NETWORK PARTICIPATION AGREEMENT

AMONG

CNY AIM, LLC

AND

PARTICIPATING MEMBERS
CNY AIM, LLC

NETWORK PARTICIPATION AGREEMENT

THIS NETWORK PARTICIPATION AGREEMENT (the “Agreement”) is made and entered into as of __________, 2016 by and between CNY AIM, LLC (“Network”), a New York State limited liability company, and each physician or medical group executing a Network Participation Agreement on behalf of participating physicians and listed on Exhibit A hereto (each, a “Participating Member” and collectively, the “Participating Members”). Together, Network and Participating Members are the “Parties,” and each is a “Party.”

WHEREAS, Network was formed as a network to integrate Participating Members into a “value-added” clinical provider network that will improve quality of care and patient care outcomes, coordinate and increase the continuity of clinical care, control the total cost of health care, and improve the efficiency of all providers in the Network;

WHEREAS, Network has been designed, organized and developed to fully comply with the requirements of law pertaining to the operation of clinically integrated provider networks. It is the intent of the Parties to operate the Network in a manner that complies with applicable law and regulatory requirements and improves quality of care and clinical outcomes, improves coordination and continuity of care, controls the cost of care, eliminates unnecessary clinical care variation by the adoption of clinical protocols and pathways, applies evidence-based medical interventions and supports comprehensive clinical care with an integrated information technology platform;

WHEREAS, Network and Participating Members desire to set forth their agreements and understandings concerning participation in and operation of the Network;

NOW, THEREFORE, in consideration of the mutual covenants set forth below and other good and valuable consideration, receipt of which is hereby acknowledged by each Party, Network and Participating Members hereby agree as follows:

1. FORMATION AND GOVERNANCE

1.1 Formation. Network has been organized as a limited liability company under the laws of the State of New York, with St. Joseph’s Hospital Health Center (“SJHHC”) serving as its sole member. SJHHC is a non-profit corporation, a member of the Trinity Health system, and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and exempt from federal income tax.

1.2 Governance. The Parties acknowledge and agree that representatives of SJHHC and Participating Members will participate in the governance of Network through (i) the Management Board (the “Management Board”) as set forth in the Network Operating Agreement (“Operating Agreement”), and (ii) governing committees,
the membership of which shall be determined by the Management Board. A key element of the organizational design of Network is that physicians play a key role in the governance and oversight of the Network clinical activities and programs.

1.3 **Reserved Powers.** SJHHC will retain certain reserved powers over the governance and operations of Network, as described in the Operating Agreement.

1.4 **Management Organization.** It is understood and agreed that the Network President will maintain a dual reporting relationship to both the Management Board and SJHHC, through its President. All other Network officers and senior managers will be accountable to the Network President and the Management Board.

2. **NETWORK PARTICIPATION AGREEMENTS**

2.1 **Network Membership.** The Network will provide such services and operate such programs as are necessary and desirable to secure the integration of clinical services among SJHHC, Participating Members and other service providers participating in the Network activities. Participating Members each commit to participate in the Network by executing a Network Participation Agreement in the form of this Agreement. Under the Network Participation Agreement, Participating Members agree (i) to support and participate in the Network and its clinical integration programs, (ii) to participate in performance-based incentive compensation programs (“Performance Incentive Programs”) as defined by the Management Board and (iii) to support the Network by authorizing the funding of Network incentive compensation pools and programs from fees payable under payer Contracts negotiated by Network on behalf of the Participating Members. The Participating Members acknowledge and agree to satisfy the Membership qualification criteria set forth in section 2.2 of this Agreement, and as such criteria may be modified from time-to-time by the Management Board. The Network will have two (2) types of Participating Members, as follows:

2.1.1 **Full Participating Members.** Full Participating Members will be those Participating Members who (i) delegate health plan, third party payer, and government healthcare program contracting authority to the Network, and (ii) agree to contract exclusively through the Network with the health plans, third party payers, and government healthcare programs with which the Network secures Contracts for Network products and programs (the “Contracts”). Full Participating Members are free to contract independently (i) with health plans, third party payers, and government healthcare programs with which the Network does not secure Contracts or is not at the time in active negotiations for Contracts, and (ii) with health plans, third party payers, and government healthcare programs with which the Network does secure Contracts, but only for those products and programs not within the scope of the Network Contracts. Full Participating Member may opt out of participation of discrete classes of contracts (e.g. Medicaid HMO, Medicare Advantage, etc.), but must participate in all Network Contracts for classes of contracts in which they choose to participate.
Physicians in primary care specialties (*family medicine, general internal medicine, geriatrics, general pediatrics*) may only participate in the Network as Full Participating Members.

