedures of a Party; (iii) statistical information of a Party; and (iv) anything developed by reference to the information described in this definition.
5. **“DEAA”** means the Data Exchange Application and Agreement executed by CNYCC and delivered to DOH regarding access to, and the protections to be accorded to, data, analyses, or reports based on or derived from the Medicaid Analytics Performance Portal.
6. **“DSRIP Agreement”** means the DSRIP Project Plan Award Letter executed by CNYCC and DOH, which designates CNYCC to be the PPS Lead.
7. **“DSRIP Requirements”** means the requirements of DSRIP as set forth in the DSRIP Agreement, or DOH or CMS regulations, guidelines, and guidance statements, as amended from time to time.
8. **“Dispute Resolution Process”** means the process adopted by CNYCC in accordance with DSRIP Requirements to resolve conflicts between and among CNYCC and Partner Organizations.
9. **“DSRIP Funds”** means the funds distributed by DOH to the PPS in accordance with the DSRIP Agreement.
10. **“DSRIP Goals”** means the goals set forth by DOH for DSRIP.





11. **“DSRIP Year”** means each twelve-month period for DSRIP activities and funding as identified by DOH.
12. **“Financial Information”** means any and all financial, budget, and fiscal information prepared by or about CNYCC or Partner Organization shared with the other Party to implement DSRIP Goals and the PPS Project Plan and conduct the Financial Sustainability Analysis.
13. **“Funds Flow Distribution Plan”** means the plan adopted in accordance with CNYCC’s bylaws, as may be amended periodically, that specifies how DSRIP Funds received will be distributed to CNYCC and among Partner Organizations to cover implementation costs and incentivize Partner Organizations to achieve the DSRIP Goals, Metrics and Milestones.
14. **“HIE”** means the health information system(s) to exchange and use clinical information and data regarding the PPS Patient Population.
15. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1966, Public Law 104-191, as amended by the Health Insurance Technology for Economic Clinical Health Act (HITECH) and any regulations, rules, and guidance issued pursuant to HIPAA and the HITECH Act (collectively “HIPAA”).
16. **“Medicaid Confidential Data”** means data and information, including personal health information, derived from the database of Medicaid applicants and beneficiaries maintained by DOH.
17. **“Metrics”** mean the DSRIP process and outcome performance measures that the PPS must satisfy to receive certain DSRIP Funds and any additional measures of Partner Organization or Project performance as adopted by CNYCC.
18. **“Milestones”** mean the DSRIP process milestones that the PPS must satisfy to receive certain DSRIP Funds and any additional measures of Partner Organization or Project performance adopted by CNYCC.
19. **“PAC”** means the Project Advisory Committee for the PPS.
20. **“Participant Organization”** means an entity that participates in a DSRIP Project or engages in PPS activities or provides or sells goods or services in connection for PPS Projects or CNYCC’s operations, and which is not a Partner Organization.
21. **“Partner Organizations”** means the organizations that execute an agreement to participate in the PPS as a Partner Organization.
22. **“PPS”** has the meaning set forth in Recital A and includes the network of health care providers, Community-Based Organizations, vendors, and state or municipal





agencies that participate in PPS Projects, operations, or activities to implement the PPS Project Plan and meet DSRIP Goals.

23. **“PPS Implementation Plan”** means the plan submitted by CNYCC to DOH to implement the PPS Project Plan.

24. **“PPS Policies and Procedures”** means policies and procedures duly adopted by CNYCC’s Board or Directors, governance committees of the Board of Directors or otherwise in accordance with CNYCC’s bylaws.

25. **“PPS Project Plan”** means the DSRIP Application for the Central New York Region PPS submitted by CNYCC, as approved by DOH.

26. **“Project”** means any one of the projects selected by the PPS as identified in the PPS Project Plan.

27. **“Project Agreement”** means an agreement executed by CNYCC and one or more Partner Organizations to govern clinical, financial, administrative or other arrangements for the purpose of implementing one or more Projects.

28. **“PHI”** means Protected Health Information as such term is defined under HIPAA.

29. **“Project Protocol”** means protocol(s) adopted by CNYCC and approved by the CNYCC’s Clinical Governance Committee and/or Board of Directors.

30. **“RCE”** means Rapid Cycle Evaluation, the DSRIP-required process to collect data about quality performance and provide analysis of the data to Partner Organizations to drive improvement.

31. **“RHIO”** means a Regional Health Information Organization.

32. **“Specified Purpose Funds”** means funds provided by CNYCC to a Partner Organization for a specified purpose, such as delivery of services or capital improvements, as set forth in any agreement between CNYCC and the Partner Organization, Project Protocols or the Funds Flow Distribution Plan.

33. **“Workforce Strategy”** means the PPS plan to identify and address the need for retraining and redeployment and the impact of changes on Partner Organizations’ workforce as a result of DSRIP and the implementation of the PPS Project Plan.

