



CNYCC Project 2biii Agreement “ED Care Triage”

This project agreement (“Agreement”) is made and entered into this _____ day of _____, 2017 (“Effective Date”) by and between Central New York Care Collaborative, Inc. (“CNYCC”), a New York not-for-profit corporation, located 109 Otisco St. 2nd Floor Syracuse, NY 13204 and _____, (“Project Participant”) 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 CNYCC 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 in the counties of Cayuga, Lewis, Madison, Oneida, Onondaga and Oswego (CNYCC Region) and (ii) designated CNYCC as the PPS Lead.

B. Among other projects, CNYCC has elected to undertake Project 2biii, also known as ED Care Triage (“PPS Project”). Project Participant wishes to participate in the PPS Project and has agreed to collaborate with CNYCC and other providers in the CNYCC network (CNYCC Network) in order to implement the PPS Project.

C. The objective of PPS Project is to develop an evidence-based care coordination and transitional care program that will assist patients to link with a primary care physician/practitioner, support patient confidence in understanding and self-management of personal health condition(s), improve provider to provider communication, and provide supportive assistance to transitioning members to the least restrictive environment.

AGREEMENT

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

ARTICLE I DEFINITIONS

The terms used in this Agreement shall have the following meanings.

1. “**CMS**” means the Centers for Medicare and Medicaid Services.
2. “**Compliance Program**” means the program established by CNYCC to prevent, detect, and address compliance issues that arise with respect to PPS operations, projects or activities.
3. “**DSRIP Requirements**” means the requirements of DSRIP as set forth in DOH or CMS regulations, guidelines, and guidance statements, as amended from time to time



4. **“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”).
5. **“Partner Organization Agreement”** means the agreement between CNYCC and participating Partner Organizations that sets forth the rights and obligations of the parties in relation to implementation of the CYNCC Project Plan.
6. **“Partner Organizations”** means the organizations that execute an agreement to participate in the PPS as a Partner Organization.
7. **“PPS”** has the meaning set forth in Recital A and includes the network of health care providers, community-based organizations, vendors, and state, county and municipal agencies that participate in PPS projects, operations, or activities to implement the CNYCC Project Plan and meet DSRIP goals.
8. **“PPS Policies and Procedures”** means policies and procedures duly adopted by CNYCC’s Board of Directors or governance committees of the Board of Directors, in accordance with CNYCC’s bylaws.
9. **“PHI”** means Protected Health Information as defined under HIPAA.
10. **“Project Protocols”** means protocols adopted by CNYCC to implement the PPS Project, as may be amended from time to time, and as developed by CNYCC in collaboration with Partner Organizations throughout the duration of the PPS Project.

ARTICLE II PROJECT IMPLEMENTATION AND REQUIREMENTS

Section 2.1. CNYCC Obligations. CNYCC shall plan and manage the PPS Project, including but not limited to developing or identifying Project Protocols and evidence-based practice guidelines required for project implementation, tracking project performance, and reporting as required by DSRIP to DOH.

Section 2.2. Project Participant Obligations and Services. Project Participant shall:

- (a) Comply with PPS Project requirements, including but not limited to requirements set forth in: (i) this Agreement; and (ii) Project Protocols, as may be adopted and amended from time to time by CNYCC, except that Project Protocols shall not override the professional judgment of Partner Organization and its licensed health care professionals in treating patients in individual cases;
- (b) Provide services to Medicaid beneficiaries and uninsured individuals or conduct activities to prepare for or undertake Project implementation (“Project Deliverables”) as set forth in Appendices to this Agreement. Such services or Activities shall be provided in accordance with generally accepted standards of practice for clinical services, if any, and in accordance with applicable federal, state, and local laws and regulation.



- (c) Participate in secure messaging and information exchange with CNYCC and other providers in the CNYCC network and exchange data, as required to implement the PPS Project;
- (d) Maintain information and data as required by CNYCC, including but not limited to the information and data elements listed in Appendix C, attached to this Agreement; and
- (f) Report information to CNYCC as required by the data reporting protocol set forth in Appendix C. Project Participant understands that CNYCC will rely on the information submitted by Project Participant in submitting reports to DOH and agrees that all data, reports and documentation submitted by Project Participant under this Agreement shall be accurate and complete.

ARTICLE III PAYMENT TERMS

Section 3.1. CNYCC shall pay Project Participant for Project Deliverables and performance in accordance with the terms and conditions set forth in Appendix B to this Agreement. The payment terms set forth in Appendix B shall be subject to the contingencies for payment set forth in Section 4.3 of the Partner Organization Agreement.

ARTICLE IV PARTNER ORGANIZATION AGREEMENT

Section 4.1. Partner Organization Agreement. The Parties have entered into a Partner Organization Agreement setting forth their respective rights and obligations in implementing the CNYCC Project Plan. This Agreement shall be interpreted and relied upon by the Parties as an addendum to the Partner Organization Agreement.

ARTICLE V TERM AND TERMINATION

Section 5.1. Term. This Agreement shall terminate on March 31, 2020, unless the Agreement is terminated earlier in accordance with the provisions of this Article. The Parties may agree in writing to renew the Agreement for a specified time period.

Section 5.2. Termination by CNYCC. CNYCC may terminate this Agreement in the event that Project Participant breaches a material term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from CNYCC specifying the nature of 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 Project Participant if any license, certification or government approval of Project Participant material to its performance under this Agreement is suspended, terminated, revoked, or surrendered.