2.1.2 **Incentive Participating Members.** Incentive Participating Members will be those Participating Members who (i) retain independent contracting authority with health plans, third party payers, and government healthcare programs, and (ii) contract directly with health plans, third party payers, and government healthcare programs, either individually or through their medical groups, but (iii) who agree to participate in the Network Incentive Programs. The decision to participate as an Incentive Participating Member shall last for one year from the date of election. On an annual basis thereafter, Participating Members may re-elect to participate as an Incentive Participating Member or may choose a different level of participation offered by Network at that time. Participation as an Incentive Participating Member will be approved at the discretion of the Board on a case-by-case basis, based on recommendation from the Credentialing and Standards Committee.

2.1.3 **Limitations on Incentive Participating Members.** It is anticipated that opportunities to participate in Performance Incentive Programs for Full Participating Members will be more extensive than for those who are Incentive Participating Members. It is anticipated that Incentive Participating Members may be subject to additional terms and conditions which could include additional limitations on the ability of Incentive Participating Members to receive incentive payments or to participate in certain Network governance capacities.

2.2 **Network Qualification Criteria.** Each Participating Member makes the following representations and warrants that he/she meets the following qualifications for participation in the Network:

2.2.1 **Participating Member’s Representations.** Each Participating Member represents and warrants that, except as specified on *Exhibit A*, the Participating Member’s, or if a group, any physician or other licensed healthcare provider participating in the Network through the Participating Member: (a) has never had a license to practice medicine or other license to provide healthcare services in any state suspended, revoked or restricted; (b) has never been reprimanded, sanctioned or disciplined by any licensing board or state or local medical society or specialty board; (c) has never been denied membership or reappointment of membership on the medical staff of any hospital or surgery center, and no hospital or surgery center medical staff membership or clinical privileges have ever been suspended, terminated, curtailed or revoked; (d) has never been excluded from participation in, or sanctioned by, any state, federal or local health care program, including, without limitation, Medicare or Medicaid; (e) has
never been reprimanded, sanctioned or disciplined by a federal or state drug enforcement agency or commission, been denied a federal or state drug enforcement registration number, or had a federal or state drug enforcement registration number restricted; (f) has never been denied professional liability or general liability insurance coverage or had such insurance coverage restricted; and (g) has never been convicted of a felony or crime of moral turpitude. If during the term of the Agreement, Participating Member, or any physician or other licensed healthcare provider participating in the Network through the Participating Member is placed on the sanctions list, excluded from government healthcare programs, or convicted of a felony or any crime relating to healthcare, Participating Member will immediately notify Network in writing of the event. In such event, Network will have the right to terminate this Agreement immediately by written notice to Participating Member in accordance with Section 4.2.1, without further obligation.

2.2.2 Qualifications. Each Participating Member shall ensure that at all times during the term of this Agreement, he or she, or if a group, any physician or other licensed healthcare provider participating in the Network through the Participating Member, (a) possesses a valid and unlimited license to practice medicine or to provide other healthcare services within the individual’s scope of practice pursuant to the laws of the State of New York; (b) with respect to physicians, is board certified by the appropriate certifying organization; or, with the prior written approval of Network’s President, or his/her designee, has either satisfied all requirements needed to take the written board certification examination, or is otherwise qualified on the basis of skills, training, and experience; (c) maintains unrestricted federal and state drug enforcement registration numbers as applicable to scope of practice; and (d) has obtained and maintained insurance coverage as set forth in this Agreement. Each Participating Member shall provide documentation of compliance with all of the above qualifications as from time to time is requested by Network.

2.2.3 Compliance With Network Standards. Throughout the term of this Agreement, each Participating Member shall meet the Network Standards described in Section 2.2.3.1-10 below. The Network Standards may be amended upon approval by unanimous consent of the Network Management Board. In accordance with the Network Standards, each Participating Member agrees to:

2.2.3.1 actively participate in clinical integration program, initiatives, and measures adopted by the Network;
2.2.3.2 comply with all applicable terms of this Agreement and all policies, protocols, Operating Agreement and Bylaws, rules and regulations of the Network, as in effect from time to time;

2.2.3.3 commit to standards of access whereby Participating Members share claims data on patients covered by Network contracts, honor in-Network referrals, and participate in Networks activities in areas where Network contracts;

2.2.3.4 maintain appropriate technological protocols including high-speed internet access at practice sites;

2.2.3.5 comply with the Network’s Legal Compliance Program (“Compliance Program”);

2.2.3.6 cooperate in good faith to investigate any complaints made by patients served under the Contracts and to resolve such complaints in a reasonable time with appropriate action;

2.2.3.7 participate in the Network’s quality assurance, utilization review and risk management programs and serve on such committees as may be requested by the Network from time to time;

2.2.3.8 participate in on-going quality assurance monitoring activities, such as audits;

2.2.3.9 comply with the clinical protocols, criteria, and procedures developed by the Network to assure the consistency and quality of all professional services provided under the Contracts with health plans, third party payers, and governmental programs; and

2.2.3.10 ensure that all services provided in connection with membership in the Network are at all times rendered in a competent and professional manner, consistent with the continuous quality improvement standards of the Network as in effect from time to time.

2.2.4 Compliance with Applicable Laws, Regulations and Standards. Each Participating Member shall comply with all applicable laws, rules and regulations of all governmental authorities and accrediting agencies having jurisdiction over the Network, each Participating Member, and/or this Agreement, including, without limitation, (a) Medicare and Medicaid laws, rules and regulations, (b) federal and state laws governing referral of patients, (c) federal and state laws prohibiting discrimination against individuals, (d) federal and state laws governing the confidentiality and privacy of patient health information, and (e) standards of the Joint Commission or other accrediting entity that the
Network may designate. In addition, each Participating Member shall comply with all professional licensure and reimbursement laws, regulations, rules and policies.

2.2.5 Notice; Disclosure to Network. Each Participating Member shall immediately notify Network or its designated representative, including a description of the particulars, of (a) any failure to satisfy the terms of any representation or warranty made herein; (b) any incident report filed or any malpractice claims or professional disciplinary action asserted or initiated against Participating Member, and any complaints made by patients served under the Contracts concerning a Participating Member based on criteria for reporting as may from time to time be adopted by the Network; (c) any failure to satisfy any of the qualifications for membership.

2.2.6 Medical Records. Each Participating Member shall document promptly in the medical record all medical services provided to patients under the Contracts, in accordance with industry standards, and in compliance with all state and federal laws and regulations, standards of the voluntary accrediting institutions, the Network Compliance Program, the Network policies and rules and regulations, and all requirements for participation and payment associated with private, federal, state, or other public third party payment programs. All medical records shall be and shall remain the property of the Participating Member. To the extent permitted by law and consistent with policies established by the Management Board, Participating Member will submit copies of medical records, or portions thereof, to the Network for the purpose of evaluating Participating Member’s performance under the terms of this Agreement.

2.2.7 HIPAA Compliance. Each Party to this Agreement shall ensure that it and all personnel maintain confidentiality of all patient records, charts and other patient identifying information in accordance with state and federal laws, including the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as amended from time to time (collectively, “HIPAA”). Each Party shall ensure that it and its personnel implement and use appropriate safeguards to prevent any unauthorized use or unlawful disclosure of PHI, take appropriate action to ensure that other persons appropriately safeguard and use PHI, report any known improper disclosure or use of PHI, and return or destroy all PHI upon the termination of this Agreement for any reason. The Parties will enter into the Business Associate Agreement contained in Exhibit B to this Agreement.

2.2.8 Access to Records. The provisions of this paragraph shall only be effective if this Agreement is subject to regulations promulgated by the Centers for Medicare and Medicaid Services implementing of § 952 of

2.2.8.1 Each Party agrees, until the expiration of four (4) years after the furnishing of items pursuant to this Agreement, to make available upon written request, to the Secretary of Health and Human Services (Secretary) or, upon request, to the Comptroller General, or any of their duly authorized representatives, this Agreement and all books, documents, and records that are necessary to verify the nature and extent of the costs of such items.

2.2.8.2 If a Party carries out any of the duties hereunder through a subcontract with a related organization, having a value or cost of Ten Thousand Dollars ($10,000) or more over a twelve (12) month period, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such items pursuant to such subcontract, the related organization shall make available, upon written request, to the Secretary, or, upon request, to the Comptroller General, or any of their duly authorized representatives, the subcontract and the books, documents, and records of such organization that are necessary to verify the nature and extent of the costs of such items.