Section 5.3. Termination by Project Participant. Project Participant may terminate this Agreement in the event that CNYCC breaches a material term of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from Project Participant specifying the nature of the breach (or such other longer cure period as Project Participant deems reasonable under the circumstances). In addition, Project Participant may terminate this Agreement upon twenty-four (24) hours' written notice to CNYCC, if CNYCC is suspended or excluded from DSRIP or the New York State Medicaid Program.

ARTICLE VI DATA USE AND CONFIDENTIALITY

Section 6.1. Business Associate Agreement. The Parties agree that in order to implement the PPS Project, they may need to exchange PHI. The Parties have entered into a Business Associate Agreement that covers the exchange of PHI that may occur pursuant to this Agreement, or shall enter into a Business Associate Agreement, as a condition of entering into this Agreement.

Section 6.2. Duty to Protect Confidential Medical Information. The Parties agree that they will only use and share PHI with one another and, as necessary, with other providers in the CNYCC Network 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; (iv) the Business Associate Agreement entered into by the Parties; and (v) applicable PPS Policies and Procedures for the exchange of PHI and Medicaid Confidential Data. To the extent legally required, or required by PPS Policies and Procedures, Project Participant shall seek any necessary consent from Patients with respect to any data to be shared for DSRIP purposes.

Section 6.3. Other Confidential Information. The exchange of all other information defined as confidential in accordance with the Partner Organization Agreement shall be governed by Article XII of that agreement.

ARTICLE VII RECORD RETENTION

Section 7.1. Obligation to Maintain Records. The Parties shall maintain and retain operational, financial, administrative, and medical records, and other documents related to the subject matter of this Agreement in accordance with applicable law, DSRIP Requirements, and Article XIII OF THE Partner Organization Agreement.

ARTICLE VIII DISPUTE RESOLUTION

Section 8.1. Either Party may initiate the Dispute Resolution Process in relation to a disagreement between the Parties that arises from or is related to performance under this Agreement, provided that if a Party is served with notice of a breach under this Agreement by the other Party, the Party notified must initiate the Dispute Resolution Process with three (3) business days of receiving the notice of breach and shall participate in good faith in the Dispute Resolution Process to expedite a resolution to the dispute. Neither Party shall use the Dispute Resolution Process to delay or avoid performance or termination of this Agreement.



ARTICLE IX REPRESENTATIONS AND WARRANTIES

Section 9.1. Section Representations and Warranties of CNYCC. CNYCC hereby represents and warrants to Project Participant that 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 insurance program.

Section 9.2. Representations and Warranties of Project Participant. Project Participant hereby represents and warrants to CNYCC that:

- (a) Neither Project Participant 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 insurance program; and
- (b) Project Participant'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.

ARTICLE X INDEPENDENT CONTRACTORS

CNYCC and Project Participant 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 Project Participant is an employee, partner, or joint venture of the other.

ARTICLE XI LEGAL COMPLIANCE

Section 11.1. Compliance with Laws and Policies. In carrying out the terms of this Agreement, both Parties shall comply with all applicable federal, state and local laws, regulations and rules, DSRIP Requirements, and the CNYCC Compliance Program.

ARTICLE XII INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 12.1. 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, arising from third party claims or government enforcement action asserted or incurred in connection with the indemnifying Party's: (a) failure to perform its obligations under this Agreement; (b) willful misconduct or negligent acts or omissions in carrying out services and obligations under this Agreement; or (c) the Party's violation of any law, statute, regulation, rule or standard of care. This indemnification obligation shall 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 any other third party.



**ARTICLE XIII
NOTICE**

Section 13.1. Delivery of Notice. Except as otherwise specified herein, all notices under this Agreement shall be in writing and shall be delivered personally, mailed by first-class, registered, certified mail or overnight mail, return receipt requested, or via email:

<p>If to CNYCC:</p> <p>Attn: <u>Virginia Opipare</u></p> <p>Title: <u>Executive Director</u></p> <p>Address: 109 Otisco St. 2nd Floor Syracuse, NY 13204</p> <p>Email: <u>Virginia.Opipare@cnycares.org</u></p>	<p>If to Project Participant:</p> <p>Attn: _____</p> <p>Title: _____</p> <p>Address: _____ _____</p> <p>Email: _____</p>
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Section 13.2. Change of Notice Recipient. Each Party may designate in writing a new address to which any notice shall be delivered.

**ARTICLE XIV
GENERAL PROVISIONS**

Section 14.1. Amendment. This Agreement may only be amended, altered, or modified by a written agreement executed by the Parties, except: (i) for the reporting requirements set forth in Appendix B; and (ii) 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 notify Project Participant in writing of such amendments.

Section 14.2. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

Section 14.3. Entire Agreement. This Agreement supersedes all prior oral or written agreements, commitments, or understandings between the Parties with respect to the matters provided for herein, except for the Business Associate Agreement entered into between the Parties, and the Partner Organization Agreement, if the Parties have entered into such agreements at the time this Agreement is executed by the Parties.

Section 14.4. Waivers; Amendments. 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 14.5. 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.

Section 14.6. 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 14.7. Non-Exclusivity. Nothing in this Agreement shall prohibit either Party from affiliating or contracting with any other entity for any purpose whatsoever.

Section 14.8. 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 14.9. 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.

PROJECT PARTICIPANT

By: _____
Name: _____
Title: _____

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

By: _____
Name: Virginia Opipare
Title: Executive Director