2.3 Insurance and Indemnification.

2.3.1 Indemnification. Participating Member will defend, hold harmless, and indemnify the Network, its corporate member, officers, directors, employees, and agents from any losses, liabilities, damages, or expenses (including reasonable attorney’s fees) arising from claims asserted by third parties as a result of Participating Member’s, or Participating Member’s officers’, directors’, employees’, agent’s and representatives’ (i) willful misconduct or negligent acts or omissions in connection with this Agreement, and (ii) breach of this Agreement. Network will defend, hold harmless, and indemnify Participating Member, and its officers, directors, employees, and agents from any losses, liabilities, damages, or expenses (including reasonable attorney’s fees) arising from claims asserted by third parties as a result of Network’s or Network’s corporate member’s, officers’, directors’, employees’, and agents’ (i) acts or omissions in connection with this Agreement, and (ii) breach of this Agreement.

2.3.2 Defense of Claims. The indemnifying Party may retain defense counsel of its choice and may control defense of the matter, but may not settle or pay any claims without the indemnified Party’s consent, which will not be unreasonably withheld. If a Party fails to accept
tender of the defense within 10 days after tender by the Party seeking indemnification, then the tendering Party may provide its own defense and invoice the other Party for the costs of such defense (including attorney’s fees) as incurred.

2.3.3 **Insurance.** Participating Member will obtain and maintain professional and comprehensive general liability insurance covering Participating Member, its agents, and employees, for any services rendered by Participating Member, its agents, and employees, in connection with this Agreement in an amount of at least $1.1 million dollars ($1,100,000) for each occurrence, with a per annum aggregate limitation of at least $3.3 million dollars ($3,300,000), or such higher limits deemed reasonably appropriate by Network based upon Participating Member’s specialty. Upon expiration or termination of this Agreement, Contractor shall maintain the above described minimum levels of insurance coverage for the periods contained in the applicable statutes of limitations. Such insurance policies shall expressly require that written notice of any cancellation of or amendment to such policies shall be given to Network at least 30 days prior to the effective date thereof.

2.3.4 **Survival.** The provisions of this section will survive termination of this Agreement.

3. **NETWORK OPERATION ACTIVITIES**

3.1 **Network Operation Activities.** Network will provide Participating Members with the services necessary to operate the Network and to negotiate Contracts with health plans, third party payers, and government healthcare programs. In addition, Network will establish, secure funding for, operate or cause to be operated, Performance Incentive Programs and make, or cause to be made, performance based distributions of funds from one or more incentive compensation pools to Participating Members who are eligible to participate in the Performance Incentive Programs and to receive performance based compensation from the Network as a result of meeting the eligibility and qualification requirements established by the Management Board for the Performance Incentive Programs. Upon the request of Participating Members and consent of the Parties, Network may also provide, either through itself or through its designee, certain additional network operations and/or practice support services to Participating Members through separate management services agreements signed by the Parties. Participating Members acknowledge that Network may subcontract with another entity for the performance of Network’s obligations under this Agreement and in the ordinary course of business without Participating Members’ prior consent, provided that Participating Members’ consent shall be required for Network to subcontract all or substantially all of its obligations under this Agreement (except to a wholly controlled affiliate), and it being understood and agreed that all subcontractors shall be subject to all applicable terms and conditions set forth herein. The delivery of clinical services
rendered to patients by Participating Members shall be and remain under the sole control of Participating Members for the term of this Agreement.

3.2 Information Technology. Network and Participating Members agree that their common goal is to develop an integrated and flexible information technology platform that will allow for common and interoperable clinical connectivity, including electronic medical records, physician order entry results reporting, radiology and imaging, and network management and support. The elements necessary to implement such connectivity, and the related costs, will vary by Participating Member and will be determined as the information technology system planning is further developed. Such costs will be apportioned by agreement of the Parties, consistent with applicable law. The active and effective use of information technology by each of the Participating Members is acknowledged as a critical success factor in the operation and performance of the Network. Participating Members agree to maintain high speed internet connections consistent with standards to be adopted by the Management Board.

3.3 Contracting. Network and the Participating Members agree that one of their common goals is the negotiation of Contracts with health plans, third party payers, and government healthcare programs that include not only reimbursement for services rendered by Full Participating Members, but also provisions for Performance Incentive Programs in which payments are based, in part, on the achievement of clinical performance measures as may be agreed upon by Network and the health plans, third party payers, and/or government healthcare programs. After the effective date of the Network Participation Agreements, Network will negotiate directly for Contracts with health plans, third party payers and government healthcare programs: (i) the terms and conditions of contracting arrangements on behalf of Full Participating Members, and (ii) the terms and conditions of Performance Incentive Programs in which Participating Members will be eligible to participate according to the category of Network membership. Network is hereby appointed as negotiating and contracting agent and will negotiate directly for compensation arrangements under Contracts with health plans, third party payers, and government healthcare programs.

3.4 Performance Incentive Programs. Network and the Participating Members acknowledge and agree that the principal purpose of the Network is to enhance the quality and efficiency of patient care services provided by the Participating Members. Following the execution of this Agreement, the Parties agree to work together to develop clinical performance standards and protocols for the Network and which will form the basis upon which Network will negotiate for Contracts with health plans, third party payers, and government healthcare programs for Performance Incentive Programs pursuant to which payments are made to Participating Members for achieving clinical and efficiency performance against the established performance milestones and objectives as may be established from time-to-time by the Management Board. As of the effective date of this Network Participation Agreement, Participating Members authorize Network to arrange for the creation and management of Performance Incentive Programs and to distribute or cause to be distributed, funds from the Performance Incentive Programs and any other sources of funding to Participating
Members for performance based outcomes and criteria as developed each year by the Management Board or its designee.

3.5 Billing and Collecting Fees for Professional Services

3.5.1 By Participating Members. Participating Members shall be responsible for billing and collecting the fees ("Fees") for their professional services rendered to patients and others under the terms of this Agreement.

3.5.2 By Network. Notwithstanding Section 3.5.1, Participating Members may authorize Network to bill for and collect Fees for the professional services of Participating Members rendered under the terms of this Agreement. Network shall have no ownership interest in any such Fees collected on behalf of Participating Members except to cover Network’s cost of doing business and administration fees and to fund accounts reserved for the Performance Incentive Programs. Network shall account to Participating Members on a periodic basis regarding Fees received and shall pass through to Participating Members the Fees collected, less the administrative amount to be received by Network in accordance with the compensation arrangement agreed upon by the Parties and less the amount reserved to the Performance Incentive Programs.

3.5.2.1 Business and Occupation Taxes. Network will use its best efforts to obtain the Fees owed under the Contracts, but Network shall have neither primary nor secondary liability to Participating Members for Fees not collected. Network shall have no obligation to pay Participating Members Fees that were not paid to Network. It is the intent of the Parties that Fees received by Network on behalf of Participating Members does not constitute “gross income” to the Network as that term is defined by the tax laws of the State of New York.

Further, Fees received by Network, except for Network’s costs of doing business and administrative fees, are received solely as an agent for Participating Members, which Network must pay to Participation Members. Network does not and cannot render medical services because it is not licensed to do so. The Fees that Network receives for the professional services provided by Participating Members to patients and others are not compensation for services rendered by Network.

4. TERM AND TERMINATION

4.1 Term. This Agreement shall be effective as of the date of execution and shall continue through December 31, 2018. This Agreement will automatically renew for
additional two (2) year terms unless any Party gives written notice of intent to terminate not less than one hundred twenty (120) days prior to the end of the then-current term.

4.2 Termination of Agreement. Notwithstanding any other provisions of this Agreement, this Agreement may be terminated upon any of the following:

4.2.1 Termination For Cause.

4.2.1.1 Network may terminate this Agreement with respect to any Participating Member who is a Party hereto for “cause” upon thirty (30) days written notice at any time except as stated in Section 2.2.1 if the affected Participating Member materially defaults in performance hereunder, including the failure of the Participating Member to meet the ongoing Network qualification criteria and comply with the Network standards, and such Participating Member has failed to cure such default during such thirty (30) day period. Any Participating Member may terminate its participation in this Agreement for cause upon thirty (30) days written notice at any time if Network materially defaults in performance hereunder and Network has failed to cure such default during such thirty (30) day period.

4.2.2 Effect of Termination. Upon termination of this Agreement, as herein above provided, no terminating Party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination and (ii) obligations, promises, or covenants contained herein which are expressly made to extend beyond the term of this Agreement including, without limitation, any indemnities and access to books and records.

5. INDEPENDENT CONTRACTOR RELATIONSHIP

5.1 Independent Contractor Status. Except for those Participating Members who are employees of Foundation or Network, no Participating Member shall be construed as an employee of Foundation or Network, will at all times be acting and performing hereunder as independent contractors, and is not entitled to any employment benefits such as vacation, sick leave with pay, paid days off, health insurance, life insurance, accident insurance, or severance pay upon termination of this Agreement. Except as otherwise provided herein, Network shall neither have nor exercise any control or direction over the methods by which Participating Members do business, and in no event shall Network have or exercise control over the methods by which Participating Members practice medicine or provide other licensed health care services. The sole function of Network hereunder is to provide the expressly contemplated services in a competent, efficient and satisfactory manner. Network shall not, by entering into and performing its obligations under this Agreement, become liable for any of the obligations, liabilities, debts or losses of Participating Members. This Agreement does not, and shall not be interpreted to create a partnership or joint venture between or
among Network and Participating Members. Network shall have no liability whatsoever for damages suffered on account of the acts or omissions of any employee, agent or independent contractor (other than Network) of Participating Members. Each Party shall be solely responsible for compliance with all state and federal laws and for the withholding and timely payment of unemployment tax, workers’ compensation tax, Social Security tax, federal and state income tax, and other employment related taxes applicable to such Party’s respective employees, agents and servants. In the event that any court or regulatory authority shall determine that the relationship established hereby creates an employment relationship (or in the event that Network, in good faith, determines that there is a material risk that such a determination would be made by any court or regulatory authority) between Network and Participating Member’s employees, the Parties will negotiate in good faith to enter into an arrangement that substantially preserves for the Parties the relative economic benefits of this Agreement. If the Parties cannot reach agreement on such an arrangement, then Network may terminate this Agreement upon one hundred twenty (120) days prior written notice to Participating Members.

5.2 Practice of Medicine. The Parties hereto acknowledge that Network is not authorized or qualified to engage in any activity that may be construed or deemed to constitute the practice of medicine and that nothing herein shall be construed as the practice of medicine by Network. To the extent any act or service required of Network is construed or deemed to constitute the practice of medicine, Network is released from any obligation to provide such act or service without otherwise affecting any other terms of this Agreement.

5.3 No Referrals. Except as the clinical pathways and protocols established for Network by the Company, the Parties hereby acknowledge and agree that no benefits to Participating Members hereunder require or are in any way contingent upon or are intended to induce the admission, recommendation, referral or any other arrangement for the provision, ordering, or leasing of any item or service offered by Network or any affiliate to any patients, employees or agents of Participating Members.

6. CONFIDENTIAL INFORMATION

6.1 Agreement Confidential. This Agreement is personal and confidential between the Parties, and the Parties hereto shall not release information concerning this Agreement to any person without the consent of the other Party. This prohibition against release of information shall not apply to any information required to be released by Contracts existing as of the date of this Agreement, or to fiscal intermediaries, public agencies or commissions with government powers and duties related to disclosure of information having the right to compel disclosure of such information, nor to any information otherwise compelled to be released by process of law.

6.2 Confidential Information. Participating Members acknowledge and shall cause their personnel to acknowledge that, while maintaining Network membership, Participating Members and their personnel may develop or learn of “Confidential Information” of Network, as defined below. Participating Members shall not, and shall
ensure that their personnel do not, whether during or after the term of this Agreement, use, other than in the proper performance of this Agreement, disclose, or communicate, orally or in writing or in electronic form, to any person or entity, any Confidential Information. Nor shall Participating Members or their personnel permit any person to use, examine, make copies of any documents, files, data or other information that contain or are derived from Confidential Information. The above covenants do not apply to disclosure of Confidential Information that is required pursuant to a valid court order or other legally required disclosure. It is understood and agreed that the restrictions and obligations under this Section 6.2 will continue to apply after the termination of this Agreement, regardless of the reason for such termination. For purposes of this Agreement, “Confidential Information” means any and all information of the Network and the affiliates of the Network that is not generally available to the public, including, but not limited to, the terms of this Agreement, the terms of the Contracts, the business, strategic, financial, operations, or planning information of Network, and any information obtained from patients or other third parties with any understanding, express or implied, that it will not be disclosed.

7. CHANGES IN LAW

If for any reason the performance of the Agreement should become a risk to the Parties’ or SJHHC’s licensure, the participation of the Parties or Sentara in, or payment or reimbursement from Medicare, Medicaid, or other government reimbursement or payment programs, the Parties’ or Foundation’s full accreditation by any state or nationally recognized accrediting organization, the tax exempt status of SJHHC, compliance with limitations applicable to tax exempt bond financing, or constitute a violation of any statute, ordinance, or regulation, then notwithstanding anything herein to the contrary, the Parties shall immediately initiate negotiations to resolve the matter through amendments to the Agreement. If the Parties are unable to resolve the matter within thirty (30) days thereafter, either Party may, at its option, terminate the Agreement immediately by providing written notice thereof to the other Party.

8. RESTRICTIVE COVENANTS

8.1 Non-Solicitation. During the term of this Agreement and for one (1) year after its termination, Participating Members (a) shall not, directly or indirectly, hire or contract with, seek to hire or contract with, or assist in hiring or contracting with any employee, agent or independent contractor of Network and (b) shall not induce, seek to induce, or take action which results in the termination of employment or other arrangement between Network and such employee, agent or independent contractor or otherwise interferes with such employment or contractual arrangement.

9. DISPUTE RESOLUTION

9.1 Special Meeting. Except as set forth in Section 9.6 below, in the event of any dispute or disagreement between Network, a Participating Member, and/or a Participating Member representing in the aggregate more than fifty percent (50%) of the full time equivalent physicians practicing within such Participating Member (the “Majority
Groups”) with respect to this Agreement, Network, the affected Participating Member, or the Majority Groups may request in writing a special meeting for the resolution of the dispute (a “Special Meeting”). The Special Meeting shall be held at a mutually agreeable location in the State of New York within ten (10) days after a written request for the meeting, which request shall specify the nature of the dispute to be resolved. The Special Meeting shall be attended by representatives of Network, the Participating Member involved, and the Majority Groups(s) (who may or may not be accompanied by legal counsel, in their respective discretion and at their expense), who shall attempt in good faith to resolve the dispute and shall have reasonable authority to do so.

9.2 Mediation. If a dispute has not been resolved within thirty (30) days after the date of the Special Meeting or within forty-five (45) days after the written request for the Special Meeting, Network, the Participating Member involved, and/or the Majority Groups may initiate mediation of the dispute by sending a written request for mediation to the other Parties. The Parties to the dispute shall meet to jointly select an independent and neutral person qualified to act as a mediator. If the Parties are not able to agree upon the selection of a mediator, the Parties shall jointly petition to the Presiding Judge of the Superior Court of New York to select a mediator. The mediation proceeding shall be held in New York and shall commence not more than thirty (30) days after the mediator is selected and agreed upon. The mediation shall be attended by representatives of the disputing Parties (who may or may not be accompanied by legal counsel, in their respective discretion and at their expense), who shall attempt in good faith to resolve the dispute and shall have reasonable authority to do so. The disputing Parties shall bear equally the costs of the mediator; each disputing Party will bear its own attorneys’ fees and costs.

9.3 Arbitration.

9.3.1 Notice; Selection of Arbitrator. If Network, the Participating Member involved, and the Majority Groups are unable to reach a mutually acceptable resolution to the dispute within thirty (30) days following an initial mediation conference or within sixty (60) days following the selection and agreement upon a mediator, the matter shall be submitted to arbitration by one (1) impartial arbitrator, who shall be experienced in mediation and arbitration and knowledgeable regarding the health care/health related services industry. Either Network, the Participating Member involved, or the Majority Groups may commence arbitration by giving a written notice to the other Parties demanding arbitration. Network, the Participating Member involved, and the Majority Groups shall meet to jointly select a single arbitrator to serve in the matter of dispute resolution. If the disputing Parties cannot reach agreement as to a mutually acceptable arbitrator within ten (10) days after the demand to arbitrate is made, the Parties shall jointly petition to the Presiding Judge of the Judicial District Court of State of New York to select an arbitrator.
9.3.2 **Hearing.** The arbitration process shall be conducted in accordance with the requirements of New York law as it may be amended, except to the extent such Act conflicts with the terms of this Agreement, in which event the terms of this Agreement shall have priority. The arbitration proceedings shall take place in the greater State of New York. The decision of the arbitrator shall be final and binding and may be enforced in any court of competent jurisdiction. The Parties consent to the jurisdiction of the Judicial District Court of New York, and the United States District Court for the 5th Judicial District of New York, for all purposes in connection with this Agreement.

9.3.3 **Fees and Expenses.** Except as otherwise determined by the arbitrator in accordance with the requirements of New York law the disputing Parties will share equally in the costs of the arbitrator, and each disputing Party shall bear its own costs and attorney’s fees.

9.4 **Injunctive Relief.** Notwithstanding the provisions of this Section 9, both Network, the Participating Member involved, and the Majority Groups shall have the right to apply for and obtain a temporary restraining order or other temporary, interim or permanent injunctive or equitable relief from a court of competent jurisdiction in order to enforce the provisions of any part of this Agreement as may be necessary to protect its rights under those sections.

9.5 **Scheduling.** The Parties will use good faith efforts to adhere to the timeframes for the dispute resolution process set forth in the Section 9; however, failure by any Party to meet the above stated timeframes will not be deemed a breach of this Agreement, so long as the delayed Party or Parties are acting in good faith.

10. **MISCELLANEOUS**

10.1 **Notices.** Any notice given pursuant to this Agreement must be in writing and will be deemed effectively delivered immediately if personally delivered or sent by facsimile transmission with confirmation receipt, or within three (3) calendar days if delivered by overnight courier service with confirmation of delivery or sent by certified or registered mail, postage prepaid, return receipt requested, addressed to the Parties at the addresses below or at such other address as they specify in writing in the manner set forth above.

To **Participating Members:**

To **Network:**

CNY AIM, LLC
301 Prospect Avenue
Syracuse, NY 13203-1298
Attn: President
Facsimile: (315) 448-6161

To the addresses listed on Exhibit C
10.2 **Incorporation of Exhibits.** All schedules, exhibits, addenda, and recitals referred to in this Agreement are an integral part of this Agreement and are hereby incorporated into this Agreement.

10.3 **Amendment.** This Agreement may be amended only pursuant to a formal resolution adopted by unanimous consent of the Management Board delivered to Participating Members in the manner set forth in Section 10.1 ("Amendment Notice"). Should any amendment not be acceptable to a Participating Member, the Participating Member may give written notice of termination of this Agreement as to that Participating Member, within thirty (30) calendar days after the date of the Amendment Notice. In the absence of a Participating Member’s notice of termination given pursuant to this section, the Amendment in question will be deemed accepted by the Participating Member.

10.4 **Assignment and Delegation.** No assignment of this Agreement or delegation of the rights and obligations hereunder shall be valid without the specific written consent of the Parties hereto, except that this Agreement may be assigned by Network to any affiliate wholly controlled by SJHHC or to any successor entity. Subject to the prohibition contained in this paragraph, this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

10.5 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to conflict of laws principles. Venue for any and all actions, claims, or proceedings related to this Agreement shall lie exclusively in New York.

10.6 **No Third Party Beneficiaries.** The Parties do not intend to make any other person or entity a third-party beneficiary under this Agreement and no action to enforce the terms of this Agreement may be brought against any Party by any person or entity that is not a Party to this Agreement.

10.7 **Waiver.** No waiver may be deemed to have been made unless made expressly in writing and signed by the waiving Party. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof. No failure by either Party to insist upon the strict performance of any provision of this Agreement may be construed as depriving that Party of the right to insist on strict performance of that provision or of any other provision in the future.
10.8 **Section Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

10.9 **Entire Agreement.** This Agreement, including all Exhibits and attachments, constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements, negotiations, and communications, whether written or oral, between the Parties hereto with respect to the subject matter hereof.

10.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

10.11 **Costs, Expenses and Attorney’s Fees.** Except as otherwise set forth in Section 9 of this Agreement, if either Party incurs costs, expenses, or attorney’s fees in enforcing any of its rights under this Agreement, the unsuccessful Party in such dispute will reimburse the prevailing Party for its costs, expenses, and attorney’s fees.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

**CNY AIM, LLC**

By: ____________________________

Its: ____________________________

Date: ____________________________

**Full Participating Member**

By: ____________________________

Its: ____________________________

Date: ____________________________

**Incentive Participating Member**

By: ____________________________

Its: ____________________________

Date: ____________________________
EXHIBIT A

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 2.2.1
EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT