

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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In the Matter of the Application of :

NEW YORK STATE CATHOLIC HEALTH  
PLAN, INC. :

VERIFIED PETITION

For Approval to Sell Substantially All of  
the Assets pursuant to Sections 510 and 511-a  
of the Not-for-Profit Corporation Law of the  
State of New York :

OAG No. 2017-3144-NYC

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TO: OFFICE OF THE ATTORNEY GENERAL  
28 Liberty Street, 19th Floor  
New York, NY 10005

Petitioner, New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York (“Petitioner”), by Rev. Patrick J. Frawley, Chief Executive Officer of the Petitioner, makes this Petition pursuant to Sections 510 and 511-a of the New York Not-for-Profit Corporation Law and herein respectfully sets forth as follows:

### INTRODUCTION

1. On September 12, 2017, Petitioner and Centene Corporation (together with its subsidiaries, “Centene”) entered into an Asset Purchase Agreement providing for the sale of substantially all of Petitioner’s assets to Centene, subject to regulatory approval (the “Transaction”). A copy of the Asset Purchase Agreement is attached hereto as Exhibit 1. Prior to the closing of the Transaction (the “Closing”), the parties will enter into an amendment to the Asset Purchase Agreement (the “APA Amendment”), a form of which is attached hereto as Exhibit 2. The Asset Purchase Agreement, as amended by the APA Amendment, is referred to in this Petition as the “Purchase Agreement.”

2. The Transaction presents a historic opportunity for the State of New York to improve the health and well-being of its poor, disadvantaged, disabled, elderly and infirm residents. Upon approval of the Transaction, Centene, the nation’s largest Medicaid managed

care organization, will bring its financial resources and innovative technology to New York State. At the same time, the Transaction will result in the establishment of the Mother Cabrini Health Foundation, Inc. (the “Foundation”), the largest charitable foundation to be focused exclusively on New York State’s residents. With over \$3 billion in assets, the Foundation will have the potential to transform the lives of New York’s most vulnerable populations for generations to come.

3. As this Petition details, the Transaction satisfies both prongs of the statutory standard for approval set forth in Section 511-a(c) of the New York Not-for-Profit Corporation Law (“N-PCL”).

4. First, the consideration and the terms of the Transaction are fair and reasonable to Petitioner, evidenced in particular by the \$3.75 billion purchase price paid by Centene, which exceeds the appraised fair-market value of the assets being sold.

5. Second, the Transaction will substantially promote the purposes of Petitioner and the interests of its corporate members, the eight Diocesan Bishops of the State and Ecclesiastical Province of New York (the “Members”). The Transaction will result in the establishment of the Foundation, a multi-billion dollar grantmaking foundation, which will significantly advance the interests and longstanding commitment of Petitioner and its Members to support the health and wellness of the poor and disadvantaged. Additionally, the Transaction will promote Petitioner’s purposes by improving access to affordable quality healthcare and healthcare related services throughout the state. Through Centene, Petitioner’s 1.7 million enrollees will benefit from the support, investment and innovation to be provided by Centene, the nation’s largest private insurer to low-income populations and state-sponsored insurance programs.

6. In addition to satisfying both prongs of the statutory standard, the Transaction will have the capacity to transform New York’s healthcare landscape. Over the course of the last several years, the State’s Medicaid program has been expanding beyond purely fee-for-service health coverage to include a focus on enhanced quality of care, preventive health, and incentivized value based payment reform, which includes health plan and provider innovative collaborations and a further concentration on addressing the social determinants of health (“Social Determinants of Health”). The Transaction will further these objectives by supporting



initiatives centered on coordinated medical, mental and behavioral health care, potentially avoidable hospitalizations, substance abuse prevention and treatment, nutrition, education, safe and affordable housing, the integration of community based organizations, and other Social Determinants of Health. In so doing, the Transaction will promote healthier living, strengthen families and communities, and reduce healthcare expenditures throughout New York State, particularly Medicaid expenditures.

7. Accordingly, Petitioner requests that the Office of the New York State Attorney General (the “Attorney General”) approve the Transaction pursuant to Sections 510 and 511-a of the N-PCL, on the terms set forth in the Purchase Agreement.

### **OVERVIEW OF SELLER**

8. Petitioner was incorporated as a Type-B not-for-profit corporation on May 13, 1993. Petitioner initially operated as the “Catholic Health Services Plan of Brooklyn and Queens, Inc.,” serving the poor and medically underserved of Brooklyn and Queens under the auspices of the Catholic Medical Center of Brooklyn and Queens, Inc. and the Diocese of Brooklyn. In 1996, the eight bishops of the Catholic Dioceses, led by John Cardinal O’Connor, obtained regulatory approval to extend Petitioner’s license to operate across New York State and change the name of Petitioner to the “New York State Catholic Health Plan, Inc.” Petitioner has operated since 1993 under the assumed name “Fidelis Care” and since 1996 under the assumed name “Fidelis Care New York.”

9. A copy of Petitioner’s current Restated Certificate of Incorporation, Petitioner’s original Certificate of Incorporation and all amendments thereto are attached to this Verified Petition as Exhibit 3. A copy of Petitioner’s current Amended and Restated By-Laws (“By-Laws”) is attached hereto as Exhibit 4. A copy of Petitioner’s Certificates of Assumed Name and all amendments thereto is attached to this Verified Petition as Exhibit 5.

10. Petitioner is a membership organization. Pursuant to Section 2.01 of Petitioner’s By-Laws, the membership of Petitioner is limited to the eight Diocesan Bishops of the State and Ecclesiastical Province of New York (the “Members” or the “Membership”): New York, Albany, Brooklyn, Buffalo, Ogdensburg, Rochester, Rockville Centre and Syracuse.

11. Pursuant to Section 5.03 of the By-Laws, the Archbishop of New York is the President of the Membership. At present, Timothy Cardinal Dolan, Archbishop of New York, is the President of the Membership. Other Members include: Most Rev. John O. Barres, Bishop of Rockville Centre; Most Rev. Robert J. Cunningham, Bishop of Syracuse; Most Rev. Nicholas DiMarzio, Bishop of Brooklyn; Most Rev. Terry R. LaValley, Bishop of Ogdensburg; Most Rev. Richard J. Malone, Bishop of Buffalo; Most Rev. Salvatore R. Matano, Bishop of Rochester; and Most Rev. Edward B. Scharfenberger, Bishop of Albany.

12. Petitioner's Members elect the Board of Directors (the "Board"), which, under Section 6.01 of the By-Laws, consists of twenty directors. Presently, there are nineteen directors and one vacancy. A list of the individuals serving as directors and their home addresses is set forth in Exhibit 6.

13. With the exception of the President of the Membership (Archbishop of New York, *ex officio*), the Members also elect the officers of the Corporation (the "Officers"), which include a Chairperson, a Vice-Chairperson, a Secretary, a Treasurer and a President/Chief Executive Officer. A list of the individuals serving as Officers and their home addresses is set forth in Exhibit 7.

14. Pursuant to Section 1.02 of the By-Laws, Petitioner is required to adhere at all times to the Ethical and Religious Directives for Catholic Health Services published by the United States Conference of Catholic Bishops (the "Ethical and Religious Directives").<sup>1</sup>

15. The By-Laws exclusively reserve certain powers for the Members, including the power to:

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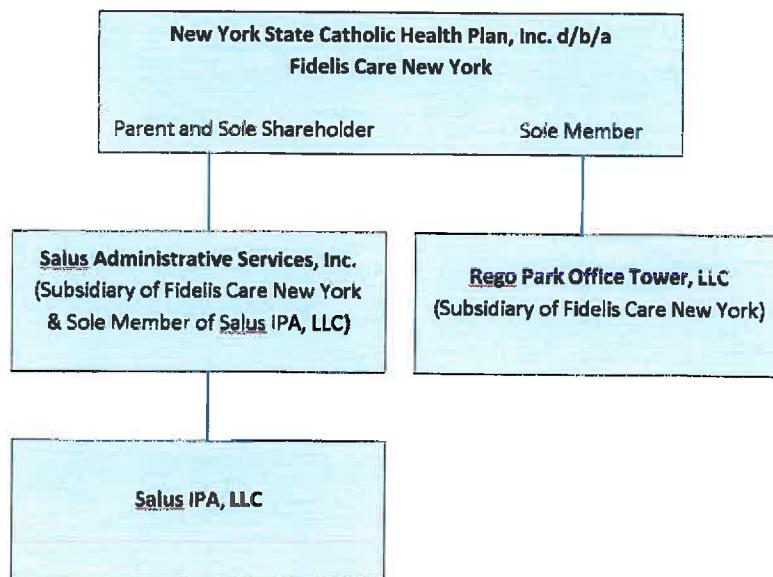
<sup>1</sup> The Ethical and Religious Directives are a body of medical and moral principles that relate to various aspects of health care, including, for example, care for the poor, uninsured, underinsured, children, unborn, single parents, elderly, those with incurable diseases and chemical dependencies, racial minorities, immigrants and refugees; the promotion of medical research, equal opportunity for employment in the Catholic health care institution's workplace; pastoral care appropriate to the needs of the patient; mutual respect between patient and physician; free and informed consent; psychological and spiritual support to victims of sexual assault; family planning; advance directives and elderly care; partnerships and collaborations with other health care providers, consistent with the foregoing moral teachings. See Ethical and Religious Directives at pp. 11-13, 15-17, 19-22, 25-28, 30-33, 36-37 (available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>).

- a) Definitively interpret the Ethical and Religious Directives that apply to Petitioner's activities;
- b) Approve the philosophy and mission statement under which Petitioner operates;
- c) Require that Petitioner operate in conformity with the Members-approved philosophy and mission statement; and
- d) Amend Petitioner's Certificate of Incorporation and its By-Laws.

16. In accordance with Paragraph 6(c) of Petitioner's Certificate of Incorporation, the Members are responsible for approving the "sale of all, or substantially all, of its assets."

17. Petitioner has two direct wholly-owned subsidiaries – Rego Park Office Tower, LLC, a New York limited liability company, and Salus Administrative Services, Inc., a New York business corporation ("Salus"), as well as one indirect wholly-owned subsidiary, Salus IPA, LLC ("Salus IPA").

18. Petitioner's present organizational structure is as follows:



19. Rego Park Office Tower, LLC holds title to the building housing Petitioner's principal corporate offices, which is located at 95-25 Queens Boulevard, Rego Park, NY 11374.

20. Salus and Salus IPA provide utilization review and pharmacy benefit management and network services in support of Petitioner's prescription drug program. Salus also leases employees from Petitioner to provide pharmacy benefit management services. Salus IPA contracts with CVS/Caremark, on behalf of Petitioner, to make CVS/Caremark's pharmacy network available to Petitioner's enrollees, employees and employee dependents. A copy of the Salus IPA – Caremark IPA Agreement is attached hereto as Exhibit 8. Pursuant to a Management Services Agreement between Salus, Petitioner and CVS/Caremark dated January 1, 2007, as amended January 1, 2009 and attached hereto as Exhibit 9, CVS/Caremark provides claims processing, credentialing and reporting services on Petitioner's behalf.

21. Petitioner has office locations in New York City, Albany, Syracuse, Rochester and Buffalo, two satellite offices in Suffern and Poughkeepsie and approximately twenty community offices throughout the State.

22. Petitioner is recognized as a five-star plan in the New York State Department of Health's 2018 Managed Care Regional Consumer Guides for Medicaid and Child Health Plus.

23. A copy of Petitioner's audited consolidated financial statements for the years ended December 31, 2017 and 2016 and independent auditor's report is attached hereto as Exhibit 10. The consolidated financial statements include a description of Petitioner's debts and liabilities, none of which are secured.

#### **PETITIONER'S CHARITABLE PURPOSES AND ACTIVITIES**

24. The Catholic Dioceses of the State of New York formed Petitioner in order to advance the Catholic Church's historic charitable commitment to assisting the poor, underserved and most vulnerable within the Catholic tradition of healthcare.

25. Petitioner's mission statement, which was adopted in 1997 and is attached as Exhibit 11, guides this charitable commitment:

*In imitation of the compassionate and healing Christ, consistent with the tradition of Catholic healthcare and maintaining the highest moral and ethical standards, we, at Fidelis Care New York, strive:*

- *To promote health through quality, accessible care and services for all;*
- *To join in partnership with health professionals to assist them in their healing work;*
- *To act as a facilitator to build linkages and systems for the coordination of care and services among healthcare, behavioral and social services, as well as educators and religious leaders, to address the spiritual, emotional and physical needs of those we serve;*
- *To advocate for a health policy that accords true dignity and respect for all human persons, especially the poor and underserved.*

26. Initially, Petitioner applied for and was recognized by the Internal Revenue Service as a tax-exempt social welfare organization within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”). Seeking to broaden its charitable services to the poor and medically underserved, Petitioner sought tax-exemption status as a charitable organization under section 501(c)(3) of the Code to allow the Corporation to accept donations and make grants in support of its mission. On March 9, 1998, the Internal Revenue Service recognized Petitioner as a tax-exempt, public charity within the meaning of Section 501(c)(3) of the Code, retroactive to October 24, 1997. Petitioner’s Internal Revenue Service 501(c)(3) Determination Letter is attached hereto as Exhibit 12.

27. Petitioner’s Restated Certificate of Incorporation states that its charitable purposes include:

To own, operate and maintain a special purpose comprehensive health services plan or plans and all services required or appropriate for the provision of comprehensive health services, as defined in Section 4401(3) of the Public Health Law, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program.

28. Section 4401(3) of the Public Health Law defines “comprehensive health services” to mean:

[A]ll those health services which an enrolled population might require in order to be maintained in good health, and shall include, but shall not be limited to, physician services (including consultant and referral services), in-patient and out-patient hospital services, diagnostic laboratory and therapeutic and diagnostic radiologic services, and emergency and preventive health services. Such term may be further defined by agreement with enrolled populations providing additional benefits necessary, desirable or appropriate to meet their health care needs.

29. In furtherance of its charitable purposes, Petitioner (i) offers a variety of New York State-sponsored insurance products through its comprehensive health services plan, and (ii) provides a broad range of charitable grants to fund services “required or appropriate” for the provision of comprehensive health services across New York State, particularly to address the Social Determinants of Health (the “Grant Program”).

#### **Comprehensive Health Services Plan**

30. Since 1993 Petitioner has been certified by the New York State Department of Health under Article 44 of the Public Health Law to offer a comprehensive health services plan to eligible enrollees as a prepaid health service plan (PHSP) focusing primarily on health care coverage and services for the low-income population. Currently, Petitioner serves more than 1.7 million enrollees in all sixty-two New York counties, making it the largest New York State Medicaid managed care plan. In operating the plan, Petitioner’s mission is to ensure that every New York State resident, regardless of income, age, religion, gender, or ethnic background, has access to quality, affordable health coverage, provided with dignity and respect.

31. Petitioner currently offers the following health insurance products within its comprehensive health services plan:

a) **Child Health Plus** is a New York State-sponsored program which provides free or low-cost comprehensive coverage to children under the age of 19, varying based on income status.

b) **Medicaid Managed Care** is a New York State-sponsored program offered for children and adults who meet certain income, resource, age and/or disability requirements.

c) **Essential Plan** is a New York State-sponsored program for lower-income people who either don't qualify Medicaid or are low-income legal immigrants.

d) **Individual Coverage, which includes Qualified Health Plans** (platinum, gold, silver, bronze), are designed for New York State residents who purchase their own coverage in the commercial market, either through the health exchange or "off exchange."

e) **HealthierLife (HARP)** is a managed care product providing physical health, mental health and substance use services in an integrated way for adults with significant behavioral health needs.

f) **Medicare Advantage, Dual Advantage and Medicaid Advantage Plus** offer enhanced benefits for those who are eligible for Medicare because of age or disability, or who are eligible for both Medicare and Medicaid based on age, disability and income. It allows dual-eligibles who meet eligibility criteria to enroll in the same health plan for most of their Medicare and Medicaid benefits.

g) **Fidelis Care at Home** is a managed long term care (MLTC) product for Medicaid eligible people who need long term care and home and community based services.

32. Petitioner provides enrollees access to an extensive, high quality network of approximately 70,000 providers. See Exhibit 13 for a statewide map detailing the provider network. While Petitioner generally has an open network philosophy in which providers can join the network irrespective of other plan affiliations, Petitioner ensures a high standard of care by conducting a thorough, detailed credentialing process, requiring every physician network provider be re-credentialed every three years. At the same time, for its New York State of Health exchange products, Petitioner utilizes a network that is similar to its Medicaid network.

### **Grants to Address Social Determinants of Health**

33. Petitioner's charitable activities have grown in tandem with the state's Medicaid program. Over the past decade, New York State, through the Medicaid Redesign Team and the Delivery System Reform Incentive Program, in conjunction with the federal government, has expanded Medicaid Managed Care to cover a larger special needs population and to provide expansive health care services which contemplate "total population health"— services which are provided to, and coordinated with, housing, education and other support services to address the Social Determinants of Health.

34. Through its Grant Program, Petitioner has ventured into broader concepts of health, particularly the Social Determinants of Health, which has allowed Petitioner to further the preventive care component of its charitable purposes. Petitioner has provided millions of dollars in charitable grants and contributions for health in local communities and provider-based locations.

35. The Transaction will enable Petitioner to substantially expand the Grant Program through its establishment of the Foundation. As detailed herein, at the Closing, the proceeds from the Transaction net of Closing expenses, together with Petitioner's other assets, will be distributed to the Foundation to fund its charitable grantmaking activities.

36. The following are examples of preventive care programs Petitioner has recently supported with its Grant Program, which will serve as a framework for future grantmaking by the Foundation:

a) **Supporting Preventative Health, Nutrition & Fitness.** Petitioner has made a variety of grants to improve the health, nutrition and fitness of low-income populations, including:

- \$60,000 grant in May 2016 to support the "*Healthy for Life*" program in Buffalo, New York, which is focused on training teachers in the areas of health, nutrition and fitness, particularly in low-income schools;



- \$10,000 grant to the Charles B. Wang Community Health Center in New York City, a health center whose mission is to provide residents with quality, comprehensive and culturally effective primary healthcare, regardless of ability to pay. The grant was made in September 2017 for the purchase of blood pressure monitors;
- \$10,000 grant to the Albany-based Whitney M. Young, Jr. Health Center in December 2017 for the “*Seal a Smile*” program, which provides school-based dental hygiene for children from low-income households;
- \$69,000 grant to St. Joseph’s Home, a nursing home in Ogdensburg, New York, to manage behavioral impact from dementia and mental illness for low income elderly;
- \$100,000 in grants to the Albany-based Maternity & Early Childhood Foundation in 2017 and 2018 to provide access to healthcare for low income pregnant women, parenting teens and young parents as well as provide essential supplies such as diapers, formula and cribs for infants;
- \$7,500 grant to Morris Heights Health Center in September 2017 to purchase equipment to enable the early detection and prevention of diabetes;
- \$90,000 grant to the Superintendent of Catholic Schools, Roman Catholic Diocese of Brooklyn in May 2015 to support “*Obesity in Today’s Society: A Call to Action for Students in Grades K-8- Using the Fine Arts to Develop Physical Education Skills*” which addresses obesity through wellness and fitness;
- \$5,000 grant in April 2017 to Columbia Memorial Hospital, which services Columbia and Greene counties and northern Dutchess County, to support the purchase of new equipment to properly distribute asthma medication to children. The grant also provides support for education to

parents on the importance of proper medical and the technique to administer the medication in the most efficient way possible;

- \$20,000 grant in January 2018 to the University of Buffalo School of Dental Medicine to sponsor their “*Give Kids a Smile Day*” event, which is designed to reach about 600 uninsured children who do not have a dentist; and
- \$5,000 grant in April 2018 to Ezras Choilim Health Center in Kiryas Joel, New York, which serves as a safety net provider for the entire Southeast portion of Orange County. The goal of the grant is to enable the Center to launch a pro-vaccine educational hotline.

**b) Improving Health and Wellness in Rural and Underserved Areas.**

Petitioner funds a number of initiatives to enhance low-income New Yorkers’ access to healthcare in rural areas, such as the following:

- \$31,750 in grants to Cortland Chenango Rural Services in 2016 and 2017 to help local residents with medical services focusing on formal counseling, transportation to appointments, dental needs, eye examinations, attaining prescription medication and assistance with office visits;
- \$200,500 grant in April 2017 to Catholic Charities of the Dioceses of Ogdensburg for “*Healthy Families/Healthy Communities*,” to provide access to counseling/casework services for low-income individuals. The goals of the services included increasing parental competency, reducing abuse and neglect, and decreasing depression in individuals; and
- \$200,000 in grants between 2009 and 2017 to Catholic Charities of Wayne County for the “*La Casa*” program, which provides transitional housing and support services for migrant workers and their families.

c) **Strengthening Immigrant Health.** Petitioner makes grants to a variety of programs to address immigrant health needs such as:

- \$400,000 grant in April 2017 to Catholic Migration Services in Brooklyn for the “*Parish Outreach and Health Education Program*,” which assists immigrants with access to healthcare and provides legal services to immigrants navigating housing and immigration status issues;
- \$60,000 grant in May 2017 to the Dioceses of Buffalo Catholic Schools for their “*Healthy Minds/Healthy Lives Program*,” which focuses on three health-related concerns for at-risk vulnerable students, especially newly arrived immigrants and refugees:
  - Healthy choices and active fitness for school aged children;
  - Conflict resolution program for school aged children; and
  - English language and acculturation services to immigrant populations and their families.
- \$90,000 grant in May 2016 for “*Con Unidad Juan Diego*,” which works to improve the education, health and wellbeing of the children of the Latino immigrant community in East Harlem. The program offers workshops on healthy living; academic assistance with volunteer tutors and mentors; English as a Second Language classes; a computer literacy class; and other workshops.
- \$15,000 grant in March 2017 to Catholic Charities of Tompkins/Tioga for their “*Refugee &Tioga Outreach Center*,” which provides emergency assistance for refugees.

d) **Reducing Emergency Room Visits.** Petitioner makes grants to reduce unnecessary emergency room visits, a key statewide goal in addressing Social Determinants of Health and reducing health care expenditures. For example, Petitioner has provided nearly \$350,000 in grants between 2012 and 2014 to fund the “*Health Care*

*Solutions to Emergency Room Dependence*” initiative run by Catholic Charities of Brooklyn and Queens. This innovative program brings together a consortium of health care providers, community based organizations and Catholic Charities to educate the community on alternatives to visiting the emergency room for basic health care needs. It is designed to improve individuals’ health, free-up emergency room resources for their intended services and help contain hospital costs.

e) **Providing Housing and Food Assistance.** Petitioner has made numerous grants to improve the health and well-being of vulnerable populations in need of food, safe housing and other assistance, including such grants as:

- \$44,000 grant to the Food Bank of Western New York in December 2017 to expand their “*School Pantry Program*.” This program focuses on high school-aged children who serve as the primary or sole caretaker of their younger siblings or cousins or who have a parent/guardian that is unable to obtain food due to a disability, unpredictable work schedule or lack of transportation;
- \$72,500 in grants between 2013 and 2017 to Catholic Charities of the Finger Lakes for the “*Geneva Community Lunch Program*,” which provides warm, nutritious meals each day to low-income residents;
- \$44,000 grant to the Regional Food Bank of Northeastern New York in December 2017 to expand its “*BackPack Program*,” which provides chronically hungry children with backpacks full of food each week;
- \$30,000 in grants to Catholic Charities of Livingston County between 2014 and 2015 for the “*Faith in Action Program*,” which helps the elderly and disabled continue to live at home safely and independently; and

- \$15,000 grant to Catholic Charities of Steuben County in March 2017 for the “*Turning Point Financial/Housing Stability Support Program*,” which provides emergency assistance to help individuals and families maintain financial and housing stability, or to pay for heat, food, or electricity.

f) **Providing Youth Counseling and Services.** Petitioner supports numerous youth initiatives, including:

- \$10,000 grant in December 2017 to Westhab Inc. in Yonkers, New York to support the “*Dayspring Youth Program*,” a free after-school program in the neighborhood;
- \$45,000 in grants from 2013 to 2017 Catholic Charities of Livingston County’s “*Hope Youth Mentoring Program*,” which pairs at-risk youths between the ages of 6 and 14 with adult mentors to promote positive healthy environments and foster caring relationship;
- \$411,000 grant in May 2017 to the Catholic Charities of the Diocese of Buffalo and the Diocesan Foundation to support the “*In-School Social Work Program*,” which works to enhance student success by providing counseling and comprehensive character development, skill-building activities for students through short-term individual sessions and small groups and classroom presentations. Consultation services are also available for parents, teachers and principals, as well as staff development for teachers and principals to expand strategies and interventions for strengthening student character;
- \$5,000 grant in December 2017 to Astor Services for Children and Families which provides children’s mental health services, child welfare services and early childhood development programs to children and families in New York State’s Mid-Hudson Valley region and the Bronx.

The primary goal is to keep children with behavioral health needs at home with their families and in their regular schools whenever possible;

- \$55,000 grant in May 2017 to Diocese of Rockville Centre Catholic Schools to fund the development of prevention strategies to reduce social anxiety of young people related to cyber-bullying; and
- \$12,000 grant in December 2017 to Staten Island based Seamen's Society for Children and Families to support "*My Hero and Me*," a 8-week interactive fatherhood program that focuses on the relationship male role models have with their children in order to build stronger families and strengthen communities.

## **OVERVIEW OF CENTENE**

37. Based in St. Louis, Missouri, Centene is a diversified, multi-national healthcare enterprise that provides a portfolio of services to government sponsored and commercial healthcare programs which, like Petitioner's services, focus on under-insured and uninsured individuals. More than 80% of Centene enrollees nationwide receive benefits provided under Medicaid, Medicare and Affordable Care Act health care exchanges.

38. Centene's core business is providing cost efficient quality healthcare coverage to underserved communities. Petitioner was recently ranked #19 on Fortune Magazine's "Change the World List," acknowledging companies that do well by doing good. Centene has achieved this goal by focusing on the whole health of its enrollees and by operating locally.

39. Centene has developed substantial expertise in serving the needs of populations through the following programs, which improve the health for low-income individuals and families:

- TANF (Temporary Assistance for Needy Families)
- Medicaid Expansion
- CHIP (Children's Health Insurance Program)
- ABD (Aged, Blind and Disabled)

- Long-Term Services and Supports
- Dual Demonstrations
- Intellectually/Developmentally Disabled
- Foster Care
- Correctional Health Care
- Medicare Special Needs Plan
- Medicare Advantage
- Health Insurance Marketplaces
- Commercial Insurance

40. In addition, through Centene's family of approximately forty specialty companies, Centene provides additional healthcare benefits in the areas of behavioral and specialty therapies, pharmacy benefits management, life and health management, primary care solutions for complex populations, managed vision care, dental benefits, telehealth nursing and health education. A list of Centene's managed care organizations and specialty companies is attached hereto as Exhibit 14.

41. Centene operates managed care organizations in twenty-three states outside of New York, with approximately 33,700 employees serving approximately 12.8 million enrollees. It had annual revenue of approximately \$40.6 billion in 2016 and \$48.4 billion in 2017.

42. To date, Centene has maintained a limited footprint inside the State of New York, providing health care services in five areas. First, Centene contracts with the Community Health Independent Provider Association to provide management consultation services and technical support to a consortium of ten Federally Qualified Health Centers serving approximately 500,000 individuals. Second, Centene provides technology and care coordination services to the Alliance for Integrated Care of New York, a partnership of approximately 150 providers serving 5,000 individuals with intellectual and developmental disabilities (IDD) and Medicare enrollees. Third, Centene contracts with Excellus, an independent Blue Cross Blue Shield health plan, to provide medical management services for approximately 200,000 Medicaid enrollees in upstate New York. Fourth, Centene's subsidiary specialty pharmacy, Acaria, is physically located in New York and holds a pharmacy license under the New York State Department of Health.



Finally, Centene's subsidiary, Envolve PeopleCare, provides employee assistance programs, pharmacy benefit management and nurse advice lines to approximately 400,000 lives under employer contracts with approximately twenty-five corporations.

43. A key aspect of Centene's acquisition and operating strategy focuses on preserving local operation of its managed care organizations. Each of Centene's twenty-three managed care organizations is headquartered within the state in which it conducts business, maintains locally-based management personnel and utilizes state-specific branding. For example, Centene's Ohio-based managed care organization is named Buckeye Health Plan, while in Florida, Centene's locally managed subsidiary is named Sunshine Health.

44. Moreover, each of Centene's managed care organizations is overseen by a board of directors that emphasizes local participation and oversight. By way of an example, Centene's largest previous acquisition, Health Net, acquired in March, 2016, has local management and a local board of directors.

45. Centene's decentralized structure allows it to maintain and grow jobs locally and foster a high level of community input and involvement in the delivery of healthcare services, while leveraging Centene's scale and data analytics to improve health outcomes and reduce costs. It also allows state government partners to communicate directly with local managers, fostering ongoing relationships.

46. As discussed below, following the Closing, Centene will follow this same model in New York and allow for local control of operations by maintaining Petitioner's current management, operations and location of its headquarters, in Rego Park, Queens.

### **SELECTION OF CENTENE AS PURCHASER**

47. Recognizing the potential adverse impact of anticipated federal healthcare regulatory changes, the significant investment in technology and analytics required in the years ahead and the increasing competition from larger, better capitalized for-profit insurers entering the New York managed care and insurance market, in 2016 Petitioner began exploring strategic options for its future.



48. Petitioner spent approximately one year carefully assessing its operations, resources and the overall future viability of its business lines and considered various strategic options, including potential operational diversification strategies, geographical expansion outside of New York, joint ventures or monetization.

49. After exploring the options, the Board determined that a sale of Petitioner's insurance operations would be in the best interest of Petitioner and its Members. Selling substantially all of Petitioner's assets would (i) result in a stronger health plan with greater access to capital and more sophisticated technology and (ii) fund a substantial grantmaking program for the benefit of enrollees and the broader New York population, furthering Petitioner's mission and legacy.

50. Accordingly, in 2016, in consultation with its financial advisor, Citigroup Global Markets, Inc. ("Citigroup"), the Board authorized Petitioner's executive management team to explore a potential sale of Petitioner's operations. Soon thereafter, Petitioner, with the assistance of Citigroup, initiated an auction process in which nine prospective purchasers, five for-profit organizations and four not-for-profit organizations, were identified and invited to submit offers for the acquisition of substantially all of Petitioner's assets.

51. Two bids were received during the first phase of the auction. Each such bidder was a large, national, publicly traded for-profit insurer. Although invited to participate in the auction, Centene did not initially submit a bid. The two bids that were received were presented to the Board in December 2016 and then to the Members, at a meeting of the Members in February 2017. The Board and Members agreed to continue the second phase of negotiations with both bidders.

52. Ultimately, neither negotiation led to an agreement. Following the expiration of the contractually agreed-upon exclusivity periods, Centene contacted Petitioner with an offer for the purchase of substantially all of Petitioner's assets, which was superior to the earlier bids Petitioner received. Petitioner and Centene commenced deal negotiations in July 2017.

53. Centene's offer appealed to Petitioner for a number of reasons. In addition to its superior price, Centene demonstrated the strongest commitment to preserving and strengthening

Petitioner's products and services as well as maintaining Petitioner's employees, provider network and overall geographical presence across the state, including in rural areas. Centene and Petitioner also share the same mission of promoting health through high quality, accessible care and services for all, as well as advocating for health policy that accords true dignity and respect for all people, especially the underserved. Additionally, Centene's offer appealed to Petitioner because following an acquisition, Centene maintains the local identity, branding, operations and infrastructure of the acquired plans.

54. After intensive negotiations and extensive deliberation by the Board and the Members, Petitioner decided to enter into the Purchase Agreement.

### **THE PURCHASE AGREEMENT**

55. The Purchase Agreement provides for the sale of substantially all of Petitioner's assets for the purchase price of \$3,750,000,000 and assumed liabilities as described below.

56. As evidenced by the key terms of the Purchase Agreement, the Transaction is structured to ensure a seamless transition for Petitioner's enrollees, providers and employees, ensuring that Petitioner's products, services and provider network remain intact.

#### **Purchased Assets and Excluded Assets**

57. With limited exceptions described below, Centene is acquiring all of Petitioner's assets pursuant to the Purchase Agreement (the "Purchased Assets"). The Purchased Assets include, in particular, the following:

- a) Provider contracts, rights with respect to Petitioner's enrollees and goodwill relating to the provision of health care services under the following federal and state insurance programs:
  - 1. New York State Medicaid, Medicaid Advantage and Medicaid Advantage Plus;

2. Medicare Advantage and Medicare Dual Advantage (together, “Medicare”), subject to the Medicare Reinsurance Agreement described below;
  3. Individual commercial business, including enrollees in Qualified Health Plans as part of the New York State of Health (New York’s state-based exchange program), subject to the QHP Reinsurance Agreement described below;
  4. Child Health Plus Program;
  5. Managed Long Term Care Program; and
  6. Essential Plan.
- b) All cash, other than Excess Cash, as defined below;
  - c) All accounts or notes receivable;
  - d) Intellectual property (other than the Petitioner’s legal name, New York State Catholic Health Plan, Inc. (the “Corporate Name”), including the “FIDELIS” trademark and derivations thereof;
  - e) Information technology;
  - f) Certain assumed contracts;
  - g) All furniture, fixtures, equipment, supplies and other tangible personal property other than religious artifacts;
  - h) Permits, to the extent transferrable under the law;
  - i) All stock of Salus Administrative Services, Inc., and membership interests of Salus IPA LLC, wholly-owned subsidiaries of Petitioner;
  - j) Certain real property leases; and

- k) All other goodwill, going concern and other similar intangibles relating to the assets being purchased.

58. Centene is not acquiring the following assets of Petitioner (the “Excluded Assets”):

- a) Excess Cash, as defined below;
- b) Membership interests in Petitioner’s wholly-owned subsidiary, Rego Park Office Tower LLC, and any assets, properties, rights and claims of Rego Park Office Tower LLC, including Petitioner’s headquarters;
- c) Right, title and interest in and to the Petitioner’s Corporate Name;
- d) Attorney-client privileged communications relating to the Transaction;
- e) Rights and claims under the Purchase Agreement;
- f) Tax refunds or claims;
- g) Certain employee plans and trusts, insurance contracts, segregated accounts or other funding vehicles maintained in connection with such plans;
- h) Certain excluded contracts;
- i) Religious artifacts;
- j) Certain reserves relating to Excluded Liabilities, as defined below; and
- k) Certain books and records.

59. With respect to the Purchased Assets and the Excluded Assets, the Purchase Agreement provides as follows:

- a) Excess Cash is defined under the Purchase Agreement as the amount, if any, by which the Total Adjusted Net Assets (equal to the consolidated total net assets of Petitioner – other than that which would constitute Excluded Assets or Excluded Liabilities – minus the consolidated non-admitted assets of Petitioner) exceeds the

Minimal Capital Amount (equal to the amount of Purchased Assets sufficient to cause the acquired operations to have an authorized control level risk-based capital ratio immediately following the Closing equal to 350%). The Excess Cash amount is anticipated to be at least \$750 million.

b) As discussed below, certain of the Purchased Assets will not be transferred to Centene at the Closing. In particular, the Medicare plans and the individual products (including Qualified Health Plans) will be transitioned to Centene on a staggered basis following the Closing.

c) Centene will assume Petitioner's obligations as lessee under its lease with Rego Park Office Tower LLC for Petitioner's Rego Park headquarters location. Centene has committed to the Attorney General that it will remain headquartered at the Rego Park location for at least three years following the Closing and that it will not seek a modification or early termination of the lease (see Undertaking described in detail herein).

d) Petitioner will grant Centene a license to use the Corporate Name solely to the extent required in connection with the performance of Centene's obligations under the Medicare Reinsurance Agreement and the QHP Reinsurance Agreement described below.

#### **Assumed Liabilities and Excluded Liabilities**

60. Centene is assuming all of Petitioner's liabilities (the "Assumed Liabilities"), except for those liabilities relating to or arising from (i) Transaction-related expenses and liabilities; (ii) taxes; (iii) term loans and indebtedness relating to the term loans; (iv) pre-Closing employee-related liabilities; (v) liabilities relating to the Excluded Assets; (vi) breaches of assigned contracts prior to the Closing; (vii) intercompany payables; and (viii) broker or finder fees (together with clauses (i) through (vii), the "Excluded Liabilities").

#### **Purchase Price & Form of Consideration**

61. The fair market value of the Purchased Assets was appraised by Navigant Consulting, Inc. ("Navigant"), an independent professional appraisal firm retained by Purchaser.

A copy of Navigant's opinion letter included with their appraisal report which sets forth the valuation range is attached hereto as Exhibit 15.

62. As explained in Navigant's supplemental letter dated March 7, 2018, attached hereto as Exhibit 16 (the "Navigant Letter"), Navigant utilized the discounted cash flow method under the "income approach" as the valuation methodology. This method evaluates the fair market value of a business on a going concern "enterprise value" basis by calculating the projected cash flow to be generated over time, discounted to present value. Navigant corroborated the valuation under the discounted cash flow method by evaluating the fair market value of the business under the "market approach," which compares the business being valued to similar peer or comparable companies.

63. In an affidavit, dated May 7, 2018, which is attached as Exhibit 17, Rev. Patrick J. Frawley affirms that the facts as laid out in the Navigant appraisal with respect to Petitioner are true and accurate in all material respects.

64. The Navigant appraisal was the only appraisal commissioned by Petitioner in contemplation of the sale of substantially all of its assets since Petitioner began exploring strategic options for its future in 2016.

65. At their September 7, 2017 meeting, the Board was provided with a fairness opinion by Citigroup Global Markets Inc. attached hereto as Exhibit 18. In addition, Citigroup Global Markets Inc. made a presentation to Petitioner's Board on September 8, 2017. Excerpts of the presentation are attached as Exhibit 19.

66. The consideration to be received by Petitioner for the Purchased Assets from Centene is \$3,750,000,000 plus Assumed Liabilities (the "Purchase Price").

67. The Purchase Price is subject to positive or negative adjustments based on the difference between the working capital estimated at Closing and the working capital as calculated one year post-Closing pursuant to the methodology attached as Exhibit O to the Purchase Agreement. In addition, the Purchase Price is subject to positive or negative adjustment based on the difference between the estimated enrollment volume each of Petitioner's business segments and the actual enrollment volume following the Closing. Specifically, such

adjustment will be calculated by multiplying (a) the difference in the number of enrollees between September 30, 2017 and specified dates following the Closing within the applicable business segment(s) by (b) the per-enrollee purchase price applicable to such business segment, as set forth on Exhibit P to the Asset Purchase Agreement.

68. The foregoing adjustments to the Purchase Price are anticipated to be *de minimis* relative to the Purchase Price.

69. Centene has the option to pay up to \$500,000,000 (approximately 13.3%) of the Purchase Price at Closing in the form of Centene's common stock (the "Permitted Stock Consideration").

70. If Centene elects to pay any portion of the Purchase Price in stock up to the Permitted Stock Consideration, the first \$375,000,000 in Permitted Stock Consideration must be used to fund the required \$375,000,000 indemnification escrow account from which indemnity claims may be paid.

71. Additionally, the Permitted Stock Consideration used to fund the indemnification escrow must be converted into cash within one year following the Closing such that, upon release of the escrow account at the end of the indemnification period, Petitioner will receive \$375,000,000 in cash, subject to any reductions for indemnification claims. The indemnification period expires on the later of (i) twelve months following the Closing, or (ii) thirty days after Centene receives its audited financial statements for the fiscal year ending on December 31, 2018, up to eighteen months following the Closing.

72. Additionally, the balance of the remaining \$500,000,000 that may be paid in the form of Permitted Stock Consideration (i.e. \$125,000,000) would be issued to Petitioner at Closing. However, this stock will be fully registered common stock and therefore can be liquidated into cash within one (1) to two (2) business days following the Closing.

### **Transition of Certain Products**

73. Enrollees in Petitioner's individual commercial market products (including Qualified Health Plans) and Medicare products (Medicare Advantage, Medicare Advantage D-

SNP, Medicare Advantage Plus, and Medicaid Advantage Plus) will not be immediately transitioned to Centene.

74. The enrollees in the individual commercial market products (including Qualified Health Plans) will be transitioned during the next annual open enrollment period. Since the Transaction will be approved between open enrollment period for these enrollees, it is anticipated that these insured lives will need to wait until the next open enrollment period (for 2019 coverage) in order to be transferred or to select another health plan. Of the approximately 1.7 million current enrollees, approximately 98,000 are enrolled in the individual market. Although the Purchase Agreement initially provided that the Essential Plan enrollees would remain with Petitioner through the end of 2018 along with the enrollees of the individual products, as part of the APA Amendment, Petitioner and Centene agreed to transfer the approximately 165,000 Essential Plan lives at Closing.

75. During the time between Closing and the date of transfer, an existing Centene subsidiary company, Hallmark Life Insurance Company, an Arizona-domiciled insurance company and wholly owned subsidiary of Centene (“Hallmark”), will reinsure all of the financial liabilities relating to Petitioner’s individual products (including Qualified Health Plans) products in accordance with a reinsurance agreement (the “QHP Reinsurance Agreement”), the form of which is attached hereto as Exhibit 20.

76. With regard to those enrolled in the Medicare products, the novation or assignment of their Medicare contracts is subject to approval by the Centers for Medicare & Medicaid Services (“CMS”) as described herein. As that approval process will unlikely align with the Closing of the Transaction, these enrollees will also need to remain with Petitioner for a certain period of time. The parties anticipate that the Medicare contracts will be fully novated or assigned to Centene prior to January 1, 2020. There are approximately 65,000 enrollees enrolled in these Medicare products.

77. Accordingly, during the time between Closing and the date of novation, Hallmark will reinsure all of the financial liabilities relating to the Petitioner’s Medicare business in accordance with a Medicare Reinsurance Agreement, the form of which is attached hereto as Exhibit 21 (the “Medicare Reinsurance Agreement”).



78. All of Hallmark's obligations under the QHP Reinsurance Agreement and the Medicare Reinsurance Agreement will be guaranteed by Centene pursuant to a Guarantee Agreement, the form of which is attached hereto as Exhibit 22 (the "Guarantee Agreement"). Upon the completion of the migration to Centene, it is anticipated that Hallmark will exit the market.

79. Subject to the Department of Health approval described herein, Petitioner will enter into a management agreement with Centene Management Company, LLC, a Wisconsin limited liability company and a wholly owned subsidiary of Centene ("CMC"), Centene Company of New York, LLC, a New York limited liability company and a wholly owned subsidiary of Centene ("CCNY"), and Salus, pursuant to which CMC, CCNY and Salus would assume responsibility for the operations of the Petitioner's individual commercial products and Medicare products until those products are transitioned to Centene (the "Management Agreement"). A copy of the current form of Management Agreement is attached hereto as Exhibit 23.

80. In furtherance of the foregoing, the parties entered into the APA Amendment to effectuate the following changes: (a) accelerate the transfer of the Essential Plan business, which was originally going to transition on or about December 31, 2018, to instead transfer it upon the closing of Transaction; (b) reflect that the Medicaid Advantage Business and the Medicaid Advantage Plus Business would be subject to the Medicare Reinsurance Agreement and transfer the businesses contemporaneously with the Medicare Business; (c) reflect that the business to be reinsured under the Medicare Reinsurance Agreement and the QHP Reinsurance Agreement would be administered under the Management Agreement by CMC, CCNY and Salus; and (d) attach updated forms of Reinsurance Agreements, Guarantee Agreement and Management Agreement to the Purchase Agreement.

### **Closing Conditions**

81. The principal conditions that must be satisfied prior to Closing in order for both parties to close the Transaction include:

- a) Filing any required materials pursuant to the Hart-Scott-Rodino Act and waiting for the termination or expiration of any applicable waiting period (or extensions);
- b) Receipt of all necessary regulatory approvals (i.e., the New York State Office of the Attorney General and/or the New York State Supreme Court, the New York State Department of Health, the New York State Department of Financial Services and Centers for Medicare and Medicaid Services);
- c) The successful novation or assignment of Petitioner's contracts for its business lines (other than those relating to Medicare and the Petitioner's individual products (including Qualified Health Plans) products to Centene and the receipt of all approvals, consents and waivers required in connection with such assignments; and
- d) Receipt of all approvals, consents or waivers required in connection with the Medicare Reinsurance Agreement and the QHP Reinsurance Agreement.

82. The principal conditions that must be satisfied prior to Closing in order for Centene to close the Transaction include, among others:

- a) The absence of any "Material Adverse Effect," which includes any event, change, effect, development, state of facts, condition, circumstance or occurrence that, individually or in the aggregate, results or could be reasonably be expected to result in a materially adverse to the Petitioner's operations, with certain exceptions.
- b) The absence of certain conditions imposed by regulatory authorities in connection with the Transaction.
- c) Receipt of all third-party consents, approvals and authorizations required to be obtained pursuant to the Purchase Agreement.

83. The principal conditions that must be satisfied prior to Closing in order for Petitioner to close the Transaction include, among others:

- a) Petitioner shall have received all required governmental approvals to enable the Foundation to operate in all material respects in furtherance of healthcare and

healthcare related purposes set forth on Exhibit S of the Purchase Agreement, including those which address the Social Determinants of Health, such as healthcare, nutrition, substance abuse, behavioral health, home and community-based services, early intervention, education and literacy, affordable quality housing, employment and care for the elderly (the “Applicable Purposes”).

b) The absence of certain conditions imposed by regulatory authorities in connection with the Transaction.

### **Post-Closing Covenants**

84. The Purchase Agreement requires the parties to satisfy certain obligations post-Closing. These include standard post-Closing obligations such as indemnification for breaches of representations and warranties and other breaches of contract as well as the following obligations:

a) Petitioner and its Members are subject to non-compete restrictive covenants for a period of five years following the Closing (the “Non-Compete”). The Non-Compete covers the geographical area of the State of New York and prohibits Petitioner and its Members from directly or indirectly engaging in, facilitating, or owning any interest in (with limited exceptions<sup>2</sup>) any other business that engages in, the operation of any healthcare insurance or managed health care business that competes with the business conducted by Petitioner immediately prior to the Closing. Prior to the Closing, as described herein, the Foundation will enter into a Payment and Limited Joinder Agreement with Petitioner and Centene under which the Foundation will agree to become bound by the Non-Compete covenants. However, it is not anticipated that this restriction will have any practical application to Petitioner or the Foundation as neither the Petitioner nor the Foundation anticipates engaging in any of the activities prohibited by the Non-Compete. Additionally, the Non-Compete includes an express carve-out for the

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<sup>2</sup> The following is permitted under the Purchase Agreement: (i) acquiring any business that engages in Restricted Business where the revenues from such Restricted Business constitute less than five percent (5%) of its total revenues and (ii) acquiring or holding bonds of up to five percent (5%) of the outstanding shares of any class or series of equity securities of any entity if such bonds or equity securities are publicly traded.

Archdiocese of New York's continued operation of the ArchCare Continuing Care Community, as such business is conducted immediately prior to the Closing.

b) As described above, pursuant to the QHP Reinsurance Agreement and the Medicare Reinsurance Agreement, Centene will reinsure all of the financial liabilities relating to the Petitioner's individual products (including Qualified Health Plans) and Medicare products until such time that the applicable contracts with CMS and the Department of Health can be novated or assigned to Centene.

c) For a period of one year following the Closing, to the extent permitted by applicable law and government authorities, Purchaser must use commercially reasonable efforts to comply with the protocols and policies developed by Petitioner relating to the Ethical and Religious Directives.

d) Purchaser is required to offer employment to all of Petitioner's employees (subject to standard background checks) and must retain such employees for a period of one year following the Closing. During this one year period, Purchaser can only terminate such employees for cause or due to the occurrence of any material adverse change to the business.

85. While the Purchase Agreement contemplates that the parties will enter into a transition services agreement for certain administrative services for a limited period of time after the Closing, the parties now believe that such an agreement will be unnecessary.

### **NEW FIDELIS CARE STRUCTURE**

86. Centene has formed New York Quality Healthcare Corporation, a wholly-owned subsidiary, to operate the businesses acquired from Petitioner following the Closing. To ensure a seamless transition, Centene will acquire the name "Fidelis Care" as part of the Transaction and New York Quality Healthcare Corporation will continue to operate the health care enterprise under that name (New York Quality Healthcare Corporation is referred to herein as "New Fidelis Care").

87. The current executive management team of Petitioner will continue managing the business for New Fidelis Care. New Fidelis Care's headquarters will continue to operate from its present home in Queens.

88. New Fidelis Care will be governed by a board of directors, which is expected, within one year of Closing, to be comprised of seven individuals. The board will represent a broad cross-section of New York State's medical community and will include management of the New Fidelis Care business. It is anticipated that Centene will also create a standing subcommittee to represent the interests of New Fidelis Care's enrollees. The chairperson of this subcommittee will hold an ex-officio seat on the New Fidelis Care board of directors.

89. As described herein, for a period of three years following the Closing of the Transaction, Centene has committed to appoint one individual to the Board of Directors of New Fidelis to advocate for the interests of the Medicaid enrollees of New Fidelis and the implementation of the recommendations contained in the report of the independent expert, such board member to be mutually agreeable to both Centene and the Attorney General

90. In conjunction with its formation and authorization to operate as a managed care organization, it is contemplated that New Fidelis Care, subject to Department of Health approval, will enter into a management agreement with CMC and CCNY. A copy of the current form of management agreement is attached as Exhibit 24.

91. Pursuant to the management agreement, New Fidelis Care will, in compliance with all applicable statutes and regulations, delegate to CMC and CCNY the authority to manage, on behalf of New Fidelis Care, certain day-to-day business operations and affairs of New Fidelis Care, including IT support, data analytics, medical management services, legal support and employee benefits services.

92. The proposed form of the management agreement was included with the Certification Application for the Department of Health's review and approval. New Fidelis Care, CMC and CCNY will utilize Petitioner's current staff and policies and procedures, including but not limited to, service delivery and provider network, quality assurance systems and practices, utilization review, claims management, grievance practices and member services

93. Because Centene's integrated healthcare model effectively will provide a complete array of government-sponsored healthcare services throughout New York State, including among others behavior health support, pharmacy benefit management and managed long term care services, Centene does not anticipated utilizing its specialty companies in contractual relationships with New Fidelis Care in the foreseeable future. The exception to this status quo is the possible introduction of Acaria Health, Centene's specialty pharmacy company, into the New York market. Acaria Health is currently licensed and operational in New York State.

94. Presently, Petitioner contracts with CVS Pharmacy for specialty pharmacy services. It is feasible that New Fidelis Care may choose to competitively bid specialty pharmacy services in the future and that Acaria Pharmacy may compete with other providers to become the best quality service at a competitive price.

95. Additionally, Centene is committed to compliance and payment integrity. Centene's payment integrity efforts include prepayment review, retrospective data mining, overpayment recovery, on-site auditing, participation in state and federal fraud taskforces and a Special Investigation Unit.

#### **NEW FIDELIS CARE OPERATIONS**

96. Centene recognizes Petitioner's valued role as a leading statewide employer with a large, highly skilled and engaged workforce. As noted below, the terms of the Transaction provide continuity of employment to the entire workforce, which both Centene and Petitioner view as vital to the historical and future success of the business.

97. Additionally, Centene's decentralized, local approach for care will preserve Petitioner's corporate presence in New York as the anchor of Centene's multi-line healthcare business in New York. Post-Closing, Petitioner's business will continue to be headquartered in Rego Park, Queens and will continue operations throughout the state, including Albany, Buffalo, Rochester and Syracuse. Its regional offices, satellite locations, community locations and kiosk locations will continue operating as before. The current executive management team of Petitioner, including Petitioner's seven top executives, will continue to manage the business.

98. As a result of the Transaction, Petitioner will be able leverage Centene's national infrastructure of support functions, including finance, information systems and claims processing, to create scale and efficiencies and improve health outcomes in connection with the integration of the assets acquired in the Transaction.

### **Enrollees**

99. From the outset of negotiations, Petitioner has focused on ensuring uninterrupted access to Petitioner's products and services. To that end, the offerings of New Fidelis Care, post-Closing, will closely mirror the product offerings that enrollees now experience. In particular, New Fidelis Care will continue to offer the full spectrum of Medicaid products, including HARP, SSI and CHIP, managed long term care, Essential Plan and Qualified Health Plans to exchange enrollees and Medicare Advantage plans to Medicare eligible customers.

100. In addition to receiving their high quality coverage from current offerings, under the Centene umbrella, enrollees will also have access to a range of new programs. For example, Centene's MemberConnections program provides cell phones to high risk enrollees who do not have safe, reliable access to a cell phone. Enrollees with ConnectionPlus phones have significantly higher HEDIS (Healthcare Effectiveness Data and Information Set) rates for adult access to care and various cancer screenings. Another program, CentAccount, provides financial rewards to enrollees who embrace healthy behaviors. Centene research showed that adult enrollees who earned the "annual well visit reward" were 34% less likely to visit the emergency room.

101. Enrollees will also have access to Centene programs that address high-risk pregnancies and substance usage during pregnancy; these programs have dramatically reduced pre-natal and post-natal care expenses, while improving mother and child health outcomes. For example, StartSmart promotes education and communication between pregnant enrollees and their case managers to ensure a healthy pregnancy and first year of life for their babies. The program has resulted in a significant decrease in low birth weight deliveries and their attendant costs.

102. Likewise, Centene-initiated programs to address living with sickle cell anemia, opioid management and prescriber/pharmacy lock-ins lead to significantly better outcomes, while appropriately managing a state's pharmaceutical expenditures.

103. In the area of pharmacy management, Centene's family of managed care companies strive to provide enrollees with the right medication at the earliest opportunity. In New York, New Fidelis Care will continue to administer its pharmaceutical formularies in accordance with the program requirements of the New York State Department of Health and the Centers for Medicare and Medicaid Services for each of New Fidelis Care's products. New Fidelis Care's pharmaceutical step therapy management and speedy response times will provide enrollees with the prescriptions they require, while appropriately emphasizing provider directives above cost considerations.

### **Provider Network**

104. The Petitioner's existing provider network will remain virtually intact. Presently, Petitioner's contracts with its providers include an assignment of the contract by Petitioner, either upon notice to providers or with the provider's consent (which generally cannot be unreasonably withheld). The process of assigning each of Petitioner's provider contracts to New Fidelis Care (subject to the approval of the Transaction) is nearly completed and, thus far, virtually no provider has objected to the assignment. It is anticipated that by Closing Petitioner's entire current network will transition to New Fidelis Care, with only *de minimis* exceptions.

105. Centene is committed to value based care and the proposition that doctors should be rewarded for good health outcomes. Centene is a national leader in innovative, value-based payment models. In notable value-based purchasing markets, such as California, Florida and Texas, 70% of current Centene enrollees are covered by a value-based purchasing model. In California, more than 80% of Centene enrollees are covered by Level II contracts, in which providers share both upside and downside risk.

106. Regarding the prompt payment of providers, Centene's claims turn-around time for payment of providers is approximately eight days and is among the best in the industry.



## **Employees**

107. Petitioner and Centene recognize that Petitioner's current employees, which total nearly 4,300, and the unparalleled personalized service they provide, are Petitioner's most valuable asset. As part of the Transaction, Centene has committed to make offers of continued employment to all of Petitioner's current employees. Compensation paid to employees of New Fidelis Care will be at least equal to their past compensation and retirement benefit packages earned as part of their prior employment at Petitioner. Under the Centene platform, New Fidelis Care will create exciting opportunities for Petitioner's current employees, who will join a large and diverse organization that will retain the unique qualities and culture that have driven Petitioner's success. Employees will also have the potential for career growth and advancement throughout Centene.

108. In addition, given the importance of retaining the Petitioner's executive team, Centene has agreed to make offers of employment to the executive team as well as certain incentive payments to such executives to ensure a smooth transition of the business to New Fidelis Care, the continued success of the business into the future, and continuity of care for its enrollees. Going forward, compensation and benefits for such executives will be commensurate with similarly situated executives within Centene and across the insurance industry.

109. None of Petitioner's executives will receive any severance or retention payments from Petitioner or its assets as a result of the Transaction. While the terms of the executives' current employment agreements would have entitled them to such payments, each agreed to waive these payments in their entirety prior to execution of the Purchase Agreement.

## **CENTENE'S COMMITMENTS TO NEW YORK**

110. As a result of the Transaction, enrollees and communities across the state will benefit from Centene's entry into the New York marketplace.

### **Commitment to Bring Innovative Technology to New York**

111. With Centene's technology and data analytics, New Fidelis Care will be able to accelerate meaningful innovations to the services it will provide to Petitioner's current enrollees.

Centene has already developed the data mining and analytic tools with which Petitioner's current IT systems will interface in order to provide superior, cost-effective health outcomes.

112. Centene annually invests more than \$1 billion per year in technology-based products, services and support. The goal of this investment is to provide enrollees with high quality healthcare at appropriate cost on behalf of its government partners. Centene accomplishes this through diligent case management. Highly trained physicians, nurses and case managers work with enrollees and providers to conduct individual health management. Proprietary IT solutions assist case managers in providing enrollees with appropriate levels of care at the earliest point in the care continuum.

113. Examples of Centene's technologies include the following:

- a) TruCare<sup>TM</sup> Centene's integrated care management platform provides health risk assessments, tracks allergies and organizes administrative and clinical information regarding patients;
- b) Centelligence<sup>TM</sup> uses predictive modeling and analytics to translate data into meaningful action on behalf of its enrollees; and
- c) Interpreta<sup>TM</sup> provides real-time clinical and genomic analysis to streamline work flows, prevent disease, customize care and circumvent adverse events.

114. In one example of Centene's successful application of data analytics, Centene has effectively used analytic platforms driven by machine learning algorithms to identify enrollees for intervention to address opioid addiction.

115. Case managers strive to remain in regular contact with enrollees through Centene's locally staffed member services call centers, 24 hour/7 day per week nurse advice lines and community health worker program. These case managers provide access to wellness instruction through a wide variety of high-touch programs, including Centene's Health Reminder Program (mailings and call campaigns), community health fairs, Start Smart Baby Showers, interactive member portal and mobile applications and CentAccount<sup>TM</sup> (Centene's healthy rewards financial incentive program), among many others.

116. The combination of Centene's technology and expert medical management also allows Centene to provide enrollees with state-of-the-art care management and disease management services. Technology provides tools for care managers to quickly close care gaps within provider panels. An array of disease management programs give real-time insight into the treatment of conditions such as asthma, chronic obstructive pulmonary disease, congestive heart failure, coronary heart disease, diabetes and smoking cessation.

117. Technology also provides case managers with new levels of insight into discharge and transition of care programs. Case managers remain in close contact with on-sight hospital discharge planning staff at high volume facilities to monitor the care and progress of in-patient enrollees. Post-discharge, case managers maintain telephone contacts within three to seven days to monitor a member's progress and conduct face-to-face follow up with enrollees at high risk for readmission.

#### **Commitment to Healthcare Exchanges**

118. Centene brings to New York its deep commitment to federal and state healthcare exchanges at a time when many other providers have distanced themselves. Today, Centene is the nation's largest provider of services through the exchanges, insuring approximately 1,000,000 enrollees in fourteen states.

119. Importantly, Centene has gained a national reputation for entering difficult exchange markets exited by other insurance carriers. In the past two years, Centene has entered otherwise "bare markets" (no insurer on the exchange) in Missouri, Arizona, Kansas and Nevada, often serving as a region's sole healthcare provider. Centene has worked closely with state governmental partners to provide insurance in counties in danger of being designated as "bare counties."

120. Centene will participate in the New York State of Health exchange marketplace, serving Petitioner's Essential Plan and Qualified Health Plan enrollees and supporting the state's health exchange mission into the future.

### **Commitment to Managed Long Term Care**

121. Centene will bring to New York its significant expertise in providing long term support services to state partners and will participate in New York State's Managed Long Term Care (MLTC) program. Currently, Centene provides MLTC/Long Terms Services and Support (LTSS) coverage in Arizona, California, Florida, Illinois, Kansas, Ohio and Texas. Additionally, Centene is contracted to begin providing such services in Pennsylvania in 2018.

122. Centene believes a highly-trained and appropriately compensated workforce is critical to providing MLTC services to enrollees. Consequently, Centene has developed strong partnerships with Service Employees International Union (SEIU), a mainstay in the home healthcare field, to incentivize and train a caring and competent workforce. In states such as Illinois and California, Centene has supported SEIU's local training programs to train healthcare workers for these demanding jobs. Currently, Centene is working with SEIU in Pennsylvania to develop even more advanced programs. Specifically, Centene is partnering to create an advanced home health aide pilot program, leveraging the knowledge and skills of the most experienced home health workers across a community.

123. Additionally, Centene is a national leader in transitioning enrollees from nursing facilities back to the communities in which they live. Since 2013, Centene has transitioned nearly 8,000 enrollees from nursing homes back into the community in the states of Florida, Illinois, Kansas, Ohio, Texas and California.

124. Centene has recently opened a dialogue with SEIU Local 1199 in New York to explore ways to ensure MLTC workers are appropriately trained and incentivized to provide quality care across rural and urban New York State.

### **Centene Undertaking**

125. At the request of the Attorney General, Centene has agreed to enter into an undertaking (the "Undertaking"), pursuant to which Centene is making specific commitments to the Attorney General concerning the maintenance of Petitioner's current product offerings following the Closing, the appointment of an enrollee-advocate to serve on New Fidelis Care's

board, and certain other matters. A form of the Undertaking is attached as Exhibit 25. In the Undertaking, Centene has agreed to cause New Fidelis Care to, among other things:

a) offer through the end of calendar year 2021 a substantially identical selection of Medicaid, Medicare and New York State of Health Exchange health plans in the same geographical areas as were offered by Petitioner immediately prior to the closing of the Transaction;

b) offer all existing hospital, medical and pharmacy providers to Petitioner the opportunity to transfer to New Fidelis Care upon the closing of the Transaction on the exact same terms and conditions (including reimbursement rates) as such providers had with Fidelis Care prior to the closing of the Transaction for the remainder of the calendar year 2018;

c) offer all existing hospital, medical and pharmacy providers to Petitioner the opportunity to participate in the New Fidelis Care provider network during calendar years 2019 through 2021 on substantially similar terms and conditions as such providers had with Petitioner as of the Closing date of the Transaction, subject to Department of Health regulations in place at the time of contracting;

d) retain an independent expert, selected by the Attorney General, to produce a report of recommendations to the Board of Directors of New Fidelis Care for its consideration following the Closing, which recommendations are intended to address the potential impact, if any, of the Transaction on the Medicaid membership of Petitioner (the report will be produced for three years after the Closing);

e) for a period of three years following the Closing of the Transaction, to appoint one individual to the Board of Directors of New Fidelis to advocate for the interests of the Medicaid enrollees of New Fidelis and the implementation of the recommendations contained in the report of the independent expert, such board member to be mutually agreeable to both Centene and the Attorney General;

f) not limit the whistleblower rights of any of its New York-based employees, vendors or consultants before any state or federal law enforcement or regulatory body in

any agreements regarding employment or separation from employment entered into by Centene or its affiliates or implement any policies or procedures that would limit such rights;

g) maintain New Fidelis' headquarters at Petitioner's current headquarters location in Rego Park, Queens for at least three years, under Petitioner's current lease arrangement; and

h) make annual reports to the Attorney General regarding the foregoing through the year 2021.

### **REGULATORY APPROVAL PROCESS**

126. In addition to the Attorney General's approval, certain other State and Federal regulatory approvals are required for aspects of the Transaction. Petitioner will provide a copy of this Verified Petition to the New York State Department of Health, the New York State Department of Financial Services and such other agencies as directed by the Attorney General.

#### **New York State Department of Health**

127. On October 23, 2017, Petitioner and Centene filed a "change of control" application with the Department of Health pursuant to Article 44 of the New York Public Health Law. The application requested approval of the sale of Petitioner's assets and liabilities to New Fidelis Care (New York Quality Healthcare Corporation).

128. On April 20, 2018, the Department of Health approved the application subject to the conditions set forth therein. It also approved the transfer of the Transaction proceeds and all assets of Petitioner to the Foundation following the Closing to enable the Foundation to conduct its charitable grantmaking activities as described herein.

129. Attached as Exhibit 26 is (i) the approval letter of the Department of Health dated April 20, 2018 and (ii) an agreement by Petitioner, dated April 19, 2018, in which it agreed to the conditions for Department of Health approval. Attached as Exhibit 27 is a letter from the Superintendent of the Department of Financial Services to the Commissioner of the Department of Health providing support for the Transaction.

130. In addition, on April 20, 2018, the Department of Health approved New Fidelis Care's application to operate Medicaid, Child Health Plus, Health and Recovery Plan (HARP), and Managed Long-Term Care (MLTC) (excluding Medicare lines of business) programs in all 62 counties and issued New Fidelis Care a Certificate of Authority reflecting such approval. The Certificate of Authority also includes the Essential Plan in specified counties and, effective January 1, 2019, the Qualified Health Plan. Attached as Exhibit 28 is (i) the approval letter of the Department of Health dated April 20, 2018; (ii) the Certificate of Authority issued to New Fidelis Care; and (iii) an agreement by Centene, dated April 18, 2018, in which it agreed to the conditions for Department of Health approval.

131. In addition, Department of Health approval is pending for the Management Agreement described above and attached as Exhibit 23 hereto.

#### **New York State Department of Financial Services**

132. The Department of Financial Services' approval of Hallmark's application to become a licensed insurer in New York is also required in order for Hallmark to provide reinsurance under these agreements. On April 18, 2018 Department of Financial Services approved the license subject to the conditions set forth therein. Attached as Exhibit 29 is a copy of Department of Financial Services approval and a copy of the license, which is effective April 20, 2018.

133. Approval by the Department of Financial Services for the Medicare Reinsurance Agreement and QHP Reinsurance Agreement is pending.

#### **Centers for Medicare and Medicaid Services ("CMS")**

134. The novation of Petitioner's existing Medicare contract and business to New York Quality Healthcare Corp. is subject to approval by CMS. Prior to such novation, New York Quality Healthcare Corp. must apply to become an eligible organization to provide such Medicare coverage. The approval of eligible organizations by CMS are permitted only during certain limited time periods over the year (beginning in June of the calendar year). Once approval to be an eligible entity is granted, then a request will be made for approval of the novation of the Medicare contract. Thus, this process will likely not be completed until 2019.

135. Petitioner notified CMS of the transaction on October 4, 2017 and recently spoke with CMS to update them on the transaction and discuss the timeline for the novation. In advance of the Closing of the transaction, Petitioner will submit to CMS a notice of a delegation of management functions to a Centene affiliate.

#### **Hart-Scott-Rodino Anti-Trust Review**

136. The Transaction was subject to antitrust review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). Centene and Petitioner each filed a pre-merger notification under the HSR Act with the United States Department of Justice and the United States Federal Trade Commission on September 18, 2017. Early termination of the waiting period under the HSR Act (which would otherwise have expired on October 18, 2017) was granted on September 29, 2017, as reflected in the letter attached hereto as Exhibit 30, with no action taken.

#### **AGREEMENT WITH GOVERNOR’S OFFICE**

137. Following the execution of the Purchase Agreement, the State asserted its intent to enact legislation aimed at regulating transactions such as the Transaction. Through the legislation, the State asserted a right to substantially all of the Transaction proceeds, as well as a significant portion of Petitioner’s cash and investments on its balance sheet, which post-Closing is projected to be approximately \$4.6 billion. Petitioner strongly disputed the State’s position, asserting that the State had no right or interest in or to any portion of the Transaction proceeds or any of its assets.

138. Although Petitioner had strong legal arguments challenging the State’s position, it ultimately determined that it was in the best interests of Petitioner and its Members, as well as the poor and underserved populations of New York State, to settle and resolve the dispute.

139. On March 30, 2018, the Petitioner and the State agreed on a framework for settlement that would result in an approximately \$3.2 billion foundation while at the same time providing a monetary contribution to the State. As part of the settlement, Petitioner agreed that it would make a payment of \$1 billion (the “Initial Fidelis Payment”) to the State within 30 days of the Closing and that an additional payment of \$400 million would be made to the State within 18



months of the Initial Fidelis Payment. Finally, Petitioner agreed to provide an additional \$100 million, which could be paid in the form of two equal \$50 million charitable grants, the first made in 2021 and the second made in 2022. Attached as Exhibit 31 is the letter dated March 30, 2018 from Petitioner to Mr. Robert Mujica, director of the New York State Division of the Budget, outlining the settlement framework.

140. Centene also entered into a Memorandum of Understanding, whereby it agreed to contribute to the State \$340 million payable in five equal installments over five years. New York State will also receive from Centene at least \$160 million in additional taxes and fees as a result of Centene's operation as a for-profit health insurer in New York State. Attached as Exhibit 32 is Centene's Memorandum of Understanding dated March 30, 2018.

### **ORGANIZATIONAL STRUCTURE FOLLOWING THE CLOSING**

141. Following the Closing, Petitioner's current governance structure will remain intact. Members will continue to have the same reserved powers they currently hold, including the power to appoint directors and officers of Petitioner and the power to ensure compliance with the Ethical and Religious Directives.

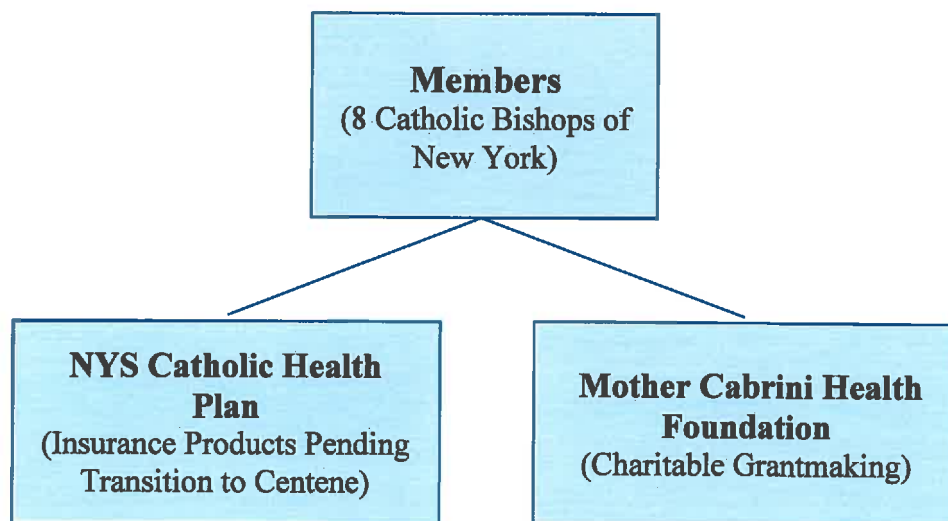
142. Additionally, following the Closing, Petitioner's Certificate of Incorporation and By-Laws will remain as currently in effect, except that Petitioner's Board of Directors will likely be reduced in size to reflect the narrower scope of Petitioner's services post-Closing.

143. Petitioner, however, has determined that it is in its and the Members' best interest to separate the insurance/managed care business that will temporarily remain with Petitioner (i.e. individual and Medicare products) from the grantmaking program to be carried out post-Closing.

144. Accordingly, following the Closing, Petitioner – the New York State Catholic Health Plan, Inc. – will maintain the individual and Medicare contracts until they are transitioned to Centene. The Foundation – the Mother Cabrini Health Foundation, Inc. – a separate New York charitable corporation with identical Members as Petitioner, will serve as the grantmaking foundation following the Closing.

145. Several factors contributed to this decision. First, the remaining managed care products will be subject to regulatory oversight and requirements that apply solely to managed care organizations and not charitable grantmaking foundations. Second, a managed care plan's business requires different governance, management, compliance and oversight functions than a charitable grantmaking foundation. Third, the regulatory restrictions that would apply upon the final transfer of Petitioner's remaining business to Centene could interfere with planned charitable grantmaking activities and potentially encumber a substantial amount of charitable assets intended for grants. Fourth, segregating the insurance business from the grantmaking activities insulates the assets intended to help New York's poor and needy from competing interests.

146. The organizational structure of Petitioner and the Foundation is depicted below:



147. To enable the Foundation to carry out its activities, at or immediately following the Closing Petitioner will transfer the proceeds of the Transaction, net of Closing expenses, and all of Petitioner's remaining assets to the Foundation. In addition, the Petitioner's rights and obligations with respect to the \$375,000,000 indemnification escrow will be assigned to the Foundation at Closing.

148. Exhibit 33 provides a statement of the sources and uses of the Transaction proceeds and the assets of Petitioner to be transferred to the Foundation.

149. In contemplation of the transfer of assets to the Foundation, Petitioner, Centene and the Foundation will enter into a Payment and Limited Joinder Agreement (the "Payment and

Joinder Agreement”), pursuant to which the Foundation will agree to pay on behalf of Petitioner certain of Petitioner’s payment obligations that are determined to be owed by Petitioner under the Purchase Agreement.<sup>3</sup> In addition, the Foundation agrees to comply with certain provisions of the Purchase Agreement as if the Foundation had originally been named a party to the Purchase Agreement.<sup>4</sup> Attached hereto as Exhibit 34, is a form of the Payment and Joinder Agreement.

### **MOTHER CABRINI HEALTH FOUNDATION, INC.**

150. The Foundation will be the largest foundation focusing exclusively on the health and well-being of poor, underserved and disadvantaged New York residents.

151. The Foundation’s certificate of incorporation and the proposed by-laws are attached hereto as Exhibit 35 and Exhibit 36, respectively. The Foundation will apply for and obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

152. Consistent with Petitioner’s current charitable purposes and grantmaking program, the Foundation anticipates making up to \$150 million in grants annually to improve the health and well-being of vulnerable New Yorkers, bolster the health outcomes of targeted communities, and bridge gaps in services that address the health and wellness needs of low-income communities and families throughout the State.

153. Importantly, the Foundation will use its assets to create greater access to care, services and other support for New Yorkers. It will drive better care for marginalized communities and will provide flexible support for new and innovative approaches that enhance health and wellness across New York State as reflected in its proposed mission statement attached hereto as Exhibit 37.

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<sup>3</sup> Applicable provisions of Purchase Agreement: Sections 2.07(d) and (e) (Determination of Enrollment Purchase Price Adjustment), Sections 2.08(d),(e) &(f) (Determination of Working Capital Purchase Price Adjustment), Section 2.10 (Third Party Consents), Section 6.08(d) (Governmental Approvals and Consents), Section 6.18 (Transfer Taxes), Section 6.19 (Health Insurance Provider Fees), Section 6.21 (Apportioned Obligations), Section 6.25 (Subsidiary Tax Matters), Section 6.26(b) (Insurance) and Section 8.02 (Indemnification by Seller).

<sup>4</sup> Applicable provisions of Purchase Agreement: Section 6.06 (Confidentiality), Section 6.07 (Non-competition; Non-solicitation), Section 6.13 (Reconciliation) and Section 6.19 (Non-disparagement).

154. Moreover, the Foundation has the potential to become a national model for addressing the Social Determinants of Health, from dense urban areas with tremendous population diversity to low-population rural areas across the State.

155. Consistent with Petitioner, which has operated since its inception in accordance with the Ethical and Religious Directives for Catholic Health Care Services, the Foundation will adhere to the tenets and teachings of the Roman Catholic Faith as reflected in the doctrines and directives published by the United States Conference of Catholic Bishops. Accordingly, following the Closing, the Foundation will adhere to the Ethical and Religious Directives and other applicable guidelines promulgated by the Conference of Catholic Bishops, to the extent they relate to the activity in question.

156. In accordance with these directives, no person will be discriminated against based on race, sex, age, religion, national origin or disability. Attached as Exhibit 38 is the Foundation's proposed non-discrimination policy.

### **Foundation Governance**

157. The Foundation's Board of Directors is expected to consist of twenty directors (the "Foundation Board"), and will be comprised of experts in the fields of health, social welfare, finance and philanthropy. Attached as Exhibit 39, is the initial list of individuals who have agreed, upon Member approval, to serve on the Board.

158. It is expected that the Foundation Board will meet at least twice a year, but more frequently during the launch phase in order to properly oversee the evolution of the Foundation's activities.

159. The Foundation Board will establish committees in compliance with the New York State Not-for-Profit Corporation Law and consistent with established best practices for foundation governance. It is anticipated that the Board will establish an Executive Committee, a Finance Committee, an Investment Committee, an Audit Committee, a Grants Committee and a Regional Grants Committee. These Committees will assist the Foundation Board in providing oversight of the Foundation's finances and the management of its investment portfolio, developing a grantmaking strategy, determining the Foundation's priorities, establishing and

maintaining grantee relations and developing collaborations. Attached as Exhibit 40 is the proposed list of the initial members of the Investment and Audit Committees, subject to Member approval.

160. The Foundation will adopt a conflict of interest policy in compliance with N-PCL §715 (the “Conflict of Interest Policy,” proposed policy attached as Exhibit 41). While it is not anticipated that any related party (as defined in N-PCL § 102) of Petitioner or Centene will have any direct or indirect grantee, governance or financial relationship with the Foundation, to avoid the appearance of any conflict of interest or personal benefit, no present employee of Petitioner or Centene will be compensated as an employee, officer or director of the Foundation for a period of at least three years from Closing. Additionally, while none are presently expected, the Foundation will address any related party transactions (as defined in N-PCL §102) in accordance with the procedures set forth in the Conflict of Interest Policy and N-PCL §715.

161. The Foundation’s investment portfolio will be overseen by the Investment Committee in accordance with the Foundation’s investment policy (proposed policy attached as Exhibit 42).

### **Operations and Organization**

162. To ensure the Foundation is ready to commence its operations following the Closing, Petitioner has been actively working with a leading philanthropic advisory firm, Rockefeller Philanthropy Advisors, to develop an operations plan based on benchmark data of staffing and operations for similar foundations (e.g., size, geographic scope, grantmaking approach, public purpose and origin).

163. It is anticipated that the Foundation will make several key hires focusing on asset management, financial, compliance and program functions, including a Chief Executive Officer, a Chief Operating Officer, a Chief Investment Officer and Vice President of Programing.



164. The Chief Operating Officer will oversee Finance, Human Resources, facilities, grants management, communications, risk management functions and hires. The Chief Investment Officer will oversee internal/external investment advisors and managers. The Vice President of Programming will oversee the build-out of grants and philanthropic programs, as discussed further below.

165. A more detailed description of the key executive positions is attached hereto as Exhibit 43.

166. Initial benchmarking data from comparable sized foundations indicate program staff levels ranging from 30 in the initial years to 100 full-time equivalents if the Foundation moves towards funding more complex programs such as competitive research prizes. The Foundation plans to hire program staff with expertise in health and wellness needs of local and regional underserved populations, and programs that align with these needs

167. The Foundation's Board will approve an annual operating plan and budget for the Foundation. A proposed initial budget for the Foundation is attached as Exhibit 44 (the "Initial Budget"). The Initial Budget is based on data from peer foundations of a similar asset size and which grant on a similar scale.

168. The compensation and benefits set forth in the first year of the Initial Budget includes consultants to assist with program and operating functions until staff are hired. This will allow the Foundation to conduct open, transparent searches to obtain professional and experienced talent to fulfill crucial functions to achieve mission. Other positions included are standard functions required for operations.

## **Grantmaking**

169. Upon recognition of its tax-exemption, the Foundation anticipates making annual grants of up to \$150 million to improve the health and well-being of New York's poor, underserved and disadvantaged residents. While maintaining the highest moral and ethical standards informed by the Catholic faith and guided by the tenets and teachings of the Roman Catholic Faith, the Foundation's grantmaking program will support two core objectives in furtherance of its charitable purposes: (i) promoting access to quality and affordable healthcare and healthcare related services, including by supporting initiatives that address the Social Determinants of Health; and (ii) addressing unmet healthcare and healthcare related needs (including Social Determinants of Health).

170. The Foundation's grantmaking program will be modeled on best practices and guided by New York State's health needs, which includes analyses of the approaches of major health foundations and other philanthropic organizations across the country. These best practices include for example: (i) developing approaches informed by research and community input, (ii) targeting resources toward programs with proven or promising results, (iii) serving high-need or disadvantaged populations, (iv) standardizing grantmaking processes and reporting; and (v) hiring staff with experience in healthcare grantmaking and knowledge of local community needs. Foundation's programs and operations will be transparent, responsive and respectful of applicants, and proactive on diversity, equity and inclusion.

171. To assist the Foundation in developing and implementing its grantmaking program, the Foundation plans to partner with health and social welfare experts to help identify funding priorities and grant initiatives. It will seek input from key stakeholders, including by establishing advisory committees to supplement the expertise on the Foundation Board. These committees may focus on urban, rural, immigrant health issues, or on particular health disparities or inequalities.

172. The Foundation will also be informed by the ongoing programs and initiatives sponsored by New York State government, and will aim to work collaboratively with State agencies to further joint goals. For example, the experience gained and research gathered from the Department of Health's "First 1000 Days on Medicaid Initiative," Governor Cuomo's

“Health Across All Policies” initiative, and Attorney General Schneiderman’s Community Overdose Prevention (COP) program will help guide Petitioner’s activities.

173. Work has already begun towards implementing these strategic goals. Rockefeller Philanthropy Advisors is conducting a needs and gap analysis around purposes consistent with New York State’s Medicaid program, including, but not limited, Social Determinants of Health in New York, such as housing, wellness needs, nutrition, health education and safety. Through its analysis, Rockefeller Philanthropy Advisors has helped identify priority funding areas upon which the Foundation may immediately focus on once it is operational, such as:

- a) Enhancing access to affordable quality healthcare and healthcare related services, by reducing barriers to care, developing a healthcare workforce in rural areas and increasing health insurance enrollment;
- b) Addressing mental health and substance abuse issues through the treatment of opioid addiction, improving access to supportive housing and supporting education and awareness programs;
- c) Improving the overall health of communities, through a focus on improving neighborhood safety and air/water quality and increasing access to housing;
- d) Encouraging healthy behaviors, through nutrition, exercise, health-centric education and increasing access to recreation and healthy, beneficial food;
- e) Caring for aging populations, by supporting aging in place and promoting both independence and community connection;
- f) Addressing early infant and child health care, which will focus on promoting health in the first 1,000 days of life, in addition to providing support for abused and neglected children; and



- g) More broadly, addressing the unmet healthcare and healthcare related needs (including Social Determinants of Health) of communities across New York State, in each case consistent with the Catholic values that have historically guided Petitioner.

174. The foregoing major funding areas align with New York State public health funding priorities for serving disadvantaged populations and meeting their health and wellness needs.

175. Rockefeller Philanthropy Advisors has assisted in developing a draft grantmaking strategy for the Foundation grounded in best practices of philanthropy and consistent with the Petitioner's current Grant Program. In addition, Rockefeller Philanthropy Advisors has prepared draft program guidelines that outline grant criteria and eligibility standards for potential grantees. The guidelines specify reporting requirements on grantee progress through interim and final reports to Foundation. A draft of the grantmaking strategy and guidelines is included in the Foundation's Grant Program Guide, a draft of which is attached hereto as Exhibit 45.

176. The Foundation will not make any grants prior to receipt of its Internal Revenue Service determination letter recognizing its tax-exempt status. Until that time, the Foundation will hold the Transaction proceeds in a segregated fund, to be used exclusively for administrative and operational start-up costs.

#### **THE TRANSACTION MEETS THE SECTION 511-A STANDARDS FOR APPROVAL**

177. Section 511-a(c) of the N-PCL states that a petition for the sale of substantially all of a corporation's assets should be approved where: (a) the consideration and the terms of the transaction are fair and reasonable to the corporation and (b) the purpose of the corporation or the interest of its members will be promoted by the sale. The proposed Transaction meets both prongs of this test.

178. The Transaction is fair, reasonable and beneficial to Petitioner, to Petitioner's current enrollees and to the broader New York community. It involves fair consideration, assurance of continued healthcare in all sixty-two New York counties by one of the nation's

leading insurers and the creation of an expanded grantmaking program by Petitioner, dedicated to advancing healthcare for all poor, disadvantaged or underserved New Yorkers.

**The Terms of the Transaction are Fair and Reasonable**

179. With respect to the first prong, in reaching their respective conclusions that the Purchase Price is fair and reasonable, Petitioner's Board of Directors and Members took into consideration, and relied upon, the independent Appraisal, as well as the information and knowledge obtained through a robust auction process involving highly-qualified potential and actual bidders and extensive arm's length negotiations with several bidders over the course of the past year.

180. The terms of the Transaction were negotiated at arm's length with the assistance of independent legal counsel and financial advisors and are set forth in detail in the Purchase Agreement, whereby Petitioner agreed to sell to Centene substantially all of its assets. As evidenced by the key terms of the Purchase Agreement and the Undertaking, Petitioner and Centene have a central objective: to facilitate a seamless transition before, during and after the Closing so that all of Petitioner's current enrollees will continue to have excellent health care coverage under Centene's leadership.

181. Accordingly, in evaluating whether the consideration and the terms of the Transaction are fair and reasonable, Petitioner had the benefit of comparing three independent bona fide bids from sophisticated, financially qualified prospective purchasers for the acquisition of Petitioner's assets. The terms of the Transaction are superior to the other two bids Petitioner received and the Purchase Price is greater than both (i) the high end of the range of the Appraisal and (ii) the purchase price offered by the other bidders in the auction. Consequently, Petitioner hereby respectfully submits that the consideration and terms of the Transaction are fair and reasonable.

### **The Sale Promotes the Purposes of Petitioner and the Interests of its Members**

182. With respect to the second prong of Section 511-a(c), the proposed Transaction promotes the mission and purposes of the Petitioner.

183. The Transaction promotes the interests of the approximately 1.7 million individuals insured by Petitioner. Through the Transaction, these individuals will have the support, investment and innovation provided by the nation's largest private insurer to vulnerable populations and government-sponsored insurance programs. With Centene's scale, expertise and resources, New Fidelis Care will further enhance the well-being of these enrollees and improve the overall healthcare experience for both enrollees and providers for years to come.

184. Further, under Section 511-a(c), it is unquestionable that the Transaction will promote the interests not only of Petitioner, but also of Petitioner's Members, the Diocesan Bishops of the State and Ecclesiastical Province of New York. The Transaction will substantially advance the Members' historic charitable commitment to assisting the poor, underserved and most vulnerable within the Catholic tradition of healthcare, which is the very reason the Members had originally formed Petitioner.

185. Finally, Petitioner's enrollees and the broader New York community at-large will reap the substantial benefits from this Transaction. The Transaction will create a groundbreaking foundation, unlike any other in New York, dedicated to bolstering the health and wellness of Petitioner's enrollees and other vulnerable populations across New York State. The Transaction provides New York with a historic opportunity to (i) improve access to affordable quality healthcare and healthcare related services and (ii) address the Social Determinants of Health and the unmet healthcare and healthcare related needs of New York's communities.

### **APPROVAL OF TRANSACTION**

186. Petitioner convened a Special Meeting of the Board of Directors on September 7, 2017 for the purpose of considering the proposed Transaction involving the sale of substantially all of Petitioner's assets to Centene; specifically, whether to approve the Transaction and the latest version of the Purchase Agreement and to make a recommendation to the Members to approve the Transaction and the Purchase Agreement. Written notice of the Special Meeting

was issued to the directors on September 2, 2017. Prior to the meeting, the most recent draft of the Purchase Agreement between Petitioner and Centene was distributed to the Board.

187. The September 7, 2017 meeting took place at Petitioner's Rego Park offices. Eighteen directors participated (fourteen by telephone; four were present in person). Quorum for the meeting was satisfied.

188. Of the eighteen Directors present, one was non-voting. In addition, certain executive staff, representatives of Citigroup, and outside counsel to Petitioner, were present.

189. Citigroup made a presentation to the Board on the Transaction, including:

- a) An overview of Transaction process;
- b) A comprehensive review of Centene;
- c) A description of the Transaction and its key terms; and
- d) A financial summary

190. A fairness opinion from Citigroup and a copy of the Appraisal report prepared by Navigant were distributed to the Board. Lastly, outside counsel made a presentation addressing various legal issues associated with the Transaction and the Purchase Agreement.

191. Of the seventeen voting directors, fifteen were present for the vote (two directors left the meeting prior to the vote for other obligations). The fifteen voting directors unanimously voted to approve the Purchase Agreement. A copy of the September 7, 2017 minutes and resolutions approving the Transaction and the Purchase Agreement and recommending approval of the same to the Members, as certified by the Secretary, is attached hereto as Exhibit 46.

192. Subsequent to September 7, 2017, Petitioner and Centene engaged in additional negotiations with respect to the Purchase Agreement. Accordingly, Petitioner convened a Special Meeting of the Board on September 12, 2017 for the purpose of ratifying the changes made to the Purchase Agreement. Written Notice of the Special Meeting was issued to the directors on September 12, 2017. The meeting took place via teleconference. Sixteen of nineteen directors participated, of which one was non-voting. Quorum for the meeting was

satisfied. In addition, certain executive staff, representatives of Citigroup and outside counsel were present. During this September 12, 2017 meeting, outside counsel provided a presentation of the changes that had been made to the Purchase Agreement since the September 7, 2017 meeting. The fifteen voting directors present voted to approve the Transaction and Purchase Agreement, as modified. A copy of the September 12, 2017 minutes and resolutions approving the Transaction and the Purchase Agreement and recommending approval of the same to the Members, as certified by the Secretary, is attached hereto as Exhibit 47.

193. Since each of these Board meetings was called on less than the 10 business days' notice as required pursuant to Section 8.04 of the By-Laws, Waivers of Notice were obtained from every director for each meeting. A copy of the Waivers for each Board meeting is attached hereto as Exhibit 48.

194. The Board then submitted their recommendation to the Petitioner's Members for approval. The eight Members met telephonically on September 12, 2017 at a meeting duly called and voted unanimously to approve the Transaction. A certified copy of the minutes is attached hereto as Exhibit 49.

195. On April 4, 2018, Petitioner's Members met telephonically, at a meeting duly called, to discuss a variety of items, including the payment to the State described above, the reorganization of the Petitioner into two entities, the formation of the Foundation and the decision to transfer Petitioner's assets to the Foundation post-Closing. The eight Members voted unanimously to approve these matters. A certified copy of meeting minutes is attached hereto as Exhibit 50.

196. On May 3, 2018, the Board met telephonically to discuss the status of the Transaction and approve the APA Amendment and Payment and Joinder Agreement, and authorize the transfer of assets and Transaction proceeds post-Closing to the Foundation. Quorum for the meeting was satisfied. The fifteen voting directors present at the meeting unanimously voted to approve the resolutions attached hereto as Exhibit 51.

197. Since this Board meetings was called on less than the 10 business days' notice as required pursuant to Section 8.04 of the By-Laws, Waivers of Notice were obtained from every

director for the meeting. A copy of the Waivers for each Board meeting is attached hereto as Exhibit 52.

### **ADDITIONAL PROVISIONS**

198. The Foundation, as set forth in an agreement, the form of which is attached as Exhibit 53, agrees to provide the Attorney General with annual CHAR 500 reports as well as independently audited financial statements pursuant to Article 7-A of the Executive Law and Section 8-1.4 of the Estates, Powers and Trusts Law.

199. Petitioner acknowledges that the Attorney General's office plans to submit the Verified Petition for public comment prior to Attorney General approval of the Transaction.

200. Other than the offers of continued employment to be made by Centene as part of the Transaction as described above, no director, officer or key employee of Petitioner, will benefit financially or otherwise, either directly or indirectly, as a result of the Transaction. Additionally, no director, officer, or key employee of Petitioner has any relationship with a person or has any related party that will benefit financially or otherwise, either directly or indirectly, as a result of the Transaction. Other than the annual company-wide three percent (3%) salary adjustment implemented each April, there have been no other increases in compensation for any key employees listed in the Form 990s since the last compensation review which took place in April 2017. Petitioner does not offer any compensation which does not result in Form 990 reporting.

201. No prior application for relief of this nature has been made by the Petitioner to the Attorney General or a court.

202. The Petitioner is not insolvent, nor will it become insolvent as a result of the proposed Transaction, and no dissolution of Petitioner is contemplated.

203. No persons or entities have raised, nor have a reasonable basis to raise, any objections to the proposed Transaction.

204. No Vatican or other hierarchical approval of the Transaction is required.

205. There is no pending litigation relating to the Transaction.

206. The Transaction has been approved by all required government and regulatory agencies.

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WHEREFORE, Petitioner requests that the Attorney General approve the Asset Sale Agreement and the Transaction contemplated thereunder, including the sale of all or substantially all of the Petitioner's assets by New York State Catholic Health Plan, Inc. d/b/a Fidelis Care, a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law Sections 510 and 511-a.

IN WITNESS WHEREFORE, the Petitioner has caused this Petition to be executed this seventh (7<sup>th</sup>) day of May, 2018 by

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: Patrick J. Frawley  
Name: Rev. Patrick J. Frawley  
Title: Chief Executive Officer

Filed and Submitted By:

Jason R. Lilien, Esq.  
Loeb & Loeb LLP  
345 Park Avenue  
New York, NY 10154

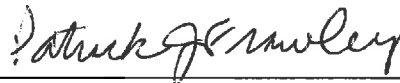


Verification

STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF QUEENS     )

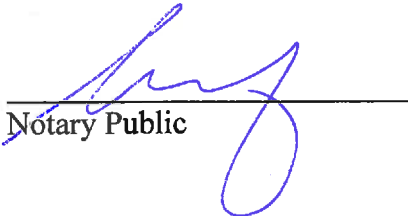
Rev. Patrick J. Frawley, being duly sworn, deposes and says:

I am the Chief Executive Officer of New York State Catholic Health Plan, the corporation named in the above Petition, and make this verification at the direction of its Board of Trustees. I have read the forgoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.



Rev. Patrick J. Frawley, Chief Executive Officer

Sworn to before me this  
7<sup>th</sup> day of May, 2018

  
\_\_\_\_\_  
Notary Public

SANDRA RESHEF  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RE6329033  
Qualified in Queens County  
My Commission Expires August 10, 2019

## **Table of Exhibits**

Exhibit 1.....	Asset Purchase Agreement
Exhibit 2.....	Amendment to the Asset Purchase Agreement
Exhibit 3.....	Restated Certificate of Incorporation (and all amendments)
Exhibit 4.....	Current By-laws
Exhibit 5.....	Certificates of Assumed Name (and all amendments)
Exhibit 6.....	List of Current Directors
Exhibit 7.....	List of Current Officers
Exhibit 8.....	Salus IPA – Caremark IPA Agreement
Exhibit 9.....	Management Services Agreement
Exhibit 10.....	Petitioner’s Financial Statements - Years Ended December 31, 2017 and 2016 and Independent Auditor’s Report
Exhibit 11.....	Petitioner’s Mission Statement
Exhibit 12.....	Petitioner’s IRS 501(c)(3) Determination Letter
Exhibit 13.....	Statewide Map Detailing Provider Network
Exhibit 14.....	Centene’s Managed Care Organizations and Specialty Companies
Exhibit 15.....	Navigant Opinion Letter
Exhibit 16.....	Navigant Supplemental Letter
Exhibit 17.....	Affidavit of Rev. Patrick J. Frawley
Exhibit 18.....	Fairness Opinion by Citigroup Global Markets Inc.
Exhibit 19.....	Citigroup Global Markets Inc.- Excerpts of Presentation to Petitioner’s Board
Exhibit 20.....	QHP Reinsurance Agreement
Exhibit 21.....	Medicare Reinsurance Agreement
Exhibit 22.....	Guarantee Agreement
Exhibit 23.....	Management Agreement between Petitioner, Salus, CMC and CCNY
Exhibit 24.....	Management Agreement between New York Quality Healthcare Corporation and CMC and CCNY
Exhibit 25.....	Undertaking
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# EXHIBIT 1

## Asset Purchase Agreement

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**ASSET PURCHASE AGREEMENT**

by and between

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

and

**CENTENE CORPORATION**

Dated as of

September 12, 2017

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of September 12, 2017 (the “**Signing Date**”), is entered into by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“**Seller**”), and CENTENE CORPORATION, a Delaware corporation (“**Buyer**”). Seller and Buyer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Seller holds a Certificate of Authority as a health maintenance organization under Article 44 of the New York Public Health Law issued by the New York State Department of Health (“**DOH**”), is subject to the regulatory jurisdiction of DOH and the New York State Department of Financial Services (“**DFS**”), and is a party to various contracts to provide Medicaid, Child Health Plus, Managed Long Term Care, Health Benefit Exchange, and Medicare services, including: (i) a contract with DOH dated March 1, 2014 to provide health care services under the Medicaid (the “**Medicaid Business**”) and Health and Recovery Plan programs (the “**HARP Business**”), (ii) a contract with DOH dated January 1, 2016 to provide health care services under the Child Health Plus Program (the “**CHP Business**”), (iii) a contract with DOH dated January 1, 2015 to provide health care services under the Managed Long Term Care Program (the “**MLTC Business**”), (iv) a contract with the Centers for Medicare & Medicaid Services (“**CMS**” and, together with DOH, the “**Payors**”) effective January 1, 2017 to provide health care services under the Medicare Advantage program (the “**Medicare Advantage Business**”) and a contract with CMS effective January 1, 2017 to provide health care services under the Medicare Advantage D-SNP program (the “**D-SNP Business**” and, together with the Medicare Advantage Business, the “**Medicare Business**”), (v) a contract with DOH effective January 1, 2011 to provide health care services to members who are eligible for services under the Medicaid Advantage program (the “**Medicaid Advantage Business**”), (vi) a contract with DOH effective January 1, 2017 to provide health care services to members who are eligible for services under the Medicaid Advantage Plus program (the “**Medicaid Advantage Plus Business**”), (vii) a contract with DOH and CMS effective January 1, 2015 to provide health care services to members who are eligible for services under the Fully Integrated Duals Advantage program (the “**FIDA Business**” and, collectively with the Medicaid Advantage Business and the Medicaid Advantage Plus Business, the “**Duals Business**”), (viii) a contract with DOH dated October 1, 2013 to provide health care services to members through the New York State Health Benefit Exchange under the Qualified Health Plan program (the “**QHP Business**”) and (ix) a contract with DOH dated November 1, 2015 to provide health care services to members who are eligible for services under the Essential Plan (the “**EP Business**”). Collectively, the operation of the Medicaid Business, the HARP Business, the CHP Business, the MLTC Business, the Medicare Business, the Duals Business, the QHP Business and the EP Business, the “**Business**” and each, individually, a “**Line of Business**”. The foregoing contracts with Payors are collectively referred to herein as the “**Payor Contracts**.”

B. Subject to the terms and conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of the assets owned or leased by Seller which are used or held for use in the operation of the Business.

C. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to obtain the requisite approvals, licenses, certificates, authorizations and permits to effect the sale, transfer, conveyance, assignment and delivery by Seller to Buyer of the Business so that all of Seller's members enrolled under the Payor Contracts relating to the Business ("**Enrollees**") at the time of transfer would be enrolled in a health plan operated by Buyer providing or arranging for health services to such Enrollees.

D. Concurrently with the execution and delivery of this Agreement, Seller is entering into Waiver, Discharge and Settlement Agreements ("**Executive Waivers**") with certain Key Executives (as hereinafter defined).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

The following terms have the definitions set forth below or ascribed thereto in the section of this Agreement identified below:

"**403(b)**" has the meaning set forth in **Section 6.05(f)**.

"**Acquired Cash Amount**" has the meaning set forth in **Section 2.01(a)(i)**.

"**Acquisition Proposal**" has the meaning set forth in **Section 6.03(a)**.

"**Action**" means any claim, action, suit, corrective action plan, cause of action, lawsuit, arbitration, audit, written notice of violation, administrative proceeding, litigation, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, before or by any Governmental Authority.

"**Adverse Claim Consequences**" has the meaning set forth in **Section 8.05(b)**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "**controlled by**" and "**under common control with**") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For avoidance of doubt, only Seller's Subsidiaries shall be deemed to be Affiliates of Seller.

"**Agreement**" has the meaning set forth in the Preamble.

"**Alternative Financing**" has the meaning set forth in **Section 6.23(c)**.

***“Antitrust Laws”*** means applicable federal, state, local or foreign antitrust, competition, premerger notification or trade regulation Laws, including the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the HSR Act and the Federal Trade Commission Act of 1914.

***“Applicable Purposes”*** means the healthcare and healthcare related purposes contemplated in the proposed amendment to Seller's Certificate of Incorporation set forth on **Exhibit S** (the ***“Proposed Amendment”***) consistent with the types and nature of activities and programs customarily conducted, and grants customarily made, by Seller prior to the Signing Date to address the social determinants of health for the population served by Seller, including such consistent activities, programs and grants in furtherance of healthcare, nutrition, substance abuse, behavioral health, home and community-based services, early intervention, education and literacy, affordable quality housing, employment, and care for the elderly (in each case, other than conduct that would violate **Section 6.07**). It being understood and agreed that nothing in the foregoing is intended to limit Applicable Purposes to the specific activities or programs or specific recipients or amounts of any grants conducted or made by the Seller prior to the Signing Date.

***“Apportioned Obligations”*** has the meaning set forth in **Section 6.21**.

***“Assigned Contracts”*** has the meaning set forth in **Section 2.01(a)(vii)**.

***“Assignment and Assumption Agreement”*** means an assignment and assumption agreement in substantially the form attached hereto as **Exhibit A**, duly executed by Buyer and Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities.

***“Assumed Plans”*** means the Seller Employee Plans marked by an asterisk on Section 4.13(g) of the Disclosure Schedules.

***“Assumed Liabilities”*** has the meaning set forth in **Section 2.03**.

***“Assumed Provider Contracts”*** means the Provider Contracts relating to the Business, including any such Provider Contract entered into after execution of this Agreement as described in **Section 6.09(a)**, but excluding any Excluded Contracts.

***“Audited Financial Statements”*** has the meaning set forth in **Section 4.05(a)**.

***“Balance Sheet”*** has the meaning set forth in **Section 4.05(a)**.

***“Balance Sheet Date”*** has the meaning set forth in **Section 4.05(a)**.

***“Base Enrollment Number”*** means, in respect of each Business Segment, the number of Enrollees in respect of such Business Segment set forth in the column labeled “Base Enrollment Number” on **Exhibit B** as of the last day of the calendar month in which the Signing Date occurs.

***“Base Projected Enrollment Number”*** means, in respect of each Business Segment, the projected number of Enrollees in respect of such Business Segment as of December 31, 2017 as set forth in the column labeled “Base Projected Enrollment Number” on **Exhibit C**.

**“Bill of Sale”** means a bill of sale in substantially the form attached hereto as **Exhibit D**, duly executed by Seller, transferring the personal property included in the Purchased Assets to Buyer.

**“Books and Records”** has the meaning set forth in **Section 2.01(a)(xiv)**.

**“Burdensome Amount”** has the meaning set forth in the definition of Burdensome Condition.

**“Burdensome Condition”** means (a) in respect of Buyer, any term, limitation, restriction, condition or requirement imposed by any Governmental Authority on Buyer, its Affiliates, or the Business as a condition to such Governmental Authority granting any Required Governmental Approval, or otherwise promulgated or enacted by any Governmental Authority (but only to the extent that the statute or regulation so promulgated or enacted would also constitute a Change in Healthcare Law) that would have or could reasonably be expected to have a material and adverse effect, individually or in the aggregate, on (i) the financial condition results of operations or business of Buyer and its Subsidiaries or the Business, in each case, as currently conducted, provided that, for purposes of determining whether any term, limitation, restriction or requirement imposed by any Governmental Authority would have or could reasonably be expected to have a material and adverse effect on Buyer and its Subsidiaries, Buyer and its Subsidiaries will collectively be deemed to be a company the size of the Business, (ii) the lines or types of business, in the aggregate, in which Buyer and its Subsidiaries or the Business shall be permitted to engage, and/or (iii) the overall benefits that the Buyer reasonably expects to derive from the consummation of the transactions contemplated by this Agreement, and (b) in respect of Seller, any term, limitation, restriction, condition or requirement imposed, promulgated or enacted by any Governmental Authority on Seller or its Affiliates that would result in or could reasonably be expected to result in: (i) a reduction of the Purchase Price received by Seller or the inability of Seller to retain the Excluded Assets or have immediate access to the Purchase Price or Excluded Assets at Closing (except as contemplated by the Escrow Agreement), in an amount, individually or in the aggregate, greater than \$375 million dollars (\$375,000,000) (the **“Burdensome Amount”**); (ii) Seller's inability to operate in all material respects in furtherance of the Applicable Purposes following the Closing, it being understood and agreed that any impairment of Seller's ability to operate for purposes other than the Applicable Purposes shall not give rise to a Burdensome Condition; (iii) Seller's obligation to use more than a Burdensome Amount of the entire Purchase Price and Excluded Assets not in furtherance of the purposes set forth on the Proposed Amendment (the **“Seller Post-Closing Purposes”**); (iv) any Governmental Authority requiring Seller to make grants or distributions to, or expenditures on behalf of, in each case specific Persons or government established programs or funds that are specifically designated or directed by a Governmental Authority, in excess individually or in the aggregate of the Burdensome Amount; or (v) a requirement that Seller amend its Certificate of Incorporation such that more than a Burdensome Amount of the aggregate Purchase Price and Excluded Assets is required to be used in furtherance of purposes other than the Seller Post-Closing Purposes. For purposes of determining (1) whether any terms, limitations, restrictions, conditions or requirements imposed, promulgated or enacted by any Governmental Authority on Buyer, its Affiliates or the Business would, individually or in the aggregate, have a material and adverse effect under clauses (a)(i), (a)(ii) or (a)(iii), all such terms, limitations, restrictions, conditions or requirements imposed, promulgated or enacted by any

Governmental Authority on Buyer, its Affiliates and the Business, whether relating to clauses (a)(i), (a)(ii) or (a)(iii), shall be aggregated (but without duplication) and the level of the effects of all such terms, limitations, restrictions, conditions and requirements (even if not applicable to a particular clause) shall be taken into account in determining whether a material and adverse effect has occurred under any of such clauses (a)(i), (a)(ii) or (a)(iii) above, and (2) whether any terms, limitations, restrictions, conditions or requirements imposed, promulgated or enacted by any Governmental Authority on Seller or its Affiliates would, individually or in the aggregate, exceed the Burdensome Amount, amounts under clauses (b)(i), (b)(iii), (b)(iv) and (b)(v) above shall be aggregated, but without duplication.

**“Business”** has the meaning set forth in the Recitals.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by Law to be closed for business.

**“Business Intellectual Property”** means the Licensed Intellectual Property and the Purchased Intellectual Property.

**“Business IT Assets”** has the meaning set forth in **Section 4.09(h)**.

**“Business Segments”** means, collectively, the Exchange Segment, the Senior Programs Segment and the State Sponsored Segment.

**“Business Software”** means all Software used in or material to the Business, including but not limited to Software embodied in products of the Business, other than commercially available “off the shelf” Software that has not been modified or customized for use by Seller or its Subsidiaries.

**“Buyer”** has the meaning set forth in the Preamble.

**“Buyer Average Price”** means, as of the date of determination, the average (measured as an arithmetic mean) of the daily volume weighted averages of the trading prices of the Buyer Common Stock, as such prices are reported on the NYSE Composite Tape, for the five (5) consecutive Trading Days ending on such date of determination; *provided, however*, that if an ex-dividend date is set for the Buyer Common Stock during such period, then the trading price for a share of Buyer Common Stock for each day during the portion of such period that precedes such ex-dividend date will be reduced by the amount of the dividend payable on a share of Buyer Common Stock.

**“Buyer Common Stock”** means the common stock, par value \$0.001 per share, of Buyer.

**“Buyer Equity Securities”** means (a) capital stock or other equity interests of Buyer and (b) options, warrants or other securities that are directly or indirectly convertible into, exchangeable for or exercisable for capital stock or other equity interests of Buyer.

**“Buyer Fundamental Representations”** means the representations and warranties of Buyer set forth in **Section 5.01** (Organization), **Section 5.02** (Authority) and **Section 5.04** (Brokers).

**“Buyer Indemnitees”** has the meaning set forth in **Section 8.02**.

**“Buyer 401(k) Plan”** has the meaning set forth in **Section 6.05(f)**.

**“Cash”** means, as of any date of determination, cash, cash equivalents, marketable securities, and short-term investments of Seller and its Subsidiaries, Statutory Escrow Accounts, checks and funds received by Seller and its Subsidiaries, less the amount of checks written by Seller and its Subsidiaries but not yet cleared, in each case calculated as of such date in accordance with GAAP applied on a consistent basis with the Audited Financial Statements.

**“Cash Escrow Amount”** means Three Hundred and Seventy-Five Million Dollars (\$375,000,000) minus the Share Escrow Amount (if any).

**“Cash Purchase Price”** means (a) Three Billion Seven Hundred Fifty Million Dollars (\$3,750,000,000), minus (b) the Share Consideration Amount (if any), plus (c) the positive or negative amount, if any, determined by subtracting (i) the Working Capital Target from (ii) Estimated Working Capital, subject to adjustment in accordance with **Section 2.07**.

**“Cause”** shall mean (a) as determined by Buyer in its reasonable discretion: (i) refusal or continuing failure to perform employment duties in any material respect, (ii) misconduct identified as a ground for termination in Buyer’s human resources policies, code of business conduct, or other written policies, practices or procedures to the extent such termination would comply with applicable Law, or (iii) commission of any criminal, fraudulent, or dishonest act in connection with the individual’s employment, or (b) conviction of any felony.

**“Change in Healthcare Laws”** means any adoption, implementation, promulgation, repeal, modification, amendment, reinterpretation, or change of any applicable federal or New York State Laws relating to Medicare or Medicaid or otherwise relating to the healthcare, health insurance or managed care industry that, in the aggregate, is more adverse from a financial point of view to the Business than the Repeal and Replace Legislation.

**“CHP Business”** has the meaning set forth in the Recitals.

**“CHP Enrollees”** has the meaning set forth in **Section 2.01(f)(i)**.

**“CHP Purchased Assets”** has the meaning set forth in **Section 2.01(f)**.

**“Claim Notice”** has the meaning set forth in **Section 8.05(a)**.

**“Closing”** has the meaning set forth in **Section 3.01**.

**“Closing Acquired Cash Amount”** has the meaning set forth in **Section 2.07(b)**.

**“Closing Cash Purchase Price”** has the meaning set forth in **Section 2.05(a)**.



***“Closing Date”*** has the meaning set forth in **Section 3.01**.

***“Closing Date Indebtedness”*** means any Indebtedness relating to the Business or the Purchased Assets, or in respect of which any Encumbrances (other than Permitted Encumbrances) exist on, or with respect to, the Business or the Purchased Assets, in each case incurred by Seller or its Subsidiaries and outstanding as of the Closing Date, including, without limitation, (a) the Revolving Credit Facilities and (b) the Existing Term Loan Indebtedness.

***“Closing Enrollment”*** has the meaning set forth in **Section 2.07(b)**.

***“Closing Minimum Capital Amount”*** has the meaning set forth in **Section 2.07(b)**.

***“Closing Statement”*** has the meaning set forth in **Section 2.08(b)**.

***“Closing Statement Disputed Items”*** has the meaning set forth in **Section 2.08(d)**.

***“Closing Statement Objection Notice”*** has the meaning set forth in **Section 2.08(c)**.

***“Closing Total Adjusted Net Assets”*** has the meaning set forth in **Section 2.07(b)**.

***“Closing Working Capital”*** has the meaning set forth in **Section 2.07(b)**.

***“CMS”*** has the meaning set forth in the Recitals.

***“Code”*** means the Internal Revenue Code of 1986, as amended.

***“Commitment Letter”*** has the meaning set forth in **Section 5.06**.

***“Confidentiality Agreement”*** has the meaning set forth in **Section 6.02**.

***“Contract”*** means any agreement, contract, lease, deed, mortgage, license, instrument, promissory note, evidence of Indebtedness, security agreement, commitment, undertaking, indenture or joint venture, whether written or oral.

***“Corporate Name”*** means Seller’s legal name, “New York State Catholic Health Plan, Inc.,” and any and all Intellectual Property of Seller to the extent incorporating or derived from such name.

***“Court”*** means any court, arbitrator or tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

***“Definitive Agreements”*** has the meaning set forth in **Section 6.23(b)**.

***“DFS”*** has the meaning set forth in the Recitals.

***“Direct Claim”*** has the meaning set forth in **Section 8.05(c)**.

***“Disclosure Schedules”*** means the disclosure schedules delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

***“Disclosure Update”*** has the meaning set forth in **Section 6.04(a)(i)**.

***“DOH”*** has the meaning set forth in the Recitals.

***“Dollars”*** or ***“\$”*** means the lawful currency of the United States.

***“Duals Business”*** has the meaning set forth in the Recitals.

***“Duals Enrollees”*** has the meaning set forth in **Section 2.01(d)(i)**.

***“Duals Purchased Assets”*** has the meaning set forth in **Section 2.01(d)**.

***“Effective Time”*** has the meaning set forth in **Section 3.01**.

***“Encumbrance”*** means any encumbrance, charge, claim, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, hypothecation, easement, encroachment, right of way, right of first refusal, restriction, levy or charge of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

***“Enrollee Information”*** has the meaning set forth in **Section 4.12(a)**.

***“Enrollees”*** has the meaning set forth in the Recitals.

***“Enrollment Disputed Items”*** has the meaning set forth in **Section 2.07(d)**.

***“Enrollment Notice”*** has the meaning set forth in **Section 2.07(b)**.

***“Enrollment Objection Notice”*** has the meaning set forth in **Section 2.07(c)**.

***“Enrollment Review Period”*** has the meaning set forth in **Section 2.07(c)**.

***“Environmental Law”*** means any applicable Law relating to the regulation or protection of the environment, natural resources, or human health or safety, including Laws relating to the manufacture, processing, distribution, sale, use, treatment, storage, disposal, transport, handling, remediation, cleanup, Release or threatened Release of or exposure to pollutants, contaminants, chemicals or other hazardous, harmful or deleterious materials or substances, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.

***“EP Business”*** has the meaning set forth in the Recitals.

***“EP Enrollees”*** has the meaning set forth in **Section 2.01(h)(i)**.

***“EP Purchased Assets”*** has the meaning set forth in **Section 2.01(h)**.

***“ERISA”*** means the Employee Retirement Income Security Act of 1974, as amended.

***“Escrow Agent”*** means Wilmington Trust, N.A.

***“Escrow Agreement”*** means an Escrow Agreement, in substantially the form attached hereto as **Exhibit E**, to be entered into among Buyer, Seller and the Escrow Agent.

***“Escrow Amount”*** means the Cash Escrow Amount plus the Share Escrow Amount, which for the avoidance of doubt shall be an amount in cash and/or Buyer Common Stock (as determined in accordance with the terms of this Agreement ) equal to Three Hundred Seventy-Five Million Dollars (\$375,000,000).

***“Escrow Fund”*** has the meaning set forth in **Section 2.06(d)**.

***“Escrow Shares”*** means the number of shares of Buyer Common Stock equal to the Share Escrow Amount divided by the Buyer Average Price on the Trading Day two clear Trading Days prior to the Closing (rounded up to the nearest whole share).

***“Estimated Acquired Cash Amount”*** has the meaning set forth in **Section 2.07(a)**.

***“Estimated Closing Statement”*** has the meaning set forth in **Section 2.08(a)**.

***“Estimated Minimum Capital Amount”*** has the meaning set forth in **Section 2.07(a)**.

***“Estimated Total Adjusted Net Assets”*** has the meaning set forth in **Section 2.07(a)**.

***“Estimated Working Capital”*** has the meaning set forth in **Section 2.08(a)**.

***“Excess Cash”*** means the amount, if any, by which Total Adjusted Net Assets exceeds the Minimum Capital Amount.

***“Exchange Act”*** means the Securities Exchange Act of 1934, as amended.

***“Exchange Segment”*** means Seller’s and its Subsidiaries’ business segment comprised of the QHP Business and the EP Business.

***“Excluded Assets”*** has the meaning set forth in **Section 2.02**.

***“Excluded Contracts”*** means any Contract relating to the Business to which Seller or any of its Subsidiaries is a party that by their terms may not be assigned to Buyer without the consent of another Person and such consent has not been obtained prior to the Closing.

***“Excluded Liabilities”*** has the meaning set forth in **Section 2.04**.

***“Executive Waivers”*** has the meaning set forth in the Recitals.

***“Existing Key Executive Employment Agreements”*** means the employment agreements dated June 7, 2013 (or in the case of Patrick J. Frawley, December 19, 2012), and any amendments thereto, entered into between Seller and each of the Key Executives.

***“Existing Term Loan Indebtedness”*** means the Term Loans outstanding as of the Closing Date in respect of which Seller has not delivered to Buyer within ten (10) days prior to Closing a valid and effective waiver, consent or amendment to the Existing Term Credit

Agreement, in form and substance satisfactory to Buyer, permitting the transactions contemplated by this Agreement (including, for the avoidance of doubt, the sale of the Purchased Assets) and releasing the Business and Purchased Assets from any restrictions, guarantees or other obligations thereunder (the “**Waiver**”).

“**Expenses**” means, with respect to any Person, all reasonable and documented out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, financial advisors and investment bankers of such Person and its Affiliates), incurred by such Person or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and any transactions related thereto, any litigation with respect thereto, or in connection with other regulatory approvals, and all other matters related to transactions contemplated hereby.

“**Federal Health Care Program**” has the meaning given to such term in 42 U.S.C. § 1320a-7b-(f).

“**Fee Letter**” has the meaning set forth in **Section 5.06**.

“**FIDA Business**” has the meaning set forth in the Recitals.

“**Final Acquired Cash Amount**” has the meaning set forth in **Section 2.08(b)**.

“**Final Closing Adjustment**” has the meaning set forth in **Section 2.08(f)**.

“**Final Working Capital**” has the meaning set forth in **Section 2.08(b)**.

“**Financial Statements**” has the meaning set forth in **Section 4.05(a)**.

“**Financing**” has the meaning set forth in **Section 5.06**.

“**Financing Sources**” means the Persons (including the parties to the Commitment Letter) that have committed to provide or otherwise entered into agreements in connection with the Financing, or alternative financings in connection with the transactions contemplated by this Agreement, including any joinder agreements, loan documents, purchase agreements, underwriting agreements, indentures or credit agreements entered into pursuant thereto or relating thereto (including the Buyer’s (or its Affiliates) existing credit agreements, loan documents and indentures and agents thereunder) together with any of their respective, direct or indirect, former, current or future general and limited partners, controlling Persons, managers, stockholders, members, Affiliates, agents, officers, directors, employees and representatives involved in the Financing and any of their respective successors and assigns.

“**GAAP**” means United States generally accepted accounting principles in effect as of the date hereof, consistently applied.

“**Governmental Authority**” means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental

authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

***“HARP Business”*** has the meaning set forth in the Recitals.

***“Hazardous Materials”*** means any waste, substance, chemical, radiation or material regulated, listed, defined or which forms the basis for Liability under Environmental Laws.

***“Health Insurance Providers Fee”*** has the meaning set forth in **Section 6.19(a)**.

***“High Collar Mark”*** means, in respect of any Business Segment, one hundred five percent (105%) of the Base Projected Enrollment Number for such Business Segment.

***“HIPAA”*** means the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented by the Health Information Technology for Economic and Clinical Health Act (Pub. L. No. 111-5) and the implementing regulations of each, when each is effective and as each is amended from time to time.

***“Hired Employee”*** has the meaning set forth in **Section 6.05(a)**.

***“HSR Act”*** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

***“Inactive Employee”*** means an employee employed by Seller in the operation of the Business who is on a Seller-approved leave of absence on the Closing Date as a result of (a) other than authorized paid time off, any accident, short-term disability, family, pregnancy, parental, personal, or medical leave, (b) disability or salary continuation under the terms of a Seller Employee Plan, (c) workers’ compensation leave, (d) any leave required by applicable Law, or (e) military service.

***“Indebtedness”*** means, as of any date without duplication, all obligations (including any principal, accrued and unpaid interest, premium, penalty or other payment) of Seller and its Subsidiaries (i) for indebtedness for borrowed money, (ii) evidenced by notes, bonds, debentures or other similar instruments, but not including operating leases, (iii) with respect to any interest rate hedging, swap agreements or similar arrangements and related break-up fees, (iv) for any liability for all or any part of the deferred purchase price of property, goods or services (other than trade payables incurred in the ordinary course of business), including any “earn-out”, purchase price adjustment, release of “holdback” or similar payment or any non-compete payments, (v) for any liability under any reimbursement obligation relating to a surety bond, letter of credit, bankers’ acceptance, note purchase facility or similar credit transactions, (vi) under leases required in accordance with GAAP to be recorded as capital leases, (vii) for indebtedness secured by an Encumbrance, except for Permitted Encumbrances, (viii) under conditional sale or other title retention agreements relating to any property purchased, and (ix) any guarantee of the payment or performance of, or any contingent obligation in respect of, any Indebtedness of any other Person. “Indebtedness” shall not include any item included in the definition Working Capital.

***“Indemnified Party”*** has the meaning set forth in **Section 8.05**.

***“Indemnifying Party”*** has the meaning set forth in **Section 8.05**.

***“Independent Accountants”*** means the New York, New York office of Ernst & Young LLP or other nationally or regionally recognized firm of independent accountants as to which Buyer and Seller mutually agree.

***“Ineligible Person”*** means any Person that (a) is currently excluded, debarred, suspended, or otherwise ineligible to participate in any Federal Health Care Program or in federal procurement or non-procurement programs or (b) to the Knowledge of Seller has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

***“Information Privacy and Security Laws”*** means all Laws concerning the privacy or security of Personal Information, and all regulations promulgated and guidance issued by any Governmental Authority thereunder, including, but not limited to, HIPAA, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Telephone Consumer Protection Act, Section 5 of the Federal Trade Commission Act as it relates to Personal Information, the CAN-SPAM Act, Children’s Online Privacy Protection Act, PCI DSS, state data breach notification laws, state data security laws, state social security number protection laws, any healthcare Laws pertaining to privacy or data security and any applicable Laws concerning requirements for website and mobile application privacy policies and practices, or any outbound communications (including e-mail marketing, telemarketing and text messaging), tracking and marketing.

***“Initial Termination Date”*** has the meaning set forth in **Section 9.01(d)(ii)**.

***“Intellectual Property”*** means all intellectual property, intangible property and proprietary rights, title, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world, including all United States, foreign and international: (i) patents, patent applications and statutory invention registrations, utility models, reissues, divisionals, continuations, continuations-in-part, extensions and reexaminations thereof; (ii) trademarks, service marks, trade dress, logos, trade names and corporate names, uniform resource locator addresses, symbols, slogans, and other indicia of source or origin, including the goodwill of the business symbolized thereby or associated therewith, common law rights, registrations and applications thereof; (iii) internet domain names, website content, social media handles, tags, hashtags, social media accounts, or any other online indicia of source; (iv) original works of authorship in any medium of expression, whether or not published, copyrights and copyrightable works, registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (v) trade secrets, formulas, designs, devices, technical data, technology, know-how, research and development, advertising and promotional materials, inventions and invention disclosures, methods or processes, and other confidential or proprietary technical, business and other information; (vi) computer software (including source and object code) and computer programs and databases in any form, including firmware, development tools, algorithms, data, data files, records, database management code, utilities, graphic user interfaces, internet web sites, all versions, updates, corrections, enhancements and modifications of any of the foregoing, and all related documentation (collectively, ***“Software”***); (vii) all rights and remedies against past, present and

future infringement, misappropriation or any other violations relating to any of the foregoing; and (viii) all tangible embodiments of any of the foregoing.

**“Intercompany Agreement”** means any Contract as of the date hereof between Seller or any of its Affiliates, on the one hand, and Seller or any of its Affiliates, on the other hand, relating to the Business, any Purchased Asset or any Assumed Liability.

**“Interim Financial Statements”** has the meaning set forth in **Section 4.05(a)**.

**“IP Assignment Agreement”** means an intellectual property assignment agreement in substantially the form attached hereto as **Exhibit F**, duly executed by Buyer and Seller.

**“IRS”** means the Internal Revenue Service.

**“IT Assets”** means all computer systems, including software, hardware, databases, firmware, middleware and platforms, interfaces, systems, networks, information technology equipment, facilities, websites, infrastructure, workstations, switches, data communications lines and associated documentation used or held for use by or on behalf of Seller or any of its Subsidiaries in connection with the conduct of their businesses.

**“Key Executives”** means Patrick J. Frawley, Thomas Brown, Thomas Halloran, Pamela Hassen, Martin Krebs, Santo Russo, David Thomas, Brian Cummings, Dr. Vincent Marchello, Robert Fazzolari, Claudia Shoro and Alicia Delmont.

**“Knowledge of Seller”** or **“Seller’s Knowledge”** or any other similar knowledge qualification, means the actual knowledge of the Key Executives, after reasonable inquiry of employees of Seller and its Subsidiaries having responsibility for the subject matter in question.

**“Law”** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any Order having the effect of law in any jurisdiction, and applicable common law.

**“Leased Real Property”** has the meaning set forth in **Section 4.08(a)**.

**“Liabilities”** means any debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, monetary or non-monetary, direct or indirect, determined or determinable or any other nature whether due or to become due, and regardless of when asserted or whether it is accrued or required to be accrued or disclosed pursuant to GAAP.

**“Licensed Intellectual Property”** means Intellectual Property licensed to or held for use by Seller or any of its Subsidiaries, but excluding the Purchased Intellectual Property.

**“Line of Business”** has the meaning set forth in the Recitals.

**“Long-Term License”** has the meaning set forth in **Section 6.16(c)**.

“**Losses**” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, Taxes, costs or expenses of whatever kind, including reasonable fees of accountants, attorneys and other similar professionals, the cost of enforcing any right to indemnification hereunder, the cost of pursuing any insurance providers, including any incidental, indirect and consequential damages, and any damages calculated based on lost profits or multiples of earnings (to the extent any such damages are the reasonably foreseeable result of the breach or violation in question), but excluding any special or punitive damages (other than such damages awarded as part of a Third Party Claim).

“**Low Collar Mark**” means, in respect of each Business Segment, ninety-five percent (95%) of the Base Enrollment Number for such Business Segment.

“**Marketing Period**” means the first period of twenty (20) consecutive Business Days after the date of this Agreement throughout which (i) Buyer shall have the Required Information; and (ii) the conditions set forth in **Article VII** shall have been satisfied (except for any conditions that by their nature can only be satisfied on the Closing Date, but subject to the satisfaction of such conditions or waiver by the Party entitled to waive such conditions) and nothing has occurred and no condition or state of facts exists that would cause any of the conditions set forth in **Article VII** to fail to be satisfied assuming the Closing were to be scheduled for any time during such twenty (20) consecutive Business Day period; provided, that if the financial statements included in the Required Information that is available to Buyer on the first day of any such twenty (20) consecutive Business Day period would not be sufficiently current on any day during such twenty (20) consecutive Business Day period to permit (x) a registration statement filed by the Seller using such financial statements to be declared effective by the Securities and Exchange Commission (the “**SEC**”) on the last day of the twenty (20) consecutive Business Day period and (y) the Seller’s independent auditors to issue a customary comfort letter (in accordance with its normal practices and procedures) on the last day of the twenty (20) consecutive Business Day period (any documents complying with the requirements of clauses (x) and (y), *mutatis mutandis*, “**Compliant Documents**”), then a new twenty (20) consecutive Business Day period shall commence upon Buyer receiving updated Required Information that would be sufficiently current to permit the actions described in clauses (x) and (y) above on the last day of such twenty (20) consecutive Business Day period; provided further, that the Marketing Period shall be deemed not to have commenced if, (1) prior to the completion of such twenty (20) consecutive Business Day period, the Seller’s independent auditor shall have withdrawn its audit opinion with respect to any of the financial statements contained in the Required Information in which case the Marketing Period shall not be deemed to commence unless and until a new unqualified audit opinion is issued with respect the applicable Required Information by the Seller’s independent auditors, another “big four” accounting firm or another independent public accounting firm reasonably acceptable to Buyer, or (2) the Seller shall have publicly announced any intention to restate any material financial information included in the Required Information or that any such restatement is under consideration or may be a possibility, in which case the Marketing Period shall be deemed not to commence unless and until such restatement has been completed and the Required Information has been amended or the Seller has determined that no restatement shall be required under GAAP; provided further, that such twenty (20) consecutive Business Day period shall not commence before September 5, 2017, such period shall not be required to be consecutive to the extent it would include November 22, 2017, November 23, 2017, November 24, 2017, January 15, 2018, March 30, 2018, May 28,



2018 or July 4, 2018 (which dates shall not count for purposes of the twenty (20) consecutive Business Day period), and if such period has not ended on or before December 22, 2017, it shall not commence before January 2, 2018, and if such period has not ended on or before August 17, 2018, it shall not commence before September 4, 2018, and in no event will the twenty (20) consecutive Business Day period extend beyond the Termination Date. Notwithstanding the foregoing, the Marketing Period shall end on any earlier date that is the date on which the proceeds of the Financing or any alternative financing are obtained and are sufficient to consummate the transactions contemplated by this Agreement. If the Seller shall in good faith reasonably believe that it has provided the Required Information to Buyer and that the Required Information qualifies as a Compliant Document, the Seller may deliver to Buyer a written notice to that effect (stating the date on which it believes it completed such delivery), in which case the Seller shall be deemed to have complied with the requirement to deliver Required Information that qualifies as a Compliant Document (in which case, such twenty (20) consecutive Business Day period shall be deemed to have commenced on the date specified in such notice unless Buyer in good faith reasonably believes that the Seller has not completed the delivery of Required Information that qualifies as a Compliant Document and, within three Business Days after the delivery of such notice by the Seller, delivers a written notice to the Seller to that effect (stating with specificity which Required Information Buyer believes the Seller has not delivered or does not qualify as a Compliant Document at that time).

***“Material Adverse Effect”*** means any event, change, effect, development, state of facts, condition, circumstance or occurrence that, individually or in the aggregate with all other events, changes, effects, developments, states of facts, conditions, circumstances and occurrences, is, or could reasonably be expected to be, materially adverse to the business, results of operations, properties, assets, liabilities, operations or financial condition of (i) Seller and its Subsidiaries (other than Rego Park LLC), (ii) the Business or (iii) the Purchased Assets and Assumed Liabilities, in each case, taken as a whole; *provided* that none of the following, and no event, change, effect, development, state of facts, condition, circumstance or occurrence resulting from the following, shall be taken into account, either alone or in combination, in determining whether a Material Adverse Effect has occurred for purposes of this definition: (A) any changes in general United States or global economic conditions, (B) any changes in the general conditions of the healthcare, health insurance or managed care industry or any other industry in which Seller or any of its Subsidiaries operate (other than as a result of any Change in Healthcare Law), (C) any changes in regulatory, legislative or political conditions or in securities, credit, financial, debt or other capital markets, in each case in the United States or any foreign jurisdiction (other than any Change in Healthcare Law), (D) any failure, in and of itself, by Seller to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period (it being understood that the underlying events, changes, effects, developments, states of facts, conditions, circumstances and occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Material Adverse Effect shall be taken into account in determining whether there has been, a Material Adverse Effect or whether a Material Adverse Effect could be reasonably expected to occur), (E) the identity of the Buyer, (F) any adoption, implementation, promulgation, repeal, modification, amendment, reinterpretation, change or proposal of any applicable Law of or by any Governmental Authority after the date of this Agreement (other than any Change in Healthcare Law), (G) any change in applicable GAAP or authoritative interpretations thereof, (H) the adoption, implementation or promulgation of the Repeal and

Replace Legislation, (I) any changes in geopolitical conditions, the outbreak or escalation of hostilities, any acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism, (J) any taking of any action at the written request of or with the written consent of the Buyer, or (K) any hurricane, earthquake, flood or other natural disasters, acts of God or any change resulting from weather conditions; *provided, however*, that: (1) any event, change, effect, development, state of facts, condition or occurrence referred to in clauses (A), (B), (C), (F), (G), (I) and (K), shall be taken into account for purposes of determining whether a Material Adverse Effect has occurred to the extent, and only to the extent, that such fact, circumstance, occurrence, effect, development, change or condition has a materially disproportionate adverse effect on Seller and its Subsidiaries or the Business, in each case, taken as a whole, relative to the adverse effect such events or changes have on other insurance providers engaged in the Medicare and Medicaid businesses in the State of New York; (2) for avoidance of doubt, the adoption, implementation or promulgation of the Repeal and Replace Legislation referred to in clause (H) shall not be subject to the preceding proviso regarding disproportionate adverse effect; and (3) the adoption, implementation or promulgation of the Repeal and Replace Legislation shall not be taken into account, either alone or in combination, in determining whether any event, change, effect, development, state of facts, condition or occurrence referred to in clauses (B), (C) and (F) shall have taken place.

***“Material Contracts”*** has the meaning set forth in **Section 4.07(b)**.

***“Material Provider Contract”*** has the meaning set forth in **Section 4.07(a)**.

***“Measurement Date”*** has the meaning set forth in **Section 2.07(b)**.

***“Medicaid Advantage Business”*** has the meaning set forth in the Recitals.

***“Medicaid Advantage Plus Business”*** has the meaning set forth in the Recitals.

***“Medicaid Business”*** has the meaning set forth in the Recitals.

***“Medicaid Enrollees”*** has the meaning set forth in **Section 2.01(b)(i)**.

***“Medicaid Purchased Assets”*** has the meaning set forth in **Section 2.01(b)**.

***“Medicare Business”*** has the meaning set forth in the Recitals.

***“Medicare Enrollees”*** has the meaning set forth in **Section 2.01(c)(i)**.

***“Medicare Novation Date”*** has the meaning set forth in the Medicare Reinsurance Agreement.

***“Medicare Purchased Assets”*** has the meaning set forth in **Section 2.01(c)**.

***“Medicare Reinsurance Agreement”*** means an Indemnity Reinsurance Agreement, in substantially the form attached hereto as **Exhibit G**, to be entered into between Buyer (or an Affiliate of Buyer) and Seller, as may be modified prior to the Closing upon mutual agreement of

Buyer and Seller in accordance with the applicable requirements of any Governmental Authority having jurisdiction over the business that is the subject of the Medicare Reinsurance Agreement.

**“Member Non-Compete Agreement”** means the Non-Compete Agreement, in substantially the form attached hereto as **Exhibit H**, to be entered into among Buyer, Seller and each Member of Seller.

**“Members of Seller”** means the Diocesan Bishops of the State and Ecclesiastical Province of New York.

**“Minimum Capital Amount”** means an amount of Purchased Assets sufficient to cause the Buyer to have an authorized control level risk based capital ratio immediately following the Closing, determined in accordance with the risk based capital instructions adopted by the National Association of Insurance Commissioners and the adjustment procedures described on **Exhibit I**, of three hundred fifty percent (350%), calculated without taking into account any assets or liabilities of the Buyer other than (a) the Purchased Assets and (b) the Assumed Liabilities, including in each case any such Purchased Assets and Assumed Liabilities transferred pursuant to the QHP and EP Reinsurance Agreement and the Medicare Reinsurance Agreement.

**“Minimum Capital Statement”** has the meaning set forth in **Section 2.07(a)**.

**“MLTC Business”** has the meaning set forth in the Recitals.

**“MLTC Enrollees”** has the meaning set forth in **Section 2.01(g)(i)**.

**“MLTC Purchased Assets”** has the meaning set forth in **Section 2.01(g)**.

**“NYSE”** means the New York Stock Exchange.

**“NYSE Composite Tape”** means the “NYSE Composite Transactions Tape” as reported by Bloomberg Financial Markets (or such other source as the parties may agree in writing).

**“Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority (in each such case whether preliminary or final).

**“Party”** and **“Parties”** have the meanings set forth in the Preamble.

**“Payor Contracts”** has the meaning set forth in the Recitals.

**“Payors”** has the meaning set forth in the Recitals.

**“PCI DSS”** means the Payment Card Industry Data Security Standard, issued by the Payment Card Industry Security Standards Council, as may be revised from time to time.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

***“Permitted Encumbrances”*** has the meaning set forth in **Section 4.08(c)**.

***“Person”*** means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

***“Phase-Out License”*** has the meaning set forth in **Section 6.16(c)**.

***“Personal Information”*** means any information that (a) identifies or relates to a natural person including information that alone or in combination with other information held by Seller or any of its Subsidiaries can be used to identify, contact or precisely locate a natural person or can be linked to a natural person; (b) any information that is governed, regulated or protected by one or more Information Privacy and Security Laws; (c) any information that Seller or any of its Subsidiaries receives from or on behalf of a customer of Seller or any of its Subsidiaries; (d) any information that is covered by the PCI DSS; or (e) Enrollee Information.

***“Post-Closing Tax Period”*** means any taxable period beginning after the Closing Date and that portion of a Straddle Period beginning after the Closing Date.

***“Pre-Closing Tax Period”*** means any taxable period ending on or before the Closing Date, and with respect to any Straddle Period, the portion of such taxable period ending on and including the Closing Date.

***“Privacy Policy”*** has the meaning set forth in **Section 4.12(a)**.

***“Prohibitive Order”*** has the meaning set forth in **Section 7.01(c)**.

***“Proposed Amendment”*** has the meaning set forth in the definition of Applicable Purposes.

***“Provider”*** means any physician, hospital, pharmacy or other health care professional, independent practice association, facility or supplier that has contracted to provide or arrange for the provision of health care services, dental services, prescription drugs or supplies to Enrollees, as well as any vendor required to be part of Seller’s network under any Payor Contract.

***“Provider Contract”*** means any Contract between Seller and any Provider.

***“Purchase Price”*** has the meaning set forth in **Section 2.05(a)**.

***“Purchase Price Allocation”*** has the meaning set forth in **Section 2.09**.

***“Purchased Assets”*** has the meaning set forth in **Section 2.01(a)**.

***“Purchased Intellectual Property”*** means all Intellectual Property owned or controlled by Seller or any of its Subsidiaries and used or held for use in or related to the Business, including any and all rights to the name “FIDELIS” and derivations thereof and any and all Intellectual Property relating to the “FIDELIS” name, but excluding the Corporate Name.

***“QHP and EP Reinsurance Agreement”*** means an Indemnity Reinsurance Agreement, in substantially the form of **Exhibit J** attached hereto, to be entered into between Buyer (or an Affiliate of Buyer) and Seller, as may be modified prior to the Closing upon mutual agreement of Buyer and Seller in accordance with the applicable requirements of any Governmental Authority having jurisdiction over the business that is the subject of the QHP and EP Reinsurance Agreement.

***“QHP and EP Reinsurance Business”*** means the business that is the subject of the QHP and EP Reinsurance Agreement.

***“QHP Business”*** has the meaning set forth in the Recitals.

***“QHP Enrollees”*** has the meaning set forth in **Section 2.01(e)(i)**.

***“QHP Purchased Assets”*** has the meaning set forth in the **Section 2.01(e)**.

***“Real Property Leases”*** has the meaning set forth in **Section 4.08(a)**.

***“Registered Intellectual Property”*** means any Purchased Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any Governmental Authority at any time.

***“Registration Rights Agreement”*** means a Registration Rights Agreement, in substantially the form of **Exhibit K** attached hereto, to be entered into between Buyer and Seller.

***“Rego Park Lease Assignment”*** means an assignment of the existing lease agreement between Seller, as lessee, and Rego Park LLC, as lessor, in a form mutually agreed to by the Parties.

***“Rego Park LLC”*** means Rego Park Office Tower, LLC, a New York limited liability company and direct wholly-owned subsidiary of Seller.

***“Regulatory Filings”*** has the meaning set forth in **Section 4.16(c)**.

***“Release”*** means any emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source.

***“Religious Artifacts”*** means any and all religious-themed art, symbols or artifacts owned by Seller or any of its Subsidiaries.

***“Repeal and Replace Legislation”*** means (a) the United States House of Representatives Bill entitled the “American Health Care Act of 2017” (H.R. 1628) and the United States Senate Bill entitled the “Better Care Reconciliation Act of 2017” (H.R. 1628), in each case, as such bills existed as of July 17, 2017, and (b) any other Laws to the extent containing or implementing provisions substantially similar to either of the foregoing bills.

***“Replacement Facility”*** has the meaning set forth in **Section 6.23(a)**.

***“Representative”*** means, with respect to any Person, any and all directors, officers, employees, partners, members, consultants, financial advisors, counsel, accountants and other agents of such Person.

***“Required Funding Amount”*** has the meaning set forth in **Section 5.06**.

***“Required Governmental Approvals”*** has the meaning specified in **Section 6.08(a)**.

***“Required Information”*** has the meaning set forth in **Section 6.23(d)**.

***“Required Third Party Consents”*** has the meaning specified in **Section 7.02(k)**.

***“Restricted Business”*** means operating any healthcare insurance or managed health care business that competes with the Business as conducted by Seller immediately prior to the Closing (other than the Archdiocese of New York’s continued operation of the Archcare Continuing Care Community, as such business is conducted immediately prior to the Closing). For purposes of the definition of “Restricted Business,” the parties hereto agree that the “Business” also shall include any Governmental Authority-sponsored successor programs to the Business operated by Seller immediately prior to Closing, including successor programs to Medicaid, Child Health Plus, Health Benefit Exchange, Medicare services, Medicaid and Health and Recovery Plan, Child Health Plus Program, Managed Long Term Care Program, Medicare Advantage program, Medicare Advantage D-SNP program, Medicaid Advantage program, Medicaid Advantage Plus, Fully Integrated Duals Advantage program, Qualified Health Plan program, and Essential Plan.

***“Restricted Period”*** means the five (5) year period commencing on the Closing Date.

***“Review Period”*** has the meaning set forth in **Section 2.08(c)**.

***“Revolving Credit Facilities”*** means all obligations (including Indebtedness) outstanding pursuant to: (i) that certain Credit Agreement, dated as of July 1, 2013, by and between Seller and Bank of America, N.A. (as amended June 27, 2014, June 26, 2015, June 24, 2016, and June 23, 2017); (ii) that certain Credit Agreement, dated July 1, 2015, by and between Seller and Capital One, National Association (as amended July 22, 2015, June 27, 2016 and June 28, 2017); and (iii) that certain Amended and Restated Credit Agreement, dated as of June 28, 2012, between Seller and HSBC Bank USA, National Association (as amended June 27, 2013, June 20, 2014, June 25, 2015, June 23, 2016, and June 23, 2017).

***“Sale Activities”*** means (a) the engagement of legal counsel and financial advisors to assist in the transactions contemplated by this Agreement, (b) discussions with such legal counsel and financial advisors, (c) the review, preparation, negotiation, execution and delivery of this Agreement and the Transaction Documents, (d) the negotiation with Buyer and, prior to execution of this Agreement, other Persons, in connection with the transactions contemplated by this Agreement and (e) following the Signing Date, performance of this Agreement.

***“Salus”*** means Salus Administrative Services, Inc., a New York corporation and direct wholly-owned subsidiary of Seller.

“**Salus IPA**” means Salus IPA LLC, a New York limited liability company and indirect wholly-owned subsidiary of Seller.

“**Sarbanes-Oxley Act**” means the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder.

“**SEC**” has the meaning set forth in the definition of “**Marketing Period**.”

“**SEC Reports**” has the meaning set forth in **Section 5.09**.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Risk Assessment**” has the meaning set forth in **Section 4.12(g)**.

“**Seller**” has the meaning set forth in the Preamble.

“**Seller Employee Payables**” means the following items payable by Seller, excluding (i) amounts payable by Buyer pursuant to **Section 6.05(d)**, **Section 6.05(e)** and **Section 6.05(f)** and (ii) amounts included in Working Capital:

(a) any bonuses or other amounts payable by Seller due to employees of Seller or its Subsidiaries by reason of the consummation of the transactions contemplated by this Agreement including any retention, stay or change in control bonus payments;

(b) amounts payable by Seller to any Person (including additional contribution credits as a result of the transactions contemplated by this Agreement and Tax gross-up payments or amounts for which there is an acceleration of vesting) under any nonqualified deferred compensation plan of Seller;

(c) all accrued but unpaid salaries, wages, commissions, bonuses, severance, vacation or sick pay, paid time off, nonqualified deferred compensation, incentive compensation or other compensation or payroll items earned by any current employees of Seller and its Subsidiaries for any period ending on or prior to the Closing Date;

(d) all other amounts payable under any Seller Employee Plan other than amounts described in the Executive Waivers; and

(e) with respect to the payments described in each of the foregoing clauses (a) through (d), all related payroll Tax Liabilities.

“**Seller Employee Plan**” means each “employee benefit plan” within the meaning of Section 3(3) of ERISA and each other employment (including the Existing Key Executive Employment Agreements), consulting, profit-sharing, deferred compensation, incentive (equity-based or otherwise), change in control, retention, severance, vacation, paid time off, fringe-benefit and other compensatory agreement, plan, policy, program or arrangement, in each case (i) that is sponsored, maintained, contributed to, or required to be contributed to by Seller or any of its Subsidiaries with or for the benefit of any current or former employee, director, officer or individual independent contractor who provided or provides services to the Business (or with or

for the benefit of their respective spouses or dependents) or (ii) with respect to which Buyer or its Subsidiaries would have any actual or contingent Liability subsequent to the Closing in respect of periods on or prior to the Closing.

***“Seller Fundamental Representations”*** means the representations and warranties of Seller set forth in **Section 4.01** (Organization and Qualification), **Section 4.02** (Subsidiaries), **Section 4.03** (Authority), the second sentence of **Section 4.08(c)** (Title to Purchased Assets), **Section 4.11** (Compliance with Law), and **Section 4.15** (Brokers).

***“Seller Headquarters”*** means the land and buildings located at 95-25 Queens Boulevard, Rego Park, New York 11374 and currently occupied in part by Seller’s corporate headquarters.

***“Seller Indemnitees”*** has the meaning set forth in **Section 8.03**.

***“Seller Parties”*** has the meaning set forth in **Section 6.03(a)**.

***“Seller Post-Closing Purposes”*** has the meaning set forth in the definition of Burdensome Condition.

***“Seller Transaction Expenses”*** means the aggregate amount of all fees, commissions, costs and expenses of Seller and its Subsidiaries incurred in connection with, or related to the transactions contemplated by this Agreement, to the extent not paid in full at or prior to the Closing including all legal, accounting, financial advisory, broker, consulting and all other fees and expenses of third parties; *provided, however*, that Seller Transaction Expenses shall exclude any item included in the definitions of Seller Employee Payables or Working Capital .

***“Seller’s CHP Health Plans”*** has the meaning set forth in **Section 2.01(f)(i)**.

***“Seller’s Duals Health Plans”*** has the meaning set forth in **Section 2.01(d)(i)**.

***“Seller’s EP Health Plans”*** has the meaning set forth in **Section 2.01(h)(i)**.

***“Seller’s Medicaid Health Plans”*** has the meaning set forth in **Section 2.01(b)(i)**.

***“Seller’s Medicare Health Plans”*** has the meaning set forth in **Section 2.01(c)(i)**.

***“Seller’s MLTC Health Plans”*** has the meaning set forth in **Section 2.01(g)(i)**.

***“Seller’s QHP and EP Reinsured Plans”*** has the meaning set forth in **Section 6.20(a)**.

***“Seller’s QHP Health Plans”*** has the meaning set forth in **Section 2.01(e)(i)**.

***“Senior Programs Segment”*** means Seller’s and its Subsidiaries’ business segment comprised of MLTC Business, the Medicare Business and the Medicaid Advantage Plus Business.

***“Share Consideration Amount”*** means an amount of Buyer Common Stock ranging in value, at Buyer’s election and sole discretion, from Zero Dollars (\$0) to One Hundred and Twenty-Five Million Dollars (\$125,000,000). Buyer shall notify Seller in writing of the amount



of the Share Consideration Amount (if any) no later than five (5) Business Days prior to the Closing Date; provided that, for avoidance of doubt, if Buyer fails to deliver such notice, the Share Consideration Amount shall equal Zero Dollars (\$0). If and to the extent the sum of the Share Consideration Amount plus the Share Escrow Amount is less than Five Hundred Million Dollars (\$500,000,000), the Buyer Common Stock issued hereunder shall be applied first to the Escrow Shares up to the Escrow Amount and, thereafter to the Share Consideration.

**“Share Consideration”** means the number of shares of Buyer Common Stock equal to the Share Consideration Amount divided by the Buyer Average Stock Price on the Trading Day two clear Trading Days prior to the Closing (rounded up to the nearest whole share).

**“Share Escrow Amount”** means an amount of Buyer Common Stock ranging in value, at Buyer’s election and sole discretion, from Zero Dollars (\$0) to Three Hundred and Seventy-Five Million Dollars (\$375,000,000). Buyer shall notify Seller in writing of the amount of the Share Escrow Amount (if any) no later than five (5) Business Days prior to the Closing Date; provided that, for avoidance of doubt, if Buyer fails to deliver such notice, the Share Escrow Amount shall equal Zero Dollars (\$0).

**“Signing Date”** has the meaning set forth in the Preamble.

**“Software”** has the meaning set forth in the definition of “Intellectual Property.”

**“State Sponsored Segment”** means Seller’s and its Subsidiaries’ business segment comprised of the Medicaid Business, the HARP Business and CHP Business.

**“Statutory Escrow Account”** means the escrow account maintained by Seller in accordance with the requirements of New York Law.

**“Straddle Period”** means any taxable period beginning before or on and ending after the Closing Date.

**“Subsidiary”** of any Person means any corporation, partnership, joint venture, limited liability company, trust, estate or other Person of which (or in which) more than 50% of (a) the issued and outstanding capital stock, or other equity interests having ordinary voting power to elect a majority of the board of directors of such corporation or Persons performing similar functions of any other Person (irrespective of whether at the time capital stock, membership or other equity interests of any other class or classes of such corporation or other Person shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or other Person, or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries.

**“Survival Period”** has the meaning set forth in **Section 8.01**.

**“Tax Return”** means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**“Taxes”** means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, escheat, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

**“Termination Date”** has the meaning set forth in **Section 9.01(d)(ii)**.

**“Termination Fee”** has the meaning set forth in **Section 9.02(b)**.

**“Term Loans”** means all obligations (including Indebtedness) outstanding pursuant to that certain Term Loan Agreement, dated December 12, 2016 (the **“Existing Term Credit Agreement”**), by and among Seller, as borrower, and HSBC Bank USA, N.A., Bank of America, N.A. and Capital One, National Association, each as a lender, as amended.

**“Territory”** means the State of New York and any other location in which the Business is conducted on the date hereof and as of the Closing.

**“Third Party Claim”** has the meaning set forth in **Section 8.05(a)**.

**“Total Adjusted Net Assets”** means an amount calculated as of the Closing Date in accordance with GAAP and the example calculation set forth on **Exhibit L** equal to (a) the consolidated total net assets of Seller (net of amounts that would otherwise be included in the calculation thereof that constitute Excluded Assets or Excluded Liabilities), minus (b) consolidated non-admitted assets of Seller.

**“Trading Day”** means any day on which there are sales of Buyer Common Stock on the NYSE Composite Tape.

**“Transaction Documents”** means this Agreement, the Escrow Agreement, the Transition Services Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the IP Assignment Agreement, the Rego Park Lease Assignment, the QHP and EP Reinsurance Agreement, the Medicare Reinsurance Agreement, the Registration Rights Agreement, the Member Non-Compete Agreement and the other agreements, instruments and documents required to be delivered at the Closing.

**“Transaction Privilege Matters”** has the meaning set forth in **Section 2.02(d)**.

**“Transfer Taxes”** has the meaning set forth in **Section 6.18**.

**“Transition Services Agreement”** means a Transition Services Agreement, in substantially the form of **Exhibit M** attached hereto, to be entered into between Buyer and Seller.

**“Union”** has the meaning set forth in **Section 4.13(b)**.

**“Working Capital”** means all current assets of Seller and its Subsidiaries included among the Purchased Assets, minus all current liabilities of Seller and its Subsidiaries included among the Assumed Liabilities, in each case as determined as of 12:01 a.m. on the Closing Date in accordance with the Working Capital Methodologies; *provided, however*, that Working Capital shall specifically exclude any item covered by the definitions of Cash, Indebtedness, Seller Employee Payables and Seller Transaction Expenses.

**“Working Capital Calculation Example”** means the example calculation attached hereto as **Exhibit N** showing the calculation of Working Capital as if the Closing had occurred on June 30, 2017.

**“Working Capital Methodologies”** means the judgments, accounting methodologies, practices, classifications, estimation techniques, assumptions and principles described on **Exhibit O**.

**“Working Capital Target”** means negative One Billion Two Hundred Million Dollars (\$1,200,000,000).

## ARTICLE II

### PURCHASE AND SALE

#### Section 2.01 Purchase and Sale of Assets.

(a) General. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller’s rights, title and interest in, to and under all assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the Business (the **“Purchased Assets”**), including:

(i) all Cash (including Statutory Escrow Accounts), other than Excess Cash, subject to adjustment in accordance with **Section 2.07** (such Cash included among the Purchased Assets, the **“Acquired Cash Amount”**);

(ii) all accounts or notes receivable of the Business;

(iii) all prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees of the Business;

(iv) all of Seller’s and its Subsidiaries’ rights, title and interests in and to the Purchased Intellectual Property and the Licensed Intellectual Property;

(v) all of Seller’s and its Subsidiaries’ rights, title and interests in and to Personal Information;

(vi) all of Seller's rights, title and interests in and to Business Software (whether proprietary or non-proprietary), Business IT Assets, servers, data storage devices, systems, networks and other computer assets, laptop computers and all technology underlying or enabling Internet sites, URLs, systems or networks, e-mail addresses, telephone numbers and fax numbers;

(vii) the Assumed Provider Contracts and all other Contracts relating to the Business other than any Contract relating to Indebtedness of Seller and other than the Excluded Contracts (the "***Assigned Contracts***"), subject, in the case of Contracts relating to the Medicare Business and the QHP and EP Reinsurance Business, to **Section 2.01(c)(i), Section 2.01(e)(i), Section 2.01(h)(i) and Section 6.20;**

(viii) all furniture, fixtures, equipment, supplies and other tangible personal property of the Business or Seller used or held for use in the Business other than any Religious Artifacts;

(ix) all Permits, but only to the extent such Permits may be transferred under applicable Law;

(x) all outstanding capital stock of Salus and all outstanding membership interests of Salus IPA;

(xi) the Real Property Leases, including any prepaid rent, security deposits (to the extent not theretofore applied under the Real Property Leases), and options to renew in connection therewith;

(xii) all of Seller's and its Subsidiaries' rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(xiii) all of Seller's and its Subsidiaries' communications relating to the Business involving attorney-client confidence and the privilege related thereto (other than with respect to the Transaction Privilege Matters or to the extent related to or arising out of an Excluded Asset or Excluded Liability);

(xiv) originals, or where not available, copies, of all books and records and all other data and information (in whatever form maintained) in the possession or control of the Seller or its Affiliates, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, personnel records, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records, strategic plans, internal financial statements and marketing and promotional surveys, material and research, that relate to the Business, the Purchased Assets or the Assumed Liabilities, other than (A) books and records set forth in **Section 2.01(a)(xiv)** of the Disclosure Schedules, (B) books and records relating to Seller's tax exempt status or the exemption

from any Tax, and (C) Tax Returns and any other Tax books and records not related to the operation of the Business (“**Books and Records**”); and

(xv) all goodwill, going concern and other similar intangibles relating to the Purchased Assets.

(b) **Medicaid Business Assets.** Subject to the terms and conditions set forth herein, and without limiting the generality of **Section 2.01(a)**, at the Closing, Seller shall sell, assign, transfer, convey and deliver, to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller’s right, title and interest in, to and under the following assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the Medicaid Business (collectively, the “**Medicaid Purchased Assets**”):

(i) **Rights With Respect to Medicaid Enrollees.** Any and all rights of Seller to provide services to Enrollees in any of Seller’s health plans comprising the Medicaid Business (such individuals, “**Medicaid Enrollees**” and such health plans, “**Seller’s Medicaid Health Plans**”) and any other individuals who would be default-assigned to Seller’s Medicaid Health Plans from and after the Closing Date if Seller retained the right to serve Medicaid Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such Medicaid Enrollees (and other individuals);

(ii) **Rights Under Provider Contracts.** All of Seller’s rights from and after the Medicare Novation Date under the Assumed Provider Contracts to the extent relating to the Medicaid Business;

(iii) **Claims and Rights.** Subject to the Medicare Reinsurance Agreement, claims and rights of every kind relating to the Medicaid Purchased Assets and/or the ownership of the Medicaid Business arising from the conduct of the Medicaid Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(iv) **Goodwill.** All goodwill, going concern and other similar intangibles relating to the Medicaid Purchased Assets identified above in this **Section 2.01(b)**.

(c) **Medicare Business Assets.** Subject to the terms and conditions set forth herein, and without limiting the generality of **Section 2.01(a)**, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller’s right, title and interest in, to and under the following assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the Medicare Business (collectively, the “**Medicare Purchased Assets**”):

(i) Rights With Respect to Medicare Enrollees. Subject to **Section 6.20** and the Medicare Reinsurance Agreement, any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the Medicare Business (such individuals, "***Medicare Enrollees***" and such health plans, "***Seller's Medicare Health Plans***") and any other Persons who would be default-assigned to Seller's Medicare Health Plans from and after the Closing Date if Seller retained the right to serve Medicare Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such Medicare Enrollees (and other Persons);

(ii) Rights Under Provider Contracts. All of Seller's rights from and after the Medicare Novation Date under the Assumed Provider Contracts to the extent relating to the Medicare Business;

(iii) Claims and Rights. Claims and rights of every kind relating to the Medicare Purchased Assets and/or the ownership of the Medicare Business arising from the conduct of the Medicare Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(iv) Goodwill. All goodwill, going concern and other similar intangibles relating to the Medicare Purchased Assets identified above in this **Section 2.01(c)**.

(d) Duals Business Assets. Subject to the terms and conditions set forth herein, and without limiting the generality of **Section 2.01(a)**, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under the following assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the Duals Business (collectively, the "***Duals Purchased Assets***");

(i) Rights With Respect to Duals Enrollees. Any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the Duals Business (such individuals, "***Duals Enrollees***" and such health plans, "***Seller's Duals Health Plans***") and any other Persons who would be default-assigned to Seller's Duals Health Plans from and after the Closing Date if Seller retained the right to serve Duals Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such Duals Enrollees (and other Persons);

(ii) Rights Under Provider Contracts. All of Seller's rights from and after the Effective Time under the Assumed Provider Contracts to the extent relating to the Duals Business;

(iii) Claims and Rights. Claims and rights of every kind relating to the Duals Purchased Assets and/or the ownership of the Duals Business arising from the

conduct of the Duals Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(iv) Goodwill. All goodwill, going concern and other similar intangibles relating to the Duals Purchased Assets identified above in this **Section 2.01(d)**.

(e) QHP Business Assets. Subject to the terms and conditions set forth herein, and without limiting the generality of **Section 2.01(a)**, at the Closing, Seller shall sell, assign, transfer, convey and deliver, to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under the following assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the Exchange Segment (collectively, the "**QHP Purchased Assets**"):

(i) Rights With Respect to QHP Enrollees. Subject to **Section 6.20** and the QHP and EP Reinsurance Agreement, any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the QHP Business (such individuals, "**QHP Enrollees**" such health plans, "**Seller's QHP Health Plans**");

(ii) Rights Under Provider Contracts. All of Seller's rights from and after the Non-Renewal Date (as defined in the QHP and EP Reinsurance Agreement) under the Assumed Provider Contracts to the extent relating to the QHP Business;

(iii) Claims and Rights. Subject to the QHP and EP Reinsurance Agreement, claims and rights of every kind relating to the QHP Purchased Assets and/or the ownership of the QHP Business arising from the conduct of the QHP Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(iv) Goodwill. All goodwill, going concern and other similar intangibles relating to the QHP Purchased Assets identified above in this **Section 2.01(e)**.

(f) CHP Business Assets. Subject to the terms and conditions set forth herein, and without limiting the generality of **Section 2.01(a)**, at the Closing, Seller shall sell, assign, transfer, convey and deliver, to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under the following assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the CHP Business (collectively, the "**CHP Purchased Assets**"):

(i) Rights With Respect to CHP Enrollees. Any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the CHP Business (such individuals, "**CHP Enrollees**" and such health plans, "**Seller's CHP Health Plans**") and any other individuals who would be default-assigned to Seller's CHP

Health Plans from and after the Closing Date if Seller retained the right to serve CHP Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such CHP Enrollees (and other individuals);

(ii) Rights Under Provider Contracts. All of Seller's rights from and after the Effective Time under the Assumed Provider Contracts to the extent relating to the CHP Business;

(iii) Claims and Rights. Claims and rights of every kind relating to the CHP Purchased Assets and/or the ownership of the CHP Business arising from the conduct of the CHP Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(iv) Goodwill. All goodwill, going concern and other similar intangibles relating to the CHP Purchased Assets identified above in this **Section 2.01(f)**.

(g) MLTC Business Assets. Subject to the terms and conditions set forth herein, and without limiting the generality of **Section 2.01(a)**, at the Closing, Seller shall sell, assign, transfer, convey and deliver, to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under the following assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the MLTC Business (collectively, the "**MLTC Purchased Assets**");

(i) Rights With Respect to MLTC Enrollees. Any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the MLTC Business (such individuals, "**MLTC Enrollees**" and such health plans, "**Seller's MLTC Health Plans**") and any other individuals who would be default-assigned to Seller's MLTC Health Plans from and after the Closing Date if Seller retained the right to serve MLTC Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such MLTC Enrollees (and other individuals)

(ii) Rights Under Provider Contracts. All of Seller's rights from and after the Effective Time under the Assumed Provider Contracts to the extent relating to the MLTC Business;

(iii) Claims and Rights. Claims and rights of every kind relating to the MLTC Purchased Assets and/or the ownership of the MLTC Business arising from the conduct of the MLTC Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(iv) Goodwill. All goodwill, going concern and other similar intangibles relating to the MLTC Purchased Assets identified above in this **Section 2.01(g)**.



(h) **EP Business Assets.** Subject to the terms and conditions set forth herein, and without limiting the generality of **Section 2.01(a)**, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under the following assets, properties, rights and claims of Seller (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by the EP Business (collectively, the "**EP Purchased Assets**"):

(i) **Rights With Respect to EP Enrollees.** Subject to **Section 6.20** and the QHP and EP Reinsurance Agreement, any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the EP Business (such individuals, "**EP Enrollees**" and such health plans, "**Seller's EP Health Plans**") and any other Persons who would be default-assigned to Seller's EP Health Plans from and after the Closing Date if Seller retained the right to serve EP Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such EP Enrollees (and other Persons);

(ii) **Rights Under Provider Contracts.** All of Seller's rights from and after the Non-Renewal Date under the Assumed Provider Contracts to the extent relating to the EP Business;

(iii) **Claims and Rights.** Subject to the QHP and EP Reinsurance Agreement, claims and rights of every kind relating to the EP Purchased Assets and/or the ownership of the EP Business arising from the conduct of the EP Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(iv) **Goodwill.** All goodwill, going concern and other similar intangibles relating to the EP Purchased Assets identified above in this **Section 2.01(h)**.

**Section 2.02 Excluded Assets.** The purchase of the Purchased Assets by Buyer and sale of the Purchased Assets by Seller contemplated by this Agreement shall not include the following assets of Seller (which assets shall be referred to as the "**Excluded Assets**"):

(a) all Excess Cash (which shall include Cash that would be reflected as temporarily restricted net assets on Seller's consolidated balance sheet as of the Closing);

(b) all outstanding membership interests of Rego Park LLC and all right, title and interest in and to any assets, properties, rights and claims of Rego Park LLC, whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, including the Seller Headquarters;

(c) all right, title and interest in and to the Corporate Name;

(d) all communications involving attorney-client confidences between Seller or its Subsidiaries and counsel in the course of Seller's efforts to dispose of the Business,

including negotiation, documentation and consummation of the transactions contemplated by this Agreement and the privilege related thereto (the “*Transaction Privilege Matters*”);

- (e) Seller’s rights and claims under this Agreement;
- (f) any Tax refund or Tax claim of Seller relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period;
- (g) except as otherwise specifically provided in **Section 6.05**, all Seller Employee Plans (other than Assumed Plans) and all trusts, insurance contracts, segregated accounts or other funding vehicles maintained as a part of any Seller Employee Plans (other than Assumed Plans);
- (h) any Excluded Contract;
- (i) any Contract relating to Indebtedness of Seller or its Subsidiaries
- (j) all right, title and interest in and to any Religious Artifacts;
- (k) any and all reserves reflected in Seller’s and its Subsidiaries accounting records as of the Closing Date to the extent associated with any Liability contemplated by **Section 2.04(h)**; and
- (l) Seller’s and its Subsidiaries’ (i) books and records set forth in **Section 2.01(a)(xiii)** of the Disclosure Schedules, (ii) books and records relating to Seller’s tax exempt status or the exemption from any Tax, and (iii) Tax Returns and any other Tax books and records to the extent not related to the operation of the Business.

**Section 2.03 Assumed Liabilities.** Subject to the terms and conditions set forth herein, at the Closing, Buyer shall assume and shall pay, perform and discharge all Liabilities of Seller, in each case, to the extent related to the Business or the Purchased Assets (whether arising before or after the Closing), in each case, other than Excluded Liabilities (collectively, the “*Assumed Liabilities*”), including the following:

- (a) all trade accounts payable of Seller to third parties in connection with the Business and all claims under any Provider Contracts or Seller’s health plans that remain unpaid as of the Closing Date;
- (b) all Liabilities under the Assigned Contracts (other than any Liabilities relating to pre-Closing breaches of any such Assigned Contracts);
- (c) all Liabilities specifically assumed by Buyer in **Section 6.05(d)**, **Section 6.05(e)** and **Section 6.05(f)**;
- (d) all Liabilities for Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any Post-Closing Tax Period; and

(e) all Liabilities directly relating to Buyer's ownership or operation of the Business and the Purchased Assets.

**Section 2.04 Excluded Liabilities.** Buyer shall not assume and shall not be responsible to pay, perform or otherwise discharge (and Seller shall retain, pay, perform and otherwise discharge) any of the following Liabilities of Seller (collectively, the "***Excluded Liabilities***"):

(a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Seller (or any Affiliate of Seller); (ii) Taxes relating to the Business or the Purchased Assets for any Pre-Closing Tax Period; and (iii) Taxes for which Seller is liable pursuant to **Section 6.18**;

(c) the Term Loans and any and all Closing Date Indebtedness;

(d) any and all Seller Transaction Expenses;

(e) except as specifically provided in **Section 6.05(e)** in respect of credit for Hired Employee accrued paid time off, any and all Seller Employee Payables;

(f) except as specifically assumed by Buyer in **Section 6.05(d)**, **Section 6.05(e)** and **Section 6.05(f)**, (i) all Seller Employee Plans, (ii) any Liabilities arising under or in connection with any Seller Employee Plans, (iii) any Liabilities constituting workers' compensation claims relating to current or former employees that relate to any period on or before the Closing Date, irrespective of whether such claims are made prior to or after the Closing Date and (iv) any Liabilities of Seller or any of its Subsidiaries with respect to the employment or termination of employment of its or their current or former employees where (and to the extent) the act or omission giving rise to such Liability arose while such employee was employed with Seller or any of its Subsidiaries, irrespective of whether such claims are made prior to or after the Closing Date;

(g) any Liabilities relating to or arising out of the Excluded Assets;

(h) all Liabilities relating to or resulting from any breaches of the Assigned Contracts prior to the Closing Date, whether arising prior to, on or after the Closing Date;

(i) all intercompany payables by the Business in favor of Seller or any of Seller's Affiliates other than intercompany payables due from Salus or Salus IPA to Seller pursuant to any Assigned Contract; and

(j) all Liabilities relating to any payable to any broker or finder in connection with the transactions contemplated by this Agreement or the Transaction Documents.

## Section 2.05 **Purchase Price.**

(a) The aggregate purchase price for the Purchased Assets shall be (i) the Cash Purchase Price, plus (ii) the Share Consideration Amount (if any), plus (iii) the assumption of the Assumed Liabilities (the “**Purchase Price**”), subject to adjustment pursuant to **Section 2.05(b)**. The portion of the Cash Purchase Price payable to Seller in cash at the Closing (the “**Closing Cash Purchase Price**”) shall equal (1) the Cash Purchase Price, minus (2) the Seller Transaction Expenses, minus (3) Closing Date Indebtedness (if any), and minus (4) the Escrow Amount.

(b) The Closing Cash Purchase Price may be subject to an enrollment volume adjustment as to each Business Segment following the Closing (as described in clauses (i) through (iv) below, and otherwise in accordance with **Section 2.07**).

(i) If the Closing Enrollment for any Business Segment is greater than or equal to the Low Collar Mark and equal to or less than the High Collar Mark for such Business Segment, then there shall be no adjustment to the Closing Cash Purchase Price with respect to such Business Segment pursuant to this **Section 2.05(b)**.

(ii) If the Closing Enrollment for any Business Segment is less than the Low Collar Mark for such Business Segment, then the Closing Cash Purchase Price shall be decreased by the per Enrollee adjustment set forth on **Exhibit P** for each Enrollee by which the Closing Enrollment for such Business Segment is less than the Low Collar Mark for such Business Segment.

(iii) If the Closing Enrollment for any Business Segment is greater than the High Collar Mark for such Business Segment, then the Closing Cash Purchase Price shall be increased by the per Enrollee adjustment set forth on **Exhibit P** for each Enrollee by which the Closing Enrollment for such Business Segment is greater than the High Collar Mark for such Business Segment.

(iv) The adjustments in respect of each Business Segment pursuant to this **Section 2.05(b)** shall be netted against one another for purposes of determining the adjustment contemplated by this **Section 2.05(b)**.

## Section 2.06 **Payment; Share Consideration.**

(a) Cash to Seller. At the Closing, Buyer shall deliver to Seller an amount equal to the Closing Cash Purchase Price by wire transfer of immediately available funds to an account or accounts designated by Seller in writing at least three (3) Business Days prior to the Closing Date.

(b) Payment of Closing Date Indebtedness. At the Closing, Buyer, on behalf of Seller and its Subsidiaries (as applicable), shall pay the Closing Date Indebtedness (if any) in accordance with the debt payoff letters, as applicable, to each counterparty or holder of Closing Date Indebtedness in order to fully discharge such Closing Date Indebtedness and terminate all applicable obligations and Liabilities of Seller and any of its Subsidiaries related thereto, in each

case, by wire transfer of immediately available funds to the account or accounts designated in the debt payoff letters.

(c) Payment of Seller Transaction Expenses. At the Closing, Buyer, on behalf of Seller and its Subsidiaries (as applicable), shall pay the Seller Transaction Expenses (if any) in order to fully discharge such Seller Transaction Expenses and terminate all applicable obligations and Liabilities of Seller and any of its Subsidiaries related thereto, in each case, by wire transfer of immediately available funds to the account or accounts designated by Seller.

(d) Payment to Escrow Agent. At the Closing, Buyer shall deliver to the Escrow Agent for deposit the Cash Escrow Amount and the Escrow Shares (if any) into an escrow fund under the Escrow Agreement (the “***Escrow Fund***”).

(e) Share Consideration. Subject to **Section 6.27(b)**, at the Closing, Buyer shall deliver to Seller the Share Consideration (if any).

#### **Section 2.07 Determination of Enrollment Purchase Price Adjustments.**

(a) At least ten (10) Business Days prior to the Closing Date, Seller shall have delivered to Buyer a written statement (the “***Minimum Capital Statement***”) setting forth Seller’s good faith estimate of (i) the Minimum Capital Amount as of the Effective Time (the “***Estimated Minimum Capital Amount***”) along with reasonable supporting detail to evidence the calculation thereof, (ii) Total Adjusted Net Assets as of the Closing Date (the “***Estimated Total Adjusted Net Assets***”), and (iii) the Acquired Cash Amount (the “***Estimated Acquired Cash Amount***”). The calculation of Excess Cash and Acquired Cash at Closing pursuant to **Section 2.01(a)(i)** shall be based on the Estimated Minimum Capital Amount, the Estimated Total Adjusted Net Assets and the Estimated Acquired Cash Amount.

(b) Within thirty (30) days following the Measurement Date, Buyer shall give written notice to Seller (the “***Enrollment Notice***”), which shall set forth (i) the number of Enrollees (excluding any such Enrollees that have rejected the proposed novation contemplated by the QHP and EP Reinsurance Agreement) in respect of each Business Segment (the “***Closing Enrollment***”) as of the last calendar day of the first calendar month following the month in which the Effective Time occurs or, if later, the last calendar day of the month in which the expiration of any opt-out period required to be provided by Seller to its membership by any Governmental Authority occurs (the “***Measurement Date***”), (ii) Buyer’s calculation of (A) the final Minimum Capital Amount (the “***Closing Minimum Capital Amount***”), (B) Buyer’s calculation of Total Adjusted Net Assets as of the Closing Date (the “***Closing Total Adjusted Net Assets***”), and (C) Buyer’s calculation of Acquired Cash (the “***Closing Acquired Cash Amount***”), and (iii) Buyer’s calculation of Working Capital (the “***Closing Working Capital***”), determined in accordance with the Working Capital Methodologies. The Enrollment Notice shall include reasonable supporting detail describing Buyer’s calculation of the Closing Enrollment, the Closing Minimum Capital Amount, the Closing Total Adjusted Net Assets, the Closing Acquired Cash Amount and the Closing Working Capital.

(c) Seller shall have thirty (30) days following Buyer’s delivery of the Enrollment Notice (the “***Enrollment Review Period***”) to review the same. If Seller objects to

any portion of the Enrollment Notice on or before the expiration of the Enrollment Review Period, Seller shall deliver to Buyer a written statement setting forth in reasonable detail and accompanied by reasonable supporting information, its objection to the Enrollment Notice (the “**Enrollment Objection Notice**”). During the Enrollment Review Period, Buyer shall upon reasonable advance notice and during normal business hours permit Seller and its Representatives to have reasonable access, subject to their execution of standard hold harmless letters, to the books, records and other documents (including work papers, schedules, financial statements, memoranda, etc.) and shall reasonably cooperate with Seller in obtaining work papers from Buyer’s accountants pertaining to or used in connection with the preparation of the Enrollment Notice and calculation of the Closing Enrollment, the Closing Minimum Capital Amount, the Closing Total Adjusted Net Assets, the Closing Acquired Cash Amount and the Closing Working Capital, and provide Seller with copies thereof (as reasonably requested by Seller). If Seller does not deliver a Enrollment Objection Notice to Buyer on or before the expiration of the Review Period, Seller shall be deemed to have accepted the Enrollment Notice and the calculations therein in full. Any determination set forth on the Enrollment Notice which is not specifically objected to in the Enrollment Objection Notice shall be deemed accepted by Seller and shall be final and binding upon Seller upon delivery of the Enrollment Objection Notice.

(d) In the event that Seller delivers an Enrollment Objection Notice objecting to all or any portion of the Closing Statement within the Review Period, Buyer and Seller shall promptly meet and in good faith attempt to resolve such objections. Any such objections set forth in the Enrollment Objection Notice which cannot be resolved between Buyer and Seller within thirty (30) days following Buyer’s receipt of the Enrollment Objection Notice (the “**Enrollment Disputed Items**”) shall be resolved in accordance with this **Section 2.07(d)**. Should Seller and Buyer not be able to resolve such Enrollment Disputed Items within the thirty (30) day period described above, either party may submit the matter to the Independent Accountants for review and resolution, with instructions to complete the same as promptly as practicable, but in any event within thirty (30) days of its engagement, and to resolve any objections consistent with the terms of this Agreement. The Independent Accountants shall only have authority to make determinations in respect of Enrollment Disputed Items, and all determinations shall be based solely on the presentations of Buyer and Seller and their respective Representatives, and not by independent review. Buyer and Seller each shall provide the Independent Accountants with their respective determinations of the Enrollment Disputed Items. In resolving any Enrollment Disputed Item, the Independent Accountants: (i) shall be bound by the principles set forth in this **Section 2.07**, (ii) shall not assign a value to any item greater than the greatest value for such item claimed by either Party or less than the smallest value for such item claimed by either Party, and (iii) shall act as an expert and not an arbitrator. The Parties shall instruct the Independent Accountants to deliver to each of Buyer and Seller a written statement setting forth its resolution of the dispute within thirty (30) days of the submission of the dispute to such firm, which resolution, absent manifest error, shall be binding and conclusive on the parties and not subject to appeal or further review. The Enrollment Notice shall be modified if necessary to reflect such determination by the Independent Accountants, as well as the resolution by or on behalf of the parties of any Enrollment Disputed Item. All Enrollment Disputed Items that are resolved between Seller and Buyer and all Enrollment Disputed Items that are determined by the Independent Accountants will be final, conclusive and binding on the Parties hereto and may be entered in any Court of competent jurisdiction, and each of the Parties

hereto agrees that it shall not have any right to, and shall not, institute any Action of any kind challenging such determination or with respect to the matters that are the subject of this **Section 2.07**. The other Party's only defense to such a request for enforcement shall be fraud by or upon the Independent Accountant or manifest error. Absent such fraud or manifest error, such other party shall reimburse the Party seeking enforcement for all of its expenses related to the enforcement of the Independent Accountant's determination. The fees and costs of the Independent Accountants shall follow the methodology set forth in **Section 2.07(b)**. The fees and costs of the Independent Accountants, if one is required, shall be borne by Buyer, on the one hand, and Seller, on the other hand, in inverse proportion as they may prevail on the matters resolved by the Independent Accountants, which proportionate allocation will also be determined by the Independent Accountants.

(e) If the Closing Enrollment results in a decrease in the Closing Cash Purchase Price pursuant to **Section 2.05**, then Seller shall pay the amount of such decrease to Buyer in cash or other immediately available funds within five (5) Business Days of determination of the Closing Enrollment. If the Closing Enrollment results in an increase in the Closing Cash Purchase Price pursuant to **Section 2.05**, then Buyer shall pay the amount of such excess to Seller in cash or other immediately available funds within five (5) Business Days of determination of the Closing Enrollment. If the Closing Acquired Cash Amount exceeds the Estimated Acquired Cash Amount, then Buyer shall pay the amount of such excess to Seller in cash or other immediately available funds within five (5) Business Days of determination of the Closing Acquired Cash Amount. If the Estimated Acquired Cash Amount exceeds the Closing Acquired Cash Amount, then Seller shall pay the amount of such excess to Buyer in cash or other immediately available funds within five (5) Business Days of determination of the Closing Acquired Cash Amount. If the Closing Working Capital is greater than the Estimated Working Capital, then Buyer shall pay the amount of such excess to Seller in cash or other immediately available funds within five (5) Business Days of determination of the Closing Working Capital. If the Estimated Working Capital is greater than the Closing Working Capital, then Seller shall pay the amount of such excess to Buyer in cash or other immediately available funds within five (5) Business Days of determination of the Closing Working Capital. For the avoidance of doubt, if Seller fails to promptly pay any amounts due to Buyer under this **Section 2.07(e)**, Buyer may demand that such amount be paid to Buyer from the Escrow Fund in accordance with the Escrow Agreement and the Seller shall promptly thereafter deposit such amount into the Escrow Fund.

#### **Section 2.08 Determination of Working Capital Purchase Price Adjustment.**

(a) At least ten (10) Business Days prior to the Closing Date, Seller shall have delivered to Buyer a written statement (the "***Estimated Closing Statement***") setting forth Seller's good faith estimate of Working Capital (the "***Estimated Working Capital***") determined in accordance with the Working Capital Methodologies along with reasonable supporting detail to evidence the calculation thereof.

(b) On or after the first (1<sup>st</sup>) anniversary of the Closing Date, but no later than thirty (30) calendar days following the first (1<sup>st</sup>) anniversary of the Closing Date, Buyer shall prepare and deliver to Seller a statement (the "***Closing Statement***") setting forth (i) Buyer's calculation of Acquired Cash (the "***Final Acquired Cash Amount***") and (ii) Buyer's calculation of the Working Capital (the "***Final Working Capital***") determined in accordance with the

Working Capital Methodologies, along with reasonable supporting detail as part of the Closing Statement to evidence the calculation thereof.

(c) Seller shall have thirty (30) days following Buyer's delivery of the Closing Statement (the "**Review Period**") to review the same. If Seller objects to any portion of the Closing Statement on or before the expiration of the Review Period, Seller shall deliver to Buyer a written statement setting forth in reasonable detail and accompanied by reasonable supporting information, its objection to the Closing Statement (the "**Closing Statement Objection Notice**"). During the Review Period, Buyer shall upon reasonable advance notice and during normal business hours permit Seller and its Representatives to have reasonable access to the books, records and other documents (including work papers, schedules, financial statements, memoranda, etc.) and shall reasonably cooperate with Seller in obtaining work papers from Buyer's accountants pertaining to or used in connection with the preparation of the Closing Statement and calculation of the Final Acquired Cash Amount and Final Working Capital, and provide Seller with copies thereof (as reasonably requested by Seller). If Seller does not deliver a Closing Statement Objection Notice to Buyer on or before the expiration of the Review Period, Seller shall be deemed to have accepted the Closing Statement and the calculations therein in full. Any determination set forth on the Closing Statement which is not specifically objected to in the Closing Statement Objection Notice shall be deemed accepted by Seller and shall be final and binding upon Seller upon delivery of the Closing Statement Objection Notice.

(d) In the event that Seller delivers a Closing Statement Objection Notice objecting to all or any portion of the Closing Statement within the Review Period, Buyer and Seller shall promptly meet and in good faith attempt to resolve such objections. Any such objections set forth in the Closing Statement Objection Notice which cannot be resolved between Buyer and Seller within thirty (30) days following Buyer's receipt of the Closing Statement Objection Notice (the "**Closing Statement Disputed Items**") shall be resolved in accordance with this **Section 2.08(d)**. Should Seller and Buyer not be able to resolve such Closing Statement Disputed Items within the thirty (30) day period described above, either party may submit the matter to the Independent Accountants for review and resolution, with instructions to complete the same as promptly as practicable, but in any event within thirty (30) days of its engagement, and to resolve any objections consistent with the terms of this Agreement, including making the calculations in accordance with the Working Capital Methodologies. The Independent Accountants shall only have authority to make determinations in respect of Closing Statement Disputed Items, and all determinations shall be based solely on the presentations of Buyer and Seller and their respective representatives, and not by independent review. Buyer and Seller each shall provide the Independent Accountants with their respective determinations of the Closing Statement Disputed Items. In resolving any Closing Statement Disputed Item, the Independent Accountants: (i) shall be bound by the principles set forth in this **Section 2.08**, (ii) shall not assign a value to any item greater than the greatest value for such item claimed by either Party or less than the smallest value for such item claimed by either Party, and (iii) shall act as an expert and not an arbitrator. The Parties shall instruct the Independent Accountants to deliver to each of Buyer and Seller a written statement setting forth its resolution of the dispute within thirty (30) days of the submission of the dispute to such firm, which resolution, absent manifest error, shall be binding and conclusive on the parties and not subject to appeal or further review. The Closing Statement shall be modified if necessary to reflect such determination by the Independent Accountants, as well as the resolution by or on behalf of the parties of any Closing



Statement Disputed Item. All Closing Statement Disputed Items that are resolved between Seller and Buyer and all Closing Statement Disputed Items that are determined by the Independent Accountants will be final, conclusive and binding on the Parties hereto and may be entered in any Court of competent jurisdiction, and each of the Parties hereto agrees that it shall not have any right to, and shall not, institute any Action of any kind challenging such determination or with respect to the matters that are the subject of this **Section 2.08**. The other Party's only defense to such a request for enforcement shall be fraud by or upon the Independent Accountant or manifest error. Absent such fraud or manifest error, such other party shall reimburse the Party seeking enforcement for all of its expenses related to the enforcement of the Independent Accountant's determination. The fees and costs of the Independent Accountants, if one is required, shall be borne by Buyer, on the one hand, and Seller, on the other hand, in inverse proportion as they may prevail on the matters resolved by the Independent Accountants, which proportionate allocation will also be determined by the Independent Accountants.

(e) **Determinations; Adjustments.** If the Final Working Capital as finally determined pursuant to this **Section 2.08** is greater than the Closing Working Capital, Buyer shall pay to Seller the full amount by which the Final Working Capital is greater than the Closing Working Capital in accordance with **Section 2.08(f)**. If Final Working Capital as finally determined pursuant to this **Section 2.08** is less than the Closing Working Capital, Seller shall pay to Buyer the full amount by which the Closing Working Capital is greater than Final Working Capital in accordance with **Section 2.08(f)**. If the Final Acquired Cash Amount as finally determined pursuant to this **Section 2.08** is greater than the Closing Acquired Cash Amount, Buyer shall pay to Seller the full amount by which Final Acquired Cash Amount exceeds Closing Acquired Cash Amount in accordance with **Section 2.08(f)**. If the Final Acquired Cash Amount as finally determined pursuant to this **Section 2.08** is less than the Closing Acquired Cash Amount, Seller shall pay to Buyer the full amount by which Closing Acquired Cash Amount exceeds Final Acquired Amount in accordance with **Section 2.08(f)**. For the avoidance of doubt, if Seller fails to promptly pay any amounts due to Buyer under this **Section 2.08(e)**, Buyer may demand that such amount be paid to Buyer from the Escrow Fund in accordance with the Escrow Agreement and the Seller shall promptly thereafter deposit such amount into the Escrow Fund.

(f) **Final Payments.** The amount (if any) owed to Seller, on the one hand, or to Buyer, on the other hand, pursuant to **Section 2.08(e)** shall be referred to as the "**Final Closing Adjustment**." If Buyer is obligated to pay the Final Closing Adjustment, it shall make payment to Seller in cash by wire transfer of immediately available funds to an account or accounts designated by Seller. If Seller is obligated to pay the Final Closing Adjustment, Seller shall make payment to Buyer in cash by wire transfer of immediately available funds to an account or accounts designated by Buyer. Any payment required under this **Section 2.08(f)** shall be made within five (5) Business Days of the final determination of the Final Closing Adjustment. For the avoidance of doubt, if Seller fails to promptly pay any amounts due to Buyer under this **Section 2.08(f)**, Buyer may demand that such amount be paid to Buyer from the Escrow Fund in accordance with the Escrow Agreement and the Seller shall promptly thereafter deposit such amount into the Escrow Fund.

**Section 2.09 Allocation of Purchase Price.** Within sixty (60) days after Closing, Buyer shall prepare and deliver to Seller a proposed allocation of the total consideration to be

paid to Seller by Buyer pursuant to this Agreement for the Purchased Assets, which shall include relevant Assumed Liabilities, in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (and any similar provision of Law, as appropriate) (the “**Purchase Price Allocation**”). In the event that Seller objects to the Purchase Price Allocation, Seller shall notify Buyer of such objection within twenty (20) days of receipt of the Purchase Price Allocation and the parties will endeavor to resolve such dispute in good faith. In the event that Buyer and Seller agree on the Purchase Price Allocation (or if Seller does not object within the twenty (20)-day period described above), each of Seller and Buyer and their respective Affiliates shall report and file Tax Returns, in all respects and for all Tax purposes consistent with such mutually agreed upon allocation, and neither Seller nor Buyer shall take any position (whether in audits, Tax Returns, or otherwise) which is inconsistent with such allocation, except as otherwise required by applicable Law or a determination within the meaning of Section 1313 of the Code. In the event that Buyer and Seller do not agree on the Purchase Price Allocation, the items in dispute shall be referred to the Independent Accountant for a determination that is final and binding on the Parties.

**Section 2.10 Third Party Consents.** Subject to **Section 6.08(a)** and **Section 6.08(d)**, Seller, with Buyer’s reasonable cooperation, shall use reasonable best efforts to give all notices to, and obtain all consents from all third parties that are described on **Section 4.04** of the Disclosure Schedules. To the extent that Seller’s or its Subsidiaries’ rights under any Contract constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained prior to the Closing, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller and Buyer shall, at Seller’s expense, cooperate in good faith and shall use their respective reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer’s rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller or its Subsidiaries, as applicable, to the maximum extent permitted by Law and the Purchased Asset, shall act after the Closing at Seller’s sole cost and expense, as Buyer’s agent in order to obtain for Buyer the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this **Section 2.10** to the contrary, Buyer shall not be deemed to have waived its rights under **Section 7.02(b)** hereof unless and until Buyer either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at the Closing.

**Section 2.11 Withholding.** Buyer shall be entitled to deduct and withhold from the consideration and any other amounts otherwise payable pursuant to this Agreement to Seller or any other Person such amounts as Buyer is required to deduct and withhold under the Code, or any Tax Law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. Prior to any such withholding, Buyer shall give notice to Seller at least five (5) Business Days prior to Closing and will consult in good faith with Seller.

## ARTICLE III

### CLOSING

Section 3.01 **Closing.** Subject to the terms and conditions of this Agreement, the consummation of the sale, assignment, transfer, conveyance and delivery of the Purchased Assets, and the assumption of the Assumed Liabilities (the “**Closing**”) shall take place remotely via the exchange of executed documents and other deliverables on the later of (i) the first calendar day of the first month following the date on which all of the conditions to Closing set forth in **Article VII** are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date) or (ii) the earlier of (A) a Business Day during the Marketing Period to be specified by Buyer on no less than two (2) Business Days’ notice to the Seller (it being understood that such date may be conditioned upon the simultaneous completion of the Financing), and (B) the third (3<sup>rd</sup>) Business Day following the final day of the Marketing Period, or at such other time, date or place as Seller and Buyer may mutually agree upon in writing; *provided, however*, that Buyer may, in its sole discretion, elect that the Closing shall take place on the first Business Day of the first month following the month during which the Closing otherwise would occur pursuant to clauses (i) and (ii) of this first sentence of this **Section 3.01**. The date on which the Closing actually occurs is herein referred to as the “**Closing Date**.” If the Closing occurs on a day other than the first calendar day of a month, the Closing shall be deemed to have occurred and to be effective as of 12:01 a.m. on the first calendar day of the month during which the Closing otherwise would occur pursuant to the first sentence of this **Section 3.01** (the “**Effective Time**”).

Section 3.02 **Closing Deliverables.** At the Closing, Seller shall deliver to Buyer the documents set forth in **Section 7.02** and Buyer shall deliver to Seller the documents set forth in **Section 7.03**.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller hereby represents and warrants to Buyer that the statements contained in this **Article IV** are true and correct as of the Signing Date and as of the Closing Date, except to the extent that any such representation or warranty refers to a specified date, in which event such representation or warranty shall be true and correct as of such specified date. The Disclosure Schedules have been arranged in separately numbered sections corresponding to the Sections of this **Article IV**; however, the disclosure of any item in any section of the Schedules shall be deemed to incorporate by reference all information disclosed in any other section of the Schedules to which the relevance of such item is reasonably apparent on its face. Capitalized terms used in the Disclosure Schedules and not otherwise defined therein have the meanings given to them in this Agreement.

Section 4.01 **Organization and Qualification.** Seller is a New York not-for-profit corporation duly organized, validly existing and in good standing under the Laws of the State of New York and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

**Section 4.01** of the Disclosure Schedules sets forth each jurisdiction in which Seller is licensed or qualified to do business as a foreign corporation, and Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary, except where the failure to so qualify would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

#### Section 4.02 **Subsidiaries.**

(a) The name and the authorized, issued and outstanding capital stock or other equity interests, as applicable, of each of Seller's Subsidiaries is listed on **Section 4.02(a)** of the Disclosure Schedules. Neither Seller nor any of its Subsidiaries owns, directly or indirectly, any capital stock of, or equity ownership or voting interest in, any Person (other than one of Seller's Subsidiaries). Each of the issued and outstanding membership interests, shares of capital stock or other securities, as applicable, of each of Seller's Subsidiaries is duly authorized, validly issued, fully paid and non-assessable (to the extent applicable) and Seller is the direct or indirect owner of all of the membership interests in, or capital stock or other securities of, each of such Subsidiary, free and clear of all Encumbrances other than restrictions on transfer imposed by federal and state securities Laws. There are no (i) outstanding subscriptions, options, warrants, commitments, preemptive rights, agreements, arrangements or rights of any kind to acquire from any of Seller's Subsidiaries, or that obligate any of Seller's Subsidiaries to issue or register, or that restrict the transfer or voting of, any membership interest, capital stock or other security of, or any securities convertible into or exchangeable for membership interests, shares of capital stock or other securities, as applicable, of Seller's Subsidiaries, (ii) outstanding securities convertible into or exercisable or exchangeable for any capital stock of any class or other equity interests or security of any of Seller's Subsidiaries, (iii) obligations of Seller or any of its Subsidiaries to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security, preemptive rights, rights of first refusal or offer, conversion rights, exchange rights or other similar agreement or commitment relating to any capital stock of, or other equity, membership or voting interests (including any voting debt) in, Seller's Subsidiaries, or (iv) dividends or similar distributions which have accrued or been declared but are unpaid on the capital stock, membership interests or other equity securities of Seller's Subsidiaries and neither Seller nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to pay any dividend or otherwise to make any distribution or payment to any current or former holder of Seller's Subsidiaries' capital stock, membership interests or other equity securities. Neither Seller nor any of its Subsidiaries has any outstanding bonds, debentures, notes or other obligations, pursuant to which the holders would have the right to vote with the holders of capital stock of any such Subsidiary on any matter.

(b) Each of Sellers' Subsidiaries is duly formed, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite entity power and authority to own, operate and lease its properties and assets and to carry on its business as currently conducted. If applicable, each such Subsidiary is duly licensed or qualified to do business as a foreign entity and is in good standing under the Laws of each jurisdiction listed on **Section 4.02(b)** of the Disclosure Schedules and each other jurisdiction in which the character of its properties or assets or in which the transaction of its business makes such licensing or qualification necessary, except where the failure to so qualify would not, individually or in the

aggregate, reasonably be expected to have a Material Adverse Effect. Seller has delivered or made available to Buyer complete and correct copies of the organizational documents of Seller and its Subsidiaries as amended to date.

**Section 4.03 Authority.** Seller has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is or will be a party, the performance by Seller and its Subsidiaries of their obligations hereunder and thereunder and the consummation by Seller and its Subsidiaries of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of such Persons, and no other proceedings on the part of such Persons are requisite to authorize the execution, delivery and performance thereof by such Person. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 4.04 No Conflicts; Consents.** The execution and delivery by Seller of this Agreement and the other Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated hereby and thereby, and performance by Seller or any of its Subsidiaries of the obligations hereunder and thereunder, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, bylaws, operating agreement or other organizational documents of Seller or its Subsidiaries; (b) conflict with or result in a violation or breach of any provision of any Law or Order applicable to Seller, its Subsidiaries, the Business or the Purchased Assets; (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the termination or acceleration of or create in any party a right of purchase, sale, acceleration, termination, modification or cancellation under, any Material Contract or Permit to which Seller or its Subsidiaries is a party or by which any of them or the Purchased Assets are bound or affected (for purposes of this **Section 4.04(c)**, in each case, without giving effect to **Section 2.10** and, for the avoidance of doubt, including any Material Contracts which are Excluded Contracts); or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets. No consent, approval, Permit, Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller or its Subsidiaries in connection with the execution and delivery of this Agreement or any of the

other Transaction Documents and the performance and consummation by Seller or its Subsidiaries of the transactions contemplated hereby and thereby.

#### Section 4.05 Financial Statements.

(a) **Section 4.05(a)** of the Disclosure Schedules contains complete and correct copies of the audited consolidated financial statements consisting of the balance sheet of Seller as at December 31st in each of the 2016, 2015 and 2014 fiscal years and the related statements of operations, changes of net assets and cash flows, including the notes thereto, and schedules thereto, accompanied by the reports thereon of the Seller's independent auditors for the years then ended (the "**Audited Financial Statements**"), and unaudited consolidated financial statements consisting of the balance sheet of Seller as at June 30, 2017 and the related statements of operations, changes of net assets and cash flows, including the notes thereto, and schedules thereto, accompanied by the reports thereon of the Seller's independent auditors, for the six-month period then ended and comparable prior period (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**"). The Financial Statements have been, and any additional financial statements delivered pursuant to **Section 6.22(d)** (together with the Financial Statements, the "**Financial Statement Deliverables**") will be prepared from the books and records of Seller and have been, or will be, as applicable, prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (none of which year-end adjustments would, alone or in the aggregate, be material to Seller) and the absence of notes. The Financial Statement Deliverables fairly and accurately present, or will fairly and accurately present when delivered and at all times thereafter, in all material respects the consolidated financial condition of Seller and its Subsidiaries as of the respective dates they were prepared and the results of the operations, equity and cash flows of Seller and its Subsidiaries for the periods indicated. The consolidated balance sheet of Seller as of December 31, 2016 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**".

(b) Seller and its Subsidiaries do not have any Liabilities, except for (i) Liabilities specifically disclosed, reflected in or reserved against in the Balance Sheet, (ii) Liabilities arising from executory obligations under Contracts to which Seller, any of its Subsidiaries or any of their respective assets may be bound that were entered into in the ordinary course of business, other than any such Liabilities resulting from a breach of such Contracts, (iii) Liabilities disclosed on **Section 4.05(b)** of the Disclosure Schedules, (iv) Liabilities which have arisen in the ordinary course of business and consistent with past practice since the Balance Sheet Date, none of which is a material Liability arising from a breach of contract, breach of warranty, tort, infringement, action or a violation of Law and (v) Liabilities under this Agreement.

(c) Seller and its Subsidiaries maintain, and during the last three (3) years have maintained, systems of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP in all material respects, including but not limited to internal accounting controls sufficient to provide reasonable assurance that: (A) transactions are executed in accordance with management's general or specific authorization; (B)

transactions are recorded as necessary to permit the preparation of financial statements of Seller and its Subsidiaries in conformity with GAAP and maintain accountability for assets; and (C) the recorded accountability for assets is maintained at reasonable intervals and appropriate action is taken with respect to any differences. During the last three (3) years (i) no complaints from any source outside Seller or its Subsidiaries regarding accounting, internal accounting controls or auditing matters relating to Seller or any of its Subsidiaries, and (ii) no concerns from any employees of Seller or its Subsidiaries regarding questionable accounting or auditing matters relating to Seller or its Subsidiaries, have been received by Seller or any of its Subsidiaries or members of the management of Seller or its Subsidiaries.

(d) The accounts receivable and other receivables reflected on the Audited Financial Statements, and those arising in the ordinary course of business after the date thereof, (i) are calculated in accordance with GAAP, (ii) are valid receivables that have arisen from bona fide transactions in the ordinary course of business, (iii) are not subject to any counterclaims, setoffs, adjustments, defenses, security interests or Encumbrances and (iv) have not been factored or sold.

(e) Other than the Indebtedness as set forth in **Section 4.05(e)** of the Disclosure Schedules, Seller and its Subsidiaries have no other outstanding Indebtedness. There exists no Indebtedness owed by Seller to any of its Subsidiaries or any of Seller's Subsidiaries to Seller.

**Section 4.06 Absence of Certain Changes, Events and Conditions.** Except as otherwise contemplated by this Agreement, during the period since December 31, 2016, Seller and its Subsidiaries have operated the Business in the ordinary course of business consistent with past practice and there has not been, with respect to the Business or the Purchased Assets, any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, a Material Adverse Effect;

(b) sale, lease, exchange, license, mortgage, pledge, subjection to any Encumbrance, transfer or other disposition of any of the Purchased Assets;

(c) amendment of the organizational documents of Seller or its Subsidiaries;

(d) cancellation, amendment, compromise, termination, release or waiver of any debts, rights or claims relating to the Business or the Purchased Assets;

(e) incurrence of any Indebtedness or the making of any loans, advances or guarantees, in each case affecting the Business or the Purchased Assets, except in the ordinary course of business consistent with past practice;

(f) deferral of any capital expenditure or authorization of, or the making of any, capital expenditures for the Business in an aggregate amount exceeding Ten Million Dollars (\$10,000,000);

(g) imposition of any Encumbrance upon any of the Purchased Assets, except for Permitted Encumbrances;

(h) increase in the bonus targets or payments, wages, salaries, severance payments, change in control payments or other compensation or fringe benefits of any employees, other than in the ordinary course of business;

(i) adoption, termination, amendment or modification of any Seller Employee Plan, other than actions in the ordinary course of business and the effect of which in the aggregate would not increase the obligations of Seller or its Subsidiaries by more than two percent (2%) of its existing annual obligations to such plans;

(j) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(k) purchase or other acquisition (by merger, exchange, consolidation, acquisition of stock or assets or otherwise), or sale, lease or disposal, of any property, material asset, corporation, partnership, joint venture, limited liability company or other business organization or division or material assets thereof, other than in the ordinary course of business consistent with past practice;

(l) entry into any agreement which limits the scope or conduct of the operations or prospects of the Business other than in the ordinary course of business consistent with past practice;

(m) entry into any transaction with any Affiliate of Seller (other than its Subsidiaries) or any officers or directors of Seller or its Subsidiaries;

(n) (i) amendment, waiver, modification or consent to the termination of any Material Contract, or amendment, waiver, modification or consent to the termination of Seller's or its Subsidiaries' rights thereunder other than in the ordinary course of business consistent with past practice or (ii) entry into any Material Contract in connection with the Business or the Purchased Assets other than in the ordinary course of business consistent with past practice;

(o) change in any material Tax or financial accounting methods, practices, policies or principles or elections from those utilized in the preparation of the Audited Financial Statements, other than any such changes as may be required under GAAP;

(p) payment, discharge or satisfaction of any claim or Liability relating to the Business or the Purchased Assets, other than the payment, discharge or satisfaction, in the ordinary course of business consistent with past practice, of Liabilities reflected or reserved against on the Balance Sheet or subsequently incurred in the ordinary course of business consistent with past practice;

(q) lapse of any existing policy of insurance relating to the Business or the Purchased Assets;

(r) lapse of any right relating to or arising out of Purchased Intellectual Property or any other Intellectual Property material to the Business;



(s) acceleration of the collection of or discounting of any accounts receivable and other receivables reflected on the Audited Financial Statements, delay in the payment of liabilities that would become Assumed Liabilities or deferment of expenses, or other increase in the cash on hand in connection with the Business, except in the ordinary course of business consistent with past practice;

(t) commencement or settlement of any Action relating to the Business, the Purchased Assets or the Assumed Liabilities, except for settlements of Actions or potential Actions in the ordinary course of business consistent with past practice and so long as such settlement will not create any material obligation on behalf of Buyer following the Closing;

(u) conclusion of or agreement to any corrective action plans, consents, decrees, actions or Orders, other than in the ordinary course of business consistent with past practice;

(v) change in or revocation of any material Tax election; settlement or compromise of any material claim or assessment in respect of Taxes; surrender of any right to claim a material Tax refund; amendment to any material position on a Tax return; change in any Tax accounting method; entrance into any closing agreement relating to any material Tax; or consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment; or

(w) commitment or agreement to do any of the foregoing, or any action or omission that would result in any of the foregoing.

#### Section 4.07 **Contracts.**

(a) **Section 4.07(a)** of the Disclosure Schedules lists each Provider Contract pursuant to which Seller has paid or received in excess of Ten Million Dollars (\$10,000,000), with respect to Provider Contracts with facilities, and Two Million Dollars (\$2,000,000), with respect to Provider Contracts with non-facilities, in the twelve (12) month period ended June 30, 2017 (each such Provider Contract, a “**Material Provider Contract**”).

(b) **Section 4.07(b)** of the Disclosure Schedules, by applicable subsection, sets forth a correct and complete list of each of the following Contracts (including all amendments or modifications thereto) (x) by which any of the Purchased Assets are bound or affected or (y) to which Seller or its Subsidiaries is a party or by which it is bound in connection with the Business or the Purchased Assets (collectively with the Material Provider Contracts, the Real Property Leases and any agreement that addresses the provisions for business associate contracts required by 45 C.F.R. § 164.504(e) or § 164.314(a), as amended, the “**Material Contracts**”):

(i) all employment or other personal services Contracts providing for annual compensation in excess of One Hundred Thousand Dollars (\$100,000), other than any such Contract that may be canceled by Seller or its Subsidiary without penalty upon no more than ninety (90) days’ notice;

(ii) all Contracts with any Governmental Authority including (A) the Payor Contracts, (B) any power of attorney granted by Seller or any of its Subsidiaries to any Governmental Authority or other Person, and (C) any Contract under which Seller or any of its Subsidiaries is, to the Knowledge of Seller, a subcontractor or downstream contractor under a Contract with any Governmental Authority;

(iii) all Contracts between Seller and any Affiliate of Seller;

(iv) all Contracts between Seller and a management contractor, as such term is defined in 10 N.Y.C.R.R. § 98-1.2(z);

(v) Contracts involving shared risk arrangements, including reinsurance, coinsurance or retrocession treaties, to which Seller or any of its Subsidiaries is a party as a cedent, and any such terminated or expired Contracts under which there remains any outstanding Liability;

(vi) Contracts with vendors providing for payments by or to Seller and its Subsidiaries in excess of Five Million Dollars (\$5,000,000) during the fiscal year ended December 31, 2016;

(vii) without duplication of clause (vi) above, Contracts with any suppliers accounting for at least Five Million Dollars (\$5,000,000) in expenditures of Seller and its Subsidiaries for the fiscal year ended December 31, 2016;

(viii) Contracts with any licensed producer or broker relating to the sale of Seller's health plans providing for annual payments by Seller in excess of Five Hundred Thousand Dollars (\$500,000);

(ix) Contracts pursuant to which Seller or any of its Subsidiaries has continuing indemnification, "earn-out" or other contingent payment Liabilities, including Contracts providing for indemnification to or from any Person with respect to Liabilities relating to any current or former business of Seller or any of its Subsidiaries;

(x) Contracts or agreements relating to or evidencing Indebtedness of Seller or any of its Subsidiaries or any mortgage, pledge, indenture or security agreement or similar arrangement constituting an Encumbrance on the Purchased Assets;

(xi) any lease (capital or operating) or license, that is not a Real Property Lease, under which Seller or any of its Subsidiaries is the lessee and is obligated to make payments in excess of One Million Dollars (\$1,000,000) per annum;

(xii) Contracts for the sale or purchase of (A) personal property having a value individually, with respect to outstanding sale or purchase obligations thereunder, in excess of One Million Dollars (\$1,000,000) or (B) the equity interests or a material portion of the assets of any Person or any other acquisition, divestiture, merger, consolidation or business combination transaction;

(xiii) Contracts that (A) purport to restrict or limit in any respect or contain limitations on (x) the ability of Seller or any of its Subsidiaries or their respective employees to freely compete in any line of business or to solicit customers, suppliers or any other business, anywhere in the world (other than customer contracts and non-disclosure agreements entered into in the ordinary course of business that contain employee non-solicitation obligations) or (y) the manner in which, or the localities in which, Seller or any of its Subsidiaries may operate, (B) provide “most favored nation” or similar status to any customer or provider, (C) contain any exclusivity provision binding on Seller or any of its Subsidiaries or that materially limit or purport to limit the ability of the Business or Seller or any of its Subsidiaries to own, operate, sell, transfer, pledge or otherwise dispose of any assets or property, (D) require the purchase of any product or service exclusively from a single party or grant exclusive rights to marketing or distribution or (E) grant to any Person (other than Seller or any of its Subsidiaries) an option or a first refusal, first-offer or similar preferential right to purchase or acquire any assets which are material to Seller or any of its Subsidiaries;

(xiv) Contracts relating to the creation, formation, operation, management or control of any partnership, joint venture or other similar entity to which Seller or any of its Subsidiaries is a party;

(xv) any collective bargaining or other labor agreement, or Contracts setting forth any of the terms or conditions relating to, the employment, retention, change in control, transaction bonus, personal services, consulting, severance, golden parachute or similar Contract or engagement or termination thereof with respect to any director, officer, employee of Seller or any of its Subsidiaries, or any independent contractor, agent or consultant of Seller or any of its Subsidiaries;

(xvi) Contracts concerning Business Intellectual Property, including agreements pursuant to which Seller or any of its Subsidiaries is a named party and licenses or is otherwise permitted to use, hold for use or register any rights under any Business Intellectual Property owned by a third party (but excluding licenses for off-the-shelf Software having an acquisition price in the aggregate for all such related Software of less than One Million Dollars (\$1,000,000)) and agreements pursuant to which Seller or any of its Subsidiaries grants licenses or otherwise permits any Person to use or register any Business Intellectual Property;

(xvii) Contracts relating to the settlement of any Actions, other than (A) releases immaterial in nature or amount entered into with former employees or current or former independent contractors in the ordinary course of business, and (B) settlement agreements entered into more than three (3) years prior to the date of this Agreement under which none of Seller or its Subsidiaries have any continuing obligations or Liabilities equal to or greater than One Million Dollars (\$1,000,000) or rights (excluding releases);

(xviii) Contracts that relate to any off-balance sheet arrangements, loss sharing, or loss guarantee and contingent purchase transactions, special purpose entity

transactions or other similar transactions of Seller or any of its Subsidiaries, and any hedging, derivatives or similar Contracts or arrangements;

(xix) any Contract pursuant to which Seller or any of its Subsidiaries provides practice management or otherwise manages the business of another Person in exchange for a management fee;

(xx) Contracts that require capital expenditures in excess of Three Million Dollars (\$3,000,000) and are not fully performed as of the date of this Agreement;

(xxi) Contracts that require or are reasonably likely to require annual or one time payments or delivery of goods, services, materials, Intellectual Property or other assets from third parties to Seller or its Subsidiaries of at least Five Million Dollars (\$5,000,000), in each case that are not terminable for convenience by Seller or its Subsidiaries on ninety (90) days' notice or less and that are not Contracts of a type that are described in another subsection of this **Section 4.07(b)**; and

(xxii) Contracts not otherwise disclosed in **Section 4.07(b)** of the Disclosure Schedules that are either material to Seller or any of its Subsidiaries, or were not entered into by Seller or any of its Subsidiaries in the ordinary course of business.

(c) Seller has made available to Buyer accurate and complete copies of all Material Contracts with all amendments, waivers or other changes thereto. Each Material Contract is valid, enforceable and binding on Seller (or its Subsidiary party thereto) and, to the Knowledge of Seller, against each other party thereto in accordance with its terms and is in full force and effect, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). None of Seller nor any of its Subsidiaries party thereto or, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any (i) notice of any intention to terminate, cancel or materially modify any Material Contract or (ii) claim for damages or indemnification with respect to the products or performance of services pursuant to any Material Contract. To Seller's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would result in a breach of or constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

#### **Section 4.08 Title to and Sufficiency of Purchased Assets; Leased Real Property.**

(a) **Section 4.08(a)** of the Disclosure Schedules sets forth all real property leased, licensed or occupied by Seller or its Subsidiaries and used in connection with the Business (collectively, the "***Leased Real Property***"), and a list, as of the date of this Agreement, of all leases, licenses and occupancy agreements for each Leased Real Property (collectively, the "***Real Property Leases***"). The Real Property Leases constitute valid leasehold interests, are valid and binding on Seller or its Subsidiaries, and are in full force and effect. Seller or its Subsidiaries are in peaceful and undisturbed possession of the property leased under the Real

Property Leases and there are no contractual or legal restrictions that preclude or restrict the ability of Seller or its Subsidiaries to use the Leased Real Property for the purposes for which they are currently being used. The Leased Real Property is adequate and suitable for the purposes for which it is presently being used and Seller or its Subsidiaries have adequate rights of ingress and egress into and from each for the operation of the business of Seller or its Subsidiaries in the ordinary course. None of the Real Property Leases, or the Leased Real Property thereunder, are subject to any prime, ground or master lease, mortgage, deed of trust or other Encumbrance or interest which would entitle the interest holder to interfere with or disturb the rights of Seller or its Subsidiaries under the Real Property Leases so long as no default under the applicable Real Property Lease exists, or if it is, then Seller or its Subsidiaries have delivered the appropriate subordination and non-disturbance agreement for the applicable Real Property Lease confirming that the rights of Seller or its Subsidiaries under the Real Property Lease will not be disturbed. Neither Seller nor its Subsidiaries have collaterally assigned or granted any other security interest in the Leased Real Property or any interest therein. Neither Seller nor its Subsidiaries have subleased, licensed or otherwise granted to any Person the right to use or occupy any portion of the Leased Real Property. Neither Seller nor its Subsidiaries have granted any options or rights of first refusal to purchase or lease all or a portion of the Leased Real Property. Neither Seller nor its Subsidiaries have received written notice indicating that the Leased Real Property, or the condition or use thereof, including the operation of Seller's or its Subsidiaries' business, or any of the buildings, structures, fixtures and other improvements thereon contravenes or violates any building, zoning, fire safety, health safety or other applicable Law, and the Leased Real Property is in good condition and repair and have been maintained in accordance with normal industry practice. Neither Seller nor its Subsidiaries have received written notice of and there are no existing, proposed or threatened eminent domain or other proceedings that would result in the taking of all or any part of the Leased Real Property. Seller hereby represents and warrants that neither Seller nor its Subsidiaries owns a fee interest in any real property other than the Seller Headquarters, which real property is owned by Seller's Subsidiary, Rego Park LLC.

(b) After giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, the Purchased Assets (other than the assets set forth on **Section 4.08(b)** of the Disclosure Schedules) constitute all assets, services, properties, goodwill and rights (including intellectual property rights) which (i) were used in the Business immediately prior to the Closing and (ii) are necessary and sufficient to operate the Business following the Closing in the same manner as the Business is operated as of the Signing Date and immediately prior to the Closing.

(c) All of the Purchased Assets are in satisfactory operating condition and repair for the uses to which they are being put, subject to ordinary wear and tear and ordinary maintenance requirements, and are usable in the ordinary course of business and conform in all material respects with all applicable Laws relating to their use and operation. Seller and its Subsidiaries have good and marketable title to, a valid leasehold interest in, or a valid license to use, all of the Purchased Assets (whether real, personal, or mixed and whether tangible or intangible), free and clear of all Encumbrances except for the following (collectively referred to as "***Permitted Encumbrances***"):

(i) those items set forth in **Section 4.08(b)** of the Disclosure Schedules;

(ii) liens for Taxes not yet due and payable as of the Closing Date; or

(iii) mechanics', carriers', workmen's, repairmen's or other like liens arising under Law and incurred in the ordinary course of business consistent with past practice for amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business or the Purchased Assets.

#### **Section 4.09 Intellectual Property.**

(a) Seller or one of its Subsidiaries exclusively owns (or has the right to use pursuant to an Assigned Contract) all Business Intellectual Property free and clear of any exclusive licenses and Encumbrances other than Permitted Encumbrances. As of the date of this Agreement, the Purchased Intellectual Property is solely and exclusively owned by Seller or one of its Subsidiaries and is subsisting, valid, and has not expired, been cancelled, or abandoned, as applicable. The Business Intellectual Property constitutes all of the Intellectual Property used in or reasonably necessary for the conduct of the Business as currently conducted or proposed to be conducted.

(b) The conduct of the Business as currently conducted and as has been conducted does not and has not infringe(d), misappropriate(d) or otherwise violate(d) the Intellectual Property rights of any Person, nor does the Purchased Intellectual Property owned by Seller nor Seller's products or services infringe, misappropriate or violate any Intellectual Property rights of any Person. Neither Seller nor any of its Affiliates has received any written or, to Seller's Knowledge, oral offer of a license or complaint, claim, demand or notice (i) alleging or implying that it has infringed or misappropriated any Intellectual Property rights of any third party (including any claim that Seller or its Subsidiaries must license or refrain from using any Intellectual Property rights of any third party), or (ii) contesting or seeking to deny or restrict or otherwise concerning the validity, use, ownership, registrability or enforceability of any Business Intellectual Property. To Seller's Knowledge, no Person is infringing, misappropriating or otherwise violating or has infringed, misappropriated or otherwise violated any Purchased Intellectual Property, and no such claims have been made by Seller or any of its Affiliates.

(c) **Section 4.09(c)** of the Disclosure Schedules sets forth a complete and accurate list of all Registered Intellectual Property, indicating for each such item the registration or application number and the applicable filing jurisdiction, and the date of expiration on the use of such item or indication that such use is perpetual.

(d) **Section 4.09(d)** of the Disclosure Schedules identifies each item of material Intellectual Property that is Licensed Intellectual Property, other than commercially available "off the shelf" Software that has not been modified or customized for use by Seller or its Subsidiaries, and lists all Contracts pertaining to Licensed Intellectual Property. Seller has made available to Buyer correct and complete copies of all Contracts pursuant to which Seller or its Subsidiaries have received the right to use such Licensed Intellectual Property (as amended to date).

(e) **Section 4.09(e)** of the Disclosure Schedules lists all Contracts pursuant to which Seller has granted any license or option to any third party with respect to any Business Intellectual Property. With respect to each Contract listed on **Section 4.09(d)** or **Section 4.09(e)** of the Disclosure Schedules, none of Seller, its Subsidiaries or any other party thereto is in material breach or default of, or has repudiated, any provision of the Contract. All such Contracts shall be deemed “**Assigned Contracts**” for purposes of this Agreement.

(f) Seller and its Subsidiaries have taken commercially reasonable actions consistent with industry-standard practice to protect in all material respects the confidentiality, integrity and security of all trade secrets and confidential information stored or contained in the Business Intellectual Property or transmitted thereby from any unauthorized use, access, destruction or modification, and to Seller’s Knowledge, no such use, access, destruction or modification has occurred.

(g) Each item of Business Intellectual Property will be owned, licensed and available for use by Buyer on similar terms following the consummation of the transactions contemplated hereby as such items were owned, licensed and available for use to Seller and its Subsidiaries for the operation of the Business as operated prior to the consummation of the transactions contemplated hereby.

(h) Seller and its Subsidiaries have sufficient rights to use all Software, middleware and systems, information technology equipment, and associated documentation used or held for use in connection with the operation of the Business (the “**Business IT Assets**”), all of which rights shall survive unchanged following the consummation of the transactions contemplated hereby. The Business IT Assets operate and perform in all material respects in accordance with their documentation and functional specifications and otherwise as required in connection with the operation of the Business. The Business IT Assets have not malfunctioned or failed in the past three (3) years, except for malfunctions or failures that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

#### **Section 4.10 Legal Proceedings; Orders.**

(a) There are no Actions pending or, to Seller’s Knowledge, threatened against (including by any public authority) or by Seller or any of its Subsidiaries (i) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin, restrain, prohibit or otherwise delay the execution and delivery by Seller of this Agreement or the consummation of the transactions contemplated hereby. There is not currently, and in the past three (3) years there has not been, any Action against Seller or its Subsidiaries or relating to Seller, its Subsidiaries or the Business that is, or was, not fully covered by Seller’s insurance policies (subject to any applicable deductible).

(b) There are no outstanding Orders or consent decrees or other similar agreements, to the Knowledge of Seller no such Order or consent decree or other similar agreement is threatened, and there are no unsatisfied judgments, penalties or awards against, relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities. Neither Seller nor its Subsidiaries is subject to any outstanding Order which would reasonably be

expected to have a material adverse effect on the ability of Seller or its Subsidiaries to consummate the transactions contemplated hereby.

#### Section 4.11 **Compliance With Laws.**

(a) Each of Seller and its Subsidiaries are, and for the past six (6) years have been, in compliance in all material respects with all Laws and Orders applicable to the conduct of the Business or the ownership and use of the Purchased Assets. Neither Seller nor any of its Subsidiaries nor their officers nor directors has, within the past six (6) years, received any notice, Order, complaint or other communication from any Governmental Authority or any other Person regarding any actual or alleged material violation of any Law or Order applicable to it. To Seller's Knowledge, no Governmental Authority has instituted, implemented, taken or threatened to take, and no Governmental Authority intends to take, any other action the effect of which, individually or in the aggregate, would be reasonably expected to have a Material Adverse Effect.

(b) All Permits required for Seller and its Subsidiaries to conduct the Business or for the ownership and use of the Purchased Assets have been duly obtained by Seller or such Subsidiaries and are valid and in full force and effect. **Section 4.11(b)** of the Disclosure Schedules sets forth a complete and correct list of all Permits that are necessary for Seller or its Subsidiaries to conduct the Business or for the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. Each of Seller and its Subsidiaries is and has been in compliance in all material respects with such Permits and no event has occurred or circumstances exists that (with or without the lapse of time or the giving of notice, including as a result of the transactions contemplated by this Agreement) would reasonably be expected to constitute or result in Seller's or any of its Subsidiaries' material failure, default or violation under any of their respective Permits, or that could reasonably be expected to result in any loss, expiration, or termination of any such Permit, and there are no Actions pending or, to the Knowledge of Seller, threatened in writing relating to the suspension, failure to renew, revocation, withdrawal, penalty, payment, fine or modification of any of the Permits. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not adversely affect, in any material respect, any such Permits or result in the revocation, cancellation, suspension or modification, in any material respect, of any such Permits, such that all such Permits shall be available for use by Buyer or Seller's Subsidiaries immediately after the Closing, in each case, to the same extent such Permits were available for use by Seller and its Subsidiaries immediately prior to the Closing.

(c) None of Seller or any of its Subsidiaries, or to the Knowledge of Seller, any officer, director, employee or agent of any of the foregoing, have (i) offered, authorized, promised, made or agreed to make gifts of money, other property or similar benefits or contributions (other than incidental gifts or articles of nominal value) to any actual or potential customer, provider, supplier, governmental employee, Governmental Authority or other Person in a position to assist or hinder Seller or any of its Subsidiaries in connection with any actual or proposed transaction or to any political party, political party official or candidate for federal, state or local public office in violation of any Law or (ii) maintained any unrecorded fund or asset of Seller or any of its Subsidiaries for any improper purpose or made any intentional false entries on its books and records for any reason.



#### Section 4.12 **HIPAA and Privacy.**

(a) Seller and each of its Subsidiaries has adopted, maintains and operates pursuant to a written privacy policy (the “**Privacy Policy**”) regarding, among other things, the collection and use of information from its Enrollees, customers and visitors to the websites of Seller or any of its Subsidiaries (“**Enrollee Information**”). The Privacy Policy and Seller’s and each of its Subsidiaries’ actions thereunder are in compliance in all material respects with all applicable Laws and industry standards and practice, including all applicable HIPAA requirements and other Information Privacy and Security Laws. The Privacy Policy (a copy of which has been delivered to Buyer prior to the Signing Date) applies to all Enrollees, and no other privacy policies regarding the collection and use of Enrollee Information have been adopted or used by Seller have been provided to Enrollees by or on behalf of Seller or any of its Subsidiaries. In addition to the Privacy Policy, Seller and each of its Subsidiaries has adopted reasonable internal written policies and procedures that comply with applicable Information Privacy and Security Laws with respect to privacy, data protection, security, processing, collection, disclosure and use of Personal Information. Seller and each of its Subsidiaries is in compliance in all material respects with the Privacy Policy and such internal policies, and does not use Enrollee Information in an unlawful manner or in a manner that violates the privacy rights of its Enrollees, including its Enrollees’ rights under HIPAA or other Information Privacy and Security Laws.

(b) Seller’s and each of its Subsidiaries’ receipt, collection, monitoring, maintenance, creation, transmission, use, analysis, disclosure, storage, disposal and security of Personal Information has complied, and complies, with (i) any Contracts to which Seller or its Subsidiaries is party, (ii) applicable Information Privacy and Security Laws, (iii) if applicable, PCI DSS, and (iv) all consents and authorizations that apply to Seller’s and/or its Subsidiaries’ receipt, access, use and disclosure of Personal Information. Seller and each of its Subsidiaries has all necessary authority, consents and authorizations to receive, access, use and disclose the Personal Information in Seller’s and/or each of its Subsidiaries’ possession or under its control in connection with the operation of Seller and/or its Subsidiaries.

(c) Seller and each of its Subsidiaries has, in all material respects, protected the confidentiality, integrity and security of its Personal Information and IT Assets against any unauthorized control, use, access, interruption, modification or corruption in conformance with Information Privacy and Security Laws.

(d) There has been no data security breach or unauthorized access, control, use, modification or destruction of any IT Asset, or unauthorized access, use, acquisition or disclosure of any Personal Information owned, used, stored, received, or controlled by or on behalf of Seller or any its Subsidiaries, including any unauthorized access, use or disclosure of Personal Information that would constitute a breach for which notification to individuals and/or Governmental Authorities is required under any applicable Information Privacy and Security Laws or Contracts to which Seller or its Subsidiaries is a party.

(e) Neither Seller nor any of its Subsidiaries are subject to any Orders, nor are any Orders pending or, to the Knowledge of Seller or any its Subsidiaries, threatened against

Seller or any of its Subsidiaries or its “workforce” (as defined under HIPAA) regarding or relating to Seller’s or any of its Subsidiaries’ processing of Personal Information.

(f) The (A) collection, storage, processing, transfer, sharing and destruction of Personal Information in connection with the transactions contemplated by this Agreement and (B) execution, delivery and performance of this Agreement and the other agreements and instruments contemplated hereby and the consummation of the transactions contemplated hereby and thereby complies with Seller’s and each of its Subsidiaries’ applicable privacy notices and policies and with all applicable Information Privacy and Data Security Laws. Seller has the right to assign to Buyer, and Buyer shall have the right to possess and use following the Closing, all Personal Information and Enrollee Information as used or held for use by Seller and its Subsidiaries in the Business prior to the Closing.

(g) Seller and each of its Subsidiaries has performed a security risk assessment no less frequently than annually that meets (i) the standards set forth at 45 C.F.R. § 164.308(a)(1)(ii)(A), including an assessment as described at 45 C.F.R. § 164.306(d)(3), taking into account factors set forth in 45 C.F.R. § 164.306(a)–(c); (ii) to the extent applicable, the requirements of the PCI DSS; (iii) any requirements to perform security assessments under any Information Privacy and Security Law; and (iv) any obligations to perform security assessments set forth in any Contracts to which Seller or a Subsidiary is party (collectively, the “**Security Risk Assessment**”). Seller and each of its Subsidiaries has addressed all threats and deficiencies identified in every Security Risk Assessment.

#### Section 4.13 **Employment and Benefits Matters.**

(a) **Section 4.13(a)** of the Disclosure Schedules sets forth, for each employee of Seller and its Subsidiaries the following: (i) name; (ii) title or position (including whether full or part time, exempt or non-exempt); hire date; (iii) current annual base compensation rate; and (iv) commission, bonus or other incentive-based compensation, to be updated following the date hereof upon reasonable request of Buyer so that Buyer may satisfy its obligations under **Section 6.05**.

(b) Neither Seller nor any of its Subsidiaries is a party to, bound by, or negotiating any labor agreement, collective bargaining agreement or similar labor-related agreement or other Contract with a union, works council or labor organization (collectively, “**Union**”), and there is not any Union representing or purporting to represent any employee of Seller or any of its Subsidiaries, and, to Seller’s Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor to Seller’s Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Seller, its Subsidiaries or any employees of the Business

(c) In the last six (6) years, Seller and each of its Subsidiaries is and has been in compliance with all applicable Laws regarding employment and employment practices (including anti-discrimination), terms and conditions of employment and wages and hours (including classification of employees and independent contractors, and equitable pay practices) and other laws in respect of any reduction in force (including notice, information and

consultation requirements). Neither Seller nor any of its Subsidiaries is or has been a joint employer, single employer or co-employer with or alter ego of any other Person.

(d) There is not any (i) unfair labor practice charge or complaint against Seller or any of its Subsidiaries pending before the National Labor Relations Board or any similar state or local agency relating to an alleged violation or breach of any Laws or (ii) Action pending or, to Seller's Knowledge, threatened against Seller or any of its Subsidiaries concerning employment-related matters, employees of Seller and its Subsidiaries, or violation of any Laws regarding employment and employment practices or breach of any contractual obligations.

(e) There are no Actions, including audits, requests for information, investigations, complaints, charges, or claims with respect to any regular or leased employee, consultant, or independent contractor of Seller or any of its Subsidiaries pending with or threatened by the Equal Employment Opportunity Commission, the Department of Labor, the Internal Revenue Service, the National Labor Relations Board, or any other Governmental Authority.

(f) No employee of Seller or any of its Subsidiaries is in any respect in violation of any term of any employment agreement, nondisclosure agreement, common law nondisclosure obligation, fiduciary duty, non-competition agreement, restrictive covenant or other obligation: (i) to Seller or any of its Subsidiaries or (ii) to a former employer of any such employee relating (A) to the right of any such employee to be employed by of Seller or any of its Subsidiaries or (B) to the knowledge or use of trade secrets or proprietary information.

(g) **Section 4.13(g)** of the Disclosure Schedules contains a list of each material Seller Employee Plan and indicates each Assumed Plan. With respect to each material Seller Employee Plan, Seller has furnished or made available to Buyer true and complete copies of the governing plan document and amendments thereto and, as applicable, (i) the trust agreement or other governing document for any related funding vehicle, (ii) the current summary plan description and any related summary of material modifications and (iii) any notices to or from the IRS or any office or representative of the DOL or any similar Governmental Authority relating to any compliance issues in respect of any such Seller Employer Plan.

(h) Each Seller Employee Plan and related trust or other funding vehicle has been established, administered, funded and maintained in all material respects in accordance with its terms and in compliance in all material respects with applicable Law. All contributions, benefit payments and premium deposits or payments required to be made by Seller or a Subsidiary under the Seller Employee Plans have been made or paid by the due date thereof, and all contributions, benefit payments and premium deposits or payments that have accrued but have not been made or paid because they are not yet due have been properly accrued in the Financial Statements. No claims, investigations or other proceedings (other than routine claims for benefits) are pending or, to the Knowledge of Seller, threatened against or with respect to any Seller Employee Plan. With respect to each Seller Employee Plan, (A) the Seller has not engaged in any nonexempt "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) and (B) neither the Seller nor any other "fiduciary" (as defined in Section 3(21) of ERISA) has any liability for breach of fiduciary duty or any other failure to act

or comply in connection with the administration or investment of the assets of such Seller Employee Plan.

(i) In the last six (6) years, neither Seller nor any of its ERISA Affiliates has participated in, maintained or been liable for contributions to, nor does any of them have any Liability, contingent or otherwise, with respect to a plan that is a “pension plan” (within the meaning of Section 3(2) of ERISA) that is or was subject to Section 412 of the Code or Section 302 or Title IV of ERISA or that is or was a “multiemployer plan” (within the meaning of Section 3(37) of ERISA).

(j) No Encumbrance has been imposed on the Purchased Assets pursuant to Section 302, 303 or Title IV of ERISA or Section 412 or 430 of the Code and no fact exists that would reasonably be expected to give rise to any such Encumbrance. Other than as required by Section 4980B of the Code or other similar applicable Law, no Seller Employee Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment.

(k) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in conjunction with any other event) result in the acceleration of vesting or payment, trigger any payment or funding, or increase the amount or value of any compensation, payment or benefits (including severance and unemployment compensation) to any current or former employee or consultant of Seller or any of its Subsidiaries. No provision of a benefit, acceleration, or amount to be paid with respect to any current or former employee of, or consultant or other service provider to, Seller or any of its Subsidiaries, would individually or in the aggregate, whether alone or in combination with any other event, (i) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (ii) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

(l) Each Seller Employee Plan that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A(d)(1) of the Code) has been maintained and operated in all respects in a manner that conforms with the applicable documentary and operational requirements of Section 409A of the Code.

#### **Section 4.14 Taxes.**

(a) All material Tax Returns required to be filed by Seller or its Subsidiaries have been timely filed. Such Tax Returns are true, complete and correct in all material respects. All Taxes due and owing by Seller or its Subsidiaries (whether or not shown on any Tax Return) have been, or will be, timely paid. All Taxes of Seller and its Subsidiaries that have accrued, but are not yet due and payable, have been properly accrued on the Financial Statements in accordance with GAAP.

(b) There are no pending or, to Seller’s Knowledge, threatened audits, investigations, disputes, notices of deficiency, claims or other Actions for or relating to any Taxes of Seller or any Subsidiary. Neither Seller nor any Subsidiary has waived any statute of

limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency that has not been resolved.

(c) There are no Encumbrances for Taxes upon any of the Purchased Assets other than Permitted Encumbrances.

(d) Seller is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

(e) Seller is exempt from tax within the meaning of Code section 501(a) and is an organization described in Code section 501(c)(3).

(f) The IRS has not revoked Seller’s status as an organization exempt from tax under Code section 501(c)(3) by ruling letter or otherwise.

(g) Neither Seller nor any Subsidiary has participated in any “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4.

(h) In the past two (2) years, neither Seller nor any Subsidiary has distributed stock of another Person in a distribution that was purported or intended to be governed by Code section 355(a).

(i) No claim has been made or, to the Knowledge of Seller, threatened by a taxing authority in a jurisdiction where neither Seller nor any of its Subsidiaries has filed a Tax Return asserting that such Person is or may be subject to Taxes imposed by that jurisdiction.

(j) None of the Purchased Assets, and no portion of the Business, (i) constitutes a permanent establishment in any country other than the United States, or (ii) is the subject of taxation in any jurisdictions outside the United States.

(k) Seller and its Subsidiaries have properly and timely paid to the appropriate taxing authorities all payroll, unemployment and similar Taxes due on or before the Closing Date and have properly withheld and timely paid to the appropriate taxing authorities all other Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party with respect to the Business, and have complied with all information reporting, backup withholding and Tax Return requirements, including maintenance of required records with respect thereto, in connection with any such amounts.

(l) Neither Seller nor any Subsidiary is a party to any (i) joint venture, alliance, partnership or other arrangement that is treated as a partnership for Tax purposes or (ii) Tax indemnity, Tax allocation or Tax sharing agreement (other than a commercial agreement entered into in the ordinary course of business the principal subject matter of which is unrelated to Taxes).

(m) Neither Seller nor any Subsidiary has any liability for the Taxes of any Person (other than itself) under Treasury Regulations Section 1.1502-6 (or any corresponding or

similar provision of state, local or foreign Law), as a transferee or successor, by operation of applicable Law, by Contract or otherwise.

(n) Neither Seller nor any Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Period as a result of any (A) change in method of accounting for a Pre-Closing Period under Code section 481(c) (or any corresponding or similar provision of state, local or foreign Law); (B) “closing agreement” as described in Code section 7121 (or any corresponding or similar provision of state, local or foreign Law) entered into prior to the Closing Date; (C) installment sale made prior to the Closing Date; (D) prepaid amount received or deferred revenue accrued on or prior to the Closing Date; or (E) election under Code section 108(i) (or any corresponding or similar provision of state, local or foreign Law).

(o) Salus IPA is, since its formation has been, and at all times through the Closing Date will be, classified as an entity disregarded as separate from its owner for U.S. federal income tax purposes within the meaning of Treasury Regulations Section 301.7701-2(a).

**Section 4.15 Brokers.** No broker, finder, investment banker or similar intermediary is entitled to any brokerage, finder’s or other fee or commission or similar compensation in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller or any of its Subsidiaries, other than as set forth in **Section 4.15** of the Disclosure Schedules.

#### **Section 4.16 Healthcare Matters.**

(a) **Compliance with Healthcare Laws.** (i) The Business operations of Seller and its Subsidiaries (including its form and rate filing, reserving, marketing, investment, financial, claims, taxation, underwriting, premium collection and refunding, securities compliance and other practices, if applicable) are, and for the past six (6) years have been, operated in compliance in all material respects with all applicable Laws, (ii) Seller is not, and has not been in the past six (6) years, in material violation of any of the provisions of applicable New York Law with respect to managed care organizations, and (iii) neither Seller, its Subsidiaries nor any Person acting on behalf of Seller or its Subsidiaries has violated or has incurred any Liability under (A) any federal or state fraud and abuse Laws, including the Stark Law (42 U.S.C. §1395nn), the civil False Claims Act (31 U.S.C. §3729 et seq.), Sections 1320a-7a and 1320a-7b of Title 42 of the United States Code, (B) Medicare (Title XVIII of the Social Security Act), (C) Medicaid (Title XIX of the Social Security Act), (D) any prompt pay Laws, (E) any quality, safety or accreditation standards, (F) any applicable licensure Laws or regulations, or (G) any other applicable health care Law.

(b) **Debarment and Suspension.** Neither Seller, its Subsidiaries nor any officer, director or manager of Seller or its Subsidiaries has ever been debarred, suspended or otherwise excluded from participating in any state or federally funded health care program. Seller is in good standing with, and not excluded or suspended from participation in, or limited in its right to participate in any Federal Health Care Program or any state or local government health care programs.

(c) Regulatory Filings. Each of Seller and its Subsidiaries has timely filed (taking into account permitted extensions timely obtained, if any) all material regulatory reports, schedules, statements, documents, filings, submissions, forms, registrations and other documents, together with any amendments required to be made with respect thereto, that each was required to file with any Government Authority (“**Regulatory Filings**”). All such Regulatory Filings are accurate and complete in all material respects. Each of Seller and its Subsidiaries has timely paid (taking into account permitted extensions timely obtained, if any) all fees and assessments due and payable in connection therewith, including the assessments required under the New York Health Care Reform Act.

(d) Penalties Under Medicaid Programs. Seller has not been required to pay any civil monetary penalty under Law regarding false, fraudulent or impermissible claims under, or payments to induce a reduction or limitation of health care services to beneficiaries of, any state health care program or Federal Health Care Program. To the Knowledge of Seller, Seller is not currently the subject of any investigation, audit or proceeding that may result in such payment. Seller is not a party to any corporate integrity agreement, monitoring agreement, consent decree, settlement order, or similar agreement imposed by any Governmental Authority.

(e) Recoupment Proceedings. There are no material recoupments, adjustments or recovery proceedings of any Payor being sought, requested, claimed or threatened against Seller.

(f) Marketing. Seller’s marketing staff has not violated laws applicable to the marketing or enrollment of Seller’s health plans. The compensation payable by Seller to its marketing staff complies with applicable Laws.

(g) Compliance Program. Seller has implemented a corporate compliance program which meets all applicable legal requirements and staff to oversee the functioning of its corporate compliance program. As part of its corporate compliance program, Seller has implemented administrative processes, policies and procedures that are reasonably designed to ensure that Seller remains in compliance with health care Laws applicable to Seller’s Business. Seller has in place a process to regularly check all applicable Federal Health Care Program or state health care program exclusion and debarment lists to determine whether any of the following are an Ineligible Person: Seller, its officers, directors, managers, employees, and providers of services and any contracted vendor or agent that provides health care related services to Seller. To the Knowledge of Seller, neither it nor any of these individuals or companies is an Ineligible Person who have been excluded or otherwise debarred from any Federal Health Care Program or other governmental health care programs.

(h) Executive Order 38. Seller has at all times complied with the requirements of New York State Executive Order 38 and has timely satisfied applicable reporting obligations and waiver requests thereunder.

(i) Duly Licensed Employees. Each employee of Seller that is required to be licensed in connection with their employment holds a valid and unrestricted license to practice his or her profession in New York.

**Section 4.17 Related Party Transactions.** This Agreement or pursuant to any Seller Employee Plan, no direct or indirect member, director or officer of Seller or any of its Subsidiaries, nor any Subsidiary or Affiliate of any such direct or indirect member, director or officer, nor any Affiliate of Seller (other than its Subsidiaries), has any interest in any property or assets owned by Seller or any of its Subsidiaries, or has in the past three (3) years engaged in any transaction with or is currently directly or indirectly a party to any Contract with Seller or any of its Subsidiaries, including any agreement, arrangement or understanding, written or oral, providing for the employment of, furnishing of services by, rental of real or personal property from or otherwise requiring payment to any such Person.

**Section 4.18 Environmental Matters.** The Business, and Seller with respect to the Business and the Purchased Assets, are in compliance in all material respects with applicable Environmental Laws. Except as would not reasonably be expected to result in Material Adverse Effect, Seller, with respect to the Business and the Purchased Assets, has not caused a Release, and to the Knowledge of Seller, there has been no Release at, on, under or from the Leased Real Property. Seller has made available to Buyer copies of all material environmental assessments, reports, audits and other material documents in its possession or under its control that relate to the compliance of the operations of the Business and Purchased Assets with Environmental Laws or the environmental condition of any real property currently or formerly owned, operated or leased with respect to the Business and Purchased Assets.

**Section 4.19 Securities Act.** Seller is receiving the shares of Buyer Common Stock being issued pursuant to the Share Consideration solely for the purpose of investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act. Seller acknowledges that the shares being issued pursuant to the Share Consideration are not registered under the Securities Act, any applicable state securities Law or any applicable foreign securities Laws, and that such shares may not be transferred or sold except pursuant to the Registration Rights Agreement and the registration provisions of the Securities Act or applicable foreign securities Laws or pursuant to an applicable exemption therefrom and pursuant to state securities Laws as applicable. Seller (either alone or together with its Representatives) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Buyer Common Stock and is capable of bearing the economic risks of such investment.

**Section 4.20 Disclaimer of Other Representations and Warranties.** NEITHER SELLER NOR ITS SUBSIDIARIES, THEIR RESPECTIVE REPRESENTATIVES, DIRECTORS, OFFICERS, EMPLOYEES OR MEMBERS HAS MADE, AND SHALL NOT BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO ANY ONE OR MORE OF SELLER OR ANY OF ITS SUBSIDIARIES, THE BUSINESS, THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS **Article IV**.



## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the statements contained in this **Article V** are true and correct as of the Signing Date and as of the Closing Date, except to the extent that any such representation or warranty refers to a specified date, in which event such representation or warranty shall be true and correct as of such specified date.

Section 5.01 **Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.

Section 5.02 **Authority.** Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is or will be a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.03 **No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated hereby and thereby, and performance by Buyer of the obligations hereunder and thereunder, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any material Law or Order applicable to Buyer; (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the termination or acceleration of or create in any party a right of purchase, sale, acceleration, termination, modification or cancellation under, any material Contract or Permit to which Buyer is a party or by which it is bound or affected; or (d) result in the creation or imposition of any Encumbrance on any of the material properties or assets of Buyer. Except as set forth in **Section 4.04** of the Disclosure Schedules, no consent,

Permit, Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the performance and consummation by Buyer of the transactions contemplated hereby and thereby.

**Section 5.04 Brokers.** Other than Allen & Company LLC, no broker, finder, investment banker or similar intermediary is entitled to any brokerage, finder's or other fee or commission or similar compensation in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

**Section 5.05 Legal Proceedings.** As of the date hereof, there are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

**Section 5.06 Financing.** (a) Buyer has delivered to the Seller a correct and complete fully executed copy of a commitment letter including all exhibits, schedules, annexes and amendments to such letter in effect as of the date of this Agreement (the "**Commitment Letter**") from Financing Sources, pursuant to which and subject to the terms and conditions thereof the lender thereunder has committed to lend the amounts set forth therein (the provision of such funds as set forth therein, but subject to the provisions of **Section 6.23**, the "**Financing**") for the purposes set forth in such Commitment Letter. Buyer has also delivered to the Seller a correct and complete fully executed copy of the related fee letter; provided that the fee amounts, pricing caps and other economic terms, the rates and amounts included in the "market flex" provisions (but not covenants) and other customary provisions have been redacted (the "**Fee Letter**"). The Commitment Letter has not been amended, restated or otherwise modified or waived prior to the execution and delivery of this Agreement, and the respective commitments contained in the Commitment Letter have not been withdrawn, rescinded, amended, restated or otherwise modified in any respect prior to the execution and delivery of this Agreement. As of the date of this Agreement, other than the Commitment Letter and the Fee Letter, there are no other Contracts, side letters or other arrangements to which Buyer or any of its Subsidiaries is a party or by which Buyer or any of its Subsidiaries is bound relating to the availability, amount or conditionality of the Financing. As of the execution and delivery of this Agreement, the Commitment Letter is in full force and effect and constitutes the legal, valid and binding obligation of each of Buyer and, to the knowledge of Buyer, the other parties thereto, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally, by general equitable principles (regardless of whether enforcement is sought in a proceeding of law or in equity) or by the discretion of any Governmental Authority before which any proceeding seeking enforcement may be brought. Buyer has fully paid (or caused to be fully paid) any and all commitment fees or other fees required by the Commitment Letter to be paid on or before the date of this Agreement. There are no conditions precedent (including pursuant to any "market flex" provisions) related to the funding of the full amount of the Financing pursuant to the Commitment Letter, other than as expressly set forth in the Commitment Letter and the unredacted portions of the Fee Letter. Subject to the terms and conditions of the Commitment Letter, assuming the accuracy of the Seller's representations and warranties contained in **Article IV** and assuming completion of the Marketing Period and no breach or default by the Seller of its covenants contained in **Section**

**6.01**, the net proceeds contemplated from the Financing, together with cash on hand and marketable securities of Buyer and its Subsidiaries on the Closing Date, will, in the aggregate, be sufficient for the payment of the aggregate cash portion of the Purchase Price and any other amounts required to be paid pursuant to **Article II** hereof, the funding of any required refinancings or repayments of any existing Closing Date Indebtedness of the Seller in connection herewith and the payment of all fees and expenses reasonably expected to be incurred by Buyer in connection herewith and the Financing (collectively, such amount, the “**Required Funding Amount**”). As of the date of this Agreement, no event has occurred which would result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) by Buyer under the Commitment Letter, and Buyer does not have any reason to believe that any of the conditions to the Financing will not be satisfied or that Financing will not be available to Buyer on the Closing Date.

#### Section 5.07 **Capitalization.**

(a) As of June 30, 2017, the authorized capital stock of Buyer consists of (i) 400,000,000 shares of Buyer Common Stock, of which 178,900,000 shares are issued, 172,467,000 shares are outstanding, 6,433,000 shares are issued and held in the treasury of Buyer, and 14,438,000 shares are reserved for issuance pursuant to the grant of equity awards under Buyer equity compensation plans, and (ii) 10,000,000 shares of preferred stock, par value \$0.001 per share, of which no shares are issued or outstanding. Since June 30, 2017 through the date of this Agreement, there have been no issuances of Buyer Equity Securities or other securities of Buyer other than shares that were reserved for issuance pursuant to Buyer equity compensation plans. All of the outstanding shares of capital stock of Buyer are duly authorized, validly issued, fully paid and non-assessable.

(b) Buyer has no outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote (or are convertible into or exercisable for securities having the right to vote) with the stockholders of Buyer on any matter.

**Section 5.08 Share Consideration and Escrow Shares.** The Share Consideration (if any) and Escrow Shares (if any) shall be, at the time of issuance, duly authorized, validly issued, fully paid and nonassessable, free and clear of all liens and will not be issued in breach or violation of any preemptive rights or Contract. Assuming the accuracy of Seller’s representations and warranties set forth in **Section 4.19**, the issuance of the Share Consideration in accordance with the terms set forth in the Agreement is exempt from registration under the Securities Act and otherwise issued in compliance with all Laws.

#### Section 5.09 **SEC Reports; Financial Statements.**

(a) Buyer has filed with or furnished to the SEC all reports, schedules, forms, statements and other documents required to be filed or furnished by Buyer under the Securities Act, the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, and the rules and regulations of the NYSE for the three (3)-year period preceding the date of this Agreement (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “**SEC Reports**”) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the

expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements of Buyer included (or incorporated by reference) in the SEC Reports (including the notes thereto) comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of Buyer and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal year-end audit adjustments. Since January 1, 2016, Buyer has not made any change in the accounting practices and policies applied in the preparation of its financial statements, except as required by GAAP, SEC rule or policy or applicable Law. No financial statements of any Person other than Buyer are required by GAAP to be included in the financial statements of Buyer.

**Section 5.10 Internal Accounting and Disclosure Controls.** Buyer maintains a system of internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of Buyer's financial reporting and the preparation of Buyer's financial statements for external purposes in accordance with GAAP and that (a) transactions are executed in accordance with management's general or specific authorization, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (c) access to assets is permitted only in accordance with management's general or specific authorization, and (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Buyer's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are adequate and effective to ensure that all material information required to be disclosed by Buyer in the reports it files or furnishes under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Buyer's management has completed an evaluation of the effectiveness of Buyer's internal controls over financial reporting as required by Section 404 of the Sarbanes-Oxley Act for the fiscal year ended December 31, 2016, and has concluded that such internal controls were effective. Buyer has disclosed, based on its most recent evaluation of Buyer's internal control over financial reporting prior to the date of this Agreement, to Buyer's auditors and audit committee (i) any significant deficiencies and material weaknesses in the design or operation of Buyer's internal control over financial reporting which are reasonably likely to adversely affect Buyer's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in Buyer's internal control over financial reporting. Buyer's management has evaluated the effectiveness of the design and operation of Buyer's disclosure controls and procedures and, to the extent required by applicable Law, presented in any applicable SEC

Report that is a report on Form 10-K or Form 10-Q, or any amendment thereto, filed prior to the date of this Agreement, its conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by such report or amendment based on such evaluation (and as of the most recent evaluation, such disclosure controls and procedures were effective). Since the date of the most recent evaluation of such disclosure controls and procedures and internal controls, there have been no material changes in such controls or in other factors that would reasonably be expected to materially affect disclosure controls and procedures or internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.

**Section 5.11 Listing and Maintenance.** The Buyer Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and Buyer has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of Buyer Common Stock under the Exchange Act nor has Buyer received any written notification that the SEC is contemplating terminating such registration. Buyer is in material compliance with the listing and maintenance requirements and any other applicable rules and regulations of the NYSE.

**Section 5.12 Inspection.** Buyer is an informed and sophisticated Person, and has engaged expert advisors experienced in the evaluation and acquisition of the Purchased Assets and Assumed Liabilities as contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the transactions contemplated hereby. Buyer acknowledges that Seller has given it access to the key employees, documents and facilities of Seller and its Subsidiaries. Without limiting the generality of the foregoing, Buyer acknowledges that, except as expressly set forth in **Article IV**, Seller does not make any representation or warranty with respect to (i) any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows (or any component thereof) or future financial condition (or any component thereof) of the Business (including any future sales of the Business' products or services), or (ii) any other information or documents made available to Buyer or its counsel, accountants, advisors or other representatives with respect to Seller, its Subsidiaries, the Business, the Purchased Assets or the Assumed Liabilities.

**Section 5.13 Disclaimer of Additional Warranties.** NEITHER BUYER NOR ITS SUBSIDIARIES, THEIR RESPECTIVE REPRESENTATIVES, DIRECTORS, OFFICERS OR EMPLOYEES HAS MADE, AND SHALL NOT BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO BUYER OR ANY OF ITS SUBSIDIARIES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS **ARTICLE V**.

## ARTICLE VI

### COVENANTS

Section 6.01 **Conduct of Business Prior to the Closing.** Except for Sale Activities, actions contemplated by this Agreement, and as set forth in **Section 6.01** of the Disclosure Schedules, from the Signing Date until the earlier of (A) termination of this Agreement in accordance with **Article IX** or (B) Closing, except as consented to in writing by Buyer, Seller shall, and shall cause its Subsidiaries to, (ii) conduct the Business in the ordinary course of business consistent with past practice and (iii) use commercially reasonable efforts to maintain and preserve intact Seller's and its Subsidiaries' current business organization, assets, properties and operations and to preserve the rights, goodwill and relationships of its employees, Providers, Enrollees, suppliers, regulators, lenders and others having relationships with the Business. Without limiting the foregoing, from the Signing Date until the Closing Date, subject to Sale Activities, Seller shall, and shall cause its Subsidiaries to:

(a) use commercially reasonable efforts to preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;

(b) pay, discharge or satisfy the Liabilities, Taxes and other obligations of the Business which are not in dispute when due in the ordinary course of business consistent with past practice;

(c) not change or revoke any material Tax election; not settle or compromise any material claim or assessment in respect of Taxes; not surrender any right to claim a material Tax refund; not amend any material position on a Tax Return; not change any Tax accounting method; not enter into any closing agreement relating to any material Tax; and not consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment;

(d) defend and protect the properties and assets included in the Purchased Assets from infringement or usurpation in the ordinary course of business consistent with past practice;

(e) perform in all material respects all of its obligations under all Provider Contracts and the Payor Contracts;

(f) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets (including with respect to the maintenance of statutory contingent reserves sufficient to be in compliance with applicable Laws);

(g) other than as set forth in **Section 6.01(g)** of the Disclosure Schedules, or as may be required by any Seller Employee Plan, employment agreement or applicable Law, not (i) enter into, adopt, amend or terminate any Seller Employee Plan; (ii) amend or terminate any Key Executive Employment Agreement; (iii) enter into a new employment agreement or retention agreement with any current or future employee with an annual base salary in excess of

\$200,000, provided that such agreement is not an Assumed Plan and does not increase compensation or benefits other than as permitted by **Section 6.01(g)(v)**; (iv) make any increase in the compensation or benefits of any of its directors or officers; (v) increase the compensation or benefits of any employee of the Business who is not a director or officer except in the ordinary course of business and consistent with past practice for employees with an annual base salary of less than \$100,000; and (vi) grant any severance or termination pay to any employee of the Business other than severance or termination pay in the ordinary course of business payable in full prior to the Closing Date;

(h) not enter into, amend or terminate any labor agreement, collective bargaining agreement or similar labor related agreement;

(i) without limitation to **Section 4.06(n)**, not amend, terminate or fail to renew any Material Provider Contract or any Payor Contract, except for such immaterial amendments as may from time to time be required by the Governmental Authority having jurisdiction thereover;

(j) other than in the ordinary course of business consistent with past practice, not (i) enter into, materially modify or terminate (except expirations in accordance with its terms) any Material Contract, or waive, release or assign any material rights or claims thereunder or (ii) enter into, modify, amend, renew or terminate any Contract or waive, release or assign any material rights or claims thereunder, which if so entered into, modified, amended, terminated, waived, released or assigned would reasonably be expected to (1) prevent or materially delay or impair the ability of the Seller and its Subsidiaries to consummate the transactions contemplated by this Agreement, (2) impair in any material respect the ability of the Seller and its Subsidiaries to conduct the Business in the ordinary course consistent with past practice or (3) adversely affect in a material respect the expected benefits of the transactions contemplated by this Agreement;

(k) not enter into any Contract to support a community initiative or non-affiliate non-profit corporation or similar entity or charitable endeavor that would create any obligation on Buyer;

(l) not amend the constituent documents of Seller (including by merger, consolidation or otherwise) or amend in any material respect the constituent documents of any Subsidiary of Seller (including by merger, consolidation or otherwise);

(m) other than borrowings under the Seller's Term Loan and other credit facilities and lines of credit in existence as of the Signing Date, not (i) incur or otherwise acquire, or modify in any material respect the terms of, any Indebtedness for borrowed money or assume, guarantee or endorse or otherwise become responsible for any such Indebtedness of any Person other than a Subsidiary of Seller, make any loans, advances or capital contributions to, or investments in, any other Person other than a Subsidiary of Seller or issue or sell any debt securities or calls, options, warrants, or other rights to acquire any debt securities of the Seller or its Subsidiaries, enter into any "keep well" or Contract to maintain any financial statement condition of another Person or enter into any arrangement (including any capital lease) having the economic effect of the foregoing; *provided* that no Indebtedness incurred by the Seller or its

Subsidiaries shall have any voting rights associated therewith or (ii) redeem, repurchase, prepay, defease or cancel any Indebtedness for borrowed money, other than, in the case of clause (ii), (1) as required in accordance with its terms or expressly required by this Agreement or (2) in the ordinary course of business consistent with past practice;

(n) not sell, transfer, lease, license, mortgage, pledge, encumber, allow to lapse, incur any Encumbrance on (other than a Permitted Encumbrance), or otherwise dispose of, or agree to do any of the foregoing with respect to, any of the Purchased Assets except (i) in the ordinary course of business consistent with past practice, (ii) pursuant to Contracts in force on the date of this Agreement, (iii) such dispositions of assets no longer used in the ordinary course of business consistent with past practice of the Seller's or its Subsidiaries' business as conducted as of the date of this Agreement or (iv) such dispositions among the Seller and its Subsidiaries (other than Rego Park LLC);

(o) not defer any capital expenditure or make or authorize any payment of, accrual or commitment for, capital expenditures in excess of Two Million Dollars (\$2,000,000) in the aggregate, except those budgeted for in a budget previously made available to Buyer;

(p) not change any material Tax or financial accounting methods, practices, policies or principles or elections from those utilized in the preparation of the Audited Financial Statements, other than any such changes as may be required under GAAP;

(q) not commence or settle of any Action relating to the Business, the Purchased Assets or the Assumed Liabilities, except for settlements of Actions or potential Actions in the ordinary course of business consistent with past practice and so long as such settlement will not create any material obligation on behalf of Buyer following the Closing;

(r) not cancel, amend, compromise, terminate, release or waive any debts, rights or claims relating to the Business or the Purchased Assets;

(s) not conclude of or agree to any corrective action plans, consents, decrees, actions or Orders, other than in the ordinary course of business consistent with past practice;

(t) not adopt any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against Seller under any similar Law;

(u) not purchase or otherwise acquire (by merger, exchange, consolidation, acquisition of stock or assets or otherwise), or sale, lease or disposal, of any property, material asset, corporation, partnership, joint venture, limited liability company or other business organization or division or material assets thereof, other than in the ordinary course of business consistent with past practice;

(v) not enter into any transaction with any Affiliate of Seller (other than its Subsidiaries) or any officers or directors of Seller or its Subsidiaries;



(w) not allow to lapse any existing policy of insurance relating to the Business or the Purchased Assets; and

(x) not enter into a Contract, commitment or arrangement to do any of the foregoing that would materially impair its ability to consummate the transactions contemplated by this Agreement in accordance with the terms hereof.

**Section 6.02 Access to Information.** From the Signing Date until the Closing, Seller shall (a) furnish Buyer and its Representatives and Financing Sources with such financial, operating and other data and information as Buyer or any of its Representatives or Financing Sources may reasonably request related to (i) the Business, or (ii) the Purchased Assets; (b) use commercially reasonable efforts to provide Buyer (i) sufficiently in advance of the Closing, copies of such information as is reasonably requested by Buyer and its Representatives in order for Buyer to assume operations on the Closing Date for the transition of the Enrollees and continuity of care”acquired, and (ii) copies of such other information as is necessary for the operation, ownership and management of the Business or which is otherwise reasonably requested by Buyer, and which Seller is permitted by applicable Law to provide or which is required in writing to be provided to Buyer by DFS, DOH or CMS (and Seller shall provide such written consents and authorizations as may be reasonably necessary for Buyer to have access to materials on file with any Governmental Authority), including any information as may be required to permit Buyer to satisfy its obligations to any Governmental Authority following the Closing, including any third party accreditation or review organization (such as the National Committee for Quality Assurance); and (c) make available to the officers, employees, accountants, counsel and other Representatives of Buyer upon the reasonable request of Buyer and during normal working hours, officers, accountants, counsel, consultants, investment banker and other Representatives or agents of Seller for discussion of the Business as Buyer may reasonably request. Any inquiries pursuant to this **Section 6.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Seller. Nothing in this Agreement or any of the other Transaction Documents to the contrary shall in any manner restrict the ability of Buyer, from and after the date of this Agreement, to discuss the business and affairs of Seller or its Subsidiaries with any Governmental Authority having jurisdiction over Seller or its Subsidiaries or the fiscal intermediaries administering Seller’s payor programs. From the date hereof until the earlier of (i) the Closing Date or (ii) the date this Agreement is terminated pursuant to **Article IX**, Seller and Buyer shall cooperate to contact such third parties, including customers, prospective customers, specifying agencies, vendors or suppliers of Seller and its Subsidiaries, as Seller and Buyer mutually deem reasonably necessary. Prior to the Closing Date and after any termination of this Agreement, each Party shall hold and shall cause its Representatives to hold, in confidence, all confidential documents and information concerning the other Party’s or any of its Subsidiaries furnished to a Party or its Representatives in connection with the transactions contemplated by this Agreement in the manner and for the time period specified in (i) the Confidentiality Agreement, dated June 24, 2017 (the “**Confidentiality Agreement**”) and (ii) the Clean Team Agreement dated July 21, 2017, in each case, between Buyer and Seller, and as further amended from time to time; *provided, however*, that, prior to the Closing Date and prior to any termination of this Agreement, nothing in the foregoing sentence shall be deemed to limit any customary disclosures made by Buyer and its Affiliates to the Financing Sources, rating agencies, prospective traders, prospective Financing Sources, existing lenders (and related agents) or otherwise in connection with efforts

or activities by Buyer or the Financing Sources to obtain the Financing. Notwithstanding the foregoing, nothing in this **Section 6.02** shall be construed to obligate Seller or its Subsidiaries to provide any information or reports to Buyer in a form that Seller and its Subsidiaries do not generate in the ordinary course of business consistent with past practice if providing information or reports in such form would be reasonably expected to interfere in any material respect with the conduct of the Business or any other businesses of Seller.

### **Section 6.03 No Solicitation of Other Bids.**

(a) Seller shall not, and shall not authorize or permit any of its Subsidiaries or Representatives (collectively, the “***Seller Parties***”) to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and or cause to be terminated, and shall cause the other Seller Parties to immediately cease and cause to be terminated, all existing activities, discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal and shall notify each such party that it, or any Representative retained by it, no longer seeks or requires the making of any Acquisition Proposal, and withdraws any consent theretofore given to the making of an Acquisition Proposal. None of the Seller Parties shall, directly or indirectly, and each of the Seller Parties shall cause their Affiliates and their respective Representatives not to, solicit, initiate or conduct any discussions or negotiations with, or provide any information to or otherwise cooperate in any other way with, or facilitate or encourage any effort to attempt to, or enter into any agreement or understanding with, any Person or group of Persons regarding any Acquisition Proposal. For purposes hereof, “***Acquisition Proposal***” means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets or any public announcement of a proposal, plan or intention to do the foregoing or any agreement to engage in the foregoing. At the Closing, Seller shall assign to Buyer or one of its Affiliates all confidentiality agreements, non-disclosure agreements, standstill agreements or similar agreements entered into with any third parties regarding any Acquisition Proposal; *provided, however*, that if any such attempted assignment would be ineffective, then from and after the Closing, Seller will continue to enforce its rights under such agreements on Buyer’s behalf.

(b) In addition to the other obligations under this **Section 6.03**, Seller shall promptly (and in any event within two (2) Business Days after receipt thereof by any Seller Party) advise Buyer orally and in writing of any Acquisition Proposal or any request for information with respect to any Acquisition Proposal, and the identity of the Person making the same.

(c) Seller agrees that the rights and remedies for noncompliance with this **Section 6.03** shall include having such provision specifically enforced by any Court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

#### Section 6.04 Notice of Certain Events.

(a) From the Signing Date until the earlier of termination of this Agreement in accordance with **Article IX** or the Closing, Seller shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in any representation or warranty made by Seller hereunder not being true and correct (to the extent occurring or arising after the Signing Date, a “**Disclosure Update**”), or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** to be satisfied;

(ii) any written notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority, other than in the ordinary course of business consistent with past practice and which does not relate to the transactions contemplated by this Agreement and the Transaction Documents; and

(iv) any Actions commenced or, to Seller’s Knowledge, threatened against, relating to, involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the Signing Date, would have been required to have been disclosed pursuant to **Section 4.10** or that relate to the consummation of the transactions contemplated by this Agreement.

(b) No Disclosure Update shall be deemed to modify, or cure any breach of Seller’s representations and warranties in this Agreement or have any effect for the purpose of determining satisfaction of the conditions set forth in **Section 7.02** (other than **Section 7.02(c)**) or the obligations of Seller under **Article VII**.

#### Section 6.05 Employees.

(a) Seller shall provide Buyer with reasonable access during normal business hours to the employees of the Business not less than forty-five (45) days prior to the Closing Date and with information reasonably requested by Buyer with respect to compensation and benefits of the employees of the Business. No less than ten (10) days prior to the Closing Date, to be effective as of the Closing but contingent on the Closing, Buyer or an Affiliate of Buyer shall offer employment to all individuals who are employed by Sellers or its Subsidiaries in good standing in the operation of the Business; *provided however*, that Buyer shall not be required to make offers of employment to (i) any employee of Seller or its Subsidiaries who does not satisfy Buyer’s employment policies regarding employee documentation, drug testing, background screening, and other similar matters or (ii) any Inactive Employee, except as set forth in this **Section 6.05**. Each such offer of employment shall provide for the payments and benefits required to be provided by **Section 6.05(c)**. Each employee of Seller or its Subsidiaries who reports to work on the first work day immediately following the Closing (after taking into

account any authorized paid time off) and commences employment with Buyer as of immediately following the Closing (after taking into account any authorized paid time off) shall be considered a “**Hired Employee**.” Any Inactive Employee who returns to active employment within six (6) months of the Closing Date, or such longer period as required by applicable Law, and who satisfies Buyer’s employment policies regarding employee documentation, drug testing, background screening, and other similar matters shall be considered a Hired Employee upon such Inactive Employee’s commencement of employment with Buyer, provided such date is within six (6) months of the Closing Date. Buyer and its Affiliates shall only be responsible for Liabilities relating to an Inactive Employee from and after the date such Inactive Employee becomes a Hired Employee. From the Closing Date through the first anniversary of the Closing Date, Buyer shall not terminate any Hired Employee other than (1) for Cause or (2) due to the occurrence of any material adverse change to the Business (including as a result of any Change in Healthcare Laws) during such twelve (12) month period.

(b) Effective as of the Closing Date, Seller and its Subsidiaries shall terminate the employment of all of the Hired Employees as of the Closing, or, with respect to any Inactive Employee who becomes a Hired Employee after the Closing Date, upon their commencement of employment with Buyer in accordance with **Section 6.05(a)**. Except as otherwise specified herein, effective as of the Closing, all Hired Employees will cease to be active participants in the Seller Employee Plans (other than Assumed Plans) and will become participants in the corresponding new or existing plans of Buyer and its Affiliates, including group health and other welfare benefit plans in each case subject to the terms thereof; *provided however*, that Seller shall maintain each Inactive Employee’s participation in the Seller Employee Plans in accordance with the terms of such plans in effect from time to time.

(c) For the one (1) year period described in **Section 6.05(a)**, Buyer shall provide or cause to be provided to each Hired Employee (i) base salary or base wages and annual or other periodic cash incentive opportunities (excluding any retention bonuses and other special or non-recurring bonuses or cash awards) that are no less favorable in the aggregate than cash compensation payable to such Hired Employee by Seller or its Subsidiaries immediately before Closing (excluding any retention bonuses and other target-level special or non-recurring bonuses or cash awards), and (ii) retirement, welfare, fringe and other employee benefits (excluding any nonqualified deferred compensation or equity benefits) which are substantially comparable in the aggregate to the employee benefits that are provided to them by Seller and its Subsidiaries immediately prior to the Closing Date under the Seller Employee Plans or, in Buyer’s discretion, are substantially comparable to those made available to similarly situated employees of Buyer or any of Buyer’s Affiliates.

(d) Seller shall be responsible for timely payment, in accordance with the applicable arrangement, plan or policies, of all Seller Employee Payables to the person or persons entitled thereto; provided that Seller shall only be obligated to pay accrued paid time off in respect of any Hired Employees in excess of their one hundred and fifty (150) hours. All such payments that are subject to the applicable Tax withholding will be made through Seller’s payroll system. Buyer shall assume and shall be solely responsible for the payment or satisfaction of any and all Liabilities with respect to (i) any Hired Employee arising after the Closing Date and (ii) the Assumed Plans after the Closing Date. Between the date hereof and the Closing Date, Seller shall use best efforts to cause the Assumed Plans to be assigned to Buyer as

of the Closing. To the extent Seller is not able to assign an Assumed Plan to Buyer, such plan shall no longer be designated as an Assumed Plan and the Parties shall cooperate in good faith to either implement a mirror plan at Buyer or transition the Hired Employees to a plan of Buyer and its Affiliates as of the Closing.

(e) Buyer shall use commercially reasonable efforts to ensure that (i) all Hired Employees receive credit for prior service with Seller and its Subsidiaries (or any predecessor entities) for purposes of eligibility, participation, vesting and benefit accrual (but not for benefit accruals or eligibility under any defined benefit pension plan or retiree medical plan) under any employee benefit or compensatory plan, program or arrangement of Buyer or any of Buyer's Affiliates in which Hired Employees are eligible to participate to the extent such prior service credit would result in a duplication of benefits, (ii) subject to any required consent under applicable Law, all Hired Employees receive credit for their accrued paid time off as of the Closing up to One Hundred and Fifty (150) hours, (iii) any pre-existing conditions or limitations, eligibility waiting periods or required physical examinations under any group health benefit plans of Buyer or any of Buyer's Affiliates will be waived with respect to Hired Employees and their eligible spouses and dependents, to the extent waived or satisfied under a corresponding Seller Employee Plan in which the applicable Hired Employee participated immediately prior to the Closing; and (iv) subject to Seller providing adequate data to Buyer, in a format required by Buyer, that the Hired Employees and their eligible spouses, dependents and beneficiaries will receive credit for the plan year in which the Closing Date occurs towards applicable deductibles and annual out-of-pocket limits for expenses incurred prior to the Closing Date that were credited for the same purpose to such individual under the corresponding Seller Employee Plan as of the Closing Date.

(f) Prior to, and effective as of, the Closing, Seller shall amend the Seller 403(b) Retirement Savings Plan (the "**403(b) Plan**") to discontinue (freeze) all employee and employer contributions thereunder. At the Closing, Seller shall assign, transfer, convey and deliver to Buyer, Seller's sponsorship of, and all of Seller's rights, title and interest in, the 403(b) Plan, and Buyer shall assume sponsorship of, and perform and discharge all Liabilities under, the 403(b) Plan after the Closing. Buyer shall continue to maintain the 403(b) Plan after the Closing as a frozen plan until the 403(b) Plan is terminated by Buyer, at its discretion. For the avoidance of doubt, in no event shall Buyer permit any employee or employer contributions to be made to the 403(b) Plan on or after the Closing; provided, however, that after the Closing and until the Buyer terminates the 403(b) Plan, Hired Employees with unvested account balances under the 403(b) Plan may continue to vest under the terms of the 403(b) Plan and, to the extent permitted by Law, Hired Employees with outstanding loan balances under the 403(b) Plan shall be permitted to make scheduled loan payments under the 403(b) Plan so as to avoid, to the extent possible, a loan default and deemed distribution with respect to such outstanding loans. Buyer shall adopt or designate a new or existing tax-qualified defined contribution retirement plan of the Buyer with a cash or deferred arrangements under Section 401(k) of the Code (the "**Buyer 401(k) Plan**") that will cover Hired Employees on and after the Closing.

(g) This **Section 6.05** shall be binding upon and inure solely to the benefit of each of the Parties. Nothing contained herein, express or implied (i) shall be deemed to confer upon any Hired Employee (or any spouse, dependent, beneficiary of or other Person claiming through such Hired Employee) any third party beneficiary rights or remedies of any nature

whatsoever under or by reason of this **Section 6.05**, (ii) shall be construed to establish, amend, or modify any Seller Employee Plan or any other benefit plan, program, agreement or arrangement, (iii) shall alter or limit the ability of the Seller or any of its Subsidiaries, or Buyer or any of its Subsidiaries to amend, modify or terminate any benefit plan, program, agreement or arrangement or (iv) is intended to or shall confer upon any current or former employee of Business or any other person any right to employment or continued employment or service for any period of time by reason of this Agreement or any other related agreement, or any right to a particular term or condition of employment.

(h) Seller and Buyer agree that, for purposes of any of Seller's nonqualified deferred compensation plans maintained under Section 457(f) of the Code, the Hired Employees shall be deemed to have incurred a "separation from service" within the meaning of Code Section 409A as a result of their termination of employment with Seller hereunder.

**Section 6.06 Confidentiality.** From and after the Closing, the Seller shall, and shall cause its Subsidiaries to, hold, and shall use their commercially reasonable efforts to cause their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business and Purchased Assets, except to the extent that (a) such information relates to Excluded Assets or Excluded Liabilities, except to the extent such information relates to the Business, (b) such information is generally available to and known by the public through no fault of Seller or any of its Subsidiaries or Representatives, or (c) is lawfully acquired by Seller or any of its Subsidiaries or Representatives from and after the Closing from sources (other than Buyer or its Affiliates or their respective Representatives) which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or any of its Subsidiaries or Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing, if and to the extent Seller is permitted by applicable Law to do so, and shall disclose only that portion of such information which Seller are advised by its counsel is legally required to be disclosed, provided that Seller shall use commercially reasonable efforts, at Buyer's expense, to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

**Section 6.07 Non-competition; Non-solicitation.**

(a) During the Restricted Period, Seller shall not, directly or indirectly, either for Seller's own benefit or for the benefit of any other Person, (i) engage in, make any regulatory application to engage in, enter into any Contract (including any Provider Contract) in anticipation of engaging in, or assist or provide any material services to any Person in engaging in a Restricted Business in the Territory; (ii) have an ownership interest in any capacity, including as a partner, shareholder, member, principal, joint venturer, agent, trustee or lender, in any Person that engages directly or indirectly in the Restricted Business in the Territory; or (iii) induce or persuade, or seek or attempt to induce or persuade, any Provider, Enrollee, supplier or licensor of the Business (including any existing or former Provider, Enrollee, supplier or licensor of Seller and any Person known to Seller to have become a Provider, Enrollee, supplier or licensor of the Business during the Restricted Period) to terminate or modify its business relationship with the Business in a manner adverse to the Business; *provided, however*, that it will not constitute a breach of this **Section 6.07(a)** for Seller or any of its Affiliates to (x) acquire

any business entity which engages in the Restricted Business in the Territory if such business entity's revenues from the operation of the Restricted Business constitute less than five percent (5%) of such business entity's total revenues (measured based on actual trailing twelve month revenues from the date of measurement) at all times during the Restricted Period, or (y) acquire or hold bonds or up to five percent (5%) of the outstanding shares of any class or series of equity securities of any entity if such bonds or equity securities are publicly traded.

(b) During the Restricted Period, Seller shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, solicit for employment or hire any Hired Employee, or encourage any Hired Employee to leave such employment or hire any Hired Employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any Hired Employees; *provided, however*, that nothing in this **Section 6.07(b)** shall prevent Seller or any of its Subsidiaries from hiring any employee of Buyer whose employment has been terminated by Buyer and such termination was not directly or indirectly attributable to actions of Seller.

(c) Seller acknowledges that a breach or threatened breach of this **Section 6.07** will give rise to irreparable harm to Buyer, for which monetary damages will not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a Court of competent jurisdiction.

(d) Seller acknowledges that the restrictions contained in this **Section 6.07** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 6.07** should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any Court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this **Section 6.07** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

#### **Section 6.08 Governmental Approvals and Consents.**

(a) Subject to the terms and conditions set forth in this Agreement, including **Section 6.08(b)**, each Party shall (i) as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement, including those set forth on **Schedule 6.08(a)** (collectively, the "**Required Governmental Approvals**"), and (ii) reasonably cooperate with the other Party and its Affiliates in promptly seeking to obtain all such Required Governmental Approvals. If required

by the HSR Act and if the appropriate filing pursuant to the HSR Act has not been filed prior to the Signing Date, each Party hereto agrees to make an appropriate filing pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the Signing Date, with the exact timing of such filings to be mutually agreed upon by the Parties, and to supply as promptly as practicable to the appropriate Governmental Authority any additional information and documentary material that may be requested pursuant to the HSR Act. In addition, each Party shall (i) provide or cause to be provided as promptly as practicable any information and documentary material that may be requested by the U.S. Department of Justice or Federal Trade Commission under the HSR Act or by any Governmental Authority with regulatory jurisdiction over enforcement of any Antitrust Laws. Seller, on the one hand, and Buyer, on the other hand, shall be responsible for the payment of fifty percent (50%) of any filings fees under the HSR Act and any other Antitrust Laws. Seller shall file the Proposed Amendment with the New York Attorney General in connection with the applications to obtain the Required Governmental Approvals.

(b) Notwithstanding anything to the contrary in this Agreement, including this **Section 6.08**, neither Seller nor Buyer, in each case, on behalf of itself or any of its Affiliates, shall be required to propose, commit to, agree to or effect any action (or refrain from taking any action) that is required by a Governmental Authority in connection with the imposition of a Burdensome Condition. Subject to each party's compliance with its obligations under this **Section 6.08**, without the prior written consent of the other party, no party shall, with respect to any Governmental Authority, propose, negotiate, commit to or effect any restriction, condition, limitation or requirement, effective as of the Closing Date, (i) in the case of Seller, on the Business, Purchased Assets or Assumed Liabilities, or Buyer or any of its Affiliates and their respective businesses or (ii) in the case of Buyer, on Seller or any of its Affiliates and their respective businesses.

(c) The Parties agree that, with respect to the Required Governmental Approvals, Buyer and Seller shall mutually determine (i) the scheduling of, and strategic planning for, any meeting with or filing with any Governmental Authority, (ii) the process for receipt of any Required Governmental Approvals and (iii) subject to **Section 6.08(b)**, the resolution of any investigation or other inquiry of any Governmental Authority. Without limiting the foregoing, (x) each Party shall disclose to the other Party in advance of any filing, submission or attendance all analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the Transaction (*provided, however*, that no Party shall be required to disclose to the other Party at any time (a) any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, (b) any disclosure which is not permitted by Law, or (c) other than to the other Party's outside antitrust counsel, any disclosure containing confidential or proprietary information, any attorney-client privileged documents or communications, and any appraisals, valuations, market studies, legal or financial opinions, or board presentations prepared, submitted and/or reviewed in connection with any application for a Required Governmental Approval), it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals and (y) each Party shall give notice to the other Party with respect to



any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact, it being understood that a Governmental Authority may require, or insist upon, only communicating with and through the Seller or Buyer, as applicable.

(d) Seller shall give any notices to third parties in connection with all Assigned Contracts or other Purchased Assets for which the consent of a third party is required to transfer such Assigned Contract or other Purchased Asset to Buyer or otherwise in connection with the transactions contemplated by this Agreement, and shall use its reasonable best efforts to obtain all such consents. Seller shall regularly consult with Buyer in connection with the foregoing. Buyer shall reasonably cooperate with Seller in connection with Seller's efforts related thereto. Seller shall pay any consideration, fees or costs therefor to any third party from whom a consent is requested, if and to the extent required by such third party.

#### **Section 6.09 New Material Contracts.**

(a) Seller shall promptly notify Buyer of any new Material Contract (including any Provider Contract which would reasonably be expected to become a Material Provider Contract, based on anticipated payments during the twelve (12) months following its execution) proposed to be executed after the Signing Date on behalf of Seller (and any Material Contract which has not been provided to Buyer on or before the Signing Date). Buyer may elect, at any time and in its sole discretion, to treat any such new Material Contract as an Excluded Contract.

(b) Seller acknowledges and agrees to promptly supply to Buyer, when reasonably requested, such information and materials (including specific answers or responses) required in connection with receipt of any required consents, authorizations, orders and approvals which relate to the provider network, the Provider Contracts and the continuity of services (such information and materials to be in such form as may reasonably be requested for purposes of filings with the applicable regulatory authorities). Without limiting the generality of **Section 2.10**, with respect to any Assumed Provider Contract requiring consent of the Provider to transfer or assign it: (A) this Agreement shall not constitute an agreement to assign or transfer any right, benefit or obligation arising thereunder if an assignment or transfer without the consent of the Provider would constitute a breach or violation thereof or adversely affect the rights of Seller or Buyer thereunder (however, the foregoing shall not excuse or waive any breach of any representation or warranty contained herein) and (B) before the Closing, Seller shall use its reasonable best efforts to cause such Provider Contract to be assigned with any required consent, and if such consent cannot be obtained, Seller shall use its commercially reasonable efforts to assist Buyer to obtain its own direct contract on terms acceptable to Buyer.

**Section 6.10 Closing Conditions.** From the Signing Date until the Closing, except as otherwise expressly set forth herein, each Party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions relating to the Closing set forth in **Article VII** hereof.

**Section 6.11 Public Announcements.** Neither Seller nor Buyer shall make, nor shall they permit any of their Representatives to make, any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other or in accordance with a communications plan mutually agreed to by the Parties, unless required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange or as may be requested by a Governmental Authority, in which case the issuing party shall use its reasonable best efforts to consult with the other party before issuing any such release or making any such public statement, and the issuing party shall allow the other party reasonable time to comment on such release or public statement in advance of such issuance and shall consider in good faith any reasonable comments of such party. Upon execution of this Agreement and upon the Closing, Seller and Buyer (or their respective Affiliates) shall each issue press releases announcing the transaction, in each case in accordance with a communications plan mutually agreed to by the Parties. Buyer's press release announcing the transaction shall include the statements set forth on **Exhibit Q** attached hereto. For the avoidance of doubt, neither the foregoing nor any other provision of this Agreement or the Confidentiality Agreement shall be deemed to limit any customary disclosure made by Buyer and its Affiliates or any of these deemed representations to the Financing Sources, rating agencies, prospective traders, existing lenders (and related agents) or otherwise in connection with efforts or activities by Buyer to obtain the Financing.

**Section 6.12 Bulk Sales Laws.** The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

**Section 6.13 Reconciliation.** If Buyer collects or receives any Excluded Asset from any third party after the Closing, then Buyer shall deliver such Excluded Asset to Seller as soon as reasonably practicable after receipt thereof. If Seller collects or receives any Purchased Asset from any third party after the Closing, then Seller shall deliver to Buyer such Purchased Asset(s) as soon as reasonably practicable after receipt thereof. Likewise, Buyer shall forward any claim for an Excluded Liability to Seller after the Closing and Seller shall forward any claim for an Assumed Liability to Buyer after the Closing. Without limitation to this **Section 6.13**, Seller shall reasonably cooperate with Buyer in Buyer's collection of the receivables that are Purchased Assets.

**Section 6.14 Transition Planning.** Between the Signing Date and the Closing Date, Seller shall cooperate with Buyer as may be reasonably requested by Buyer from time to time to develop and implement an integration and transition plan for the Business. Without limiting the generality of the foregoing, Buyer and Seller shall cooperate to develop and implement a mutually agreeable communications plan with respect to the Enrollees and Providers. Notwithstanding the foregoing, in no event shall Seller make a general announcement to its or its Subsidiaries employees regarding the transactions contemplated by this Agreement before any press releases have been issued by Buyer or Seller in accordance with **Section 6.11**.

**Section 6.15 Further Assurances.** Following the Closing, each of the Parties shall, and shall cause its respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents. Without limiting the generality of the preceding sentence, Seller shall, on and after the Closing Date, transfer (or cause to be transferred) to Buyer such records and data (including electronic data files) that, prior to the Closing, is used by Seller in providing services related to the operation of the Business, as may be reasonably requested by Buyer (and, in the case of electronic data files, in such format or formats as may be reasonably requested by Buyer).

**Section 6.16 Post-Closing Access to Information and Corporate Name Phase-Out.**

(a) After the Closing, each Party shall afford the other Party and its counsel, accountants, consultants and other Representatives, during normal business hours, reasonable access to the books, records and other information in such Party's possession relating to the Business, and the right to make copies and extracts therefrom at its expense, or shall provide copies of such information to the other Party, in each case to the extent such access is reasonably required by the requesting Party (i) to comply with reporting, disclosure, filing or other requirements imposed by a Governmental Authority, (ii) for use in the conduct of any Tax audit or other proceeding in respect of Taxes or other litigation in which such requesting Party is a party, (iii) to comply with such requesting Party's obligations under this Agreement, or (iv) with respect to Buyer, relates to the operation, ownership and management of the Business and which Seller is permitted by applicable Law to provide *provided*, that, Buyer agrees to treat such information as confidential, if applicable.

(b) In addition, after the Closing Seller shall provide to Buyer such written certifications, sub-certifications or the like as may be reasonably requested by Buyer to support any attestation or representation required to be provided by Buyer in connection with any audit, accreditation review or similar proceeding relating to the operation of the Business prior to the Closing. For a period of six (6) years after the Closing Date, neither Seller nor Buyer shall, or permit its Affiliates to, destroy or otherwise dispose of any of the books, records or other information described in this **Section 6.16** relating to the Business, the Purchased Assets or the Assumed Liabilities without first offering in writing to surrender such books, records and other information to the other Party, which other Party shall have ten (10) days after such offer to agree in writing to take possession thereof. Without limiting the foregoing, if any Governmental Authority shall, pursuant to applicable Law, require in writing the transfer by Seller to Buyer of ownership of information related to the Business as operated prior to the Closing, Seller and Buyer shall coordinate in good faith to effect such transfer; *provided*, that, in no event shall Seller be required to transfer ownership of any information which Seller requires for the run-out of the Medicaid Business and Medicare Business by Seller.

(c) Effective as of the Closing, Seller, on behalf of itself and its Subsidiaries, hereby grants to Buyer (i) for a period of no longer than nine (9) months after the Closing, a non-exclusive, worldwide, and royalty-free license to use the Corporate Name solely to effectuate the transition by Buyer to new names and marks as promptly as possible (the "**Phase-Out License**"), and (ii) solely to the extent necessary in connection with its performance of its rights and

obligations under the Medicare Reinsurance Agreement and the QHP and EP Reinsurance Agreement and/or administrative matters relating thereto, a perpetual, irrevocable, sublicensable to Affiliates of Buyer (only in connection with the operation of Business), and transferable (upon prior written consent of Seller in connection with the sale or transfer of all or an applicable portion of the Business, which consent shall not be unreasonably withheld, conditioned or delayed), non-exclusive, worldwide, and royalty-free license to use the Corporate Name (or any successor name adopted by Seller) and names and marks incorporating the Corporate Name (or any successor name adopted by Seller) (the “**Long-Term License**”). As soon as reasonably practicable after the Closing, Buyer shall phase-out use of the Corporate Name, except as reasonably necessary or appropriate in connection with its performance of its rights and obligations under the Long-Term License. All goodwill associated with the Corporate Name generated by Buyer’s use of the Corporate Name pursuant to the foregoing license in this **Section 6.16(c)** shall inure to the benefit of Seller. Buyer shall use the Corporate Name at a level of quality equivalent in all material respects to that in effect for the Corporate Name as of the Closing. For purposes of clarity, nothing in this **Section 6.16(c)** shall preclude any uses of the Corporate Name by Buyer that are required or otherwise not prohibited under applicable Law, including uses of the Corporate Name not in commerce, uses that would not cause confusion as to the origin of a good or service, uses for historical and administrative purposes and references to the Corporate Name in historical, Tax, regulatory and similar records.

**Section 6.17 Non-disparagement.** From and after the Signing Date, (a) Seller shall not, and shall cause its Subsidiaries not to, talk about or otherwise publicly communicate to any third parties (including Providers and Enrollees) in a disparaging or defamatory manner regarding Buyer, or otherwise make or authorize to be made any written or oral statement that may disparage or damage the reputation of Buyer; and (b) Buyer shall not, and shall cause their respective Affiliates not to, talk about or otherwise publicly communicate to any third parties (including Providers and Enrollees) in a disparaging or defamatory manner regarding Seller, or otherwise make or authorize to be made any written or oral statement that may disparage or damage the reputation of Seller.

**Section 6.18 Transfer Taxes.** Except as provided in **Section 6.19**, all transfer, documentary, sales, use, excise, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) (collectively, the “**Transfer Taxes**”) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid evenly between Buyer and Seller when due; *provided*, that to the extent Seller is exempt from any Transfer Tax, but such Transfer Tax (or in the case of a sales tax, the corresponding use tax) is imposed on the Buyer, such Transfer Taxes shall be borne and paid by Buyer when due. Buyer shall duly prepare any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary), and shall give Seller a copy of each such Tax Return for its review and comment at least fifteen (15) days prior to filing. Following such review and comment period, Buyer shall file all necessary Tax Returns and other documentation with respect to all Transfer Taxes and, if required by applicable Law, Seller shall join Buyer in the execution of any such Tax Returns and other documentation.

**Section 6.19 Health Insurance Providers Fee.**

(a) For purposes of the health insurance providers fee imposed by Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148 (124 Stat. 119 (2010)), as amended by Section 10905 of PPACA, and as further amended by Section 1406 of the Health Care and Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) and the Treasury Regulations promulgated with respect thereto, or any successor Law or Tax (such fee, the “**Health Insurance Providers Fee**”), Seller shall (i) treat all reinsurance arrangements between Buyer (or an Affiliate of Buyer) and Seller pursuant to the Medicare Reinsurance Agreement and the QHP and EP Reinsurance Agreement as “indemnity reinsurance” as defined in Treasury Regulations Section 57.2(h)(5)(i), (ii) report all premiums received by Seller in connection with the Medicare Business and the QHP and EP Reinsurance Business with respect to any Contract for “health insurance” (within the meaning of Treasury Regulations Section 57.2(h)), for any period (or portion thereof) beginning on or after the Closing Date and ending at such time as the Contract has been novated to Buyer, as Seller’s “premiums written” for health insurance of United States health risks (within the meaning of Treasury Regulations Section 57.2) and (iii) determine Seller’s “net premiums written” without reducing such “premiums written” described in clause (i) by any amount ceded to or otherwise payable to Buyer under any indemnity reinsurance arrangement described herein. Seller and Buyer shall report and shall act, in all respects and for all Tax purposes, consistent with such position and neither Seller nor Buyer shall take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with such position.

(b) In the event that Buyer is required to pay a Health Insurance Providers Fee in respect of any of the premiums described in **Section 6.19(a)** with respect to the Medicare Business and the QHP and EP Reinsurance Business, Seller shall pay to Buyer in accordance with **Section 6.19(c)** an amount equal to any Health Insurance Providers Fee that would have been payable by Seller in respect of such premiums had the Closing not occurred, determined assuming that (i) Seller is a “covered entity” (within the meaning of Treasury Regulations Section 57.2(b)) in the applicable “test year” (within the meaning of Treasury Regulations Section 57.2(g), (ii) Seller continues to be a New York not-for-profit corporation that is exempt from Tax within the meaning of Code section 501(a) and an organization described in Code section 501(c)(3), and (iii) the gross premiums described in clause (a)(ii) were the amount of Seller’s “net premiums written” as defined in Treasury Regulations Section 57.2(k).

(c) Any payments made pursuant to **Section 6.19(b)** shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

#### Section 6.20 **Reinsurance Business.**

(a) In accordance with **Section 2.01(e)** and **Section 2.01(h)**, as of the Non-Renewal Date, Buyer shall acquire from Seller and its Subsidiaries all of their respective Provider Contracts related to the QHP and EP Reinsurance Business and any and all rights of Seller and its Subsidiaries, to the extent applicable, to provide services to Enrollees in any of Seller’s QHP Health Plans and Seller’s EP Health Plans (collectively “***Seller’s QHP and EP Reinsured Plans***”) in effect as of the Closing Date on an indemnity reinsurance basis in accordance with the terms and conditions of the QHP and EP Reinsurance Agreement. Commencing as of the first applicable open enrollment period for the first applicable plan year

after the plan year subject to the QHP and EP Reinsurance Agreement after the Closing Date in respect of each Seller's QHP and EP Reinsured Plan, Buyer shall make available to the Enrollee of such Seller's QHP and EP Reinsured Plan Buyer insurance product replacement for such Seller's QHP and EP Reinsured Plan. Buyer shall not offer Seller's QHP and EP Reinsured Plans on a renewal basis after the applicable plan year subject to the QHP and EP Reinsurance Agreement.

(b) In accordance with **Section 2.01(c)**, as of the Medicare Novation Date, Buyer shall acquire from Seller and its Subsidiaries any and all rights of Seller and its Subsidiaries, to the extent applicable, to provide services to Enrollees in any of Seller's Medicare Health Plans in effect as of the Closing Date on an indemnity reinsurance basis in accordance with the terms and conditions of the Medicare Reinsurance Agreement. In accordance with the Medicare Reinsurance Agreement, Seller shall cede, and Buyer shall reinsure, on an indemnity reinsurance basis all Medicare Business written by Seller until the Medicare Novation Date. On the Medicare Novation Date, subject to the terms and conditions of the Medicare Reinsurance Agreement, the Payor Contract pursuant to which such Medicare Business is written shall be novated to Buyer.

**Section 6.21 Apportioned Obligations.** Liability for all real property taxes, personal property taxes and similar ad valorem obligations levied with respect to the Business, the Purchased Assets and the Assumed Liabilities (individually or in the aggregate) for a Straddle Period (the "***Apportioned Obligations***") shall be apportioned between Seller and Buyer based on the number of days of such Straddle Period included in the Pre-Closing Tax Period and the number of days of such Straddle Period included in the Post-Closing Tax Period. Seller shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Pre-Closing Tax Period. Buyer shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Post-Closing Tax Period.

**Section 6.22 Post-Closing Buyer Covenants.**

(a) For a period of three (3) years following the Closing, Buyer shall use commercially reasonable good faith efforts to maintain the corporate presence for the Business in the State of New York at a level appropriate for the nature of the Business' operations as the anchor of Buyer's multi-line healthcare operations in the State of New York. Nothing herein is intended to or shall confer upon any Enrollee, Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(b) For a period of one (1) year following the Closing, to the extent permitted by applicable Law and Governmental Authorities, Buyer shall use commercially reasonable good faith efforts to comply with the protocols and policies developed by Seller as of the date of this Agreement relating to the Ethical and Religious Directives for Catholic Health Care Services in connection with the operations of the Business in the State of New York.

(c) Nothing herein is intended to or shall confer upon any Enrollee, Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under any or by reason of this Agreement.

(d) From and after the Closing until final payment of the working capital adjustment contemplated by **Section 2.08**, Buyer shall pay or cause to be paid all claims payable and claims payable incurred but not reported included in Working Capital in the ordinary course of business consistent with the operation of the Business by Seller and its Subsidiaries prior to the Closing.

#### Section 6.23 **Financing.**

(a) Unless, and to the extent, Buyer shall have demonstrated to the reasonable satisfaction of Seller that Buyer shall have sufficient cash from other sources (including by reason of capital markets, securities or other financing transactions) available to satisfy its cash payment obligations under this Agreement, from and after the execution of this Agreement, Buyer shall not permit any amendment or modification to be made to the Commitment Letter, if such amendment or modification (A) reduces the aggregate amount of the Financing below the amount required together with the other sources to pay the Required Funding Amount or (B) imposes additional conditions or otherwise amends any of the conditions to the receipt of the Financing in a manner that could reasonably be expected to (I) prevent the Closing from occurring prior to the Termination Date, (II) make the funding of the Financing (or satisfaction of the conditions to obtaining the Financing) materially less likely to occur or (III) materially impact the ability of Buyer to enforce its rights against other parties to the Commitment Letter or the definitive agreements with respect thereto. For the avoidance of doubt, but subject to the foregoing, Buyer may amend, supplement, modify or replace the Commitment Letter as in effect at the date hereof (x) to add or replace lenders, lead arrangers, bookrunners, syndication agents or similar entities who had not executed the Commitment Letter as of the date of this Agreement, (y) to increase the amount of indebtedness or (z) to replace all or a portion of the facility committed under the Commitment Letter as in effect as of the date hereof with one or more new facilities under such Commitment Letter or under any new commitment letter or facility (any such new commitment or facility, a “**Replacement Facility**”); provided, that the terms of such Replacement Facility shall comply with clauses (A) and (B) above. Promptly following the execution of a Replacement Facility by Buyer, Buyer shall notify the Seller to such effect and shall promptly provide a fully executed copy of such Replacement Facility and any related agreements (which may be redacted in a customary manner). For purposes of this Agreement, (1) the term “**Financing**” shall be deemed to include the financing contemplated by the Commitment Letter as amended, modified or replaced pursuant to this **Section 6.23** (including any Replacement Facility, any Alternative Financing and, in the case of **Section 6.23(d)**, any offering or sale of debt or equity securities the proceeds of which are intended to be used to satisfy the obligations under this Agreement), and (2) the term “Commitment Letter” shall be deemed to include the Commitment Letter as may be amended, modified or replaced pursuant to this **Section 6.23**, any commitment letters with respect to any Replacement Facility, and any commitment letters with respect to the Alternative Financing.

(b) Unless, and to the extent, Buyer shall have demonstrated to the reasonable satisfaction of Seller that Buyer shall have sufficient cash from other sources (including by reason of a capital market or other financing transaction) available to satisfy its cash payment obligations under this Agreement, Buyer shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange the Financing contemplated by the Commitment Letter, including to (i) maintain in effect the

Commitment Letter pursuant to its terms (except for amendments not prohibited by **Section 6.23(a)**) until the transactions contemplated by this Agreement are consummated or this Agreement is terminated in accordance with its terms, (ii) negotiate and enter into definitive agreements with respect to the Financing on the terms and conditions contained in the Commitment Letter or on other terms not materially less favorable, in the aggregate, to Buyer (as determined in the reasonable judgment of Buyer) than the terms and conditions contained in the Commitment Letter (such definitive agreements, the “**Definitive Agreements**”), and (iii) satisfy (or, if deemed advisable by Buyer, seek a waiver on a timely basis of) all conditions to funding in the Commitment Letter that are within its control and, in the event that all conditions to funding in the Commitment Letter are satisfied at or prior to Closing, consummate the Financing at the Closing in accordance with the terms and conditions of the Commitment Letter as in effect at or prior to the Closing.

(c) Unless, and to the extent, Buyer shall have demonstrated to the reasonable satisfaction of Seller that Buyer shall have sufficient cash from other sources (including by reason of a capital market or other financing transaction) available to satisfy its cash payment obligations under this Agreement, in the event any portion of the Financing becomes unavailable on the terms and conditions contemplated in the Commitment Letter, Buyer shall promptly notify Seller in writing and use its reasonable best efforts to arrange alternative financing from the same or alternative sources in an amount not less than the Required Funding Amount under this Agreement (the “**Alternative Financing**”); provided, however, that Buyer shall not be required to obtain financing which includes terms and conditions materially less favorable (taken as whole and taking into account any “market flex” provision) to Buyer (as determined in the reasonable judgment of Buyer), in each case relative to those in the Financing being replaced.

(d) The Seller shall, shall cause its Subsidiaries to, and shall use reasonable best efforts to cause its and their respective Representatives, including legal, Tax, regulatory and accounting Representatives, to provide, at Buyer’s expense, on a timely basis, all reasonable cooperation requested by Buyer and/or the Financing Sources in connection with the Financing. Without limiting the generality of the foregoing, such cooperation shall in any event include: (i) promptly providing Buyer and the Financing Sources and their respective agents with (A) the financial information regarding the Seller and its Subsidiaries required to be delivered pursuant to Section 6(b) and Section 9 of Annex C of the Commitment Letter (as in effect on the date hereof, or any similar provisions pursuant to any permitted amendments to the Commitment Letter or pursuant to any Alternative Financing or Replacement Facility) as such information relates to the Company and (B) other information, including projections, as may be reasonably requested by Buyer, the Financing Sources or their respective agents to prepare customary bank information memoranda, lender presentations, offering memoranda, private placement memoranda, registration statements, prospectuses and other materials in connection with a syndicated bank financing or other offer or sale of securities in connection with such Financing (all information required to be delivered pursuant to this clause (i) being referred to as the “**Required Information**”); (ii) participating (including by making members of senior management, certain representatives and certain non-legal advisors, in each case with appropriate seniority and expertise, available to participate) in a reasonable number of meetings (including customary one-on-one meetings with the parties acting as lead arrangers or agent for, and prospective lenders and purchasers of, the Financing and senior management and Representatives, in each case with appropriate seniority and expertise, of the Seller and its Subsidiaries), due diligence sessions, presentations, “road



shows”, drafting sessions and sessions with the rating agencies in connection with the Financing; (iii) reasonably cooperating with the Financing Sources’ and their respective agents’ due diligence, including providing access to documentation reasonably requested by such Persons in connection with lending, capital markets or other securities transactions; (iv) reasonably cooperating with the marketing efforts for any portion of the Financing, including using its reasonable best efforts to ensure that any syndication effort benefits materially from any existing lending and investment banking relationship; (v) aiding in the preparation of documentation, including bank information memoranda, prospectuses and similar documents, rating agency presentations, road show presentations, private placement memoranda and written offering materials and similar documents used to complete such Financing (including delivery of one or more customary representation letters), in each case, to the extent information contained therein relates to the business of the Seller and its Subsidiaries; (vi) cause its certified independent auditors to provide (A) (x) consent to use of their reports in any materials relating to the Financing, including SEC filings, prospectuses and offering memoranda that include or incorporate the Seller’s consolidated financial information and their reports thereon and (y) auditors reports and comfort letters (including “negative assurances” comfort) with respect to financial information relating to the Seller and the its Subsidiaries in customary form and (B) other documentation and reasonable assistance (including assistance in the preparation of pro forma financial statements by Buyer); (vii) providing (including using reasonable efforts to obtain such documents from its advisors) customary certificates, legal opinions or other customary closing documents as may be reasonably requested by Buyer or the Financing Sources (including a certificate of the chief financial officer of the Seller with respect to solvency matters as of the Closing on a pro forma basis and consents and officers’ and public officials’ certifications); (viii) entering into one or more credit or other agreements on terms satisfactory to Buyer in connection with the Financing; (ix) taking all actions reasonably necessary in connection with the payoff and release, as applicable, of existing indebtedness and guarantees and related obligations of the Seller and its Subsidiaries on the Closing Date and the release of related liens on the Closing Date (including obtaining customary payoff letters, lien terminations and other instruments of discharge); (x) causing the taking of corporate actions reasonably necessary to permit the completion of the Financing, (xi) executing and delivering any pledge and security documents (and any other documents or instruments required for the creation and perfection of security interests in the collateral securing the Financing) or other definitive financing documents reasonably requested by Buyer or the Financing Sources (including guarantees and other deliverables), *provided, however*, that no obligation of the Seller or any of its Subsidiaries under any such agreement or instrument under this clause (xi) shall be effective until the Effective Time; (xii) providing, at least five (5) Business Days prior to the Closing Date, to the Financing Sources all documentation and other information reasonably requested by such Financing Sources that such Financing Sources reasonably determine is required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act; (xiii) reasonably cooperating in procuring corporate and facilities ratings for the Financing in each case, from each of Standard & Poor’s Ratings Services and Moody’s Investors Service, Inc.; (xiv) using commercially reasonable efforts to permit the Acquired Cash to be made available to Buyer at the Closing in accordance with the terms and conditions of this Agreement; (xv) providing authorization letters to the Financing Sources authorizing the distribution of information to prospective lenders and containing a representation to the Financing Sources that the portion of the public side versions of such

documents supplied by the Seller, if any, do not include material non-public information about the Seller, its Subsidiaries or their respective Affiliates or securities; (xvi) (A) informing Buyer if the chief executive officer, chief financial officer, treasurer or controller of the Seller or any member of the Seller's Board of Directors shall have knowledge of any facts as a result of which a restatement of any of the Seller's financial statements, in order for such financial statements to comply with GAAP, is probable and (B) providing reasonably appropriate representations in connection with the preparation of financial statements and other financial data of the Seller and its Subsidiaries and providing reasonable assistance in the preparation of pro forma information, projections, risk factor disclosure and other disclosures required to consummate the Financing; (xvii) assisting Buyer to obtain waivers, consents, estoppels and approvals from other parties to material leases, encumbrances and contracts relating to the Seller and its Subsidiaries (including by arranging discussions among Buyer, the Seller and the Financing Sources and their respective Representatives with other parties to such material leases, encumbrances and contracts as of the Closing); and (xviii) updating any Required Information provided to Buyer as may be reasonably necessary so that such Required Information qualifies as a Compliant Document.

(e) For the avoidance of any doubt, nothing herein shall require such cooperation to the extent it would interfere unreasonably with the business or operations of the Seller or its Subsidiaries, and neither the Seller nor any of its Subsidiaries shall be required to (i) enter into or perform under any agreement with respect to the Financing that is not contingent upon the Closing or that would be effective prior to or simultaneous with the Effective Time, (ii) pay any commitment or other similar fee or make any other payment or incur any other liability or provide or agree to provide any indemnity in connection with the Financing or any of the foregoing prior to the Effective Time, (iii) take any action or permit the taking of any action that would conflict with or violate Seller's organizational documents or any Laws or Material Contracts or (iv) take or permit the taking of any action that would (x) cause any covenant, representation or warranty in this Agreement to be breached by Seller or any of its Subsidiaries, or (y) cause any director, officer or employee of Seller or any of its Subsidiaries to incur any personal liability; provided however that the foregoing clause (i) of this sentence shall not apply to customary resolutions, representation letters, officer's certificates, supplemental indentures (which do not result in the creation or assumption of any additional obligations by the Seller or any of its Subsidiaries prior to the Effective Time) and solicitation agreement and similar documents required to be executed in connection with the closing of a sale of securities on customary terms. Buyer shall promptly indemnify and hold harmless the Seller, its Subsidiaries and their respective Representatives from and against any and all Losses suffered or incurred by any of them in connection with any claims asserted by Financing Sources in connection with the arrangement of the Financing including, for the avoidance of doubt, any Liabilities incurred in connection with Seller's cooperation in accordance with this **Section 6.23** (other than to the extent such Losses arise from the misconduct of or breach of this Agreement by the Seller, any of its Subsidiaries or their respective Representatives) and any information used in connection therewith (other than information relating to the Seller or its Subsidiaries provided to Buyer by or on behalf of the Seller, its Subsidiaries or their Representatives expressly for use in connection with the Financing) and any action taken by Seller, its Subsidiaries or their Representatives pursuant to this **Section 6.23**. Upon request by Seller, Buyer shall promptly (and in any event within thirty (30) calendar days of invoice) reimburse Seller for all reasonable and documented out-of-pocket costs (including reasonable out-of-pocket legal and accounting fees and expenses)

incurred by Seller and/or any of its Subsidiaries in connection with the cooperation contemplated by this **Section 6.23**.

(f) Seller hereby consents to the reasonable use of the Business's logos in connection with the Financing, provided, that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage Seller or any of its Subsidiaries or the reputation or goodwill of Seller or any of its Subsidiaries or any of their respective intellectual property rights.

(g) Notwithstanding anything in this Agreement, Buyer acknowledges and agrees that the obtaining of the Financing is not a condition to Closing.

(h) Seller agrees to use reasonable best efforts to obtain, as soon as practicable after the date hereof, the Waiver. Seller shall promptly provide to Buyer, the Waiver as soon as practicable after the Waiver is obtained.

**Section 6.24 Shares Reserved for Issuance; NYSE Listing.** Buyer will (i) reserve for issuance a sufficient number of shares of Buyer Common Stock for issuance in or in connection with the Share Consideration and Escrow Shares, (ii) use its reasonable best efforts to cause such shares of Buyer Common Stock to be listed on the NYSE, subject to official notice of issuance and (iii) give all notices and make all filings with the NYSE required in connection with the Share Consideration and Escrow Shares.

**Section 6.25 Subsidiary Tax Matters.**

(a) Buyer shall prepare and file, or cause to be prepared and filed, all Tax Returns required to be filed by Salus, Salus IPA and each of their respective Subsidiaries after the Closing Date (taking into account all applicable extensions). Any Tax Return for a Pre-Closing Tax Period or for a Straddle Period shall be prepared in a manner consistent with past practice, procedure and accounting methods (unless otherwise required by Law). Buyer shall deliver each such Tax Return (together with schedules, statements and, to the extent required by such other party, supporting documentation) to Seller for review and comment at least twenty (20) days prior to the due date (including extensions) of such Tax Return. If Seller objects to any item on any such Tax Return, it shall, within ten (10) days after delivery of such Tax Return, notify Buyer in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Buyer and Seller shall negotiate in good faith and use their commercially reasonable efforts to resolve such items. If Buyer and Seller are unable to reach such agreement within five (5) days after receipt by Buyer of such notice, the disputed items shall be resolved by a final determination of the Independent Accountants. The fees and expenses of the Independent Accountants shall be borne by Seller and Buyer in the same proportion by which their respective positions as initially presented to the Independent Accountants (based on the aggregate of all differences taken as a whole) differs from the final resolution as determined by the Independent Accountants. Buyer and Seller agree to file any Tax Return for a Pre-Closing Tax Period or Straddle Period, or to amend any such Tax Return that was required to be filed during the period the Independent Accountants were making their determination, consistent with the Independent Accountant's determinations. Seller shall pay (or cause to be paid) to Buyer any Taxes due with

respect to any Tax Returns for a Pre-Closing Tax Period or Straddle Period for which Seller is responsible under this Agreement no later than three (3) days before the due date for the payment of such Taxes.

(b) Buyer shall promptly pay or cause prompt payment to be made to Seller of all refunds of Taxes (and any interest thereon paid by a Governmental Authority and) received by, or credited against the Tax liability of, Salus, Salus IPA, or any of their respective Subsidiaries attributable to Taxes paid by Salus, Salus IPA, or such Subsidiary, as applicable, with respect to any Pre-Closing Tax Period, net of any tax payable by the party entitled to receive such refund or apply such credit with respect to its receipt or application thereof (including with respect to any interest included in such refund or overpayment) and net of all reasonable out-of-pocket costs associated with collecting such amounts, received; provided, that in the event that any such refund or credit is subsequently disallowed, Seller shall repay to the applicable Person an amount equal to such refund or credit (and any interest thereon paid by a Governmental Authority) within ten (10) days of written request therefor; provided, further, Seller shall not be entitled to any refund or credit of Taxes with respect to a Pre-Closing Tax Period to the extent attributable to the carryback of any loss, deduction or similar item arising in a Post-Closing Taxable Period.

(c) Unless otherwise required by applicable Law, Buyer and its Affiliates (including on or after the Closing Date the Subsidiaries) shall not file, or cause to be filed, any restatement or amendment of, modification to any Tax Return of any of the Subsidiaries for any Pre-Closing Tax Period to the extent such action would reasonably be expected to adversely affect Seller, without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Seller and Buyer will, to the extent permitted by applicable Law, close the taxable period of the Salus, Salus IPA and each of their respective Subsidiaries as of the close of business on the Closing Date. If applicable Law does not permit a Subsidiary to close their taxable year on the Closing Date or in any case in which a Tax is assessed with respect to Straddle Period, the Taxes, if any, attributable to a Straddle Period of Salus, Salus IPA and each of their respective Subsidiaries shall be allocated (i) to the Pre-Closing Tax Period for the period up to and including the close of business on the Closing Date, and (ii) to the Post-Closing Tax Period for the period subsequent to the Closing Date. For purposes of this Agreement, except as provided in **Section 6.21**, in the case of any Straddle Period of a Subsidiary, Taxes shall be allocated to the portion of the Straddle Period ending on the Closing Date in an amount equal to the amount which would be payable if the taxable year ended with the Closing Date.

(e) Neither Buyer, Salus, Salus IPA nor any of their respective Subsidiaries shall make any election under Section 338 of the Code, or other comparable provision under state, local or foreign law with respect to the transactions contemplated by this Agreement.

#### **Section 6.26 Insurance.**

(a) With respect to events or circumstances relating to the Business, the Purchased Assets and the Assumed Liabilities that occurred or existed prior to the Closing Date that are covered by occurrence-based third party liability insurance policies of Seller or its

Affiliates and any workers' compensation insurance policies or comparable workers' compensation self-insurance programs sponsored by Seller or its Affiliates and that apply to the locations at which the Business operates, Buyer may, and may cause Seller or its Affiliates, as applicable, to make claims under such policies and programs. Seller and its Affiliates will provide reasonable cooperation and assistance in the pursuit of such claims.

(b) With respect to any open claims against the insurance policies of Seller or its Affiliates relating to losses or damages relating to the Business, the Purchased Assets or the Assumed Liabilities prior to the Closing, Seller shall promptly remit to Buyer any and all proceeds realized from such claims upon settlement of such claims and the receipt of such proceeds.

#### **Section 6.27 Registration Rights Agreement; Share Consideration.**

(a) As soon as reasonably practicable following Buyer's election of the Share Consideration Amount, but in any event not later than five (5) Business Days thereafter, Seller shall deliver to Buyer a duly executed copy of the Registration Rights Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, in the event (i) Buyer elects to deliver any portion of the Purchase Price as Share Consideration (in accordance with the definition "Share Consideration Amount" set forth in this Agreement) and (ii) for any reason at the Closing the resale by Seller of such Share Consideration (A) is not registered under the Securities Act on an effective registration statement on Form S-3 or any other applicable form of registration including by prospectus supplement to an existing effective registration statement, (B) is prohibited under applicable Law due to the existence of any fact or happening of any event that makes any statement of a material fact in such registration statement, any related prospectus or issuer free writing prospectus or any document incorporated or deemed to be incorporated therein by reference untrue or which would require the making of any changes in such registration statement, prospectus or issuer free writing prospectus in order that, in the case of such registration statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of such prospectus or issuer free writing prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) is otherwise prohibited under the Registration Rights Agreement, then Buyer shall deliver at the Closing, in lieu of such Share Consideration, an amount in cash equal to the Share Consideration Amount in respect of such Share Consideration, and for purposes of this Agreement all references to the "Share Consideration Amount" (notwithstanding any prior election made by Buyer with respect thereto) shall mean an amount equal to Zero Dollars (\$0).

#### **Section 6.28 Intercompany Obligations.**

(a) Except as set forth on **Section 6.28(a)** of the Disclosure Schedules, Seller shall, and shall cause its Affiliates to, take such action and make such payments as may be necessary so that, concurrently with the Closing, the Business, on the one hand, and Seller and its Affiliates, on the other, shall settle, discharge, offset, pay or repay in full all intercompany loans,

notes, and advances regardless of their maturity and all intercompany receivables and payables for the amount due, including any accrued and unpaid interest to but excluding the date of payment.

(b) Except (i) as otherwise contemplated by the Transaction Agreements or (ii) as set forth on **Section 6.28(b)** of the Disclosure Schedules, prior to the Closing, Seller shall, and shall cause its Affiliates to, take such actions as may be necessary to terminate or commute, concurrently with the Closing, all Intercompany Agreements such that, following the Closing, the Business shall not have any further Liability under any such Intercompany Agreements.

## ARTICLE VII

### CONDITIONS TO CLOSING

**Section 7.01 Conditions to Obligations of All Parties.** The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The filings of Buyer and Seller pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(b) All other Required Governmental Approvals will have been duly made and obtained.

(c) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which has, or would have, the effect of (i) making the transactions contemplated by this Agreement illegal, (ii) otherwise restraining, enjoining or prohibiting consummation of such transactions or (iii) causing any of the transactions contemplated to be consummated at the Closing to be rescinded following completion thereof (a “**Prohibitive Order**”); *provided*, that, a Party may not assert its right to not consummate the transactions contemplated by this Agreement pursuant to this **Section 7.01(c)** if such Party shall have initiated or caused such Action or Prohibitive Order.

(d) The Payor Contracts (other than those relating to the Medicare Business, the QHP Business, or the EP Business) shall have been novated to Buyer and all other Payor Contracts shall have assigned to Buyer in accordance with **Section 2.01** and all approvals, consents and waivers required in connection with such assignments shall have been received and executed counterparts thereof shall have been delivered to Buyer and Seller at or prior to the Closing.

(e) All approvals, consents or waivers required in connection with the Medicare Reinsurance Agreement and the QHP and EP Reinsurance Agreement shall have been delivered to Buyer and Seller at or prior to Closing.

(f) The Parties shall have received a copy of the Escrow Agreement, duly executed by the Escrow Agent.

(g) The Share Consideration (if any) and the Escrow Shares (if any) shall have been approved for listing on the NYSE, subject to official notice of issuance.

**Section 7.02 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's written waiver, at or prior to the Closing, of each of the following conditions:

(a) (1) The representations and warranties of Seller set forth in **Article IV** (other than the Seller Fundamental Representations), the other Transaction Documents and any certificate or other writing delivered pursuant hereto, disregarding any qualifications or limitations set forth in such representations or warranties as to materiality, Material Adverse Effect, or any other similar qualifier contained in such representations and warranties shall be true and correct in all respects, in each case, as of the Signing Date and as of the Closing Date as though made on and as of such date except: (i) to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date; and (ii) where the failure of such representations and warranties to be so true and correct, has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (2) the Seller Fundamental Representations shall be true and correct in all but de minimis respects, in each case as of the Signing Date and as of the Closing Date as though made on and as of such date except to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date. The Parties agree and acknowledge that, solely for purposes of this **Section 7.02(a)**, "Seller Fundamental Representations" shall not include the representations and warranties of Seller set forth in **Section 4.11** (Compliance with Law), and that such Seller representations and warranties set forth in **Section 4.11** (Compliance with Law) shall be tested for accuracy in accordance with subsection (1) of this **Section 7.02(a)**.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) From the Signing Date, there shall not have occurred any Material Adverse Effect and no Burdensome Condition shall have been imposed, or will be imposed as a result of the Closing, on Buyer, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect or the imposition of a Burdensome Condition on Buyer.

(d) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement).

(e) Seller shall have delivered to Buyer a duly executed affidavit prepared in accordance with Treasury Regulations Section 1.1445-2(b) certifying Seller's non-foreign status.

(f) Seller shall have delivered the Rego Park Lease Assignment, duly executed by Rego Park LLC and Seller.

(g) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the Board of Directors of Seller, and by the Members of Seller, authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (ii) the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(h) Buyer shall have received a certificate, dated as of the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in **Section 7.02(a)**, **Section 7.02(b)**, and **Section 7.02(c)** have been satisfied.

(i) All Encumbrances, if any, relating to the Purchased Assets and the Business and all guarantees and obligations under any Closing Date Indebtedness, in each case, shall have been released in full, other than Permitted Encumbrances, and Seller shall have delivered to Buyer written evidence, in form reasonably satisfactory to Buyer, of the release of such Encumbrances, guarantees and obligations including, with respect to any Closing Date Indebtedness, payoff letters in form and substance reasonably satisfactory to Buyer, providing for the satisfaction and discharge of all amounts due under (including principal of, interest on, premium, if any, and any expenses, break fees or other amounts owing in respect of), and the termination of all obligations with respect to such Closing Date Indebtedness, in each case executed by each holder of any such Closing Date Indebtedness.

(j) Buyer shall have received all Permits that are necessary for it to conduct the Business as conducted by Seller as of the Closing Date.

(k) Buyer shall have received all consents, approvals and authorizations that are set forth in **Exhibit R**, which shall be in form and substance reasonably acceptable to Buyer (collectively, the “*Required Third Party Consents*”).

**Section 7.03 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller’s written waiver, at or prior to the Closing, of each of the following conditions:

(a) (1) The representations and warranties of Buyer contained in this Agreement (other than the Buyer Fundamental Representations), the other Transaction Documents and any certificate or other writing delivered pursuant hereto disregarding any qualifications or limitations set forth in such representations or warranties as to materiality, material adverse effect, or any other similar qualifier contained in such representations and warranties shall be true and correct in all respects, in each case, as of the Signing Date and as of the Closing Date as though made on and as of such date except: (i) to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date; and (ii) where the failure of such representations and warranties to be so true and correct, has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect and (2) the Buyer



Fundamental Representations shall be true and correct in all but de minimis respects, in each case as of the Signing Date and as of the Closing Date as though made on and as of such date except to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) No Burdensome Condition shall have been imposed, promulgated or enacted, or will be imposed, on Seller, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in the imposition of a Burdensome Condition on Seller.

(d) Buyer shall have delivered to Seller duly executed counterparts to the Transaction Documents (other than this Agreement).

(e) Buyer shall have delivered to Seller a duly executed counterpart to the Rego Park Lease Assignment.

(f) Seller shall have received a certificate, dated as of the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in **Section 7.03(a)** and **Section 7.03(b)** have been satisfied.

(g) Seller shall have received all Required Governmental Approvals to amend its Certificate of Incorporation to enable Seller to operate in all material respects in furtherance of the Applicable Purposes following the Closing.

## ARTICLE VIII

### INDEMNIFICATION

Section 8.01 **Survival.** Subject to the limitations and other provisions of this **Article VIII**, the representations and warranties contained in **Article IV** and **Article V** shall survive the Closing and shall remain in full force and effect until the later of (i) the date that is twelve (12) months following the Closing Date and (ii) the date that is thirty (30) days after the date that the audited financial statements and signed audit report of Buyer's independent auditors with respect to Buyer as of and for the fiscal year ending on December 31, 2018 are delivered to Buyer, provided that such date pursuant to this clause (ii) shall be no later than eighteen (18) months following the Closing Date (the "**Survival Period**"). Notwithstanding the preceding sentence, (a) the representations and warranties of Seller set forth in **Section 4.13** (Employment and Benefits Matters) and **Section 4.14** (Taxes) shall survive the Closing until the date that is sixty (60) days after the expiration of the applicable statute of limitations, (b) the Seller Fundamental Representations and the Buyer Fundamental Representations shall survive the Closing indefinitely, and (c) the covenants, agreements and other obligations contained in this Agreement, and the indemnification obligations of the parties with respect thereto, shall survive the Closing in accordance with their terms. Notwithstanding the foregoing, any claims asserted in accordance with this **Article VIII** prior to the expiration date of the applicable survival period

shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**Section 8.02 Indemnification by Seller.** Subject to the other terms and conditions of this **Article VIII**, Seller shall indemnify and defend each of Buyer, its Affiliates and its Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement (other than Seller Fundamental Representations);
- (b) any inaccuracy in or breach of any Seller Fundamental Representation;
- (c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement;
- (d) any claim for fraud, willful misconduct or intentional misrepresentation;
- (e) any Excluded Asset or any Excluded Liability; or
- (f) (i) any and all Taxes of or imposed on Salus or Salus IPA for any Pre-Closing Tax Period, (ii) any Taxes for which Salus or Salus IPA is liable under Treasury Regulation Section 1.1502-6 (or any corresponding or similar provision of state, local or foreign Law), as a transferee or successor, by operation of applicable Law, by Contract or otherwise and (iii) any Losses attributable to any inaccuracy or breach of the representations and warranties set forth in **Section 4.14(n)**.

**Section 8.03 Indemnification by Buyer.** Subject to the other terms and conditions of this **Article VIII**, Buyer shall indemnify and defend Seller, its Affiliates and its Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement (other than the Buyer Fundamental Representations);
  - (b) any inaccuracy in or breach of any Buyer Fundamental Representation;
  - (c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;
  - (d) any claim for fraud, willful misconduct or intentional misrepresentation;
- or
- (e) the Purchased Assets or Assumed Liabilities.

**Section 8.04 Certain Limitations.** The Parties' indemnification obligations under **Section 8.02** and **Section 8.03** shall be subject to the following limitations:

(a) Neither Seller nor Buyer shall have any liability for monetary Losses arising under **Section 8.02(a)** or **Section 8.03(a)**, to the extent the aggregate amount of Losses related thereto for which the Seller or Buyer, as applicable, would otherwise be required to provide indemnification, exceeds an amount equal to Three Hundred Seventy-Five Million Dollars (\$375,000,000). The aggregate Liability of Buyer, on the one hand, and Seller, on the other hand, for any Losses with respect to matters set forth in **Section 8.02(b)** and **Section 8.03(b)**, respectively, shall not exceed an amount equal to the Purchase Price.

(b) Neither Seller nor Buyer shall have any liability for monetary Losses under **Section 8.02(a)** or **Section 8.03(a)** unless and until the aggregate amount of all monetary Losses under **Section 8.02(a)** or **Section 8.03(a)** as applicable, for which Seller or Buyer, as applicable, would otherwise be required to provide indemnification exceeds on a cumulative basis an amount equal to Twenty-Five Million Dollars (\$25,000,000), at which point Seller or Buyer, as applicable, subject to the other provisions of this **Section 8.04**, shall indemnify the Buyer Indemnitees or the Seller Indemnitees, as applicable, for the full amount of all such Losses in excess of such amount.

(c) Any and all indemnification payments required to be made by Seller pursuant to **Section 8.02** shall be paid first from the Escrow Fund to the extent available in accordance with the Escrow Agreement. Seller shall not be required to pay any Buyer Indemnitee for any indemnifiable Losses under **Section 8.02** unless and until the Escrow Fund has been exhausted. The Escrow Agent shall distribute to Seller, subject to the terms and conditions of the Escrow Agreement, immediately following the Survival Period, the then remaining Escrow Amount in excess of the sum of any amounts with respect to (i) which Buyer is entitled to, but has not yet received, indemnification, pursuant to this **Article VIII** (plus the amount of any interest or income earned on such amount), (ii) any unresolved claims for indemnification as of such date (plus the amount of any interest or income earned on such amount) and (iii) any amounts disputed but not yet resolved pursuant to **Section 2.07** or **Section 2.08**. Once all indemnification claims are resolved between the Parties in accordance with this **Article VIII**, and all disputes (if any) are resolved between the Parties in accordance **Section 2.07** or **Section 2.08**, as applicable, all remaining amounts in the Escrow Fund, if any, shall be paid to Seller.

(d) The amount of any Losses for which indemnification is provided to an Indemnified Party under this **Article VIII** shall be net of any amounts actually recovered by such Indemnified Party under policies of insurance (less any costs and expenses of recovery thereof), with respect to such Losses. If and to the extent any insurance proceeds are actually received by any Indemnified Party after such Indemnified Party has recovered any Losses pursuant to this **Article VIII** such Indemnified Party shall promptly pay to the Indemnifying Party an amount equal to such insurance proceeds to which the Indemnifying Party is entitled pursuant to the first sentence of this paragraph.

(e) No Indemnified Party shall be entitled to be compensated more than once for the same Loss.

(f) Each Indemnified Party shall use commercially reasonable efforts to mitigate Losses for which indemnification may be claimed by such Indemnified Party under this Agreement to the extent required by applicable Law.

**Section 8.05 Indemnification Procedures.** The party making a claim under this **Article VIII** is referred to as the “*Indemnified Party*”, and the party against which such claim is asserted under this **Article VIII** is referred to as the “*Indemnifying Party*”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “*Third Party Claim*”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim (a “*Claim Notice*”). The failure to give a Claim Notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that such failure has a materially prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such Third Party Claim or the indemnification obligations are materially increased as a result of such failure. A Claim Notice shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably determinable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party within thirty (30) calendar days from receipt of the Claim Notice, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel (which choice of counsel shall be subject to the Indemnified Party’s prior written consent, not to be unreasonably withheld, conditioned or delayed), and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that (i) the Indemnifying Party shall have acknowledged in writing to the Indemnified Party its obligation to indemnify the Indemnified Party as provided hereunder in respect thereof, (ii) the Indemnifying Party must conduct the defense of the Third Party Claim actively and diligently in order to preserve its rights in this regard and (iii) notwithstanding the foregoing, the Indemnifying Party shall not have the right to elect to defend the Indemnified Party against a Third Party Claim (and the Indemnified Party shall have the sole power to direct and control such defense) if the Third Party Claim (A) could result in any Adverse Claim Consequences or (B) seeks non-monetary relief, relates to a criminal action or involves claims by a Provider or Governmental Authority. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 8.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided*, that (A) if the Indemnifying Party requests that the Indemnified Party participates in the defense of such Third Party Claim or (B) if, in the reasonable written opinion of counsel to the Indemnified Party, (x) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party or (y) there exists a conflict of interest between the Indemnifying Party

and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable documented fees and expenses of one counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to **Section 8.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 6.05(a)**) records relating to such Third Party Claim and furnishing, without expense to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim. The Indemnified Party and the Indemnifying Party shall use commercially reasonable efforts to avoid production of confidential information (consistent with applicable Law), and to cause all communications among employees, counsel and others representing any party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges.

(b) Settlement of Third Party Claims. If the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any Third Party Claim if the terms of such settlement do not contain a release of the Indemnified Parties or (i) would result in the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party, (ii) would result in a finding or admission of wrongdoing or violation of Law by the Indemnified Party, (iii) would result in any monetary Liability of the Indemnified Party that will not be paid or reimbursed by the Indemnifying Party, or (iv) has a material adverse effect on any ongoing business of the Indemnified Party (any of the foregoing, “**Adverse Claim Consequences**”). If the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnified Party shall not admit any Liability with respect to, settle, compromise or discharge, such Third Party Claim without the Indemnifying Party’s prior written consent, which consent shall not be unreasonably withheld or delayed.

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that such failure has a materially prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such Direct Claim. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) calendar days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall reasonably cooperate with the Indemnifying Party and its professional advisors to allow the Indemnified Party to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in

respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by providing reasonable access (including access to the Indemnified Party's premises and personnel, documents or records during normal business hours on a mutually convenient basis) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) calendar day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

**Section 8.06 Payments.** Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **Article VIII**, the Indemnifying Party shall satisfy its obligations within ten (10) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds (or, if the Indemnifying Party is Seller, in accordance with the Escrow Agreement, to the extent applicable).

**Section 8.07 Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 8.08 Exclusive Remedy.**

(a) Except in the case of **Section 8.02(d)** or **Section 8.03(d)**, or claims for equitable relief (including the enforcement of any covenant requiring performance following the Closing), from and after the Closing, the sole and exclusive remedy for all Losses relating to this Agreement or the transactions contemplated hereby shall be the indemnification provisions set forth in this **Article VIII**.

(b) Subject in all instances to the limitations and provisions provided for in this **Article VIII**, Buyer agrees that any and all amounts payable as a result of any Third Party Claim or Direct Claim by any Buyer Indemnitee for indemnification pursuant to **Section 8.02(a)** (other than in respect of any inaccuracy in or breach of any of the representations or warranties of Seller set forth in **Section 4.13** (Employment and Benefits Matters) and **Section 4.14** (Taxes)) shall be paid solely from the then-remaining Escrow Funds in accordance with the Escrow Agreement and neither Seller nor any of its Affiliates shall have any other Liability therefor, whether in indemnity or otherwise.

**Section 8.09 Materiality.** For purposes of **Section 8.02(a)**, **Section 8.02(b)**, **Section 8.03(a)** and **Section 8.03(b)**, any qualifications as to materiality, Material Adverse Effect, material adverse effect or similar qualification contained in the representations or warranties in this Agreement (other than with respect to the representations and warranties contained in **Section 4.05(a)** (third sentence) and **Section 4.06(a)**, as to which this **Section 8.09** shall not apply), shall be disregarded and have no effect for purposes of determining whether there has been an inaccuracy in or breach of any representation or warranty and calculating the amount of any Losses thereunder.

## ARTICLE IX

### TERMINATION

Section 9.01 **Termination.** This Agreement may be terminated at any time prior to the Closing (it being understood and hereby agreed that this Agreement may not be terminated for any reason or on any basis other than the following):

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if Buyer is not then in material breach of any provision of this Agreement and:
  - (i) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by Seller within thirty (30) calendar days of Seller's receipt of written notice of such breach from Buyer;
  - (ii) an event or condition occurs that has had a Material Adverse Effect;or
  - (iii) Buyer has been subjected to a Burdensome Condition, or will be subjected to a Burdensome Condition if the Closing occurs following good faith negotiations by Buyer with the Governmental Authority to avoid such Burdensome Condition.
- (c) by Seller by written notice to Buyer if Seller is not then in material breach of any provision of this Agreement and:
  - (i) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VII** and such breach, inaccuracy or failure has not been cured by Buyer within thirty (30) calendar days of Buyer's receipt of written notice of such breach from Seller; or
  - (ii) Seller has been subjected to a Burdensome Condition, or will be subjected to a Burdensome Condition following good faith negotiations by Seller with the Governmental Authority to avoid such Burdensome Condition.
- (d) by Buyer or Seller, by written notice to the other party, in the event that:
  - (i) any Governmental Authority shall have issued a Prohibitive Order restraining or enjoining the transactions contemplated by this Agreement, and such Prohibitive Order shall have become final and non-appealable; *provided* that the right to terminate this Agreement pursuant to this **Section 9.01(d)(i)** shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been a

material cause of, or resulted in, the occurrence of such Prohibitive Order, or who has initiated or taken any action in support of such Prohibitive Order; or

(ii) the Closing shall not have occurred on or prior to July 1, 2018 (the “**Initial Termination Date**”); *provided* that if prior to the Initial Termination Date, any of the conditions set forth in **Section 7.01(a)**, **Section 7.01(b)**, or **Section 7.01(d)** have not been satisfied (or waived) but all other conditions to the Closing (other than those conditions which by their terms cannot be satisfied until the Closing) have been satisfied (or waived) by the Initial Termination Date, the Initial Termination Date may be extended by either Seller or Buyer for up to two (2) months from the Initial Termination Date (the Initial Termination Date, as it may be extended pursuant to this **Section 9.01(d)(ii)**), is referred to herein as the “**Termination Date**”); *provided, further*, that the right to terminate this Agreement pursuant to this **Section 9.01(d)(ii)** shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or prior to such date.

#### Section 9.02 **Effect of Termination.**

(a) In the event of the termination of this Agreement in accordance with this **Article IX**, this Agreement shall forthwith become void (in whole or in part, as applicable) and there shall be no liability on the part of any Party hereto (nor any of its Representatives or Affiliates) or any of the Financing Sources except:

(i) as set forth in this **Article IX**, in **Section 6.06** and in **Article X** hereof; and

(ii) that subject to **Section 9.02(b)**, nothing herein shall relieve any Party hereto from Liability or Losses for any fraud, willful breach or intentional misrepresentation or any breach of any representation, warranty, covenant or agreement contained in this Agreement prior to the date of termination.

(b) If this Agreement is terminated prior to the Closing, (i) by Buyer pursuant to **Section 9.01(b)(iii)**, or (ii) by Seller pursuant to **Section 9.01(c)(ii)**, then in any such event the terminating Party shall pay to the other Party (by wire transfer of immediately available funds), promptly (but in no event more than three (3) Business Days) following such termination, a termination fee in the amount of Five Million Dollars (\$5,000,000) (the “**Termination Fee**”). The Termination Fee, if paid by such terminating Party, shall be considered liquidated damages for any and all Losses of the other Party in connection with, relating to or arising out of this Agreement or the Transaction Documents and the transactions contemplated hereby or thereby (including with respect to the termination thereof). In the event of a termination by either Party as contemplated by this **Section 9.02(b)**, the non-terminating Party’s receipt of the Termination Fee shall be the sole and exclusive remedy of such party and its Affiliates against the Terminating Party and any of its Affiliates and any of the Financing Sources for any and all Losses that may be suffered based upon, resulting from or arising out of the circumstances giving rise to such termination, and none of the terminating Party nor any of its Affiliates nor any of the Financing Sources shall have any further Liability relating to or arising out of this Agreement,



the Transaction Documents or the transactions contemplated by this Agreement, whether at Law or equity, contract, tort or otherwise. The Parties to this Agreement acknowledge the agreements contained in this **Section 9.02(b)**, are integral parts of the transactions contemplated by this Agreement, that without these agreements the Parties would not have entered into this Agreement, and that the payment of the Termination Fee, if applicable, does not constitute a penalty.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01 Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such Expenses, whether or not the Closing shall have occurred.

**Section 10.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 10.02**):

If to Seller:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: pfrawley@fideliscare.org and srusso@fideliscare.org

with a copy to:

Norton Rose Fulbright US LLP  
1301 Avenue of the Americas  
New York, New York 10019  
Attention: Andrew B. Roth, Esq.  
E-Mail: andrew.roth@nortonrosefulbright.com

If to Buyer:

Centene Corporation  
7700 Forsyth Blvd.  
St. Louis MO 63105  
Attention: Keith Williamson  
E-Mail: kwilliamson@centene.com

With a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, New York 10036  
Attention: Paul T. Schnell, Esq.  
E-Mail: paul.schnell@skadden.com

Attention: Sean C. Doyle, Esq.  
E-Mail: sean.doyle@skadden.com

Attention: Michael J. Homison, Esq.  
E-Mail: michael.homison@skadden.com

**Section 10.03 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including”, unless otherwise specified, shall be deemed to be followed by the words “without limitation” whether or not such words are actually stated; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, “hereunder” and derivative or similar words refer to this Agreement as a whole, including the Disclosure Schedules and Exhibits hereto; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) references to “dollars” or “\$” shall mean United States dollars; (f) references to “written” or “in writing” include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person’s successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to “close of business” on any given day shall be deemed to refer to 11:59 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument

to be drafted. The Schedules (including the Disclosure Schedules) and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 **Severability.** If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 **Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed, except that (i) Buyer may assign any or all of its rights and obligations under this Agreement without prior written consent to any of its Subsidiaries or Affiliates, provided that no such assignment shall relieve Buyer of any of its obligations hereunder and (ii) from and after the Closing Date, Buyer may assign any or all of its rights or obligations under this Agreement without prior written consent to any Financing Source (provided that any such assignment shall not relieve Buyer of its obligations hereunder) pursuant to the terms of the Financing (or any credit agreements, loan documents or indentures of Buyer or its Affiliates) for purposes of creating a security interest herein or otherwise assigning collateral in respect of the Financing.

Section 10.08 **No Third-party Beneficiaries.** Except as provided in **Article VIII**, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever

under or by reason of this Agreement; *provided, however*, that the Financing Sources are hereby made express third-party beneficiaries of, and shall be entitled to rely on, **Section 9.02(b)**, **Section 10.07**, this **Section 10.08**, **Section 10.09**, **Section 10.10**, **Section 10.12** and **Section 10.13**.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto; *provided*, that notwithstanding anything to the contrary set forth herein, **Section 9.02(b)**, **Section 10.07**, **Section 10.08**, this **Section 10.09**, **Section 10.10(b)** and **Section 10.10(c)**, and **Section 10.12** (and any related definitions to the extent a modification, waiver or termination of such definitions would modify the substance of any of the foregoing provisions) may not be modified, waived or terminated in a manner that is adverse in any material respect to the Financing Sources without the prior written consent of the Financing Sources. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement, and any Action arising or relating to this Agreement or the Transactions (including in connection with the Financing), shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WITHOUT LIMITING **SECTION 10.12**, INCLUDING, FOR THE AVOIDANCE OF DOUBT, ANY ACTION AGAINST ANY FINANCING SOURCE) MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR

PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS (INCLUDING THOSE CONTEMPLATED BY **SECTION 10.10(b)**) IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (INCLUDING ANY ACTION AGAINST THE FINANCING SOURCES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREBY, THE COMMITMENT LETTER, THE FINANCING OR THE PERFORMANCE OF SERVICES WITH RESPECT THERETO). EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 10.10(c)**.

**Section 10.11 Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement are not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

**Section 10.12 Non-Recourse.** Notwithstanding anything to the contrary contained herein, the Seller agrees on behalf of itself and its Affiliates and its and their Representatives that none of the Financing Sources shall have any liability or obligation to the Seller or any of its or their respective Affiliates or Representatives relating to this Agreement, any commitment letter, engagement letter or definitive financing document or any of the transactions contemplated hereby or thereby (including with respect to the Financing). The Seller and its Affiliates and its and their Representatives hereby waive any and all rights or claims and causes of action (whether at law, in equity, in contract, in tort or otherwise) against the Financing Sources that may be based upon, arise out of or relate to this Agreement, any commitment letter, engagement letter or definitive financing document or any of the transactions contemplated hereby or thereby (including the Financing or the Commitment Letter), and each of Seller and its Affiliates and its and their Representatives agrees not to commence or support an Action against any Financing Source in connection with this Agreement or any commitment letter, engagement letter or

definitive financing document or any of the transactions contemplated hereby or thereby (including any Action relating to the Financing or the Commitment Letter). In furtherance and not in limitation of the foregoing waiver, it is agreed that no Financing Source shall have any liability for any claims, losses, settlements, liabilities, damages, costs, expenses, fines or penalties to the Seller or any of its Affiliates and its or their respective Representatives in connection with this Agreement or the transactions contemplated hereunder. This **Section 10.12** is intended to benefit and may be enforced by the Financing Sources and shall be binding on all successors and assigns of the Seller.

Section 10.13 **Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: Patrick J. Frawley  
Name: REV. PATRICK J. FRAWLEY  
Title: CHIEF EXECUTIVE OFFICER

BUYER:

CENTENE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

BUYER:

CENTENE CORPORATION

By: \_\_\_\_\_  
Name: JESSE HUNTER  
Title: EVP



**EXHIBIT A**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

(See attached)

**EXHIBIT A**  
**FORM OF**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

ASSIGNMENT AND ASSUMPTION AGREEMENT (this “*Agreement*”), dated \_\_\_\_\_, is being executed and delivered by [NAME OF TRANSFEREE], a [●] (“*Transferee*”), and NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“*Seller*”), pursuant to that certain Asset Purchase Agreement, dated as of September \_\_, 2017, by and between CENTENE CORPORATION, a Delaware corporation (“*Buyer*”), and Seller (the “*Asset Purchase Agreement*”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

Seller and Buyer have entered into the Asset Purchase Agreement, pursuant to which Buyer has agreed to acquire the Purchased Assets and to assume the Assumed Liabilities. In consideration of the foregoing and in consideration of the mutual agreements, provisions and covenants contained herein and in the Asset Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to and in accordance with the terms of the Asset Purchase Agreement, the parties hereby agree as follows:

1. Transferee hereby assumes and agrees to pay, perform and discharge all of the Assumed Liabilities, subject to the respective conditions thereof. Transferee does not hereby assume or agree to pay, perform or discharge any of the Excluded Liabilities.

2. This Agreement shall not confer any rights or remedies on any Person other than the parties hereto and their respective successors and assigns. The assumption by Transferee of the Assumed Liabilities shall not be construed to defeat, impair, or limit in any way Transferee’s rights or remedies to in good faith contest or dispute the validity or amount of any Assumed Liability (and Transferee shall have all rights which Seller may have or have had to defend or contest any such claim or demand), nor shall it expand the rights or the remedies of any third party against Transferee as compared to the rights and remedies which such third party would have had against Seller had Transferee not assumed the Assumed Liabilities. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3. This Agreement is made pursuant to, and is subject to the terms of, the Asset Purchase Agreement. Notwithstanding anything to the contrary contained in this Agreement, nothing contained herein shall be deemed to supersede, limit, restrict or modify in any manner the rights and obligations under the Asset Purchase Agreement. In the event there is any conflict between the terms of this Agreement and the terms and conditions of the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall control.

4. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute but one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means

of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

5. At any time and from time to time hereafter, at any party's request, each party hereto shall take any and all steps and shall execute, acknowledge and deliver to the other party any and all future instruments and assurances necessary or reasonably requested in order to more fully carry out the purposes hereof.

6. Section 10.10 of the Asset Purchase Agreement is hereby incorporated herein by reference, *mutatis mutandis*.

7. This Agreement only may be amended, modified or supplemented by an instrument in writing signed by the parties hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

[NAME OF BUYER]

By: \_\_\_\_\_

Name:

Title:

Accepted and Agreed:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT B**

**BASE ENROLLMENT NUMBER**

(See attached)

## EXHIBIT B

### BASE ENROLLMENT NUMBER

<b>Business Segment</b>	<b>Low Collar Enrollment</b>	<b>Low Collar Mark</b>	<b>Base Enrollment Number<sup>(1)</sup></b>
State Sponsored Segment	1,257,682	95.0%	1,323,876
Senior Programs Segment	81,246	95.0	85,522
Exchange Segment	213,629	95.0	224,873
<b>Total</b>	<b>1,552,557</b>		<b>1,634,271</b>

(1) August 31, 2017 actual enrollment figures are reflected in this draft exhibit, for illustrative purposes only. Base Enrollment Number figures exclude contribution from the FIDA business (314 members), which will be discontinued by end of year 2017. [Base Enrollment Number and Low Collar Enrollment for each Business Segment to be updated to reflect actual figures as of the last date of the calendar month in which the Signing Date occurs.]

**EXHIBIT C**

**BASE PROJECTED ENROLLMENT NUMBER**

(See attached)



## EXHIBIT C

### BASE PROJECTED ENROLLMENT NUMBER

<b>Business Segment</b>	<b>Base Projected Enrollment Number<sup>(1)</sup></b>	<b>High Collar Mark</b>	<b>High Collar Enrollment</b>
State Sponsored Segment	1,349,187	105.0%	1,416,647
Senior Programs Segment	93,386	105.0	98,055
Exchange Segment	250,690	105.0	263,225
<b><i>Total</i></b>	<b>1,693,263</b>		<b>1,777,927</b>

(1) Projected enrollment for January 1, 2018 (expected December 31, 2017 from management forecast). Base Projected Enrollment Number figures exclude contribution from the FIDA business (321 members), which will be discontinued by end of year 2017.

**EXHIBIT D**  
**FORM OF BILL OF SALE**

(See attached)

**EXHIBIT D**  
**FORM OF**  
**BILL OF SALE**

BILL OF SALE (this “*Bill of Sale*”), dated \_\_\_\_\_, 2017, is being executed and delivered by [NAME OF TRANSFEREE], a [●] (“*Transferee*”) and NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“*Seller*”), pursuant to that certain Asset Purchase Agreement, dated as of September \_\_, 2017, by and between Seller and CENTENE CORPORATION, a Delaware corporation (the “*Asset Purchase Agreement*”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

Subject to and in accordance with the terms of the Asset Purchase Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as of the date hereof, Seller hereby sells, transfers, assigns, conveys and delivers to Transferee all of Seller’s right, title and interest in and to the Purchased Assets. Seller does not hereby sell, transfer, assign, convey or deliver to Transferee any of Seller’s rights, title, or interest in and to the Excluded Assets.

This Bill of Sale is made pursuant to, and is subject to the terms of, the Asset Purchase Agreement. Notwithstanding anything to the contrary contained in this Bill of Sale, nothing contained herein shall be deemed to supersede, limit, restrict or modify in any manner the rights and obligations under the Asset Purchase Agreement. In the event there is any conflict between the terms of this Bill of Sale and the terms and conditions of the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall control.

At any time and from time to time hereafter, at any party’s request, each party hereto shall take any and all steps and shall execute, acknowledge and deliver to the other party any and all future instruments and assurances necessary or reasonably requested in order to more fully carry out the purposes hereof.

This Bill of Sale may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute but one and the same instrument. A signed copy of this Bill of Sale delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Bill of Sale.

Section 10.10 of the Asset Purchase Agreement is hereby incorporated herein by reference, *mutatis mutandis*.

This Bill of Sale only may be amended, modified or supplemented by an instrument in writing signed by the parties hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_

Name:

Title:

Accepted and Agreed:

[NAME OF TRANSFEREE]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT E**  
**FORM OF ESCROW AGREEMENT**

(See attached)

**EXHIBIT E**  
**FORM OF**  
**ESCROW AGREEMENT**

This ESCROW AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the “**Escrow Agreement**”), is entered into by and among [NAME OF BUYER], a Delaware corporation (“**Buyer**”), NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“**Seller**”), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national association, as escrow agent (the “**Escrow Agent**” and, together with Buyer and Seller, the “**Parties**,” and individually, a “**Party**”).

**RECITALS**

A. Buyer and Seller have entered into that certain Asset Purchase Agreement, dated as of September [•], 2017 (as it may be amended from time to time, the “**Asset Purchase Agreement**”), pursuant to which, among other things, Seller will sell, transfer and deliver to Buyer, and Buyer will purchase and acquire from the Seller, substantially all of Seller’s assets. Capitalized terms used in this Escrow Agreement that are not defined herein shall have the respective meanings ascribed to them in the Asset Purchase Agreement.

B. Pursuant to the terms of the Asset Purchase Agreement, Buyer and Seller have agreed to place in escrow certain funds which represent a portion of the aggregate consideration payable by Buyer to Seller for the Purchased Assets, and which may be drawn upon by Buyer in connection with certain purchase price adjustments and indemnification obligations of Seller.

C. The Escrow Agent agrees to hold and distribute such funds in accordance with the terms of this Escrow Agreement.

D. **Schedule I** to this Escrow Agreement sets forth the wire transfer instructions for Buyer and Seller.

In consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent, intending to be legally bound, agree as follows:

**ARTICLE 1**  
**ESCROW DEPOSIT**

Section 1.1. Appointment & Acceptance of the Escrow Agent. Buyer and Seller hereby appoints Wilmington Trust, National Association as Escrow Agent for the Escrow Account (as defined below) and directs Wilmington Trust, National Association, as the Escrow Agent, to open and maintain an escrow account (the “**Escrow Account**”), in each case upon the terms and conditions set forth in this Escrow Agreement.

Wilmington Trust, National Association hereby accepts such appointment as the Escrow Agent for the Escrow Account and agrees to open and maintain the Escrow Account and to act as the Escrow Agent for the Escrow Account, in each case upon the terms and conditions set forth in this Escrow Agreement.

Section 1.2. Receipt of Escrow Property. Upon execution hereof, Buyer shall deposit or cause to be deposited with the Escrow Agent (i) [ $\bullet$ ]<sup>1</sup> shares of Buyer Common Stock for the benefit of Seller in [book-entry form] (the “***Escrow Shares***”) and (ii) cash in the amount of [ $\bullet$ ] Dollars (\$[ $\bullet$ ])<sup>2</sup> (together with any other cash from time to time in the Escrow Account, the “***Escrow Cash***” and, together with the Escrow Shares, the “***Escrow Property***”), which shall be held on behalf of Seller to satisfy any purchase price adjustment claims of Buyer pursuant to Section 2.07 and/or Section 2.8 of the Asset Purchase Agreement and any indemnification claims of any Buyer Indemnitees pursuant to Article VIII of the Asset Purchase Agreement, in each case in accordance with the terms set forth in the Asset Purchase Agreement, by wire transfer of immediately available funds.

Section 1.3. Liquidation of the Escrow Shares; True-Up.

(a) Subject to compliance with the Securities Act or the securities laws of any state, beginning on the seventh (7<sup>th</sup>) Business Day following the Closing until the earlier of (i) the Escrow Share Liquidation Date (as defined herein), (ii) the Expiration Date (as defined herein), and (iii) the termination of this Escrow Agreement in accordance with its terms, Buyer shall have the right, at its sole election and discretion (which right shall be exercisable upon the delivery of a written notice to the Escrow Agent by an Authorized Representative (as defined herein) of Buyer), at any time and in any number of separate transactions, to cause the Escrow Agent to sell any number of Escrow Shares in the open market and deposit the cash proceeds of such sale in the Escrow Account (which such cash shall constitute Escrow Cash).

(b) Notwithstanding anything to the contrary set forth in this Escrow Agreement, the Parties hereby agree that, as soon as reasonably practicable, and in any event no later than one (1) year from the Closing Date, Buyer shall cause 100% of the Escrow Shares to be liquidated in accordance with **Section 1.3(a)** such that the only Escrow Property in the Escrow Account is Escrow Cash (the date on which the last of the Escrow Shares is liquidated, the “***Escrow Share Liquidation Date***”).

(c) If, immediately following the Escrow Share Liquidation Date, the aggregate value of the Escrow Cash in the Escrow Account is greater than Three Hundred Seventy-Five Million Dollars (\$375,000,000) (the “***Escrow Cash Target Amount***”), as

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<sup>1</sup> Note to Draft: Number of shares to be equal to the “Escrow Shares” as defined in the Asset Purchase Agreement.

<sup>2</sup> Note to Draft: Amount to be equal to the “Cash Escrow Amount” as defined in the Asset Purchase Agreement.



soon as reasonably practicable, and in any event no later than five (5) Business Days thereafter, Buyer shall (by delivery of a written notice to the Escrow Agent by an Authorized Representative of Buyer) cause the Escrow Agent to disburse to Buyer such excess by wire transfer of immediately available funds.

(d) If, immediately following the Escrow Share Liquidation Date, the aggregate value of the Escrow Cash in the Escrow Account is less than the Escrow Cash Target Amount, as soon as reasonably practicable, and in any event no later than five (5) Business Days thereafter, Buyer shall deposit or cause to be deposited with the Escrow Agent an amount in cash equal to the absolute value of such difference by wire transfer of immediately available funds; provided, however, that Buyer may reduce dollar-for-dollar such amount by the amount of any Escrow Funds that would have otherwise been released to Buyer pursuant to this Escrow Agreement but for **Section 1.3(e)**.

(e) Notwithstanding anything to the contrary set forth in this Escrow Agreement, the Parties agree and acknowledge that until the aggregate value of the Escrow Cash equals or is greater than the Escrow Cash Target Amount, Buyer shall not be permitted any distributions from the Escrow Property for purposes of satisfying any indemnifiable claim pursuant to the Asset Purchase Agreement.

(f) The Parties agree and acknowledge that nothing set forth in this Escrow Agreement shall prohibit or otherwise restrict Buyer's ability to enter into any contract or other arrangement (including forwards and swaps) to hedge Buyer's risk exposure pursuant to its obligations set forth in this **Section 1.3**.

#### Section 1.4. Investment of Escrow Cash.

(a) The Escrow Agent shall invest the Escrow Cash, including any and all interest and investment income, in accordance with the written instructions provided to the Escrow Agent and signed by an Authorized Representative of Buyer. In the absence of written investment instructions, the Escrow Agent shall deposit and invest the Escrow Cash, including any and all interest and investment income, in the M&T Bank Corporate Deposit Account, which is further described herein on **Exhibit A**. Any investment earnings and income on the Escrow Cash shall become part of the Escrow Property, and shall be disbursed in accordance with **Section 1.6** of this Escrow Agreement.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investments made pursuant to this Escrow Agreement. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations or advice.

(c) Although the Parties recognize that they may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Parties hereby agree that confirmations of permitted investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered.

Section 1.5. Stock Splits and Stock Dividends; Cash Dividends and Interest; Voting Rights.

(a) If Buyer shall, at any time after the Closing and prior to the Escrow Share Liquidation Date, subdivide the outstanding shares of Buyer Common Stock, by stock split or otherwise, pay a dividend in securities in respect of shares of Buyer Common Stock or combine the outstanding shares of Buyer Common Stock (each, a "**Stock Adjustment Event**"), the number of Escrow Shares in the Escrow Account shall be proportionately adjusted for such Stock Adjustment Event. As promptly as practicable following such a Stock Adjustment Event, Buyer shall deliver to the Escrow Agent book-entry shares in the name of the Escrow Agent representing the additional number of Escrow Shares, if any, to be held in escrow by the Escrow Agent in accordance with the terms and conditions set forth herein.

(b) If Buyer shall, at any time after the Closing and prior to the Escrow Share Liquidation Date, pay a cash dividend in respect of shares of Buyer Common Stock, then Buyer shall deliver, or cause to be delivered, to the Escrow Agent an amount in cash equal to the amount of any such dividend paid in respect of the Escrow Shares in the Escrow Account,

(c) No Party shall be entitled to vote the Escrow Shares held in the Escrow Account.

Section 1.6. Disbursements.

(a) At any time the Escrow Agent receives a written direction signed by an Authorized Representative of Buyer instructing the Escrow Agent to distribute a portion of the Escrow Property pursuant to Sections 2.07(e) or 2.08(f) of the Asset Purchase Agreement (a "**Purchase Price Adjustment Certificate**"), the Escrow Agent shall disburse to Buyer the portion of the Escrow Property set forth in such Purchase Price Adjustment Certificate within five (5) Business Days of the Escrow Agent's receipt of the Purchase Price Adjustment Certificate.

(b) At any time on or prior to the last day of the Survival Period (the "**Expiration Date**"), Buyer may from time to time deliver to the Escrow Agent and Seller a certificate executed by an Authorized Representative of Buyer (each, a "**Release Certificate**") instructing the Escrow Agent to distribute all or a portion of the Escrow Property to Buyer in satisfaction of any unpaid indemnification claim asserted by any Buyer Indemnatee pursuant to the Asset Purchase Agreement. Within thirty (30) calendar days after the date on which such Release Certificate is delivered to, and received by, the Escrow Agent, Seller shall either: (i) notify the Escrow Agent and Buyer of Seller's consent to the release of all or any portion of the amount requested in the Release

Certificate (a “**Consent**”), or (ii) notify the Escrow Agent and Buyer that Seller does not consent to the release of all or any portion of the Indemnification Escrow Property claimed by Buyer (specifying any amount not so consented to) in such Release Certificate by delivering a notice (a “**Dispute Notice**”). If the Escrow Agent receives a Consent or does not receive a Dispute Notice within thirty (30) calendar days after the date on which such Release Certificate is delivered to the Escrow Agent, the Escrow Agent shall disburse to Buyer the portion of the Escrow Property set forth in such Release Certificate within two (2) Business Days of the Escrow Agent’s receipt of the Consent or the expiration of such thirty (30) calendar day period; provided that if the Escrow Agent receives a Dispute Notice disputing only a portion of the amount set forth in the Release Certificate, the Escrow Agent shall disburse to Buyer the portion of the Escrow Property set forth in such Release Certificate that is not objected to in the Dispute Notice within two (2) Business Days of the Escrow Agent’s receipt of the Dispute Notice. Any portion of the amount set forth in the Release Certificate that is disputed pursuant to a Dispute Notice shall not be delivered to Buyer except in accordance with (x) a joint written direction signed by Seller and Buyer or (y) written instruction from Buyer given to effectuate an attached final non-appealable order, judgment or decree of a court with competent jurisdiction or a final arbitration decision directing the disposition of all or a portion of such funds to Buyer.

(c) On the Business Day immediately following the Expiration Date, the Escrow Agent shall make a disbursement to Seller from the Escrow Property in an amount equal to (i) the remaining amount of the Escrow Property, minus (ii) any portion of the remaining Escrow Property claimed to be payable pursuant to any amount claimed to be payable pursuant to any unresolved Release Certificate that was delivered in accordance with the terms of this Escrow Agreement on or prior to the Expiration Date.

(d) In the event that a Party gives funds transfer instructions (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone callback to the Authorized Representative or Representatives of such Party, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated provided no callback is required if the Escrow Agent receives original instructions. The Authorized Representatives and telephone numbers for callbacks may be changed only in a writing received and acknowledged by the Escrow Agent. The Parties agree that such security procedure is commercially reasonable.

(e) The Escrow Agent will furnish monthly statements to the Parties setting forth the activity in the Account.

(f) The provisions of **Section 1.6(b)** through **Section 1.6(e)** shall be subject in all respects to the requirements set forth in **Section 1.3(e)**.

**Section 1.7. Security Procedure for Funds Transfer.** Concurrent with the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent Authorized Representatives’ forms in the form of **Exhibit B-1** and **Exhibit B-2** to this

Escrow Agreement (the persons set forth on such forms, each Party's "**Authorized Representatives**"). The Escrow Agent shall confirm each funds' transfer instruction received in the name of Parties by confirming with an Authorized Representative as evidenced in **Exhibit B-1** and **Exhibit B-2**. Once delivered to the Escrow Agent, **Exhibit B-1** or **Exhibit B-2** may be revised or rescinded only in writing signed by an Authorized Representative of the Party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford the Escrow Agent a reasonable opportunity to act on it. If a revised **Exhibit B-1** or **Exhibit B-2** or a rescission of an existing **Exhibit B-1** or **Exhibit B-2** is delivered to the Escrow Agent by an entity that is a successor-in-interest to either party, such document shall be accompanied by additional documentation reasonably satisfactory to the Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the Parties. The Parties understand that the Escrow Agent's inability to receive or confirm funds transfer instructions may result in a delay in accomplishing such funds transfer, and agree that the Escrow Agent shall not be liable for any loss caused by any such delay.

Section 1.8. Income Tax Allocation and Reporting.

(a) From the date of this Escrow Agreement through the Escrow Share Liquidation Date, the Parties agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Property shall, as of the end of each calendar year and to the extent required by the Internal Revenue Code of 1986, as amended thereunder (the "**Code**"), be reported as having been earned by Buyer, whether or not such income was disbursed during such calendar year. From the day immediately following the Escrow Share Liquidation Date through the Expiration Date, the Parties agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Property shall, as of the end of each calendar year and to the extent required by the Code be reported as having been earned by Seller, whether or not such income was disbursed during such calendar year. The Escrow Agent shall be deemed the payor of any interest or other income paid upon investment of the Escrow Property for purposes of performing tax reporting. With respect to any other payments made under this Escrow Agreement, the Escrow Agent shall not be deemed the payor and shall have no responsibility for performing tax reporting. The Escrow Agent's function of making such payments is solely ministerial and upon express direction of the Parties.

(b) The Escrow Agent shall, unless instructed otherwise pursuant to written instructions provided to the Escrow Agent and signed by an Authorized Representative of Buyer, make quarterly distributions to Buyer from the Escrow Account in an aggregate amount equal to 50% of the taxable interest or other income earned by the Escrow Account during such quarter, which is allocated to Buyer for tax reporting purposes pursuant to **Section 1.8(a)** for the period between the date of this Escrow Agreement and the Escrow Share Liquidation Date. The Escrow Agent shall, unless instructed otherwise pursuant to written instructions provided to the Escrow Agent and signed by an Authorized Representative of Seller, make quarterly distributions to Seller from the Escrow Account in an aggregate amount equal to 50% of the interest or other income earned by the Escrow Account during such quarter, which is allocated to Seller for tax reporting purposes pursuant to **Section 1.8(a)** for the period between the day immediately

following the Escrow Share Liquidation Date and the Expiration Date and which constitutes “unrelated business taxable income” (as defined in Code Section 512) to Seller.

(c) Prior to closing, the Parties shall provide the Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-8 or W-9 and such other forms and documents that the Escrow Agent may reasonably request. The Parties understand that if such tax reporting documentation is not provided and certified to the Escrow Agent, the Escrow Agent may be required by the Code, and the regulations promulgated thereunder, to withhold a portion of any interest or other income earned on the investment of the Escrow Property.

(d) Buyer, on the one hand, shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent arising out of or in connection with tax reporting or withholding with respect to interest or other income earned by the Escrow Account or disbursements of Escrow Property to Buyer and (y) the Seller, on the other hand, shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent arising out of or in connection with tax reporting or withholding with respect to disbursements of Escrow Property to the Seller, except, in each case, to the extent that such taxes are caused by the gross negligence, willful misconduct or bad faith of the Escrow Agent and, provided, further, that in each case, Buyer’s and the Seller’s respective indemnification obligations pursuant to this sentence shall be several and not joint.

Section 1.9. Termination. Upon the disbursement of all the Escrow Property pursuant to the terms of this Escrow Agreement, this Escrow Agreement shall terminate and be of no further force and effect.

## ARTICLE 2 DUTIES OF THE ESCROW AGENT

Section 2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, including but not limited to the Asset Purchase Agreement, instrument or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument or document. References in this Escrow Agreement to any other agreement, instrument or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations

with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2. Attorneys and Agents. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in **Section 3.1** for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians and/or nominees.

Section 2.3. Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the written direction or consent of the Parties or their respective agents, representatives, successors or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority.

Section 2.4. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

Section 2.5. No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

### ARTICLE 3 PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1. Indemnification. The Parties hereby agree, jointly and severally, to indemnify Escrow Agent, its directors, officers, employees and agents (collectively, the "**Indemnified Parties**"), and hold the Indemnified Parties harmless from any and against all liabilities, losses, actions, suits or proceedings at law or in equity, and any other expenses, fees or charges of any character or nature, including, without limitation, reasonable and documented attorneys' fees and expenses of outside counsel, which an Indemnified Party may incur or with which it may be threatened by reason of acting as or on behalf of Escrow Agent under this Escrow Agreement or arising out of the existence of the Escrow Account, except to the extent the same shall be caused by Escrow Agent's fraud, bad faith, gross negligence or willful misconduct. Escrow Agent shall have a first lien against the Escrow Account to secure the obligations of the parties hereunder. The terms of **Sections 1.8(d)**, this **Section 3.1** and **Section 3.4** hereto shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent. Solely as between themselves and without affecting their indemnification obligations to the Escrow Agent, (a) to the extent any Losses are caused by the Seller, then the Seller shall indemnify and hold harmless Buyer from any and all such Losses,

(b) to the extent any Losses are caused by Buyer, then Buyer shall indemnify and hold harmless the Seller from any and all such Losses and (c) in all other cases, Buyer and Seller hereby agree that any such indemnification obligations shall be borne 50% by Buyer on one hand and 50% by Seller on the other.

Section 3.2. Limitation of Liability. The escrow agent SHALL NOT be liable, directly or indirectly, for any (i) damages, Losses or expenses arising out of the services provided hereunder, other than damages, losses or expenses which have been finally adjudicated to have DIRECTLY resulted from the escrow agent's fraud, bad faith, gross negligence or willful misconduct, or (ii) special, Indirect or consequential damages or LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), even if the escrow agent has been advised of the possibility of such LOSSES OR damages AND REGARDLESS OF THE FORM OF ACTION.

Section 3.3. Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) calendar days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

Section 3.4. Compensation. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as **Exhibit C**, which compensation shall be divided equally between the Buyer and the Seller, and such equal amounts will be paid by the Buyer and the Seller. The fee agreed upon for the services rendered hereunder is intended as compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event which compensation and reimbursement shall be divided equally between the Buyer and the Seller, and such equal amounts will be paid by the Buyer and the Seller. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) calendar

days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Property with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities, and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Property.

Section 3.5. Disagreements. If any conflict, disagreement or dispute arises between, among or involving any of the Parties concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent shall be fully protected and may, at its option, retain the Escrow Property until the Escrow Agent (i) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Property, (ii) receives a written agreement executed by each of the parties involved in such disagreement or dispute directing delivery of the Escrow Property, in which event the Escrow Agent shall be authorized to disburse the Escrow Property in accordance with such final court order, arbitration decision or agreement, or (iii) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Property and shall be entitled to recover attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. The Parties further agree to pursue any redress or recourse in connection with such dispute without making the Escrow Agent a party to the same. The Escrow Agent shall be entitled to act on any such agreement, court order or arbitration decision without further question, inquiry or consent.

Section 3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 3.7. Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or



corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 3.8. Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation: acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

Section 3.9. Compliance with Legal Orders. Escrow Agent shall receive and may conclusively rely upon an opinion of counsel to the effect that such order is final, non-appealable and from a court of competent jurisdiction. Escrow Agent shall be entitled to consult with legal counsel in the event that a question or dispute arises with regard to the construction of any of the provisions hereof, and shall incur no liability and shall be fully protected in acting in accordance with the advice or opinion of such counsel.

Section 3.10. No Financial Obligation. Escrow Agent shall not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and shall not be required to take any action which, in the Escrow Agent's sole and absolute judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

#### ARTICLE 4 MISCELLANEOUS

Section 4.1. Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

Section 4.2. Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Property escheat by operation of law. The Escrow Agent shall give each of Buyer and Seller written notice of its intent to turn over any of the Escrow Property to

any state pursuant to applicable escheat laws at least thirty (30) days prior to turning such funds over to any state.

Section 4.3. Notices. All notices, requests, demands and other communications given hereunder (collectively, “**Notices**”) shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile, by electronic mail, by nationally recognized overnight courier or by registered or certified mail (postage prepaid, return receipt requested) to each other party as follows:

If to Buyer:

[NAME OF BUYER]  
[ADDRESS OF BUYER]  
Attention: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

With copies to:

Skadden, Arps, Slate, Meagher & Flom LLP  
4 Times Square  
New York, New York 10036  
Attention: Paul T. Schnell, Esq.  
E-Mail: paul.schnell@skadden.com

Attention: Sean C. Doyle, Esq.  
E-Mail: sean.doyle@skadden.com

Attention: Michael J. Homison, Esq.  
E-Mail: michael.homison@skadden.com

If to Seller:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

With copies to:

Norton Rose Fulbright US LLP  
1301 Avenue of the Americas  
New York, New York 10019  
Attention: Andrew B. Roth, Esq.  
E-Mail: andrew.roth@nortonrosefulbright.com

If to the Escrow Agent:

Wilmington Trust, National Association  
10 S. Riverside Plaza, Suite 875  
Chicago, IL 60606  
Attn:  
Facsimile:  
Email:

Section 4.4. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Escrow Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS ESCROW AGREEMENT MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS ESCROW AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS ESCROW AGREEMENT. EACH PARTY TO THIS ESCROW AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER,

(iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS ESCROW AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 4.4**.

Section 4.5. Entire Agreement. This Escrow Agreement and the Asset Purchase Agreement sets forth the entire agreement and understanding of the parties related to the Escrow Property.

Section 4.6. Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded or canceled only by a written instrument executed by the Parties and the Escrow Agent.

Section 4.7. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation or warranty contained in this Escrow Agreement.

Section 4.8. Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

Section 4.9. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. A signed copy of this Escrow Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Escrow Agreement.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

[NAME OF BUYER]

By: \_\_\_\_\_  
Name:  
Title:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Escrow Agent

By: \_\_\_\_\_  
Name:  
Title:



**WILMINGTON  
TRUST**

Schedule I

Wire Transfer Instructions

Buyer

Bank Name:

ABA Number:

Account Name:

Account Number:

Seller

Bank Name:

ABA Number:

Account Name:

Account Number:



## EXHIBIT A

### **Agency and Custody Account Direction For Cash Balances Manufacturers & Traders Trust Company Deposit Accounts**

Direction to use the following Manufacturers & Traders Trust Company (also known as M&T Bank) Deposit Account for Cash Balances for the escrow account or accounts (the "Account") established under the Escrow Agreement to which this Exhibit A is attached.

You are hereby directed to deposit, as indicated below, or as the Parties shall direct further in writing from time to time, all cash in the Account in the following deposit account of M&T Bank:

#### **M&T Corporate Deposit Account**

The Parties acknowledge that amounts on deposit in the M&T Bank Deposit Account are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (FDIC), in the basic FDIC insurance amount of \$250,000 per depositor, per issued bank. This includes principal and accrued interest up to a total of \$250,000.

The Parties acknowledge that they have full power to direct investments of the Account.

The Parties understand that they may change this direction at any time and that it shall continue in effect until revoked or modified by me by written notice to you.



EXHIBIT B-1

CERTIFICATE AS TO AUTHORIZED REPRESENTATIVES  
OF BUYER

[\_\_\_\_\_] (the “**Buyer**”) hereby designates each of the following persons as its Authorized Representatives for purposes of this Escrow Agreement, and confirms that the title, contact information and specimen signature of each such person as set forth below is true and correct. Each such Authorized Representative is authorized to initiate and approve transactions of all types for the Escrow Account[s] established under the Agreement to which this Exhibit B-1 is attached, on behalf of Buyer.

**Name (print):**

**Specimen Signature:**

**Title:**

**Telephone Number**

(required):

*If more than one, list all  
applicable telephone  
numbers.*

Office:

Cell:

**E-mail (required):**

*If more than one, list all  
applicable email addresses.*

Email 1:

Email 2:

**Name (print):**

**Specimen Signature:**

**Title:**

**Telephone Number**

(required):

*If more than one, list all  
applicable telephone  
numbers.*

Office:

Cell:

**E-mail (required):**

*If more than one, list all  
applicable email addresses.*

Email 1:

Email 2:

**Name (print):**

**Specimen Signature:**

**Title:**





# WILMINGTON TRUST

**Telephone Number**

(required):

*If more than one, list all  
applicable telephone  
numbers.*

Office:

Cell:

**E-mail** (required):

*If more than one, list all  
applicable email addresses.*

Email 1:

Email 2:

## COMPLETE BELOW TO UPDATE EXHIBIT B-1

If Buyer wishes to update this Exhibit B-1, Buyer must complete, sign and send to Escrow Agent an updated copy of this Exhibit B-1 with such changes. Any updated Exhibit B-1 shall be effective once signed by Buyer and Escrow Agent and shall entirely supersede and replace any prior Exhibit B-1 to this Escrow Agreement.

[\_\_\_\_\_]

By:\_\_\_\_\_

Name:

Title:

Date:

WILMINGTON TRUST, NATIONAL ASSOCIATION (as Escrow Agent)

By:\_\_\_\_\_

Name:

Title:

Date:



# WILMINGTON TRUST

## EXHIBIT B-2

### CERTIFICATE AS TO AUTHORIZED REPRESENTATIVES OF SELLER

NEW YORK STATE CATHOLIC HEALTH PLAN, INC. (the “Seller”) designates each of the following persons as its Authorized Representatives for purposes of this Escrow Agreement, and confirms that the title, contact information and specimen signature of each such person as set forth below is true and correct. Each such Authorized Representative is authorized to initiate and approve transactions of all types for the Escrow Account[s] established under the Agreement to which this Exhibit B-2 is attached, on behalf of Seller.

**Name (print):**

**Specimen Signature:**

**Title:**

**Telephone Number**

(required):

*If more than one, list all  
applicable telephone  
numbers.*

Office:

Cell:

**E-mail (required):**

*If more than one, list all  
applicable email addresses.*

Email 1:

Email 2:

**Name (print):**

**Specimen Signature:**

**Title:**

**Telephone Number**

(required):

*If more than one, list all  
applicable telephone  
numbers.*

Office:

Cell:

**E-mail (required):**

*If more than one, list all  
applicable email addresses.*

Email 1:

Email 2:

**Name (print):**

**Specimen Signature:**



# WILMINGTON TRUST

**Title:****Telephone Number**

(required):

*If more than one, list all  
applicable telephone  
numbers.*

Office:

Cell:

**E-mail** (required):

*If more than one, list all*

*applicable email addresses.*

Email 1:

Email 2:

**COMPLETE BELOW TO UPDATE EXHIBIT B-2**

If Seller wishes to update this Exhibit B-2, Seller must complete, sign and send to Escrow Agent an updated copy of this Exhibit B-2 with such changes. Any updated Exhibit B-2 shall be effective once signed by Seller and Escrow Agent and shall entirely supersede and replace any prior Exhibit B-2 to this Escrow Agreement.

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_

Name:

Title:

Date:

WILMINGTON TRUST, NATIONAL ASSOCIATION (as Escrow Agent)

By: \_\_\_\_\_

Name:

Title:

Date:



### **Exhibit C**

#### **Fees of Escrow Agent**

##### **Acceptance Fee:**

**\$TBD**

Initial Fees as they relate to Wilmington Trust acting in the capacity of Escrow Agent – includes review of the Escrow Agreement; acceptance of the Escrow appointment; setting up of Escrow Account(s) and accounting records; and coordination of receipt of funds for deposit to the Escrow Account(s). **Acceptance Fee payable at time of Escrow Agreement execution.**

##### **Escrow Agent Annual Administration Fee:**

**\$TBD**

For ordinary administrative services by Escrow Agent – includes daily routine account management; investment transactions; cash transaction processing (including wire and check processing); monitoring claim notices pursuant to the agreement; disbursement of funds in accordance with the agreement; and mailing of trust account statements to all applicable parties. These fees cover a full year, or any part thereof, and thus are not pro-rated in the year of termination. The annual fee is billed in advance and payable prior to that years' service.

##### ***Wilmington Trust's bid is based on the following assumptions:***

- Number of Escrow Accounts to be established: One (1)
- Estimated Term: **TBD**
- Amount of Escrow: **\$TBD**
- Estimated number of cash transactions: **TBD**
- Investment in M&T Deposit Products

##### **Out-of-Pocket Expenses:**

**Billed At Cost**

**EXHIBIT F**

**FORM OF IP ASSIGNMENT AGREEMENT**

(See attached)

**EXHIBIT F**

**FORM OF**

**INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT**

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (this “*Agreement*”), dated \_\_\_\_\_, is being executed and delivered by NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“*Seller*”), to [NAME OF BUYER], a [●] (“*Buyer*”), pursuant to that certain Asset Purchase Agreement, dated as of September \_\_, 2017, by and between CENTENE CORPORATION, a Delaware corporation and the ultimate corporate parent of Buyer (“*Centene*”), and Seller (the “*Asset Purchase Agreement*”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

WHEREAS, Seller is the owner of the Purchased Intellectual Property;

WHEREAS, in accordance with the terms and conditions of the Asset Purchase Agreement, Buyer is acquiring all right, title and interest in, to and under the Purchased Intellectual Property and Seller has agreed to sell, convey, assign and transfer to Buyer all rights, titles and interest in, to and under the Purchased Intellectual Property;

NOW, THEREFORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Seller hereby:

IRREVOCABLY SELLS, ASSIGNS, CONVEYS, DELIVERS AND TRANSFERS to Buyer, its successors and assigns, all rights, titles and interest throughout the world in, to and under the Purchased Intellectual Property (including, but not limited to, the Intellectual Property registrations and applications set forth on Schedule A hereto), including without limitation the patents, copyrights, trademarks, and trade secrets therein and all goodwill associated therewith and all of Seller’s claims and causes of action for the infringement, misappropriation or other violation by any third party of any rights in, to and under the Purchased Intellectual Property and any derivatives thereof that Seller may possess therein, whether such claims and causes of action are filed, arose, or accrued before or after the execution of this Agreement, and all remedies associated therewith;

AGREES that Buyer shall have the right to obtain and hold in the name of Buyer or its nominee any Intellectual Property rights or other forms of protection that may be or become available for the Purchased Intellectual Property and any derivatives thereof; and

AGREES that Seller will, without additional consideration, give Buyer or its nominee at any time in the future all assistance reasonably requested to perfect Buyer’s rights, title, and interest in, to and under the Purchased Intellectual Property, including without limitation the execution, acknowledgement, and delivery of all documents reasonably necessary to effectuate the intent of this Agreement.

AGREES that Buyer shall have the right record this Assignment with all applicable Governmental Authorities and registrars so as to perfect its ownership of the Purchased Intellectual Property.

AGREES that Buyer shall have the right to assign this Agreement to an Affiliate of Buyer without the prior written consent of Seller.

FURTHERMORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties hereby:

AGREE that Section 10.10 of the Asset Purchase Agreement shall be hereby incorporated herein by reference, *mutatis mutandis*; and

AGREE that this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

[Signature Page Follows]

TO BE BINDING on the heirs, assigns, representatives and successors of the undersigned and extend to the successors, assigns and nominees of Buyer.

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_

Name:

Title:



Acknowledged and agreed:

[NAME OF BUYER]

By: \_\_\_\_\_

Name:

Title:

## SCHEDULE A TO INTELLECTUAL PROPERTY ASSIGNMENT

### U.S. Trademark Registrations

<b>Jurisdiction</b>	<b>Mark</b>	<b>Owner</b>	<b>Reg. No. (Reg. Date)</b>
United States	FIDELIS	The New York State Catholic Health Plan Inc., DBA Fidelis Care New York	3775057 (4/13/2010)
United States	FIDELISAURUS	The New York State Catholic Health Plan Inc., DBA Fidelis Care New York	4611017 (9/23/2014)
United States	LUNCHOLOGY	The New York State Catholic Health Plan Inc., DBA Fidelis Care New York	5195400 (5/2/2017)
United States	FIDELIS CARE (Stylized/Design)	The New York State Catholic Health Plan Inc., DBA Fidelis Care New York	3633569 (6/9/2009)
United States	FIDELIS CARE	The New York State Catholic Health Plan Inc., DBA Fidelis Care New York	3633561 (6/9/2009)

**EXHIBIT G**

**FORM OF MEDICARE REINSURANCE AGREEMENT**

(See attached)

**EXHIBIT G**

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**COINSURANCE AGREEMENT**

by and between

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

and

**[REINSURER]**

Dated as of

\_\_\_\_\_, 201[●]

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**EXHIBIT C   FIDA REGULATORY REQUIREMENTS**  
**EXHIBIT D   FORM OF NOVATION AGREEMENT**

**SCHEDULES:**

**SCHEDULE 4.01   NET SETTLEMENT STATEMENT**  
**SCHEDULE 6.01   ADMINISTRATIVE SERVICES**

## COINSURANCE AGREEMENT

This Coinsurance Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 201[●], is entered into by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“**Ceding Company**”), and [REINSURER], a [●] (“**Reinsurer**”).<sup>1</sup> Ceding Company and Reinsurer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Ceding Company and Centene Corporation, a Delaware corporation (“**Buyer**”) are parties to that certain Asset Purchase Agreement, dated as of September [●], 2017 (the “**Asset Purchase Agreement**”).

B. Ceding Company is a party to (i) that certain contract with the Centers for Medicare & Medicaid Services (“**CMS**”), effective January 1, 2017, to provide covered services, including Medicare Part D prescription drug benefits, pursuant to the Medicare Advantage and Medicare Prescription Drug programs (the “**Medicare Advantage Business**”) and pursuant to the Medicare Advantage D-SNP program (the “**D-SNP Business**,” and together with the Medicare Advantage Business, the “**Medicare Business**”) and (ii) that certain contract with CMS and the New York State Department of Health (the “**DOH**,” and together with CMS, each a “**Payor**” and together the “**Payors**”), effective January 1, 2015, to provide covered services under the Fully Integrated Dual Advantage program (the “**FIDA Business**,” and together with the Medicare Business, the “**Business Covered**”).

C. As contemplated by the Asset Purchase Agreement, subject to the terms and conditions set forth in this Agreement, (i) Ceding Company desires to cede to Reinsurer, and Reinsurer desires to accept and reinsure, on a one hundred percent (100%) coinsurance basis, the Coinsured Liabilities (as hereinafter defined) and (ii) Ceding Company desires to appoint Reinsurer as its agent and attorney-in-fact, coupled with an interest, and Reinsurer desires to accept such appointment, to administer the Business Covered from and after the date hereof.

D. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to obtain the requisite approvals required to effectuate the novation of the CMS Contract so that all Medicare Enrollees at the time of such novation shall be enrolled in a Medicare Advantage plan operated by Reinsurer or its Affiliate pursuant to the CMS Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

---

<sup>1</sup> **Note to Draft:** Reinsurer to be a newly formed New York HMO or an affiliate of Buyer that is licensed to write health insurance in New York, to be determined by Buyer prior to the Closing. Reinsurer’s obligations under this agreement will be guaranteed by Buyer in form and substance reasonably acceptable to the parties.



## ARTICLE I

### DEFINITIONS

The following terms have the definitions set forth below or ascribed thereto in the section of this Agreement identified below:

**“Action”** means any claim, action, suit, corrective action plan, cause of action, lawsuit, arbitration, audit, written notice of violation, administrative proceeding, litigation, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, before or by any Governmental Authority.

**“Additional Covered Policies”** has the meaning set forth in **Section 6.03**.

**“Administrative Services”** has the meaning set forth in **Section 6.01**.

**“Affiliate”** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms **“controlled by”** and **“under common control with”**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Agreement”** has the meaning set forth in the Preamble.

**“Asset Purchase Agreement”** has the meaning set forth in the Recitals.

**“Authorized Change”** has the meaning set forth in **Section 2.02**.

**“Bank Accounts”** has the meaning set forth in **Section 6.12**.

**“Business Associate Agreement”** means the Business Associate Agreement by and between Ceding Company and Reinsurer, dated as of the date hereof, attached hereto as **Exhibit A**.

**“Business Covered”** has the meaning sets forth in the Recitals.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by Law to be closed for business.

**“Buyer”** has the meaning set forth in the Recitals.

**“Closing”** has the meaning set forth in the Asset Purchase Agreement.

**“CMS”** has the meaning set forth in the Recitals.

**“CMS Contract”** means Contract Number H3328 by and between Ceding Company and CMS for the operation of Medicare Advantage (including the Medicare Advantage D-SNP) coordinated care plan(s) with and without Part D prescription drug coverage, effective January 1, 2017 through December 31, 2017, as such contract may be amended, renewed or replaced from time to time.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Coinsured Liabilities”** means all Liabilities arising under or relating to the Covered Policies, the Payor Contracts or the Provider Contracts, in each case, that are payable by Ceding Company in respect of the Business Covered, including (i) all Provider Payments, (ii) to the extent permitted by applicable Law, all Extra Contractual Obligations, (iii) all commissions, fees or other compensation payable to producers, agents or brokers, (vi) all amounts paid to Covered Enrollees to reimburse for out-of-pocket expenses paid to providers that are not under contract with Ceding Company that are the financial responsibility of Ceding Company under a Covered Policy or Payor Contract, (vii) any federal, state or local tax imposed on Premiums or otherwise in respect of the Covered Policies (other than any Health Insurer Fee imposed under Section 9010 of the Patient Protection and Affordable Care Act), (viii) all Premium Adjustments and (ix) all liabilities with respect to any risk adjustment data or other similar data or information submitted to CMS, including as arising from any risk adjustment data validation audit or other similar examination under or with respect to the CMS Contract; *provided, however*, “Coinsured Liabilities” shall not include any Retained Liabilities.

**“Contract”** means any agreement, contract, lease, deed, mortgage, license, instrument, promissory note, evidence of Indebtedness (as defined in the Asset Purchase Agreement), security agreement, commitment, undertaking, indenture or joint venture, whether written or oral.

**“Court”** means any court, arbitrator or tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

**“Covered Enrollees”** means, as applicable, the FIDA Enrollees and the Medicare Enrollees.

**“Covered Policies”** means all evidences of coverage issued pursuant to the CMS Contract or the FIDA Contract.

**“Effective Time”** means 12:00:01 a.m., Eastern Time, on the first day of the month in which Closing occurs.

**“Encumbrance”** means any encumbrance, charge, claim, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, hypothecation, easement, encroachment, right of way, right of first refusal, restriction, levy or charge of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Excluded Liabilities”** has the meaning set forth in the Asset Purchase Agreement.

**“Expenses”** means, with respect to any Person, all reasonable and documented out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, financial advisors and investment bankers of such Person and its Affiliates), incurred by such Person or on its behalf in connection with or related to the authorization, preparation, negotiation, execution or performance of this Agreement and any transactions related hereto, any litigation with respect thereto, or in connection with other regulatory approvals, and all other matters related to transactions contemplated hereby.

**“Extra Contractual Obligations”** means all Liabilities arising out of or relating to Covered Policies (other than Liabilities arising under the express terms and conditions of Covered Policies), whether to Covered Enrollees, Governmental Authorities or any other Person (including any liability for fines, overpayments, penalties, forfeitures, punitive, special, exemplary or other form of extra contractual damages, including all legal fees and expenses relating thereto), in each case, to the extent such Liabilities arise from any act, error or omission, (whether or not intentional, negligent, in bad faith or otherwise) relating to: (i) the design, marketing, sale, underwriting, production, issuance, rating, cancellation or administration of Covered Policies; (ii) the investigation, defense, trial, settlement or handling of claims, benefits or payments under Covered Policies; or (iii) the failure to pay, the delay in payment or errors in calculating or administering the payment of benefits or claims under or in connection with Covered Policies.

**“FIDA Contract”** means Contract Number H1916 by and among Ceding Company, CMS and DOH for the operation of FIDA coordinated care plan(s), effective January 1, 2015, as such contract may be amended, renewed or replaced from time to time.

**“FIDA Enrollees”** means Enrollees (as defined in the Asset Purchase Agreement) of any of Ceding Company’s coordinated care plans comprising the FIDA Business.

**“Force Majeure Event”** means an event that is not reasonably within the control of the affected Party or its Affiliates, including: flood; earthquake; tornado; storm; fire; explosion; public emergency; civil disobedience; labor dispute; labor or material shortage; war or terrorist acts; sabotage; failures in power, utilities or telecommunications; and changes in Law and restraint by court order or public authority (whether valid or invalid).

**“GAAP”** means United States generally accepted accounting principles in effect as of the date hereof, consistently applied.

**“Governmental Authority”** means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

**“Law”** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or

on behalf any Governmental Authority, any Order having the effect of law in any jurisdiction, and applicable common law.

***“Legally Required Ceding Company Actions”*** has the meaning set forth in **Section 6.10**.

***“Liabilities”*** means any debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, monetary or non-monetary, direct or indirect, determined or determinable or any other nature whether due or to become due, and regardless of when asserted or whether it is accrued or required to be accrued or disclosed pursuant to GAAP or statutory accounting principles, as applicable.

***“Medicare Business”*** has the meaning set forth in the Recitals.

***“Medicare Enrollees”*** has the meaning set forth in the Asset Purchase Agreement.

***“Medicare Novation Date”*** means the effective date of the Novation, as determined by Reinsurer, subject to receipt of the Novation Authorization.<sup>2</sup>

***“Net Settlement Amount”*** has the meaning set forth in **Section 4.01**.

***“Net Settlement Statement”*** has the meaning set forth in **Section 4.01**.

***“Novation”*** means a novation of the CMS Contract whereby, pursuant to a Novation Agreement, Reinsurer or its Affiliate shall be substituted for Ceding Company as a party to the CMS Contract.

***“Novation Agreement”*** means a novation agreement substantially in the form attached as **Exhibit A**.<sup>3</sup>

***“Novation Authorization”*** has the meaning set forth in **Section 7.01**.

***“Order”*** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority (in each such case, whether preliminary or final).

***“Party”*** and ***“Parties”*** have the meanings set forth in the Preamble.

***“Payor”*** has the meaning set forth in the Recitals.

***“Payor Contracts”*** means the CMS Contract and the FIDA Contract.

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<sup>2</sup> **Note to Draft:** Buyer expects to target a novation date of January 1, 2020, subject to regulatory approval.

<sup>3</sup> **Note to Draft:** To be substantially in the form of the then current Model Novation Agreement issued by CMS, subject to any modifications mutually agreed upon by Buyer and Seller in accordance with applicable CMS requirements.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

**“Premium”** means all premiums, contributions and capitations (including all Covered Enrollee premiums and capitations paid by a Payor) relating to the Covered Policies.

**“Premium Adjustments”** means any portion of the Premium ceded hereunder that is required to be refunded or otherwise paid by Ceding Company to a Covered Enrollee or Payor due to (i) changes in or cancellations of Covered Policies, (ii) contractual requirements under the terms of the Covered Policies or the applicable Payor Contract, (iii) applicable Law, including any such refunds or payments resulting from a finding in a risk adjustment data validation audit or other similar audit or examination conducted by CMS or another Governmental Authority (or its designee), or a self-audit performed by or on behalf of Ceding Company or (iv) the reconciliation of the Part D reinsurance and risk corridor provisions of the CMS Contract.

**“Provider”** means any physician, hospital, pharmacy or other health care professional, independent practice association, facility, supplier, vendor or administrator that has contracted to provide or arrange for the provision to Covered Enrollees of health care services and supplies, including in respect of prescription drugs, that are required to be provided by Ceding Company pursuant to a Payor Contract.

**“Provider Contract”** means any Contract between Ceding Company and any Provider to the extent related to the Business Covered.

**“Provider Payments”** means all contractual payments made to Providers under the terms and conditions of the applicable Provider Contract for the provision of covered health care services or supplies to a Covered Enrollee under a Covered Policy.

**“Quarterly Accounting Period”** means each calendar-quarterly period ending after the Effective Time and prior to the termination of this Agreement; *provided* that (i) the initial Quarterly Accounting Period shall commence at the Effective Time and (ii) the final Quarterly Accounting Period shall commence at the start of the first day of the applicable calendar month and end at the end of the Termination Date.

**“Quarterly Report”** has the meaning set forth in **Section 4.01**.

**“Recoverables”** has the meaning set forth in **Section 3.02**.

**“Reinsurer”** has the meaning set forth in the Preamble.

**“Representative”** means, with respect to any Person, any and all directors, officers, employees, partners, members, consultants, financial advisors, counsel, accountants and other agents of such Person.

***“Retained Liabilities”*** means (i) any increased liability to Reinsurer to the extent arising from any action by Ceding Company with respect to the Covered Policies or the Coinsured Liabilities, Premiums, Premium Adjustments or Recoverables, in each case, taken on or after the date hereof without the consent of Reinsurer, (ii) any failure of Ceding Company to accept a reasonable recommendation of Reinsurer provided to Ceding Company under this Agreement and (iii) without duplication of the foregoing, all Excluded Liabilities.

***“Seller”*** has the meaning set forth in the Asset Purchase Agreement.

***“Termination Date”*** has the meaning set forth in **Section 10.01**.

## **ARTICLE II**

### **COINSURANCE OF COINSURED LIABILITIES**

**Section 2.01 Coinsurance.** Subject to the terms and conditions of this Agreement, as of the Effective Time, Ceding Company hereby cedes on a coinsurance basis to Reinsurer, and Reinsurer hereby accepts and reinsures on a coinsurance basis, one hundred percent (100%) of the Coinsured Liabilities. The reinsurance effected under this Agreement shall be maintained in force, without reduction, unless such reinsurance is terminated as provided herein.

**Section 2.02 Changes to Covered Policies; Coinsured Liabilities.** Ceding Company shall not, on its own initiative, change the terms or conditions of any Covered Policy, Payor Contract or Provider Contract except for any such change (a) directed by Reinsurer or (b) required by applicable Law, including by CMS pursuant to the annual bid process (each, an ***“Authorized Change”***). If Ceding Company’s liability with respect to Coinsured Liability is changed because of an Authorized Change, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Coinsured Liabilities resulting from such Authorized Change, in each case, proportionately, and on the coinsurance basis set forth in **Section 2.01**. With respect to any Authorized Change required by applicable Law, Ceding Company shall, to the extent reasonably practicable, prior to the effectiveness of such Authorized Change, (x) promptly notify Reinsurer of such proposed change and (y) afford Reinsurer the opportunity to object to such change under applicable administrative or regulatory procedures. Ceding Company shall, at Reinsurer’s request, reasonably cooperate with Reinsurer in connection with any such objection made pursuant to the preceding sentence of this **Section 2.02**. Reinsurer shall not be liable for any increase in Coinsured Liability resulting from any change in the terms or conditions of a Covered Policy made by Ceding Company other than as arising from an Authorized Change.

**Section 2.03 Underwriting Adjustments to Covered Policies.** If Ceding Company’s liability under any Covered Policy is changed because of a correction made by or on behalf of Ceding Company of a prior misstatement of age, sex, amount or nature of coverage or any other material fact or attribute made by any Covered Enrollee or any Person authorized to act on behalf of such Covered Enrollee, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Coinsured Liabilities resulting from the correction of such misstatement.

**Section 2.04 Reinstatements of Covered Policies.** Upon the reinstatement of any terminated Covered Policy in accordance with the terms and conditions of such Covered Policy,

Reinsurer shall reinsure the Coinsured Liabilities arising out of or relating to such reinstated Covered Policy on the coinsurance basis set forth in **Section 2.01**.

**Section 2.05 Follow the Fortunes.** Subject to the terms and conditions of this Agreement, including the retention by Ceding Company of the Retained Liabilities, Reinsurer's liability under this Agreement shall attach simultaneously with that of Ceding Company under the Covered Policies and the Coinsured Liabilities, and Reinsurer's liability under this Agreement shall be subject in all respects to the same risks, terms, rates, conditions, interpretations, assessments, waivers and proportion of premiums paid to Ceding Company without any deductions for brokerage, and to the same modifications, alterations and cancellations, as the respective Covered Policies and Coinsured Liabilities to which liability under this Agreement attaches, the true intent of this Agreement being that Reinsurer shall, subject to the terms, conditions and limits of this Agreement, follow the fortunes of Ceding Company under the Covered Policies, and Reinsurer shall be bound, by all payments and settlements under the Covered Policies entered into by or on behalf of Ceding Company except as otherwise provided herein. Ceding Company is under no obligation to advance any sums to satisfy any Coinsured Liabilities. It is the obligation of Reinsurer to timely pay all Coinsured Liabilities and related expenses and costs.

### **ARTICLE III**

#### **CONSIDERATION; ACCOUNTING**

**Section 3.01 Consideration.** As consideration for the reinsurance provided hereunder, Ceding Company shall, in accordance with the terms and subject to the conditions of the Asset Purchase Agreement, transfer to Reinsurer the Purchased Assets (as defined in the Asset Purchase Agreement) used or held for use by Ceding Company in connection with the Business Covered. As consideration for the reinsurance ceded hereunder as well as for the other transactions contemplated by the Asset Purchase Agreement, Ceding Company shall, in accordance with the terms and subject to the conditions of the Asset Purchase Agreement, be entitled to the Purchase Price (as defined in the Asset Purchase Agreement).<sup>4</sup>

**Section 3.02 Ongoing Liabilities of Ceding Company.** As additional consideration for the reinsurance provided hereunder, Ceding Company hereby sells, assigns, transfers and delivers to Reinsurer, and Reinsurer accepts and acquires, free and clear of all Encumbrances, effective as of the Effective Time, all of Ceding Company's right, title and interest under the Covered Policies, the Payor Contracts and the Provider Contracts,<sup>5</sup> respectively, to receive all amounts payable to Ceding Company thereunder or in respect thereof, including the following amounts: (a) Premiums; (b) amounts payable pursuant to coordination of benefits, subrogation and other third party recoveries; (c) amounts due from Providers, including settlements under

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<sup>4</sup> **Note to Draft:** Buyer is evaluating the need for a specifically identified reinsurance premium and/or ceding commission.

<sup>5</sup> **Note to Draft:** If the HMO Reinsurance Agreement with Zurich American Insurance Company is not novated to Reinsurer, Ceding Company will similarly assign all reinsurance recoverables to Reinsurer.

risk-sharing arrangements, overpayment adjustments and network discounts; and (d) any other recovery of Ceding Company, in each case, to the extent applicable to the Business Covered (collectively, the “**Recoverables**”). In furtherance of the foregoing, pursuant to **Article VI**, Ceding Company shall appoint Reinsurer as its agent and attorney-in-fact to, among other things, collect all Recoverables.

**Section 3.03 Ongoing Liabilities of Reinsurer.** From and after the Effective Time, Reinsurer shall indemnify Ceding Company in accordance with the settlement procedures set forth in **Article IV**, for all Coinsured Liabilities. In furtherance of the foregoing, pursuant to **Article VI** and subject to **Section 6.07**, Reinsurer shall discharge all Coinsured Liabilities (a) directly, (b) on behalf of Ceding Company and (c) at Reinsurer’s own expense.

## **ARTICLE IV**

### **SETTLEMENT; REPORTS**

**Section 4.01 Reinsurer Quarterly Report.** Within [●] [(●)] days after the end of each Quarterly Accounting Period, Reinsurer shall deliver to Ceding Company a report (each, a “**Quarterly Report**”)<sup>6</sup> in the form of, and containing for such Quarterly Accounting Period the information reflected in, **Schedule 4.01**, including a statement (the “**Net Settlement Statement**”) which shall set forth calculations of the net amount due to Reinsurer from Ceding Company, or to Ceding Company from Reinsurer, as applicable, under **Section 3.02** and **3.03** of this Agreement for the applicable Quarterly Accounting Period (the “**Net Settlement Amount**”), which, for the avoidance of doubt, shall take into account any amounts discharged, or collected, directly by Reinsurer in respect of the Coinsured Liabilities.

**Section 4.02 Settlement.** If the Net Settlement Amount as shown on the Net Settlement Statement is a positive amount, Ceding Company shall pay such amount to Reinsurer, and if the Net Settlement Amount as shown on the Net Settlement Statement is a negative amount, then Reinsurer shall pay cash in an amount equal to the absolute value of such negative amount to Ceding Company. Any payment, withdrawal, transfer or crediting of amounts required under this **Section 4.02** shall be made within three (3) Business Days following the date of the delivery of the applicable Quarterly Report.

**Section 4.03 Offset and Recoupment Rights.** Any debits or credits incurred from or after the Effective Time in favor of or against either Ceding Company or Reinsurer with respect to this Agreement between the Parties shall be deemed mutual debits or credits, as the case may be, and, to the extent permitted under applicable Law, shall be set off and recouped, and only the net balance shall be allowed or paid. This **Section 4.03** shall apply, to the fullest extent permitted by applicable Law, notwithstanding the initiation or commencement of a liquidation, insolvency, rehabilitation, conservation, supervision or similar proceeding by or against Ceding Company or Reinsurer.

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<sup>6</sup> **Note to Draft:** Timing for delivery, and form, of Quarterly Report to be agreed by the Parties prior to Closing.



Section 4.04 **Other Quarterly Reporting.** On a quarterly basis, in a format reasonably agreed upon by the Parties, Reinsurer shall provide to Ceding Company a reporting on standard metrics necessary for Ceding Company to comply with Payor reporting requirements as respects the Covered Policies.

## ARTICLE V

### BOOKS AND RECORDS

Section 5.01 **Books and Records.** Prior to the Medicare Novation Date, Reinsurer shall preserve, until such date as may be required by Reinsurer's standard document retention policies (or such other later date as may be required by applicable Law), books and records relating to the Covered Policies, the Payor Contracts or the Provider Contracts. During such period, upon the reasonable prior request of Ceding Company or its Representatives, Reinsurer shall (a) provide to Ceding Company and its Representatives reasonable access to such books and records during normal business hours and (b) permit Ceding Company and its Representatives to make copies of such books and records, in each case, at Ceding Company's expense. Reinsurer shall not destroy any such books and records except if Reinsurer sends to Ceding Company a written notice of its intent to destroy such books and records, upon which such books and records may then be destroyed after the tenth (10th) day following delivery of such notice unless Ceding Company notifies Reinsurer that it desires to obtain possession of such books and records, in which event Reinsurer shall transfer such records to Ceding Company and Ceding Company shall pay all reasonable expenses of Reinsurer in connection therewith.

## ARTICLE VI

### ADMINISTRATION

Section 6.01 **Appointment and Acceptance.** Except as otherwise provided in this Agreement, or unless specifically prohibited by applicable Law, Ceding Company hereby appoints Reinsurer as its exclusive agent (subject to **Section 6.15**) to provide all administrative services required or reasonably necessary with respect to the Covered Policies, the Payor Contracts and the Provider Contracts, including: (i) the payment of Coinsured Liabilities; (ii) the collection of Recoverables; and (iii) the renewal, replacement entry into, amendment or modification of Covered Policies, Payor Contracts and Provider Contracts; and (iv) such other services set forth on **Schedule 6.01** (collectively, the "**Administrative Services**").<sup>7</sup> In each case, the Administrative Services shall include any subtasks that are not specifically described in this Agreement but that are an inherent, necessary or customary part of the Administrative Services, which subtasks shall be deemed to be included within the scope of the Administrative Services. The Parties agree that Reinsurer shall provide all Administrative Services with respect to the Covered Policies, except in each case, for Legally Required Ceding Company Actions, services relating to Retained Liabilities or as otherwise specifically provided for in this Agreement, including **Section 6.14**.

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<sup>7</sup> **Note to Draft:** Schedule 6.01 to be agreed by the Parties prior to Closing.

**Section 6.02 Power of Attorney.** Subject to the terms and conditions of this Agreement, Ceding Company does hereby appoint and name Reinsurer, acting through its authorized officers and employees, as Ceding Company's lawful attorney-in-fact coupled with an interest with respect to the rights, duties, privileges and obligations of Ceding Company with respect to providing the Administrative Services, including to: (a) take any and all lawful acts that Ceding Company might have taken with respect to providing the Administrative Services; and (b) proceed by all lawful means to (i) perform any and all of Ceding Company's obligations under the Covered Policies, the Payor Contracts or the Provider Contracts, (ii) enforce any right and defend against any liabilities arising under the Covered Policies, the Payor Contracts or the Provider Contracts, (iii) sue or defend (in the name of Ceding Company, when necessary) any Action arising under the Covered Policies, the Payor Contracts or the Provider Contracts, (iv) collect all Premiums and Recoverables, or to quitclaim and release for the same, (v) sign (in Ceding Company's name, when necessary) vouchers, receipts, releases and other papers in connection with any of the foregoing matters, (vii) subject to applicable Law, without limitation (or duplication) of the foregoing, exercise all rights, and discharge all duties, of Ceding Company pursuant to the Covered Policies, the Payor Contracts or the Provider Contracts (including to renew, replace, enter into, amend or modify the same) and (vi) do everything lawfully permitted in connection with the satisfaction of Reinsurer's obligations under this Agreement.

**Section 6.03 Renewals and Issuance of Additional Policies and Related Contracts.** Subject to the terms and conditions set forth herein, on and after the date hereof, Reinsurer shall have the exclusive authority to (i) renew Covered Policies, (ii) issue additional Covered Policies (each, an "***Additional Covered Policy***" and collectively, the "***Additional Covered Policies***"), (iii) revise and amend Covered Policies, consistent with Payor authorization, (iv) seek applicable Payor authorization to offer new coverages of the types offered by Medicare Advantage plans or Medicare-Medicaid plans (as applicable), or to cease offering coverages of the type offered by Ceding Company, (v) contract with Payors with respect to the amendment, renewal or replacement of Payor Contracts, (vi) administer existing, and entering into new, Provider Contracts, and to seek the assignment thereof to Reinsurer (effective as of the Medicare Novation Date) to the extent relating to the Medicare Business, in each case, in the name of Ceding Company and on its behalf. In connection with the foregoing, Ceding Company shall fully cooperate with Reinsurer, including, subject to **Section 6.07**, contracting with a Payor at Reinsurer's direction. Reinsurer's authority with respect to the conduct set forth in this **Section 6.03** shall continue until the Medicare Novation Date, following which date, for the avoidance of doubt, the Covered Policies in respect of the Medicare Business shall become the direct obligations of Reinsurer and the foregoing authority as respects the Medicare Business shall be vested in Reinsurer. Until the earlier of the Medicare Novation Date and the termination of this Agreement, Ceding Company shall hold all Permits necessary or advisable to be maintained in connection with the conduct of the Business Covered as it is conducted prior to the date hereof, taking into account any expansion of such business by Reinsurer in accordance with the terms of this Agreement from and after the date hereof; *provided, however*, Ceding Company shall not be required to maintain any such Permits in respect of FIDA Business following the last day that such Permits are required to be maintained in accordance with applicable Law.

**Section 6.04 Reports.** Reinsurer shall, upon reasonable prior written request, provide to Ceding Company (a) financial and accounting reports and information necessary for Ceding

Company to prepare required reports and filings with Governmental Authorities with respect to the Business Covered, including tax filings and financial statements and (b) any additional reports regarding the Administrative Services reasonably required by Ceding Company to comply with any applicable regulatory, legal, tax or accounting requirement or other applicable Law. All such reports shall be in a form and format to be mutually agreed upon by the Parties.

**Section 6.05 Health Plan Management System.** To the fullest extent permitted by applicable Law, Ceding Company hereby authorizes Reinsurer to utilize its online account for the Health Plan Management System established and maintained by CMS for all purposes necessary, advisable or appropriate in connection with the performance of the Administrative Services.

**Section 6.06 Standards.** Reinsurer shall cause the Administrative Services to be provided in accordance with (a) Reinsurer's current servicing standards as these exist prior to Effective Time, subject to any changes to such standards required by applicable Law or effectuated by Reinsurer with respect to the servicing of its other comparable businesses, (b) applicable Law, (c) the terms and conditions of the Covered Policies, (d) the terms and conditions of the Payor Contracts, (e) the terms and conditions of the Provider Contracts, (f) the Medicare regulatory requirements set forth in **Exhibit B** and (g) the FIDA regulatory requirements set forth in **Exhibit C**.

**Section 6.07 Ultimate Authority.** Ceding Company shall retain the ultimate authority to make all final decisions with respect to the administration of the Covered Policies and the Payor Contracts.

**Section 6.08 Compensation.** Reinsurer's sole compensation for the reinsurance and the Administrative Services provided by Reinsurer to Ceding Company hereunder shall be the consideration described in **Section 3.01** and **Section 3.02** and Ceding Company shall not be liable to Reinsurer for any additional consideration in respect thereof.

**Section 6.09 Claims Litigation.**

(a) Reinsurer shall promptly notify Ceding Company in writing of any litigation that has been instituted with respect to: (i) any denied claim or any claim-handling under a Covered Policy, regardless of whether such claim was paid or denied; or (ii) any other matter relating to a Covered Policy, a Payor Contract, a Provider Contract or Reinsurer's administration of any of the foregoing. Such notice shall include a summary of the nature of the pending litigation, the alleged actions or omissions giving rise to such litigation and copies of any files that Ceding Company may reasonably require in order to review such litigation.

(b) From and after the date hereof, Reinsurer shall sue or defend, at its own expense and in the name of Ceding Company, any litigation brought in respect of a Coinsured Liability. Ceding Company shall have the right, at its own expense, to engage its own separate legal representation in any litigation in which Ceding Company is a named party; *provided, however*, that Reinsurer shall exercise control and direction over litigation defended pursuant to this **Section 6.09** and shall have the authority to settle or consent to judgment in any such litigation; *provided, further*, that Reinsurer shall not compromise or settle any such litigation

without Ceding Company's prior written consent (which consent shall not be unreasonably withheld, conditioned, delayed or denied), unless: (i) the settlement or judgment does not impose any equitable remedies or any restriction or condition on Ceding Company which could reasonably be expected to have an adverse effect on Ceding Company or its Affiliates or on any business of Ceding Company or its Affiliates (other than the Business Covered); and (ii) Reinsurer obtains a complete release of Ceding Company with respect to such litigation.

**Section 6.10 Legally Required Ceding Company Actions.** Reinsurer shall give Ceding Company timely notice of any actions with respect to the Administrative Services that Ceding Company is required by applicable Law or Governmental Authorities to discharge directly without Reinsurer acting on its behalf ("**Legally Required Ceding Company Actions**"), including providing Ceding Company with all information that is reasonably required from Reinsurer for Ceding Company to perform such Legally Required Ceding Company Actions (including the preparation of applicable regulatory filings) in a timely fashion. Notwithstanding the foregoing, nothing in this Agreement shall require Reinsurer to provide legal advice to Ceding Company. Ceding Company acknowledges and agrees that no action taken by Reinsurer pursuant to this Agreement shall constitute legal advice to Ceding Company.

**Section 6.11 Regulatory Matters.** If either Party receives notice of, or otherwise becomes aware of any inquiry, investigation, examination, complaint, audit or proceeding by Governmental Authorities relating to the Covered Policies or the Payor Contracts, such Party shall promptly notify the other Party thereof. The Parties shall cooperate in good faith with respect to resolving or responding to such matter. Ceding Company shall retain the final authority with respect to the resolution of any such inquiry, investigation, examination, complaint, audit or proceeding, taking into account the recommendation of Reinsurer provided to Ceding Company, which Ceding Company shall not unreasonably reject.

**Section 6.12 Bank Accounts.** During the period that Reinsurer is performing Administrative Services pursuant to this Agreement, and subject to Reinsurer's obligations under this Agreement to discharge Coinsured Liabilities and certain other amounts on Ceding Company's behalf, Reinsurer may establish and maintain accounts with banking institutions to provide the Administrative Services ("**Bank Accounts**"). To the extent such Bank Accounts are established, Reinsurer shall have exclusive authority over such Bank Accounts, including the exclusive authority to: (a) open Bank Accounts in the name of Ceding Company; (b) designate the authorized signatories on the Bank Accounts; (c) issue drafts on and make deposits in the Bank Accounts in the name of Ceding Company; and (d) make withdrawals from the Bank Accounts, in each case, to the extent necessary to provide the Administrative Services. Ceding Company shall do all things reasonably necessary to enable Reinsurer to open and maintain the Bank Accounts, including executing and delivering such depository resolutions and other documents as may be requested from time-to-time by the banking institutions. Ceding Company agrees that without Reinsurer's prior written consent it shall not make any changes to the authorized signatories on the Bank Accounts nor withdraw, or attempt to withdraw, any funds therefrom. In connection with the foregoing, upon instruction from Reinsurer, Ceding Company shall direct a Payor to make any payments to one or more Bank Accounts established pursuant to this **Section 6.12**.

**Section 6.13 Capacity; Disaster Recovery.**

(a) Reinsurer shall, at all times during the period that Reinsurer is performing the Administrative Services pursuant to this Agreement, (i) keep, maintain or subcontract for a commercially reasonable number of appropriately trained personnel and (ii) obtain and maintain all material Permits under applicable Laws (including, if required, an independent adjuster license or third party administrator license) to perform the Administrative Services.

(b) For all computer programs, data, computer equipment, communications equipment and other similar items used by Reinsurer to provide the Administrative Services, Reinsurer shall provide disaster recovery services and backup and archival services that are substantially similar to the disaster recovery services and backup and archival services, respectively, that Reinsurer uses for its own computer programs, data, computer equipment, communications equipment and other similar items.

**Section 6.14 Force Majeure.** Reinsurer shall not be deemed to be in default in the performance of any obligations under this Agreement when such a failure of performance arises out of a Force Majeure Event; *provided, however*, that Reinsurer shall not be relieved of its obligations hereunder if its failure of performance is due to removable or remediable causes that Reinsurer fails to remove or remedy using commercially reasonable efforts within a reasonable time period. If Reinsurer is rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure Event for a period of twenty-four (24) hours, Reinsurer (a) shall provide written notice thereof to Ceding Company, (b) use commercially reasonable efforts to remove such inability and (c) following the cessation of such Force Majeure Event, provide written notice thereof to Ceding Company.

**Section 6.15 Subcontracting.** Reinsurer may not subcontract for the performance of any Administrative Services without prior written approval by Ceding Company, which approval shall not be unreasonably withheld, conditioned, delayed or denied; *provided, however*, that without obtaining the consent of Ceding Company, Reinsurer shall be permitted to (a) subcontract for the performance of any Administrative Service with an Affiliate of Reinsurer, (b) continue to subcontract the performance of any function that is subcontracted by Ceding Company, or by Reinsurer or its Affiliates, prior to the Effective Time and (c) subcontract for the performance of any Administrative Services for which Reinsurer or its Affiliates also subcontracts as respects its other businesses. Notwithstanding the foregoing or Ceding Company's approval of Reinsurer's use of any subcontractor, Reinsurer shall remain fully responsible for the performance of all Administrative Services and shall be responsible for compliance by any subcontractor with the terms of this Agreement, with each reference to an obligation or duty of Reinsurer in this Agreement with respect to any subcontracted Administrative Services being considered to include the subcontractor within the scope of such referenced obligation or duty of Reinsurer. Without limitation of the foregoing, the personnel and facilities of any subcontractor shall be considered personnel and facilities of Reinsurer for purposes of this Agreement.

**Section 6.16 Independent Contractor.** Ceding Company acknowledges and agrees that Reinsurer and its applicable Affiliates, in performing their responsibilities pursuant to this Agreement, are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partners or joint

venturers, fiduciaries or any association for profit between and among the Parties or any of their respective Affiliates.

## ARTICLE VII

### NOVATION OF THE CMS CONTRACT

#### Section 7.01 **Novation of the CMS Contract.**

(a) Subject to the terms and conditions set forth in this Agreement, each Party shall (i) use its reasonable best efforts to obtain, or cause to be obtained, authorization from CMS to consummate the Novation (such approval, the “***Novation Authorization***”) and (ii) reasonably cooperate with the other Party and its Affiliates in seeking to obtain such Novation Authorization.

(b) The Parties agree that, with respect to the Novation Authorization, Buyer and Seller shall mutually determine (i) the scheduling of, and strategic planning for, any meeting with or filing with CMS, (ii) subject to applicable Law, the process for receipt of the Novation Authorization and (iii) the resolution of any investigation or other inquiry of CMS. Without limiting the foregoing, (A) each Party shall disclose to the other Party in advance of any filing, submission or attendance all analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments and proposals made by or on behalf of either Party before CMS or the staff or regulators of CMS, in connection with receipt of the Novation Authorization, *provided, however*, that no Party shall be required to disclose to the other Party at any time (I) any interactions between Ceding Company or Reinsurer with Governmental Authorities in the ordinary course of business, (II) any disclosure which is not permitted by Law or (III) any disclosure containing confidential or proprietary information, any attorney-client privileged documents or communications or any appraisals, valuations, market studies, legal or financial opinions, or board presentations prepared, submitted or reviewed in connection with any application for the Novation Authorization, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments and proposals and (B) each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with CMS or the staff or regulators of CMS, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact, it being understood that CMS may require, or insist upon, only communicating with and through Ceding Company or Reinsurer, as applicable.

## ARTICLE VIII

### OVERSIGHTS

Section 8.01 **Oversights.** Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either Party from any liability that would have attached had such delay, error or omission not occurred; *provided* that such error or omission is rectified as soon as practicable after discovery; and *provided, further*, that the Party making such error or omission, or responsible for such delay, shall be responsible for any

additional liability that attaches as a result. Subject to the foregoing, if the failure of either Party to comply with any provision of this Agreement is unintentional or the result of a misunderstanding or oversight, the parties shall cause such failure to be promptly rectified such that both parties shall be restored as closely as possible to the positions that they would have occupied had such error or oversight not occurred.

## **ARTICLE IX**

### **INSOLVENCY**

#### **Section 9.01 Insolvency of Ceding Company.**

(a) In the event of the insolvency of Ceding Company, all reinsurance made, ceded, renewed or otherwise becoming effective under this Agreement shall be payable by Reinsurer on the basis of the liability of Ceding Company under the Coinsured Liabilities reinsured hereunder without diminution because of the insolvency of Ceding Company. In the event of insolvency and the appointment of a liquidator, receiver or statutory successor of Ceding Company, such payments by Reinsurer shall be made directly to Ceding Company or its liquidator, receiver or statutory successor.

(b) It is agreed and understood, however, that in the event of the insolvency of Ceding Company, the liquidator, receiver or statutory successor of Ceding Company shall give written notice of the pendency of a claim against Ceding Company in connection with a Coinsured Liability within a reasonable period of time after such claim is filed in the insolvency proceedings and that during the pendency of such claim Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to Ceding Company or its liquidator, receiver or statutory successor. It is further understood that the expense thus incurred by Reinsurer shall be chargeable, subject to court approval, against Ceding Company as part of the expenses of liquidation to the extent of a proportionate share of the benefit which may accrue to Ceding Company solely as a result of the defense undertaken by Reinsurer.

## **ARTICLE X**

### **DURATION AND TERMINATION**

**Section 10.01 Duration.** This Agreement shall commence at the Effective Time and continue in force until the termination date (the “***Termination Date***”), which shall occur at such time as (a) Ceding Company’s liability with respect to all Covered Policies reinsured hereunder is terminated and Ceding Company has received payments which discharge such liability in full in accordance with the provisions of this Agreement, (b) this Agreement is terminated by the mutual written consent of Reinsurer and Ceding Company or (c) the Medicare Novation Date occurs.

**Section 10.02 Survival.** Notwithstanding the other provisions of this **Article X**, the terms and conditions of this **Article X** and of **Article XI** (and **Article I** to the extent relating to the foregoing) shall remain in full force and effect after the termination of this Agreement.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 **Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses.

Section 11.02 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 11.02**):

If to Ceding Company:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

If to Reinsurer:

[REINSURER]  
[ADDRESS]  
Attention: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Section 11.03 **Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including”, unless otherwise specified, shall be deemed to be followed by the words “without limitation” whether or not such words are actually stated; (b) the word “or” is not disjunctive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, “hereunder” and derivative or similar words refer to this Agreement as a whole, including the Exhibits hereto; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) references to “dollars” or “\$” shall mean United States dollars; (f) references to “written” or “in writing” include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person’s successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken



pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to “close of business” on any given day shall be deemed to refer to 11:59 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 11.04 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 11.05 **Severability.** If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 11.06 **Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

Section 11.07 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

Section 11.08 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 11.09 **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

Section 11.10 **Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.10(c).**

Section 11.11 **Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages,

even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

Section 11.12 **Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Ceding Company:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

Reinsurer:

[REINSURER NAME]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**

[To come]

## **EXHIBIT B**

### **MEDICARE REGULATORY REQUIREMENTS**

This Exhibit sets forth the requirements established by CMS, in addition to those set forth elsewhere in this Agreement, applicable to the Medicare Business. Unless otherwise provided in this Exhibit or in the other provisions of this Agreement (into which, for the avoidance of doubt, this Exhibit shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in 42 C.F.R. Parts 422 and 423. In the event of a conflict between this Exhibit and any other provision of this Agreement, this Exhibit shall govern.

#### **I. DEFINITIONS**

1.1 Completion of Audit: Completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of Ceding Company, First Tier or Downstream Entity.

1.2 Downstream Entity: Any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the Medicare Advantage or Prescription Drug benefit, below the level of the arrangement between Ceding Company and Reinsurer. These written arrangements continue down to the level of the ultimate provider of both health and administrative services. [42 C.F.R. §§ 422.500; 423.501]

1.3 Final Contract Period: The final term of the contract between CMS and Ceding Company.

1.4 First Tier Entity: Any party that enters into a written arrangement, acceptable to CMS, with Ceding Company to provide administrative services or health care services for a Medicare eligible individual under the Medicare Advantage or Prescription Drug Programs. [42 C.F.R. §§ 422.500; 423.501]

#### **II. REQUIRED PROVISIONS**

Reinsurer, as a First Tier Entity, agrees to the following:

2.1 Medicare Compliance. Reinsurer shall comply with all applicable Medicare laws, regulations and CMS instructions. [42 C.F.R. § 422.504(i)(4)(v)] Reinsurer acknowledges that the Administrative Services performed hereunder shall be consistent and comply with Ceding Company's contractual obligations under the CMS Contract. [42 C.F.R. §§ 422.504(i)(3)(iii); 423.505(i)(3)(iii)]

2.2 Monitoring by Ceding Company. Ceding Company shall, on an ongoing basis, monitor the performance of Reinsurer. [42 C.F.R. §§ 422.504(i)(4)(iii); 423.505(i)(4)(iii)]

2.3 Confidentiality and Accuracy of Medicare Enrollee Records. Reinsurer shall:

2.3.1 Abide by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information;

2.3.2 Ensure that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas;

2.3.3 Maintain Medicare Enrollee records and information in an accurate and timely manner; and

2.3.4 Ensure timely access by Medicare Enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13); 422.118; 423.505(b)(14); 423.136].

2.4 Services Performed Outside the United States. Reinsurer shall not perform or contract with any third parties to perform any of the Administrative Services to be provided under the Agreement outside of the United States without the prior written approval of Ceding Company. Reinsurer shall not utilize an offshore subcontractor to receive, process, transfer, handle, store or access beneficiary protected health information in connection with this Agreement. Should Ceding Company in its discretion grant such approval, Reinsurer agrees to timely supply Ceding Company timely information necessary for Ceding Company to comply with, and attest to compliance with, all applicable CMS requirements regarding any such approved offshore arrangement within thirty (30) days after its effective date. [HPMS Memos 07/23/2007 and 09/20/2007]

2.5 Hold Harmless. Reinsurer shall accept as payment in full for Administrative Services provided to Medicare Enrollees the compensation specified in the Agreement. Reinsurer shall not hold any Medicare Enrollee liable for any fees that are the legal obligation of Ceding Company under the Agreement. Reinsurer agrees that in no event, including nonpayment by Ceding Company, Ceding Company's insolvency or breach of this Agreement, shall Reinsurer bill, charge, collect a deposit from, or seek compensation, remuneration or reimbursement from, or have any recourse against a Medicare Enrollee or persons other than Ceding Company acting on a Ceding Company Medicare Enrollee's behalf. [42 C.F.R. §§ 422.504(i)(3)(i); 422.504(g)(1)(i); 423.505(i)(3)(i); 423.505(g)(1)(i)]

2.6 Audits/Record Retention. The parties agree that the Department of Health and Human Services (“HHS”), the Comptroller General and their designees have the right to evaluate, through inspection, audit or other means, any books, contracts, records, computer or other electronic systems, including medical records and documentation of Reinsurer, directly from Reinsurer or a Downstream Entity, that pertain to any aspect of Administrative Services performed, reconciliation of benefit liabilities, and determination of amounts payable under, or are otherwise related to the CMS Contract, or as the Secretary of the HHS may deem necessary to enforce the CMS Contract. Reinsurer further agrees that such right of HHS, the Comptroller General and their designees to inspect, evaluate and audit any pertinent information for any particular contract period will exist through ten (10) years from the Final Contract Period or from the date of Completion of Audit, whichever is later. [42 C.F.R. §§ 422.504(e)(1); 422.504(i)(2); 423.505(e)(1); 423.505(i)(2)]

2.7 Accountability; Delegation. Ceding Company will only delegate any of its activities or responsibilities under the CMS Contract to Reinsurer if such delegation is set forth in a written contract that:

- 2.7.1 Specifies the delegated activities and reporting responsibilities;
- 2.7.2 Provides for revocation of the delegation activities and reporting requirements, or specifies other remedies in instances where CMS or Ceding Company determines that Reinsurer has not performed satisfactorily;
- 2.7.3 Specifies that the performance of Reinsurer is monitored by Ceding Company on an ongoing basis;
- 2.7.4 To the extent applicable, specifies that either (i) the credentials of medical professionals affiliated with Reinsurer will be reviewed by Ceding Company, or (ii) the credentialing process will be reviewed and approved by Ceding Company. Ceding Company shall audit the credentialing process on an ongoing basis.
- 2.7.5 To the extent applicable, specifies that in the event Ceding Company delegates the selection of Providers, written arrangements must state that Ceding Company retains the right to approve, suspend, or terminate such arrangement(s);
- 2.7.6 Specifies that Reinsurer must comply with all applicable Medicare laws, regulations, CMS instructions, and CMS requirements; and
- 2.7.7 Specifies that any delegated service or activity will be consistent with and comply with the CMS Contract.

[42 C.F.R. §§ 422.504(i)(4)-(5); 423.505(i)(5)]

2.8 Subcontractors. If Reinsurer contracts with any Downstream Entity for the provision of Administrative Services, such contract shall incorporate the requirements of this Exhibit, as it may be amended from time to time, into such Downstream Entity contract.



2.9 Medicare Participation; Program Integrity. Reinsurer shall not employ or contract with any individual who is excluded from participation in Medicare under Section 1128 or 1128A of the Social Security Act (or with any entity that employs or contracts with such an individual or entity) for the provision of health care, utilization review, medical social work or administrative services. Reinsurer shall immediately notify Ceding Company in the event that Reinsurer or any employed or contracted individual or entity is excluded from participating in Medicare under Section 1128 or 1128A of the Social Security Act. Reinsurer shall further immediately notify Ceding Company in the event that it or any employed or contracted individual or entity is criminally convicted or has a civil judgment entered against it for fraudulent activities or is sanctioned under any Federal health care program involving the provision of health care or prescription drug services. [42 C.F.R. § 422.752(a)(8); 423.752(a)(6); CMS Contract, Article III.H.1]

2.10 Compliance with Other Federal Laws. Ceding Company and Reinsurer agree to comply with Federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, including but not limited to, applicable provisions of Federal criminal law, the False Claims Act (31 U.S.C. § 3729 *et seq.*) and the anti-kickback statute (42 U.S.C. § 1320a-7b(b)); the HIPAA administrative simplification rules at 45 C.F.R. parts 160, 162 and 164; and all laws applicable to recipients of federal funds. [42 C.F.R. § 422.504(h)(1); 423.505(h)(1)]

2.11 Compliance Training, Education and Communications. Reinsurer agrees and certifies that it, as well as its employees and Downstream Entities who provide services under the Agreement, shall participate in applicable compliance training, education or communications as reasonably requested by Ceding Company or as otherwise required by Law, and must be made a part of the orientation for a new employee or new Downstream Entity. Reinsurer shall annually take the compliance training made available by CMS, and Ceding Company shall accept the certificate of completion of the CMS training as satisfaction of the training requirement. [42 C.F.R. §§ 422.503(b)(4)(vi)(C); 423.504(b)(vi)(C)]

2.12 Federal Funds. Reinsurer acknowledges that the payments that Reinsurer receives from Ceding Company to pursuant to the Agreement are, in whole or part, from Federal funds. Therefore, Reinsurer and any of its Downstream Entities are subject to certain laws that are applicable to individuals and entities receiving Federal funds, which may include, Title VI of the Civil Rights Act of 1964 as implemented by 45 C.F.R. Part 80, the Age Discrimination Act of 1975 as implemented by 45 C.F.R. Part 91, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 C.F.R. Part 84. [Medicare Managed Care Manual, Chapter 11, Section 120]

2.13 Accountability. Reinsurer hereby acknowledges and agrees that Ceding Company shall oversee the provision of Administrative Services hereunder and be accountable under the CMS Contract for such services. [42 C.F.R. §§ 422.504(i)(4)(iii); 423.505(i)(1)]

2.14 Corrective Action. In the event that CMS or Ceding Company determines that Reinsurer has not performed the Administrative Services satisfactorily, Ceding Company may request Reinsurer to prepare for Ceding Company's review and approval a written corrective action plan for the remediation of the unsatisfactory performance. Such corrective action plan shall be provided within thirty (30) days of receipt of Ceding Company's request. Upon Ceding Company's approval of Reinsurer's corrective action plan, Reinsurer shall promptly implement corrective action in accordance with the approved plan.

2.15 Modification of Exhibit. The parties agree to include in this Exhibit such other terms and conditions as CMS may find necessary and appropriate in order to implement requirements of Medicare Part C and Part D. [42 C.F.R. §§ 422.504(j); 423.505(j)]

## EXHIBIT C

### FIDA REGULATORY REQUIREMENTS

This Exhibit sets forth the requirements established by CMS, in addition to those set forth elsewhere in the Agreement, applicable to the FIDA Business. Unless otherwise provided in this Exhibit or the Agreement (into which, for the avoidance of doubt, this Exhibit shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in the FIDA Contract. In the event of a conflict between this Exhibit and any other provision of this Agreement, this Exhibit shall govern.

#### I. DEFINITIONS

1.1 First Tier, Downstream and Related Entity: An individual or entity that enters into a written arrangement with Ceding Company, acceptable to CMS and DOH, to provide administrative or health care services of Ceding Company under the FIDA Contract.

1.2 Medical Record: A complete record of items and services rendered by all Providers and non-contracted providers documenting the specific items and services rendered to the FIDA Enrollee, including but not limited to inpatient, outpatient, emergency care, routine, and Long-Term Services and Supports items and services. The record must be kept in accordance with all applicable Federal, State and local laws, rules and regulations. Such record shall be signed by the provider rendering the services.

1.3 Privacy: Requirements established in the Health Insurance Portability and Accountability Act of 1996, and implementing regulations, Medicaid regulations, including 42 C.F.R. §§ 431.300 through 431.307, as well as relevant New York privacy laws for the purpose for protecting personal and individually identifiable health and other information from being shared without the approval or consent of the FIDA Enrollee.

1.4 Provider Preventable Condition: Such policies and procedures shall be consistent with Federal law, including but not limited to 42 C.F.R. § 434.6(a)(12), 42 C.F.R. § 438.6(f)(2), and 42 C.F.R. § 447.26, and guidance and be consistent with Title 10, Sub-part 86-1.42 and the DOH's policies, procedures and guidance on Provider Preventable Conditions as outlined in the NY Register and on the [www.health.ny.gov](http://www.health.ny.gov) website.

1.5 State: The State of New York.

#### II. FIDA CONTRACT REQUIRED PROVISIONS

2.1 Access. Reinsurer agrees as follows:

2.1.1 HHS, the Comptroller General, DOH, the New York State Office of the Medicaid Inspector General, Office of State Comptroller and Office of Attorney General, and their designees, and other State and Federal agencies with monitoring authority related to Medicare and Medicaid, have the right to audit, evaluate, and inspect any books, contracts, computer or other electronic systems, including Medical Records, documentation, and any pertinent information of the First Tier and Downstream Entities; and

2.1.2 HHS's, the Comptroller General's, DOH, the New York State Office of the Medicaid Inspector General, Office of State Comptroller and Office of Attorney General, or their designees right to inspect, evaluate and audit any pertinent information for any particular contract period for ten years from the final date of the contract period or from the date of completion of any audit, whichever is later.

2.2 Ceding Company and Reinsurer agree as follows:

2.2.1 Any Administrative Services or other activity performed by Reinsurer must be in accordance with Ceding Company's contractual obligations to CMS and DOH.

2.2.2 In the event that CMS, DOH or Ceding Company determines that Reinsurer has not performed the Administrative Services satisfactorily, Ceding Company may request Reinsurer to prepare for Ceding Company's review and approval a written corrective action plan for the remediation of the unsatisfactory performance. Such corrective action plan shall be provided within thirty (30) days of receipt of Ceding Company's request. Upon Ceding Company's approval of Reinsurer's corrective action plan, Reinsurer shall promptly implement corrective action in accordance with the approved plan.

2.2.3 Ceding Company shall monitor Reinsurer's performance on an ongoing basis and must impose corrective action as necessary.

2.2.4 Reinsurer shall safeguard FIDA Enrollee Privacy and the confidentiality of FIDA Enrollee health records.

2.2.5 Reinsurer shall comply with all Federal and State laws, regulations and CMS instructions.

2.3 Payments to Providers. In processing claims for services rendered to FIDA Enrollees, Reinsurer agrees that:

2.3.1 No payment shall be made to a provider for a Provider Preventable Condition; and

2.3.2 As a condition of payment, the provider shall comply with the reporting requirements as set forth in 42 C.F.R. § 447.26(d) and as may be specified by Ceding Company.

**EXHIBIT D**

**FORM OF NOVATION AGREEMENT**

[To come]

**SCHEDULE 4.01**

**NET SETTLEMENT STATEMENT**

[To come]

**SCHEDULE 6.01**

**ADMINISTRATIVE SERVICES**

[To come]

**EXHIBIT H**

**FORM OF MEMBER NON-COMPETE AGREEMENT**

(See attached)



**EXHIBIT H**  
**FORM OF**  
**MEMBER NON-COMPETE AGREEMENT**

This NON-COMPETE AGREEMENT (this “**Agreement**”), dated as of [●] [●], [●], is being executed and delivered by NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“**Seller**”), ARCHDIOCESE OF NEW YORK, a [●] (the “**Archdiocese**”), DIOCESE OF ALBANY, a [●] (the “**Albany Diocese**”), DIOCESE OF BROOKLYN, a [●] (the “**Brooklyn Diocese**”), DIOCESE OF BUFFALO, a [●] (the “**Buffalo Diocese**”), DIOCESE OF OGDENSBURG, a [●] (the “**Ogdensburg Diocese**”), DIOCESE OF ROCHESTER, a [●] (the “**Rochester Diocese**”), DIOCESE OF ROCKVILLE CENTRE, a [●] (the “**Rockville Centre Diocese**”), DIOCESE OF SYRACUSE, a [●] (the “**Syracuse Diocese**” and, together with the Albany Diocese, the Brooklyn Diocese, the Buffalo Diocese, the Ogdensburg Diocese, the Rochester Diocese and the Rockville Centre Diocese, the “**Dioceses**”), and CENTENE CORPORATION, a Delaware corporation (“**Buyer**”), pursuant to that certain Asset Purchase Agreement, dated as of September [●], 2017, by and between Seller and Buyer (the “**Asset Purchase Agreement**”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement. Capitalized terms that are not otherwise defined in this Agreement shall have the meanings ascribed to them in the Asset Purchase Agreement.

WHEREAS, Timothy Cardinal Dolan, the Archbishop of New York, and the Diocesan Bishops for each of the Dioceses serve as the members of the Seller (collectively, the “**Members**”);

WHEREAS, the Members have determined it is in the best interest of the Seller to enter into the Asset Purchase Agreement and to use the proceeds from the transactions contemplated thereby for charitable purposes, including charitable purposes that are consistent with the missions of the Archdiocese and the Dioceses;

WHEREAS, in order to induce the Buyer to enter into the transactions contemplated by the Asset Purchase Agreement and the other agreements contemplated thereby, the Archdiocese and the Dioceses wish to make certain covenants to the Buyer that they will not engage in certain businesses that compete with the business that is being sold to the Buyer under the Asset Purchase Agreement for a period of time following the sale thereof.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Certain Definitions.

- (a) “**Closing**” means the closing contemplated by the Asset Purchase Agreement.

- (b) **“Closing Date”** means [●] [●], [●].<sup>1</sup>
- (c) **“Restricted Business”** means operating any healthcare insurance or managed health care business that competes with the Business as conducted by Seller immediately prior to the Closing (other than the Archdiocese of New York’s continued operation of the Archcare Continuing Care Community (as such business is conducted immediately prior to the Closing)). For purposes of the definition of “Restricted Business,” the parties hereto agree that the “Business” also shall include any Governmental Authority-sponsored successor programs to the Business operated by Seller immediately prior to Closing, including successor programs to Medicaid, Child Health Plus, Health Benefit Exchange, Medicare services, Medicaid and Health and Recovery Plan, Child Health Plus Program, Managed Long Term Care Program, Medicare Advantage program, Medicare Advantage D-SNP program, Medicaid Advantage program, Medicaid Advantage Plus, Fully Integrated Duals Advantage program, Qualified Health Plan program, and Essential Plan.
- (d) **“Restricted Period”** means the five (5) year period commencing on the Closing Date.
- (e) **“Restricted Persons”** means the Archdiocese and the Dioceses.
- (f) **“Territory”** means the State of New York and any other location in which the Business is conducted on the Signing Date and as of the Closing.

2. Non-Compete.

- (a) During the Restricted Period, the Restricted Persons shall not, directly or indirectly, either for its or their own benefit or for the benefit of any other Person,
  - (i) engage in, make any regulatory application to engage in, enter into any Contract (including any Provider Contract) in anticipation of engaging in, or assist or provide any material services to any Person in engaging in a Restricted Business in the Territory; (ii) have an ownership interest in any capacity, including as a partner, shareholder, member, principal, joint venturer, agent, trustee or lender, in any Person that engages directly or indirectly in the Restricted Business in the Territory; or (iii) induce or persuade, or seek or attempt to induce or persuade, any Provider, Enrollee, supplier or licensor of the Business (including any existing or former Provider, Enrollee, supplier or licensor of Seller and any Person known to Seller to have become a Provider, Enrollee, supplier or licensor of the Business during the Restricted Period) to terminate or modify its business relationship with the Business in a manner adverse to the Business; provided, however, that it will not constitute a breach of this Section 2 for a Restricted Person or any of its Affiliates to (x) acquire any business entity which engages in the Restricted Business in the Territory if such business entity’s

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<sup>1</sup> Note to Draft: To be the Closing Date contemplated by the Asset Purchase Agreement.

revenues from the operation of the Restricted Business constitute less than five percent (5%) of such business entity's total revenues (measured based on actual trailing twelve month revenues from the date of measurement) at all times during the Restricted Period, or (y) acquire or hold bonds or up to five percent (5%) of the outstanding shares of any class or series of equity securities of any entity if such bonds or equity securities are publicly traded.

- (b) During the Restricted Period, the Restricted Persons shall not, and shall not permit any of their Subsidiaries to, directly or indirectly, solicit for employment or hire any Hired Employee, or encourage any Hired Employee to leave such employment or hire any Hired Employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any Hired Employees; provided, however, that nothing in this Section 2(b) shall prevent any Restricted Person or any of its Subsidiaries from hiring any employee of Buyer whose employment has been terminated by Buyer and such termination was not directly or indirectly attributable to actions of the Restricted Persons.
- (c) Each of the Restricted Persons acknowledges that a breach or threatened breach of this Section 2 will give rise to irreparable harm to Buyer, for which monetary damages will not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such Restricted Person of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a Court of competent jurisdiction.
- (d) Each of the Restricted Persons acknowledges that the restrictions contained in this Section 2 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into the Asset Purchase Agreement and consummate the transactions contemplated thereby. In the event that any covenant contained in this Section 2 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any Court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 2 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

3. Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including”, unless otherwise specified, shall be deemed to be followed by the words “without limitation” whether or not such words are actually stated; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, “hereunder” and

derivative or similar words refer to this Agreement as a whole; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) provisions shall apply, when appropriate, to successive events and transactions; and (f) a reference to any Person includes such Person's successors and permitted assigns. Unless the context otherwise requires, references herein: (i) to Sections mean the Sections of this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

4. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
5. Severability. If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
6. Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed.
8. No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or

equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
10. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.
  - (a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.
  - (b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.
  - (c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY

RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10(c).

11. Specific Performance. Without intending to limit the remedies available to the parties hereunder, the parties agree that irreparable damage would occur if any provision of this Agreement are not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.
12. Counterparts. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

ARCHDIOCESE OF NEW YORK

By: \_\_\_\_\_  
Name:  
Title:

DIOCESE OF ALBANY

By: \_\_\_\_\_  
Name:  
Title:

DIOCESE OF BROOKLYN

By: \_\_\_\_\_  
Name:  
Title:

DIOCESE OF BUFFALO

By: \_\_\_\_\_  
Name:  
Title:

DIOCESE OF OGDENSBURG

By: \_\_\_\_\_  
Name:  
Title:

DIOCESE OF ROCHESTER

By: \_\_\_\_\_  
Name:  
Title:

DIOCESE OF ROCKVILLE CENTRE

By: \_\_\_\_\_  
Name:  
Title:

DIOCESE OF SYRACUSE

By: \_\_\_\_\_  
Name:  
Title:

CENTENE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT I**

**MINIMUM CAPITAL AMOUNT CALCULATION EXAMPLE**

(See attached)

## EXHIBIT I

### MINIMUM CAPITAL AMOUNT CALCULATION EXAMPLE

(\$ in 000s)

Estimated Risk Based Capital @ 100% of Authorized Control Level ("ACL") <sup>(1)</sup>	\$336,779
350%	350%
<b><i>Minimum Capital Amount</i></b>	<b>\$1,178,726</b>

Note: The Estimated Minimum Capital Amount, Closing Minimum Capital Amount and Final Minimum Capital Amount will be calculated (i) based solely upon the Purchased Assets and Assumed Liabilities, including any such assets and liabilities transferred under the QHP and EP Reinsurance Agreement and the Medicare Reinsurance Agreement and (ii) in accordance with the risk based capital instructions adopted by the National Association of Insurance Commissioners, as adjusted to reflect the 12-month period immediately preceding the Closing Date.

(1) Minimum required level (Authorized Control Level or "ACL") as calculated per NAIC formula. The ACL example above has been derived by applying 2017 premium revenue to the ratio of RBC at 100% ACL in 2016 over 2016 premium revenue.

**EXHIBIT J**

**FORM OF QHP AND EP REINSURANCE AGREEMENT**

(See attached)

**EXHIBIT J**

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**COINSURANCE AGREEMENT**

by and between

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

and

**[REINSURER]**

Dated as of

\_\_\_\_\_, 201[●]

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EXHIBITS:

EXHIBIT A BUSINESS ASSOCIATE AGREEMENT  
EXHIBIT B EP REGULATORY REQUIREMENTS  
EXHIBIT C QHP REGULATORY REQUIREMENTS

SCHEDULES:

SCHEDULE 4.01 NET SETTLEMENT STATEMENT  
SCHEDULE 6.01 ADMINISTRATIVE SERVICES

## COINSURANCE AGREEMENT

This Coinsurance Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 201[●], is entered into by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“**Ceding Company**”), and [REINSURER], a [●] (“**Reinsurer**”).<sup>1</sup> Ceding Company and Reinsurer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Ceding Company and Centene Corporation, a Delaware corporation (“**Buyer**”) are parties to that certain Asset Purchase Agreement, dated as of September [●], 2017 (the “**Asset Purchase Agreement**”).

B. Ceding Company is a party to (i) that certain contract with the New York State Department of Health (the “**DOH**”) dated October 1, 2013, to provide health care services to members through the New York State Health Benefit Exchange under the Qualified Health Plan program (the “**QHP Business**”) and (ii) that certain contract with the DOH, dated November 1, 2015, to provide health care services to members who are eligible for services under the Essential Plan (the “**EP Business**,” and together with the QHP Business, the “**Business Covered**”).

C. As contemplated by the Asset Purchase Agreement, subject to the terms and conditions set forth in this Agreement, (i) Ceding Company desires to cede to Reinsurer, and Reinsurer desires to accept and reinsure, on a one hundred percent (100%) coinsurance basis, the Coinsured Liabilities (as hereinafter defined) and (ii) Ceding Company desires to appoint Reinsurer as its agent and attorney-in-fact, coupled with an interest, and Reinsurer desires to accept such appointment, to administer the Business Covered from and after the date hereof.

D. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to transition the Business Covered to Reinsurer following the Non-Renewal Date (as defined herein).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

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<sup>1</sup> **Note to Draft:** Reinsurer to be a newly formed New York HMO or an affiliate of Buyer that is licensed to write health insurance in New York, to be determined by Buyer prior to the Closing. Reinsurer’s obligations under this agreement will be guaranteed by Buyer in form and substance reasonably acceptable to the parties.



## ARTICLE I

### DEFINITIONS

The following terms have the definitions set forth below or ascribed thereto in the section of this Agreement identified below:

**“Action”** means any claim, action, suit, corrective action plan, cause of action, lawsuit, arbitration, audit, written notice of violation, administrative proceeding, litigation, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, before or by any Governmental Authority.

**“Additional Covered Policies”** has the meaning set forth in **Section 6.03**.

**“Administrative Services”** has the meaning set forth in **Section 6.01**.

**“Affiliate”** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “*controlled by*” and “*under common control with*”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Agreement”** has the meaning set forth in the Preamble.

**“Asset Purchase Agreement”** has the meaning set forth in the Recitals.

**“Authorized Change”** has the meaning set forth in **Section 2.02**.

**“Bank Accounts”** has the meaning set forth in **Section 6.11**.

**“Business Associate Agreement”** means the Business Associate Agreement by and between Ceding Company and Reinsurer, dated as of the date hereof, attached hereto as **Exhibit A**.

**“Business Covered”** has the meaning sets forth in the Recitals.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by Law to be closed for business.

**“Buyer”** has the meaning set forth in the Recitals.

**“Closing”** has the meaning set forth in the Asset Purchase Agreement.

**“CMS”** has the meaning set forth in the Recitals.

**“Code”** means the Internal Revenue Code of 1986, as amended.

***“Coinsured Liabilities”*** means all Liabilities arising under or relating to the Covered Policies, the Payor Contracts or the Provider Contracts, in each case, that are payable by Ceding Company in respect of the Business Covered, including (i) all Provider Payments, (ii) to the extent permitted by applicable Law, all Extra Contractual Obligations, (iii) all commissions, fees or other compensation payable to producers, agents or brokers, (vi) all amounts paid to Covered Enrollees to reimburse for out-of-pocket expenses paid to providers that are not under contract with Ceding Company that are the financial responsibility of Ceding Company under a Covered Policy or Payor Contract, (vii) any federal, state or local tax imposed on Premiums or otherwise in respect of the Covered Policies (other than any Health Insurer Fee imposed under Section 9010 of the Patient Protection and Affordable Care Act) and (viii) all Premium Adjustments; *provided, however*, “Coinsured Liabilities” shall not include any Retained Liabilities.

***“Contract”*** means any agreement, contract, lease, deed, mortgage, license, instrument, promissory note, evidence of Indebtedness (as defined in the Asset Purchase Agreement), security agreement, commitment, undertaking, indenture or joint venture, whether written or oral.

***“Court”*** means any court, arbitrator or tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

***“Covered Enrollees”*** means, as applicable, the EP Enrollees and the QHP Enrollees.

***“Covered Policies”*** means all policies or Contracts of insurance issued pursuant to a Payor Contract.

***“Effective Time”*** means 12:00:01 a.m., Eastern Time, on the first day of the month in which Closing occurs.

***“Encumbrance”*** means any encumbrance, charge, claim, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, hypothecation, easement, encroachment, right of way, right of first refusal, restriction, levy or charge of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

***“EP Contract”*** means Contract No. C030707 by and between the DOH and Ceding Company, dated November 1, 2015.

***“EP Enrollees”*** means Enrollees (as defined in the Asset Purchase Agreement) of any of Ceding Company’s coordinated care plans comprising the EP Business.

***“Excluded Liabilities”*** has the meaning set forth in the Asset Purchase Agreement.

***“Expenses”*** means, with respect to any Person, all reasonable and documented out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, financial advisors and investment bankers of such Person and its Affiliates), incurred by such Person or on its behalf in connection with or related to the authorization, preparation, negotiation, execution or performance of this Agreement and any transactions related hereto, any litigation with respect thereto, or in connection with other regulatory approvals, and all other matters related to transactions contemplated hereby.

***“Extra Contractual Obligations”*** means all Liabilities arising out of or relating to Covered Policies (other than Liabilities arising under the express terms and conditions of Covered Policies), whether to Covered Enrollees, Governmental Authorities or any other Person (including any liability for fines, overpayments, penalties, forfeitures, punitive, special, exemplary or other form of extra contractual damages, including all legal fees and expenses relating thereto), in each case, to the extent such Liabilities arise from any act, error or omission, (whether or not intentional, negligent, in bad faith or otherwise) relating to: (i) the design, marketing, sale, underwriting, production, issuance, rating, cancellation or administration of Covered Policies; (ii) the investigation, defense, trial, settlement or handling of claims, benefits or payments under Covered Policies; or (iii) the failure to pay, the delay in payment or errors in calculating or administering the payment of benefits or claims under or in connection with Covered Policies.

***“Force Majeure Event”*** means an event that is not reasonably within the control of the affected Party or its Affiliates, including: flood; earthquake; tornado; storm; fire; explosion; public emergency; civil disobedience; labor dispute; labor or material shortage; war or terrorist acts; sabotage; failures in power, utilities or telecommunications; and changes in Law and restraint by court order or public authority (whether valid or invalid).

***“GAAP”*** means United States generally accepted accounting principles in effect as of the date hereof, consistently applied.

***“Governmental Authority”*** means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

***“Law”*** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any Order having the effect of law in any jurisdiction, and applicable common law.

***“Legally Required Ceding Company Actions”*** has the meaning set forth in **Section 6.09**.

***“Liabilities”*** means any debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, monetary or non-monetary, direct or indirect, determined or determinable or any other nature whether due or to become due, and regardless of when asserted or whether it is accrued or required to be accrued or disclosed pursuant to GAAP or statutory accounting principles, as applicable.

***“Non-Renewal Date”*** means [December 31, 2018].

***“Net Settlement Amount”*** has the meaning set forth in **Section 4.01**.

***“Net Settlement Statement”*** has the meaning set forth in **Section 4.01**.

***“Order”*** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority (in each such case, whether preliminary or final).

***“Party”*** and ***“Parties”*** have the meanings set forth in the Preamble.

***“Payor”*** means, as applicable, the DOH and the Centers for Medicare & Medicaid Services (***“CMS”***).

***“Payor Contracts”*** means the QHP Contract and the EP Contract.

***“Permits”*** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

***“Person”*** means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

***“Premium”*** means all premiums, contributions and capitations (including all Covered Enrollee premiums and capitations paid by a Payor) relating to the Covered Policies.

***“Premium Adjustments”*** means any portion of the Premium ceded hereunder that is required to be refunded or otherwise paid by Ceding Company to a Covered Enrollee or Payor due to (i) changes in or cancellations of Covered Policies, (ii) contractual requirements under the terms of the Covered Policies or the applicable Payor Contract or (iii) applicable Law, including any such refunds or payments resulting from a finding in a risk adjustment data validation audit or other similar audit or examination conducted by CMS or another Governmental Authority (or its designee), or a self-audit performed by or on behalf of Ceding Company.

***“Provider”*** means any physician, hospital, pharmacy or other health care professional, independent practice association, facility, supplier, vendor or administrator that has contracted to provide or arrange for the provision to Covered Enrollees of health care services and supplies, including in respect of prescription drugs, that are required to be provided by Ceding Company pursuant to a Payor Contract.

***“Provider Contract”*** means any Contract between Ceding Company and any Provider to the extent related to the Business Covered.

***“Provider Payments”*** means all contractual payments made to Providers under the terms and conditions of the applicable Provider Contract for the provision of covered health care services or supplies to a Covered Enrollee under a Covered Policy.

***“QHP Contract”*** means Contract No. C029029 by and between the DOH and Ceding Company, dated October 1, 2013.

**“QHP Enrollees”** means Enrollees (as defined in the Asset Purchase Agreement) of any of Ceding Company’s coordinated care plans comprising the EP Business.

**“Quarterly Accounting Period”** means each calendar-quarterly period ending after the Effective Time and prior to the termination of this Agreement; *provided* that (i) the initial Quarterly Accounting Period shall commence at the Effective Time and (ii) the final Quarterly Accounting Period shall commence at the start of the first day of the applicable calendar month and end at the end of the Termination Date.

**“Quarterly Report”** has the meaning set forth in **Section 4.01**.

**“Recoverables”** has the meaning set forth in **Section 3.02**.

**“Reinsurer”** has the meaning set forth in the Preamble.

**“Renewal Rights”** has the meaning set forth in **Section 7.01(a)**.

**“Representative”** means, with respect to any Person, any and all directors, officers, employees, partners, members, consultants, financial advisors, counsel, accountants and other agents of such Person.

**“Retained Liabilities”** means (i) any increased liability to Reinsurer to the extent arising from any action by Ceding Company with respect to the Covered Policies or the Coinsured Liabilities, Premiums, Premium Adjustments or Recoverables, in each case, taken on or after the date hereof without the consent of Reinsurer, (ii) any failure of Ceding Company to accept a reasonable recommendation of Reinsurer provided to Ceding Company under this Agreement and (iii) without duplication of the foregoing, all Excluded Liabilities.

**“Seller”** has the meaning set forth in the Asset Purchase Agreement.

**“Termination Date”** has the meaning set forth in **Section 10.01**.

## ARTICLE II

### COINSURANCE OF COINSURED LIABILITIES

**Section 2.01 Coinsurance.** Subject to the terms and conditions of this Agreement, as of the Effective Time, Ceding Company hereby cedes on a coinsurance basis to Reinsurer, and Reinsurer hereby accepts and reinsures on a coinsurance basis, one hundred percent (100%) of the Coinsured Liabilities. The reinsurance effected under this Agreement shall be maintained in force, without reduction, unless such reinsurance is terminated as provided herein.

**Section 2.02 Changes to Covered Policies; Coinsured Liabilities.** Ceding Company shall not, on its own initiative, change the terms or conditions of any Covered Policy, Payor Contract or Provider Contract except for any such change (a) directed by Reinsurer or (b) required by applicable Law (each, an **“Authorized Change”**). If Ceding Company’s liability with respect to Coinsured Liability is changed because of an Authorized Change, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Coinsured Liabilities resulting from

such Authorized Change, in each case, proportionately, and on the coinsurance basis set forth in **Section 2.01**. With respect to any Authorized Change required by applicable Law, Ceding Company shall, to the extent reasonably practicable, prior to the effectiveness of such Authorized Change, (x) promptly notify Reinsurer of such proposed change and (y) afford Reinsurer the opportunity to object to such change under applicable administrative or regulatory procedures. Ceding Company shall, at Reinsurer's request, reasonably cooperate with Reinsurer in connection with any such objection made pursuant to the preceding sentence of this **Section 2.02**. Reinsurer shall not be liable for any increase in Coinsured Liability resulting from any change in the terms or conditions of a Covered Policy made by Ceding Company other than as arising from an Authorized Change.

**Section 2.03 Underwriting Adjustments to Covered Policies.** If Ceding Company's liability under any Covered Policy is changed because of a correction made by or on behalf of Ceding Company of a prior misstatement of age, sex, amount or nature of coverage or any other material fact or attribute made by any Covered Enrollee or any Person authorized to act on behalf of such Covered Enrollee, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Coinsured Liabilities resulting from the correction of such misstatement.

**Section 2.04 Reinstatements of Covered Policies.** Upon the reinstatement of any terminated Covered Policy in accordance with the terms and conditions of such Covered Policy, Reinsurer shall reinsure the Coinsured Liabilities arising out of or relating to such reinstated Covered Policy on the coinsurance basis set forth in **Section 2.01**.

**Section 2.05 Follow the Fortunes.** Subject to the terms and conditions of this Agreement, including the retention by Ceding Company of the Retained Liabilities, Reinsurer's liability under this Agreement shall attach simultaneously with that of Ceding Company under the Covered Policies and the Coinsured Liabilities, and Reinsurer's liability under this Agreement shall be subject in all respects to the same risks, terms, rates, conditions, interpretations, assessments, waivers and proportion of premiums paid to Ceding Company without any deductions for brokerage, and to the same modifications, alterations and cancellations, as the respective Covered Policies and Coinsured Liabilities to which liability under this Agreement attaches, the true intent of this Agreement being that Reinsurer shall, subject to the terms, conditions and limits of this Agreement, follow the fortunes of Ceding Company under the Covered Policies, and Reinsurer shall be bound, by all payments and settlements under the Covered Policies entered into by or on behalf of Ceding Company except as otherwise provided herein. Ceding Company is under no obligation to advance any sums to satisfy any Coinsured Liabilities. It is the obligation of Reinsurer to timely pay all Coinsured Liabilities and related expenses and costs.

### **ARTICLE III**

#### **CONSIDERATION; ACCOUNTING**

**Section 3.01 Consideration.** As consideration for the reinsurance provided hereunder, Ceding Company shall, in accordance with the terms and subject to the conditions of the Asset Purchase Agreement, transfer to Reinsurer the Purchased Assets (as defined in the Asset Purchase Agreement) used or held for use by Ceding Company in connection with the Business

Covered. As consideration for the reinsurance ceded hereunder as well as for the other transactions contemplated by the Asset Purchase Agreement, Ceding Company shall in accordance with the terms and subject to the conditions of the Asset Purchase Agreement, be entitled to the Purchase Price (as defined in the Asset Purchase Agreement).<sup>2</sup>

**Section 3.02 Ongoing Liabilities of Ceding Company.** As additional consideration for the reinsurance provided hereunder, Ceding Company hereby sells, assigns, transfers and delivers to Reinsurer, and Reinsurer accepts and acquires, free and clear of all Encumbrances, effective as of the Effective Time, all of Ceding Company's right, title and interest under the Covered Policies, the Payor Contracts and the Provider Contracts,<sup>3</sup> respectively, to receive all amounts payable to Ceding Company thereunder or in respect thereof, including the following amounts: (a) Premiums; (b) amounts payable pursuant to coordination of benefits, subrogation and other third party recoveries; (c) amounts due from Providers, including settlements under risk-sharing arrangements, overpayment adjustments and network discounts; and (d) any other recovery of Ceding Company, in each case, to the extent applicable to the Business Covered (collectively, the "**Recoverables**"). In furtherance of the foregoing, pursuant to **Article VI**, Ceding Company shall appoint Reinsurer as its agent and attorney-in-fact to, among other things, collect all Recoverables.

**Section 3.03 Ongoing Liabilities of Reinsurer.** From and after the Effective Time, Reinsurer shall indemnify Ceding Company in accordance with the settlement procedures set forth in **Article IV**, for all Coinsured Liabilities. In furtherance of the foregoing, pursuant to **Article VI** and subject to **Section 6.06**, Reinsurer shall discharge all Coinsured Liabilities (a) directly, (b) on behalf of Ceding Company and (c) at Reinsurer's own expense.

## ARTICLE IV

### SETTLEMENT; REPORTS

**Section 4.01 Reinsurer Quarterly Report.** Within [●] [(●)] days after the end of each Quarterly Accounting Period, Reinsurer shall deliver to Ceding Company a report (each, a "**Quarterly Report**") in the form of, and containing for such Quarterly Accounting Period the information reflected in, **Schedule 4.01**, including a statement (the "**Net Settlement Statement**") which shall set forth calculations of the net amount due to Reinsurer from Ceding Company, or to Ceding Company from Reinsurer, as applicable, under **Section 3.02** and **3.03** of this Agreement for the applicable Quarterly Accounting Period (the "**Net Settlement Amount**"), which, for the avoidance of doubt, shall take into account any amounts discharged, or collected, directly by Reinsurer in respect of the Coinsured Liabilities.

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<sup>2</sup> **Note to Draft:** Buyer is evaluating the need for a specifically identified reinsurance premium and/or ceding commission.

<sup>3</sup> **Note to Draft:** If the HMO Reinsurance Agreement with Zurich American Insurance Company is not novated to Reinsurer, Ceding Company will similarly assign all reinsurance recoverables to Reinsurer.

**Section 4.02 Settlement.** If the Net Settlement Amount as shown on the Net Settlement Statement is a positive amount, Ceding Company shall pay such amount to Reinsurer, and if the Net Settlement Amount as shown on the Net Settlement Statement is a negative amount, then Reinsurer shall pay cash in an amount equal to the absolute value of such negative amount to Ceding Company. Any payment, withdrawal, transfer or crediting of amounts required under this **Section 4.02** shall be made within three (3) Business Days following the date of the delivery of the applicable Quarterly Report.

**Section 4.03 Offset and Recoupment Rights.** Any debits or credits incurred from or after the Effective Time in favor of or against either Ceding Company or Reinsurer with respect to this Agreement between the Parties shall be deemed mutual debits or credits, as the case may be, and, to the extent permitted under applicable Law, shall be set off and recouped, and only the net balance shall be allowed or paid. This **Section 4.03** shall apply, to the fullest extent permitted by applicable Law, notwithstanding the initiation or commencement of a liquidation, insolvency, rehabilitation, conservation, supervision or similar proceeding by or against Ceding Company or Reinsurer.

**Section 4.04 Other Quarterly Reporting.** On a quarterly basis, in a format reasonably agreed upon by the Parties, Reinsurer shall provide to Ceding Company a reporting on standard metrics necessary for Ceding Company to comply with Payor reporting requirements as respects the Covered Policies.

## **ARTICLE V**

### **BOOKS AND RECORDS**

**Section 5.01 Books and Records.** Reinsurer shall preserve, until such date as may be required by Reinsurer's standard document retention policies (or such other later date as may be required by applicable Law), books and records relating to the Covered Policies, the Payor Contracts or the Provider Contracts. During such period, upon the reasonable prior request of Ceding Company or its Representatives, Reinsurer shall (a) provide to Ceding Company and its Representatives reasonable access to such books and records during normal business hours and (b) permit Ceding Company and its Representatives to make copies of such books and records, in each case, at Ceding Company's expense. Reinsurer shall not destroy any such books and records except if Reinsurer sends to Ceding Company a written notice of its intent to destroy such books and records, upon which such books and records may then be destroyed after the tenth (10th) day following delivery of such notice unless Ceding Company notifies Reinsurer that it desires to obtain possession of such books and records, in which event Reinsurer shall transfer such records to Ceding Company and Ceding Company shall pay all reasonable expenses of Reinsurer in connection therewith.

## **ARTICLE VI**

### **ADMINISTRATION**

**Section 6.01 Appointment and Acceptance.** Except as otherwise provided in this Agreement, or unless specifically prohibited by applicable Law, Ceding Company hereby



appoints Reinsurer as its exclusive agent (subject to **Section 6.14**) to provide all administrative services required or reasonably necessary with respect to the Covered Policies, the Payor Contracts and the Provider Contracts, including: (i) the payment of Coinsured Liabilities; (ii) the collection of Recoverables; and (iii) the renewal, replacement entry into, amendment or modification of Covered Policies, Payor Contracts and Provider Contracts; and (iv) such other services set forth on **Schedule 6.01** (collectively, the “**Administrative Services**”).<sup>4</sup> In each case, the Administrative Services shall include any subtasks that are not specifically described in this Agreement but that are an inherent, necessary or customary part of the Administrative Services, which subtasks shall be deemed to be included within the scope of the Administrative Services. The Parties agree that Reinsurer shall provide all Administrative Services with respect to the Covered Policies, except in each case, for Legally Required Ceding Company Actions, services relating to Retained Liabilities or as otherwise specifically provided for in this Agreement, including **Section 6.13**.

**Section 6.02 Power of Attorney.** Subject to the terms and conditions of this Agreement, Ceding Company does hereby appoint and name Reinsurer, acting through its authorized officers and employees, as Ceding Company’s lawful attorney-in-fact coupled with an interest with respect to the rights, duties, privileges and obligations of Ceding Company with respect to providing the Administrative Services, including to: (a) take any and all lawful acts that Ceding Company might have taken with respect to providing the Administrative Services; and (b) proceed by all lawful means to (i) perform any and all of Ceding Company’s obligations under the Covered Policies, the Payor Contracts or the Provider Contracts, (ii) enforce any right and defend against any liabilities arising under the Covered Policies, the Payor Contracts or the Provider Contracts, (iii) sue or defend (in the name of Ceding Company, when necessary) any Action arising under the Covered Policies, the Payor Contracts or the Provider Contracts, (iv) collect all Premiums and Recoverables, or to quitclaim and release for the same, (v) sign (in Ceding Company’s name, when necessary) vouchers, receipts, releases and other papers in connection with any of the foregoing matters, (vii) subject to applicable Law, without limitation (or duplication) of the foregoing, exercise all rights, and discharge all duties, of Ceding Company pursuant to the Covered Policies, the Payor Contracts or the Provider Contracts (including to renew, replace, enter into, amend or modify the same) and (vi) do everything lawfully permitted in connection with the satisfaction of Reinsurer’s obligations under this Agreement.

**Section 6.03 Renewals and Issuance of Additional Policies and Related Contracts.** Subject to the terms and conditions set forth herein, on and after the date hereof, Reinsurer shall have the exclusive authority to (i) renew Covered Policies, (ii) issue additional Covered Policies (each, an “**Additional Covered Policy**” and collectively, the “**Additional Covered Policies**”), (iii) revise and amend Covered Policies, consistent with Payor authorization, (iv) seek applicable Payor authorization to offer new coverages of the types offered by Qualified Health Plans and insurers providing Essential Plan coverages (as applicable), or to cease offering coverages of the type offered by Ceding Company, (v) contract with Payors with respect to the amendment, renewal or replacement of Payor Contracts, (vi) administer existing, and entering into new,

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<sup>4</sup> **Note to Draft:** Schedule 6.01 to be agreed by the Parties prior to Closing.

Provider Contracts, and to seek the assignment thereof to Reinsurer (effective following the Non-Renewal Date) to the extent relating to the Business Covered, in each case, in the name of Ceding Company and on its behalf. In connection with the foregoing, Ceding Company shall fully cooperate with Reinsurer, including, subject to **Section 6.06**, contracting with a Payor at Reinsurer's direction. Reinsurer's authority with respect to the conduct set forth in this **Section 6.03** shall continue until the later of the Non-Renewal Date and the Date as of which Ceding Company shall have no further liability in respect of the Coinsured Liabilities. Until the termination of this Agreement, Ceding Company shall hold all Permits necessary or advisable to be maintained in connection with the conduct of the Business Covered as it is conducted prior to the date hereof, taking into account any expansion of such business by Reinsurer in accordance with the terms of this Agreement from and after the date hereof.

**Section 6.04 Reports.** Reinsurer shall, upon reasonable prior written request, provide to Ceding Company (a) financial and accounting reports and information necessary for Ceding Company to prepare required reports and filings with Governmental Authorities with respect to the Business Covered, including tax filings and financial statements and (b) any additional reports regarding the Administrative Services reasonably required by Ceding Company to comply with any applicable regulatory, legal, tax or accounting requirement or other applicable Law. All such reports shall be in a form and format to be mutually agreed upon by the Parties.

**Section 6.05 Standards.** Reinsurer shall cause the Administrative Services to be provided in accordance with (a) Reinsurer's current servicing standards as these exist prior to Effective Time, subject to any changes to such standards required by applicable Law or effectuated by Reinsurer with respect to the servicing of its other comparable businesses, (b) applicable Law, (c) the terms and conditions of the Covered Policies, (d) the terms and conditions of the Payor Contracts, (e) the terms and conditions of the Provider Contracts, (f) the EP Business regulatory requirements set forth in **Exhibit B** and (g) the QHP Business regulatory requirements set forth in **Exhibit C**.

**Section 6.06 Ultimate Authority.** Ceding Company shall retain the ultimate authority to make all final decisions with respect to the administration of the Covered Policies and the Payor Contracts.

**Section 6.07 Compensation.** Reinsurer's sole compensation for the reinsurance and the Administrative Services provided by Reinsurer to Ceding Company hereunder shall be the consideration described in **Section 3.01** and **Section 3.02** and Ceding Company shall not be liable to Reinsurer for any additional consideration in respect thereof.

**Section 6.08 Claims Litigation.**

(a) Reinsurer shall promptly notify Ceding Company in writing of any litigation that has been instituted with respect to: (i) any denied claim or any claim-handling under a Covered Policy, regardless of whether such claim was paid or denied; or (ii) any other matter relating to a Covered Policy, a Payor Contract, a Provider Contract or Reinsurer's administration of any of the foregoing. Such notice shall include a summary of the nature of the pending litigation, the alleged actions or omissions giving rise to such litigation and copies of any files that Ceding Company may reasonably require in order to review such litigation.

(b) From and after the date hereof, Reinsurer shall sue or defend, at its own expense and in the name of Ceding Company, any litigation brought in respect of a Coinsured Liability. Ceding Company shall have the right, at its own expense, to engage its own separate legal representation in any litigation in which Ceding Company is a named party; *provided, however*, that Reinsurer shall exercise control and direction over litigation defended pursuant to this **Section 6.08** and shall have the authority to settle or consent to judgment in any such litigation; *provided, further*, that Reinsurer shall not compromise or settle any such litigation without Ceding Company's prior written consent (which consent shall not be unreasonably withheld, conditioned, delayed or denied), unless: (i) the settlement or judgment does not impose any equitable remedies or any restriction or condition on Ceding Company which could reasonably be expected to have an adverse effect on Ceding Company or its Affiliates or on any business of Ceding Company or its Affiliates (other than the Business Covered); and (ii) Reinsurer obtains a complete release of Ceding Company with respect to such litigation.

**Section 6.09 Legally Required Ceding Company Actions.** Reinsurer shall give Ceding Company timely notice of any actions with respect to the Administrative Services that Ceding Company is required by applicable Law or Governmental Authorities to discharge directly without Reinsurer acting on its behalf ("**Legally Required Ceding Company Actions**"), including providing Ceding Company with all information that is reasonably required from Reinsurer for Ceding Company to perform such Legally Required Ceding Company Actions (including the preparation of applicable regulatory filings) in a timely fashion. Notwithstanding the foregoing, nothing in this Agreement shall require Reinsurer to provide legal advice to Ceding Company. Ceding Company acknowledges and agrees that no action taken by Reinsurer pursuant to this Agreement shall constitute legal advice to Ceding Company.

**Section 6.10 Regulatory Matters.** If either Party receives notice of, or otherwise becomes aware of any inquiry, investigation, examination, complaint, audit or proceeding by Governmental Authorities relating to the Covered Policies or the Payor Contracts, such Party shall promptly notify the other Party thereof. The Parties shall cooperate in good faith with respect to resolving or responding to such matter. Ceding Company shall retain the final authority with respect to the resolution of any such inquiry, investigation, examination, complaint, audit or proceeding, taking into account the recommendation of Reinsurer provided to Ceding Company, which Ceding Company shall not unreasonably reject.

**Section 6.11 Bank Accounts.** During the period that Reinsurer is performing Administrative Services pursuant to this Agreement, and subject to Reinsurer's obligations under this Agreement to discharge Coinsured Liabilities and certain other amounts on Ceding Company's behalf, Reinsurer may establish and maintain accounts with banking institutions to provide the Administrative Services ("**Bank Accounts**"). To the extent such Bank Accounts are established, Reinsurer shall have exclusive authority over such Bank Accounts, including the exclusive authority to: (a) open Bank Accounts in the name of Ceding Company; (b) designate the authorized signatories on the Bank Accounts; (c) issue drafts on and make deposits in the Bank Accounts in the name of Ceding Company; and (d) make withdrawals from the Bank Accounts, in each case, to the extent necessary to provide the Administrative Services. Ceding Company shall do all things reasonably necessary to enable Reinsurer to open and maintain the Bank Accounts, including executing and delivering such depository resolutions and other documents as may be requested from time-to-time by the banking institutions. Ceding Company

agrees that without Reinsurer's prior written consent it shall not make any changes to the authorized signatories on the Bank Accounts nor withdraw, or attempt to withdraw, any funds therefrom. In connection with the foregoing, upon instruction from Reinsurer, Ceding Company shall direct a Payor to make any payments to one or more Bank Accounts established pursuant to this **Section 6.11**.

#### **Section 6.12 Capacity; Disaster Recovery.**

(a) Reinsurer shall, at all times during the period that Reinsurer is performing the Administrative Services pursuant to this Agreement, (i) keep, maintain or subcontract for a commercially reasonable number of appropriately trained personnel and (ii) obtain and maintain all material Permits under applicable Laws (including, if required, an independent adjuster license or third party administrator license) to perform the Administrative Services.

(b) For all computer programs, data, computer equipment, communications equipment and other similar items used by Reinsurer to provide the Administrative Services, Reinsurer shall provide disaster recovery services and backup and archival services that are substantially similar to the disaster recovery services and backup and archival services, respectively, that Reinsurer uses for its own computer programs, data, computer equipment, communications equipment and other similar items.

**Section 6.13 Force Majeure.** Reinsurer shall not be deemed to be in default in the performance of any obligations under this Agreement when such a failure of performance arises out of a Force Majeure Event; *provided, however*, that Reinsurer shall not be relieved of its obligations hereunder if its failure of performance is due to removable or remediable causes that Reinsurer fails to remove or remedy using commercially reasonable efforts within a reasonable time period. If Reinsurer is rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure Event for a period of twenty-four (24) hours, Reinsurer (a) shall provide written notice thereof to Ceding Company, (b) use commercially reasonable efforts to remove such inability and (c) following the cessation of such Force Majeure Event, provide written notice thereof to Ceding Company.

**Section 6.14 Subcontracting.** Reinsurer may not subcontract for the performance of any Administrative Services without prior written approval by Ceding Company, which approval shall not be unreasonably withheld, conditioned, delayed or denied, and of the DOH; *provided, however*, that without obtaining the consent of Ceding Company, Reinsurer shall be permitted to (a) subcontract for the performance of any Administrative Service with an Affiliate of Reinsurer, continue to subcontract the performance of any function that is subcontracted by Ceding Company, or by Reinsurer or its Affiliates, prior to the Effective Time and (c) subcontract for the performance of any Administrative Services for which Reinsurer or its Affiliates also subcontracts as respects its other businesses, in each case, provided that the prior written approval of the DOH has been obtained. Notwithstanding the foregoing or Ceding Company's or the DOH's approval of Reinsurer's use of any subcontractor, Reinsurer shall remain fully responsible for the performance of all Administrative Services and shall be responsible for compliance by any subcontractor with the terms of this Agreement, with each reference to an obligation or duty of Reinsurer in this Agreement with respect to any subcontracted Administrative Services being considered to include the subcontractor within the scope of such

referenced obligation or duty of Reinsurer. Without limitation of the foregoing, the personnel and facilities of any subcontractor shall be considered personnel and facilities of Reinsurer for purposes of this Agreement.

Section 6.15 **Independent Contractor.** Ceding Company acknowledges and agrees that Reinsurer and its applicable Affiliates, in performing their responsibilities pursuant to this Agreement, are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partners or joint venturers, fiduciaries or any association for profit between and among the Parties or any of their respective Affiliates.

## ARTICLE VII

### RENEWAL RIGHTS

#### Section 7.01 **Renewal Rights.**

(a) Effective as of the Closing, Ceding Company shall sell, transfer, convey and deliver to Reinsurer, and Reinsurer shall purchase from Ceding Company, the Renewal Rights. As used in this Agreement, “**Renewal Rights**” means the rights of Ceding Company to (i) renew or replace all Covered Policies issued, written or renewed by or otherwise in the name of Ceding Company and (ii) enter into, amend, terminate, renew or replace any Payor Contract or Provider Contract in respect of the same, including, (A) the right to solicit such renewals of, or replacement coverages for, the Covered Policies from applicable Enrollees and (B) the right to negotiate and contract with Payors and Providers of the Business Covered, including the development of a transition plan with the DOH.

(b) Subject to the requirements of Applicable Law, Ceding Company shall take all reasonable actions and execute any additional documents, instruments or conveyances of any kind which may be reasonably necessary to carry out any of the provisions of this **Section 7.01**, so as to effect fully the transfer of the Renewal Rights from Ceding Company to Reinsurer, including by (upon Reinsurer’s reasonable request), subject to Applicable Law, reasonably cooperating with Reinsurer to assist Reinsurer and its Affiliates in (i) soliciting policyholders in respect of the issuance, renewal or replacement of Covered Policies and (ii) negotiating and contracting with Payors and Providers in connection with the entrance into, amendment, termination, renewal or replacement of Payor Contracts and Provider Contracts, respectively, including the development of a transition plan with the DOH. Without limiting the foregoing, Ceding Company shall also, and shall cause its applicable Affiliates to, furnish to Reinsurer any additional information as may be reasonably requested by Reinsurer in furtherance of Reinsurer’s exercise of the Renewal Rights.

## ARTICLE VIII

### OVERSIGHTS

Section 8.01 **Oversights.** Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either Party from any liability

that would have attached had such delay, error or omission not occurred; *provided* that such error or omission is rectified as soon as practicable after discovery; and *provided, further*, that the Party making such error or omission, or responsible for such delay, shall be responsible for any additional liability that attaches as a result. Subject to the foregoing, if the failure of either Party to comply with any provision of this Agreement is unintentional or the result of a misunderstanding or oversight, the parties shall cause such failure to be promptly rectified such that both parties shall be restored as closely as possible to the positions that they would have occupied had such error or oversight not occurred.

## ARTICLE IX

### INSOLVENCY

#### Section 9.01 **Insolvency of Ceding Company.**

(a) In the event of the insolvency of Ceding Company, all reinsurance made, ceded, renewed or otherwise becoming effective under this Agreement shall be payable by Reinsurer on the basis of the liability of Ceding Company under the Coinsured Liabilities reinsured hereunder without diminution because of the insolvency of Ceding Company. In the event of insolvency and the appointment of a liquidator, receiver or statutory successor of Ceding Company, such payments by Reinsurer shall be made directly to Ceding Company or its liquidator, receiver or statutory successor.

(b) It is agreed and understood, however, that in the event of the insolvency of Ceding Company, the liquidator, receiver or statutory successor of Ceding Company shall give written notice of the pendency of a claim against Ceding Company in connection with a Coinsured Liability within a reasonable period of time after such claim is filed in the insolvency proceedings and that during the pendency of such claim Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to Ceding Company or its liquidator, receiver or statutory successor. It is further understood that the expense thus incurred by Reinsurer shall be chargeable, subject to court approval, against Ceding Company as part of the expenses of liquidation to the extent of a proportionate share of the benefit which may accrue to Ceding Company solely as a result of the defense undertaken by Reinsurer.

## ARTICLE X

### DURATION AND TERMINATION

Section 10.01 **Duration.** This Agreement shall commence at the Effective Time and continue in force until the termination date (the “***Termination Date***”), which shall occur at such time as (a) Ceding Company’s liability with respect to all Covered Policies reinsured hereunder is terminated and Ceding Company has received payments which discharge such liability in full in accordance with the provisions of this Agreement or (b) this Agreement is terminated by the mutual written consent of Reinsurer and Ceding Company.

Section 10.02 **Survival.** Notwithstanding the other provisions of this **Article X**, the terms and conditions of this **Article X** and of **Article XI** (and **Article I** to the extent relating to the foregoing) shall remain in full force and effect after the termination of this Agreement.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01 **Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses.

Section 11.02 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 11.02**):

If to Ceding Company:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

If to Reinsurer:

[REINSURER]  
[ADDRESS]  
Attention: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

Section 11.03 **Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including”, unless otherwise specified, shall be deemed to be followed by the words “without limitation” whether or not such words are actually stated; (b) the word “or” is not disjunctive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, “hereunder” and derivative or similar words refer to this Agreement as a whole, including the Exhibits hereto; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) references to “dollars” or “\$” shall mean United States dollars; (f) references to “written” or “in writing” include in electronic form; (g)

provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person's successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to "close of business" on any given day shall be deemed to refer to 11:59 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 11.04 **Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 11.05 **Severability.** If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 11.06 **Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

Section 11.07 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.



**Section 11.08 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 11.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

**Section 11.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG

OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.10(c)**.

Section 11.11 **Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

Section 11.12 **Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Ceding Company:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

Reinsurer:

[REINSURER NAME]

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**

[To come]

## **EXHIBIT B**

### **EP BUSINESS REGULATORY REQUIREMENTS**

This Exhibit sets forth the requirements established by DOH and/or the State of New York (the “*State*”), in addition to those set forth elsewhere in the Agreement, applicable to the EP Business. Unless otherwise provided in this Exhibit or the Agreement (into which, for the avoidance of doubt, this Exhibit shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in the EP Contract. In the event of a conflict between this Exhibit and any other provision of this Agreement, this Exhibit shall govern.

1. Compliance with EP Contract. Reinsurer agrees that the Administrative Services shall be performed in accordance with the terms of the EP Contract. Reinsurer specifically agrees to be bound by the confidentiality provisions set forth in the EP Contract.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.

2.1 The prospective lower tier participant certifies, by submission of this proposal; that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.

2.2 Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Confidential Information. Reinsurer shall treat all information, which is obtained by it through its performance under the EP Contract, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

4. Ownership of Marketplace Data. For purposes of this section, Marketplace Data means data and information created by the Marketplace and relating to the Marketplace, its employees and agents, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information. Without the State’s approval (in its sole discretion), the Marketplace Data will not be (1) used by Reinsurer other than in connection with carrying out its obligations under the EP Contract; (2) disclosed, sold, assigned, leased or otherwise provided to third parties by Reinsurer other than in connection with carrying out its obligations under the EP Contract; or (3) commercially exploited by or on behalf of Reinsurer. Reinsurer hereby irrevocably assigns, transfers and conveys to the State without further consideration all of its right, title and interest in and to the Marketplace Data. Upon request by the State, Reinsurer will execute and deliver any documents that may be necessary or

desirable under any law to preserve, or enable the State to enforce its rights with respect to the Marketplace Data.

## 5. Maintenance of Reinsurer Records

5.1 Reinsurer shall preserve and retain all records relating to Reinsurer performance under the EP Contract in readily accessible form during the term of the EP Contract and for a period of ten (10) years thereafter except that Reinsurer shall retain EP Enrollees' Medical Records that are in the custody of Reinsurer for ten (10) years after the date of service rendered to the EP Enrollee or cessation of Reinsurer's operation, and in the case of a minor, for ten (10) years after majority.

5.2 All provisions of the EP Contract relating to record maintenance and audit access shall survive the termination of the EP Contract and shall bind Reinsurer until the expiration of a period of ten (10) years commencing with termination of the EP Contract or if an audit is commenced, until the completion of the audit, whichever occurs later. If Reinsurer becomes aware of any litigation, claim, financial management review or audit relating to the fulfillment of the terms of the EP Contract that is started before the expiration of the ten (10) year period, the records shall be retained until all litigation, claims, financial management reviews or audit findings involved in the record have been resolved and final action taken.

## 6. Access to Contractor Records

6.1 Reinsurer shall subject itself to audits/reviews by the State or its designee to determine the correctness of EP Enrollee premium payments. Reinsurer also agrees to audit by the State on reasonable and customary terms, subject to applicable State and federal law regarding the confidentiality of and release of confidential Protected Health Information of EP Enrollees.

6.2 Reinsurer acknowledges and agrees that the State shall, subject to applicable State and federal law regarding the confidentiality and release of confidential Protected Health Information of EP Enrollees, have the right to review and to copy any records and supporting documentation pertaining to the performance of the EP Contract. Reinsurer agrees to maintain such records for possible audit for a minimum of ten (10) years, unless a longer period of records retention is agreed to. Reinsurer agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

7. Reinsurer Audits or Reviews. Reinsurer shall promptly notify Ceding Company in writing of any inquiry, audit, investigation, litigation, claim, examination or other proceeding involving Reinsurer that is threatened or commenced by any regulatory agency or other party that a reasonable person might believe could materially affect the ability to perform in accordance with the terms set forth in the EP Contract. Such notice shall be provided by Reinsurer to Ceding Company within ten (10) days of Reinsurer's receipt of notice regarding such action. Reinsurer shall comply with the State's reasonable requests for information relating to the inquiry; *provided, however* that any such exchange of information shall be subject to compliance with law and shall not occur to the extent prohibited by order of the court,

administrative agency or other tribunal or regulatory authority having jurisdiction over the matter or by the laws and regulations governing the action. This section shall not be required with respect to disputes relating to claims and other matters noticed to the State in the ordinary course of business pursuant to other terms set forth in the EP Contract or required by law.

8. No Recourse Against EP Enrollees

8.1 With the exception of the premium due in respect of a Covered Policy and applicable Essential Plan cost-sharing provided for in EP Contract, Reinsurer hereby agrees that in no event, including but not limited to non-payment by the State, insolvency of Reinsurer, loss of funding for EP Business, or breach of the EP Contract, shall Reinsurer bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from or have any recourse against EP Enrollee or person acting on his or her behalf for coverage provided in accordance with EP Contract.

8.2 This section 8 shall not prohibit Reinsurer as specified in the Agreement from billing for and collecting any applicable worker's compensation benefits or no-fault insurance. This section supersedes any oral or written contrary agreement now existing or hereinafter entered into between Reinsurer and any EP Enrollee or persons acting on his behalf. This provision shall survive termination of this Agreement for any reason.

## **EXHIBIT C**

### **QHP BUSINESS REGULATORY REQUIREMENTS**

This Exhibit sets forth the requirements established by DOH and/or the State of New York (the “*State*”), in addition to those set forth elsewhere in the Agreement, applicable to the QHP Business. Unless otherwise provided in this Exhibit or the Agreement (into which, for the avoidance of doubt, this Exhibit shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in the QHP Contract. In the event of a conflict between this Exhibit and any other provision of this Agreement, this Exhibit shall govern.

1. Compliance with QHP Contract. Reinsurer agrees that the Administrative Services shall be performed in accordance with the terms of the QHP Contract. Reinsurer specifically agrees to be bound by the confidentiality provisions set forth in the QHP Contract.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

2.1 The prospective lower tier participant certifies, by submission of this proposal; that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.

2.2 Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Confidential Information. Reinsurer shall treat all information, which is obtained by it through its performance under the QHP Contract, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

4. Ownership of Exchange Data. For purposes of this section, Exchange Data means data and information created by the Exchange and relating to the Exchange, its employees and agents, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information. Without the State’s approval (in its sole discretion), the Exchange Data will not be (1) used by Reinsurer other than in connection with carrying out its obligations under the QHP Contract; (2) disclosed, sold, assigned, leased or otherwise provided to third parties by Reinsurer other than in connection with carrying out its obligations under the QHP Contract; or (3) commercially exploited by or on behalf of Reinsurer. Reinsurer hereby irrevocably assigns, transfers and conveys to the State without further consideration all of its right, title and interest in and to the Exchange Data. Upon request by the State, Reinsurer will execute and deliver any documents that may be necessary or desirable under any law to preserve, or enable the State to enforce its rights with respect to the Exchange Data.



## 5. Maintenance of Reinsurer Records

5.1 Reinsurer shall preserve and retain all records relating to Reinsurer performance under the QHP Contract in readily accessible form during the term of the QHP Contract and for a period of ten (10) years thereafter except that Reinsurer shall retain QHP Enrollees' Medical Records that are in the custody of Reinsurer for ten (10) years after the date of service rendered to the QHP Enrollee or cessation of Reinsurer's operation, and in the case of a minor, for ten (10) years after majority.

5.2 All provisions of the QHP Contract relating to record maintenance and audit access shall survive the termination of the QHP Contract and shall bind Reinsurer until the expiration of a period of ten (10) years commencing with termination of the QHP Contract or if an audit is commenced, until the completion of the audit, whichever occurs later. If Reinsurer becomes aware of any litigation, claim, financial management review or audit relating to the fulfillment of the terms of the QHP Contract that is started before the expiration of the ten (10) year period, the records shall be retained until all litigation, claims, financial management reviews or audit findings involved in the record have been resolved and final action taken.

## 6. Access to Contractor Records

6.1 Reinsurer shall subject itself to audits/reviews by the State or its designee to determine the correctness of QHP Enrollee premium payments and Advance Premium Tax Credit payments. Reinsurer also agrees to audit by the State on reasonable and customary terms, subject to applicable State and federal law regarding the confidentiality of and release of confidential Protected Health Information of QHP Enrollees.

6.2 Reinsurer acknowledges and agrees that the State shall, subject to applicable State and federal law regarding the confidentiality and release of confidential Protected Health Information of QHP Enrollees, have the right to review and to copy any records and supporting documentation pertaining to the performance of the QHP Contract. Reinsurer agrees to maintain such records for possible audit for a minimum of ten (10) years, unless a longer period of records retention is agreed to. Reinsurer agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

7. Reinsurer Audits or Reviews. Reinsurer shall promptly notify Ceding Company in writing of any inquiry, audit, investigation, litigation, claim, examination or other proceeding involving Reinsurer that is threatened or commenced by any regulatory agency or other party that a reasonable person might believe could materially affect the ability to perform in accordance with the terms set forth in the QHP Contract. Such notice shall be provided by Reinsurer to Ceding Company within ten (10) days of Reinsurer's receipt of notice regarding such action. Reinsurer shall comply with the State's reasonable requests for information relating to the inquiry; *provided, however* than any such exchange of information shall be subject to compliance with law and shall not occur to the extent prohibited by order of the court, administrative agency, or other tribunal or regulatory authority having jurisdiction over the matter or by the laws and regulations governing the action. This section shall not be required with respect to disputes relating to claims and other matters noticed to the State in the ordinary course of business pursuant to other terms set forth in the QHP Contract or required by law.

**EXHIBIT K**

**FORM OF REGISTRATION RIGHTS AGREEMENT**

(See attached)

**EXHIBIT K**

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**FORM OF  
REGISTRATION RIGHTS AGREEMENT  
between  
CENTENE CORPORATION**

**and**

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
(D/B/A FIDELIS CARE NEW YORK)**

**Dated:      , 2017**

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## REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT, dated as of \_\_\_\_\_, 2017 (this “Agreement”), is entered into between Centene Corporation, a Delaware corporation (“Centene”), and the New York State Catholic Health Plan, Inc. (d/b/a Fidelis Care New York) (“Fidelis”). All initially capitalized terms shall have the respective meanings ascribed to them in Section 1(a) below or elsewhere in this Agreement as specified in that Section.

### RECITALS

WHEREAS, in connection with an asset purchase agreement, between Centene and Fidelis, dated \_\_\_\_\_, 2017 (the “Asset Purchase Agreement”), Centene wishes to provide Fidelis with registration rights in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

#### 1. Definitions and Interpretation.

- (a) Certain Definitions. As used in this Agreement, the following initially capitalized terms shall have the respective meanings ascribed to them below.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Agreement, including all Schedules and Exhibits hereto, each as amended, modified, supplemented or restated from time to time.

“Approved Underwriter” has the meaning set forth in Section 3(c).

“Asset Purchase Agreement” has the meaning set forth in the recitals.

“Automatic Shelf Registration Statement” means an “automatic shelf registration statement” as defined in Rule 405 promulgated under the Securities Act.

“Board” means the board of directors (or board of managers or similar governing body) of Centene, as constituted from time to time.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in the State of New York are authorized or required by law or executive order to close.

“Centene” has the meaning set forth in the preamble, and includes its successors by merger, acquisition, reorganization, conversion or otherwise.

“Closing Date” has the meaning set forth in the Asset Purchase Agreement.

“Common Stock” means the shares of common stock of Centene, and any securities into which such shares of common stock shall have been reclassified, reconstituted, exchanged or substituted (including with respect to any stock split or stock dividend or a successor security).

“Exchange Act” means the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

“Fidelis” has the meaning set forth in the preamble, and includes its successors by merger, acquisition, reorganization, conversion or otherwise.

“FINRA” means the Financial Industry Regulatory Authority.

“Free Writing Prospectus” means any “free writing prospectus” as defined in Rule 405 promulgated under the Securities Act.

“Holder” means each holder of Registrable Securities who is a party to this Agreement.

“Holder Free Writing Prospectus” means each Free Writing Prospectus prepared by or on behalf of the relevant Holder or used or referred to by such Holder in connection with the offering of Registrable Securities.

“Holders’ Counsel” means one counsel selected and retained by the Holders holding a majority of Registrable Securities being registered in a registration.

“Indemnified Party” has the meaning set forth in Section 6(c).

“Indemnifying Party” has the meaning set forth in Section 6(c).

“Initial Registration” has the meaning set forth in Section 3(a).

“Initiating Holder” has the meaning set forth in Section 3(a).

“Inspectors” has the meaning set forth in Section 5(a)(i).

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus” as defined in Rule 433 promulgated under the Securities Act.

“Liability” has the meaning set forth in Section 6(a).

“Notice” has the meaning set forth in Section 8(c).

“Person” means any individual, corporation, partnership, joint venture, association, limited liability company, limited liability partnership, partnership, estate, trust, unincorporated

organization, government or agency or political subdivision thereof or any other entity, and shall include any successor (by merger or otherwise) of such entity.

“Prospectus” means any “prospectus” as defined in Rule 405 promulgated under the Securities Act.

“Records” has the meaning set forth in Section 5(a)(viii).

“Registrable Class Securities” means the Registrable Securities and any other securities of Centene that are of the same class as the relevant Registrable Securities.

“Registrable Securities” means each of the following: (a) any shares of Common Stock issued to Fidelis as Share Consideration (as defined in the Asset Purchase Agreement) pursuant to the Asset Purchase Agreement and owned by the Holders and (b) any shares of Common Stock issued or issuable to any of the Holders with respect to the Registrable Securities by way of stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise and any shares of Common Stock issuable upon conversion, exercise or exchange thereof; provided, in both cases, that any such Registrable Securities shall cease to be Registrable Securities upon the occurrence of any of the events set forth in Section 2(b).

“Registration Statement” means a registration statement filed pursuant to the Securities Act.

“Requested Registered Securities” has the meaning set forth in Section 3(c).

“Requesting Holder” has the meaning set forth in Section 3(c).

“Rule 415” means Rule 415 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933 and the rules and regulations promulgated thereunder.

“Transfer” means, with respect to any security, the offer for sale, sale, pledge, transfer or other disposition or encumbrance (or any transaction or device that is designed to or could be expected to result in the transfer or the disposition by any Person at any time in the future) of such security, and shall include the entering into of any swap, hedge or other derivatives transaction or other transaction that transfers to another in whole or in part any rights, economic benefits or risks of ownership, including by way of settlement by delivery of such security or other securities in cash or otherwise.

“Transferred”, “Transferor” and “Transferee” shall each have a correlative meaning to the term “Transfer.”



“underwritten public offering” of securities means a public offering of such securities registered under the Securities Act in which an underwriter, placement agent or other intermediary participates in the distribution of such securities.

“Underwritten Takedown” has the meaning set forth in Section 3(c).

“Valid Board Reason” has the meaning set forth in Section 3(b)(i).

(b) Interpretation. Unless otherwise noted:

- (i) Any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law, and all references to laws, rules, regulations and forms in this Agreement shall be deemed to be references to such laws, rules, regulations and forms, as amended, modified or supplemented from time to time or, to the extent replaced, the comparable successor thereto in effect at the time.
- (ii) All references to agencies, self-regulatory organizations or governmental entities in this Agreement shall be deemed to be references to the comparable successor thereto.
- (iii) All references to agreements and other contractual instruments shall be deemed to be references to such agreements or other instruments as they may be amended, modified, supplemented or restated from time to time.
- (iv) The words “hereof”, “herein”, “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and all references herein to subsections, Articles, Sections, Exhibits, Schedules and Annexes shall be references to subsections, Articles and Sections of, and Exhibits, Schedules and Annexes to, this Agreement, unless the context shall otherwise require.
- (v) The words “including”, “include” and other words of similar import shall be interpreted to mean by way of example and not limitation, and shall be deemed to be followed by the phrase “without limitation.”
- (vi) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.
- (vii) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.
- (viii) The word “will” shall be construed to have the same meaning and effect as the word “shall.”
- (ix) The parties hereto acknowledge and agree that (A) each party hereto and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision, (B) the rule of

construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement and (C) the terms and provisions of this Agreement shall be construed fairly as to all parties hereto, regardless of which party was generally responsible for the preparation of this Agreement.

- (x) A capitalized term has the meaning assigned to it.

2. General; Securities Subject to this Agreement.

- (a) Grant of Rights. Centene hereby grants registration rights to the Holders upon the terms and conditions set forth in this Agreement.
- (b) Registrable Securities. For the purposes of this Agreement, as to any particular Registrable Securities, such securities will irrevocably cease to be Registrable Securities when (i) a Registration Statement covering such Registrable Securities has been declared effective under the Securities Act by the SEC and such Registrable Securities have been disposed of pursuant to such effective Registration Statement, (ii) such Registrable Securities are sold in a private transaction in which the Transferor's rights under this Agreement are not assigned to the Transferee of such securities, (iii) such Registrable Securities are Transferred to a Transferee that is not an Affiliate of Fidelis directly or indirectly, (iv) such Registrable Securities have been disposed of pursuant to Rule 144, (v) such Registrable Securities may be freely sold under Rule 144 without regard to volume or manner of sale restrictions or (vi) such Registrable Securities cease to be outstanding.
- (c) Holders of Registrable Securities. A Person is deemed to be a holder of Registrable Securities whenever such Person owns Registrable Securities, or holds an option to purchase, or a security convertible into, or exercisable or exchangeable for, Registrable Securities, whether or not such purchase, conversion, exercise or exchange has actually been effected. If Centene receives conflicting instructions, notices or elections from two or more Persons with respect to the same Registrable Securities, Centene may act upon the basis of the instructions, notice or election received from the registered owner of such Registrable Securities. Registrable Securities issuable upon exercise of an option or upon conversion, exercise or exchange of another security shall be deemed outstanding for the purposes of this Agreement.

3. Initial Registration of Registrable Securities.

- (a) Initial Registration. Subject to Sections 4 and 5(b), and not later than concurrently with the Closing Date, Centene shall register in accordance with the terms of this Agreement the resale, on a continuous basis pursuant to Rule 415, of the Registrable Securities issued to Fidelis ("Initiating Holder") as Share Consideration (as defined in the Asset Purchase Agreement) on the Closing Date pursuant to Section 2.06(f) of the Asset Purchase Agreement under the Securities

Act on Form S-3 or any other applicable form of registration including by prospectus supplement to an existing Registration Statement (the “Initial Registration”). Centene shall use its reasonable best efforts to keep such registration continuously effective until its obligations hereunder have terminated.

(b) Limitations on Registration.

- (i) If, beginning on the sixth (6<sup>th</sup>) Business Day following the Closing Date, the Board, in its sole discretion, determines that use of the Prospectus included in the Registration Statement should be suspended (A) because such use would require disclosure of material non-public information, the disclosure of which would reasonably be expected to adversely affect Centene and would not otherwise be required to be disclosed under law or (B) because such disclosure would materially impede, delay or interfere with, or require premature disclosure of, any material financing, offering, acquisition, corporate reorganization, merger or segment reclassification or discontinuance of operations or other material transaction or matter involving Centene or any of its subsidiaries or any negotiations, discussions or pending proposals with respect thereto involving Centene or with respect to any Registration Statement registering the sale of Registrable Securities (each of (A) and (B), a “Valid Board Reason”), Centene may postpone amending or supplementing such Registration Statement or Prospectus, including with respect to an offering pursuant to Section 3(c), in each case until such Valid Board Reason no longer exists, but in no event for more than 70 days after the date on which the Board determines that a Valid Board Reason exists. Centene shall promptly give written notice to all Holders participating in such registration of Registrable Securities of its instruction to suspend the use of the Prospectus and of the fact that the Valid Board Reason for such suspension no longer exists, in each case, promptly after the occurrence thereof. Notwithstanding anything to the contrary contained in this Section 3(b)(i), Centene shall not be entitled to suspend use of the Prospectus or postpone amending or supplementing a filing under this Section 3(b)(i) due to a Valid Board Reason (A) more than two times in any 12-month period, or (B) unless the same or more onerous restrictions are imposed on Centene and all of Centene’s directors and officers and all other holders of registration rights granted by Centene. If Centene gives notice of its determination to suspend use of the Prospectus pursuant to this Section 3(b)(i), Centene shall extend the period during which such Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from and including the date of the giving of such notice pursuant to this Section 3(b)(i) to and including the date when sellers of such Registrable Securities under such Registration Statement shall have received the copies of the supplemented or amended Prospectus contemplated by and meeting the requirements of Section 5(a)(vi) below. If, prior to the sixth (6<sup>th</sup>) Business Day following the earlier of (A) the Closing Date (as defined in the Asset Purchase

Agreement) and (B) the date on which all Registrable Securities are Transferred to a Transferee that is not an Affiliate of Fidelis directly or indirectly, (x) the Registration Statement with respect to the Registrable Securities ceases to be effective or (y) Fidelis receives a notice pursuant to Section 5(c), then Centene shall be obligated to purchase from Fidelis all Registrable Securities that Fidelis continues to beneficially own for an aggregate purchase price equal to the product of One Hundred and Twenty-Five Million Dollars (\$125,000,000), multiplied by a fraction, the numerator of which is such number of Registrable Securities Fidelis continues to beneficially own, and the denominator of which is the total number of Registrable Securities issued to Fidelis on the Closing Date pursuant to Section 2.06(f) of the Asset Purchase Agreement. Such purchase of Registrable Securities by Centene shall take place promptly, but in no event later than two (2) Business Days following the date on which (A) the Registration Statement with respect to the Registrable Securities ceases to be effective or (B) Fidelis receives a notice pursuant to Section 5(c), and the purchase price shall be payable by Centene to Fidelis in cash by wire transfer of immediately available funds.

- (c) Underwriting Procedures. Subject to Section 4, upon written request by a Holder of a majority of Registrable Securities (the “Requesting Holder”), which request shall specify the amount of such Requesting Holder’s Registrable Securities to be sold (the “Requested Registered Securities”), Centene shall use its commercially reasonable efforts to cause the sale of such Requested Registered Securities to be in the form of a firm commitment underwritten public offering (such offering including Requested Registered Securities, an “Underwritten Takedown”) (unless otherwise consented to by the Requesting Holder) if the aggregate offering price of the Registrable Securities to be sold in such offering (before deduction of any underwriting discounts or commissions) is reasonably expected to be at least \$75 million. The managing underwriter or underwriters selected for such offering shall be selected by the Requesting Holder and consented to by Centene (such consent not to be unreasonably withheld, delayed or conditioned, and each, an “Approved Underwriter”), and each such underwriter shall be deemed an Approved Underwriter with respect to such offering. Centene shall, as soon as practicable after its receipt of a request to effect a sale of the Requested Registered Securities, give written notice thereof to all the Holders, provided that in no event shall such notice be given later than 5:00 pm, New York City time, on the earlier of (i) the fifth trading day prior to the date on which the preliminary prospectus or prospectus supplement intended to be used in connection with pre-pricing marketing efforts for the relevant Underwritten Takedown is expected to be finalized, and (ii) the fifth trading day prior to the date on which the pricing of the relevant Underwritten Takedown occurs. Any Holder wishing to participate in an Underwritten Takedown must give written notice thereof to Centene and the Requesting Holder(s), which notice shall specify the number of its Registrable Securities such Holder seeks to have included in such Underwritten Takedown and shall be given no later than 5:00 pm, New York City time, on the earlier of (x) the trading day prior to the date on which the preliminary prospectus or

prospectus supplement intended to be used in connection with pre-pricing marketing efforts for the relevant Underwritten Takedown is expected to be finalized, and (y) the trading day prior to the date on which the pricing of the relevant Underwritten Takedown occurs. If the Approved Underwriter advises Centene that the aggregate amount of such Registrable Securities requested to be included in such underwritten offering exceeds the number of securities which can be sold in such offering within a price range acceptable to the holders of a majority of the Registrable Securities requested to be included, then only the aggregate amount of Registrable Securities that the Approved Underwriter believes may be sold will be included in such offering, in the following order of priority: first, the Registrable Securities requested to be included in such underwritten offering by the Initiating Holder, second, the Registrable Securities requested to be included in such underwritten offering by the Holders (excluding the Initiating Holder), as a group, *pro rata*, based on the number of Registrable Securities beneficially owned by each such Holders, third, the equity securities offered by Centene for its own account and, fourth, the shares of Common Stock requested to be included in such underwritten offering by any other Person with registration rights to shares of Common Stock pursuant to a separate registration rights agreement or similar arrangement with Centene.

4. Holdback Agreements. To the extent requested by an Approved Underwriter, in the case of an Underwritten Takedown, each Holder agrees (i) not to effect any Transfer of any Registrable Class Securities or any securities convertible into or exchangeable or exercisable for such Registrable Class Securities, and (ii) not to grant any option to purchase or enter into any hedging transactions or similar transactions with the same economic effect as a sale of any Registrable Class Securities, for 90 days from the date of the prospectus or prospectus supplement for the Underwritten Takedown, except as part of such Underwritten Takedown; provided that nothing in this Section 4 shall restrict any Holder from making a gift of such Holder's Registrable Securities or restrict a Holder that is an entity from making a distribution of Registrable Securities to the partners, members or stockholders of such Holder or restrict any Holder from making a Transfer to an Affiliate that is otherwise in compliance with the applicable securities laws, so long as in each case such donees, distributees or Transferees agree to be bound by the restrictions set forth in this Section 4. Upon request by the Approved Underwriter, each Holder shall enter into customary holdback agreements on terms consistent with the preceding sentence provided that the same or more onerous holdback agreement is entered into by all other selling security holders in the Underwritten Takedown.
5. Cooperation.
  - (a) Obligations of Centene. Whenever registration of Registrable Securities has been required pursuant to Section 3, Centene shall use its commercially reasonable efforts to effect the registration and sale of such Registrable Securities in accordance with the intended method of distribution thereof as promptly as practicable, and in connection with any such requirement, Centene shall:

- (i) before filing a Registration Statement or Prospectus under this Agreement or any amendments or supplements thereto (excluding any documents incorporated by reference therein), or before using any Issuer Free Writing Prospectus, Centene shall provide each seller of Registrable Securities, any managing underwriter participating in any disposition of such Registrable Securities pursuant to a Registration Statement, Holders' Counsel and any managing underwriter and its counsel (collectively, the "Inspectors") with copies of all such documents proposed to be filed (including all exhibits thereto and each document incorporated by reference therein) and such other documents reasonably requested by such Holders, Holders' Counsel or any other Inspector, and consider in good faith all comments timely provided by each Seller or its counsel;
- (ii) notify the Holders' Counsel and each seller of Registrable Securities pursuant to such Registration Statement of the effectiveness of each Registration Statement and of any stop order issued by the SEC and take all actions required to prevent the entry of such stop order or to remove it if entered;
- (iii) unless any Registrable Securities shall be in book-entry form only, cooperate with the selling Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends (unless required by applicable securities laws), and enable such Registrable Securities to be in such denominations and registered in such names as the selling Holders may request at least two (2) Business Days before any sale of Registrable Securities;
- (iv) use commercially reasonable efforts to register or qualify such Registrable Securities under such other securities or "blue sky" laws of such jurisdictions as Centene may determine, and to continue such registration or qualification in effect in such jurisdiction for as long as permissible pursuant to the laws of such jurisdiction, or until all of such Registrable Securities are sold, whichever is shortest, and do any and all other acts and things that may be reasonably necessary to enable any such seller to consummate the disposition in such jurisdictions of the Registrable Securities owned by such seller; provided, however, that Centene shall not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Section 5(a)(iv), (B) subject itself to taxation in any such jurisdiction or (C) consent to general service of process in any such jurisdiction;
- (v) promptly notify each seller of Registrable Securities, Holders' Counsel and each managing underwriter: (A) when a Prospectus, any Prospectus supplement, any Issuer Free Writing Prospectus, a Registration Statement or a post-effective amendment to a Registration Statement is proposed to be or has been filed with the SEC, and, with respect to a Registration

Statement or any post-effective amendment, when the same has become effective; (B) of any request by the SEC or any other federal or state governmental authority for amendments or supplements to a Registration Statement, related Prospectus or Issuer Free Writing Prospectus; (C) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement or the initiation of any proceedings for that purpose; (D) of the receipt by Centene of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation of any proceedings for such purpose; (E) of the existence of any fact or happening of any event that makes any statement of a material fact in such Registration Statement, related Prospectus or Issuer Free Writing Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue or which would require the making of any changes in the Registration Statement, Prospectus or Issuer Free Writing Prospectus in order that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of such Prospectus or Issuer Free Writing Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and (F) of the determination by counsel of Centene that a post-effective amendment to a Registration Statement is advisable;

- (vi) as soon as commercially practicable, upon the occurrence of any event contemplated by Section 5(a)(v)(E) or, subject to Section 3(b), the existence of a Valid Board Reason, as promptly as practicable, prepare a supplement or amendment to such Registration Statement, related Prospectus or Issuer Free Writing Prospectus and furnish to each seller of Registrable Securities a reasonable number of copies of such supplement to or an amendment of such Registration Statement, Prospectus or Issuer Free Writing Prospectus as may be necessary so that, after delivery to the purchasers of such Registrable Securities, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of such Prospectus or Issuer Free Writing Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;
- (vii) in connection with any underwritten public offering, enter into and perform under customary agreements (including underwriting agreement

in customary form with the Approved Underwriter) and take such other commercially reasonable actions as the Holders of a majority of the Registrable Securities being sold or the managing underwriter, if any, reasonably requests in order to expedite or facilitate the disposition of such Registrable Securities and provide all reasonable cooperation, including causing appropriate officers to attend and participate in “road shows” and analyst or investor presentations and other information meetings organized by the Approved Underwriter (taking into account the needs of Centene’s businesses and the responsibilities of such officers with respect thereto and the requirement of the marketing process), and causing counsel to Centene to deliver customary legal opinions in connection with any such underwriting agreements;

- (viii) if such sale is pursuant to an underwritten public offering, make available at reasonable times for inspection by any Inspector customary financial and other records, pertinent corporate documents and properties of Centene and its subsidiaries (collectively, the “Records”) as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause Centene’s and its subsidiaries’ officers, directors and employees, and the independent public accountants of Centene, to supply customary information reasonably requested by any such Inspector in connection with such Registration Statement. Records that Centene determines, in good faith, to be confidential and which it notifies the Inspectors are confidential shall not be disclosed by the Inspectors (and the Inspectors shall confirm their agreement in writing in advance to Centene) unless (A) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in the Registration Statement, (B) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction after exhaustion of all appeals therefrom or (C) the information in such Records was known to the Inspectors on a non-confidential basis prior to its disclosure by Centene and such knowledge is adequately demonstrated to Centene upon request or has been made generally available to the public. Each seller of Registrable Securities agrees that it shall, upon learning that disclosure of such Records is sought in a court of competent jurisdiction, promptly give written notice to Centene and allow Centene, at Centene’s expense, to undertake appropriate action to prevent disclosure of the Records deemed confidential;
- (ix) if such sale is pursuant to an underwritten public offering, use its commercially reasonable efforts to obtain and cause to be furnished to the managing underwriter(s) a signed counterpart of (A) a cold “comfort” letter (and additional cold “comfort” letters in the case of acquired entities whose financial information is in any registration statement or prospectus) dated the effective date of the Registration Statement and the date of the closing under the underwriting agreement from Centene’s independent public accountants (and such other accountants in the case of acquired



entities whose financial information is in any registration statement or prospectus) in customary form and covering such matters of the type customarily covered by “comfort” letters as the managing underwriter reasonably requests; and (B) a legal opinion of counsel representing Centene for the purposes of such registration, addressed to the relevant underwriters, in each case in customary form and covering such matters of the type customarily covered;

- (x) with respect to each Free Writing Prospectus, the preliminary Prospectus and all other information, in each case, with respect to such offering of securities, that is deemed, under Rule 159 promulgated under the Securities Act, to have been conveyed to purchasers of such securities at the time of sale of such securities (including a contract of sale), ensure that no Registrable Securities be sold “by means of” (as defined in Rule 159A(b) promulgated under the Securities Act) such Free Writing Prospectus or other materials without the prior written consent of the Holders of the Registrable Securities covered by such registration statement, which Free Writing Prospectuses or other materials shall be subject to the review and comment of Holders’ Counsel;
  - (xi) within the deadlines specified by the Securities Act, make all required filings of all Prospectuses and Free Writing Prospectuses with the SEC;
  - (xii) use commercially reasonable efforts to cause all such Registrable Securities to be listed on each securities exchange on which Registrable Class Securities issued by Centene are then listed, provided that the applicable listing requirements are satisfied;
  - (xiii) cooperate with each seller of Registrable Securities and each underwriter participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the FINRA; and
  - (xiv) use commercially reasonable efforts to take all other steps deemed reasonably necessary in the reasonable judgment of Centene to effect the registration and disposition of the Registrable Securities contemplated hereby.
- (b) Seller Obligations. In connection with any offering under any Registration Statement under this Agreement, each Holder that has inclusion of its Registrable Securities in any Registration Statement:
- (i) shall furnish to Centene in writing such information with respect to such Holder and the intended method of disposition of its Registrable Securities as Centene may reasonably request and as may be required by law for use in connection with any related Registration Statement or Prospectus (or amendment or supplement thereto) and all information required to be

disclosed in order to make the information previously furnished to Centene by such Holder not contain a material misstatement of fact or necessary to cause such Registration Statement or Prospectus (or amendment or supplement thereto) not to omit a material fact with respect to such Holder necessary in order to make the statements therein not misleading; and

- (ii) shall comply with the Securities Act and the Exchange Act and all applicable state securities laws and comply with all applicable regulations in connection with the registration and the disposition of the Registrable Securities.
- (c) Notice to Discontinue. Each Holder agrees that, upon receipt of any notice from Centene of the happening of any event of the kind described in Section 5(a)(v)(E), such Holder shall forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement covering such Registrable Securities until such Holder's receipt of the copies of the supplemented or amended Prospectus or Issuer Free Writing Prospectus contemplated by Section 5(a)(vi) and, if so directed by Centene, such Holder shall deliver to Centene (at Centene's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus or Issuer Free Writing Prospectus covering such Registrable Securities which is current at the time of receipt of such notice. If Centene shall give any such notice, Centene shall extend the period during which such Registration Statement shall be maintained effective pursuant to this Agreement by the number of days during the period from and including the date of the giving of such notice pursuant to Section 5(a)(v)(E) to and including the date when sellers of such Registrable Securities under such Registration Statement shall have received the copies of the supplemented or amended Prospectus or Issuer Free Writing Prospectus contemplated by and meeting the requirements of Section 5(a)(vi).
- (d) Registration Expenses.
  - (i) Centene shall pay, subject to Section 5(d)(ii), all fees, costs and expenses arising from or incident to its performance of, or compliance with, this Agreement (including all expenses in connection with the Initial Registration or an Underwritten Takedown), including (i) SEC, stock exchange and FINRA registration and filing fees, (ii) all reasonable and documented fees and expenses incurred in complying with state securities or "blue sky" laws (including reasonable and documented fees, charges and disbursements of counsel to any underwriter incurred in connection with "blue sky" qualifications of the Registrable Securities as may be set forth in any underwriting agreement) not to exceed \$20,000 for the Initial Registration or an Underwritten Takedown, (iii) all printing, messenger and delivery expenses, and (iv) the fees, charges and expenses of counsel to Centene, any necessary counsel retained by Centene with respect to state securities law matters and of its independent public accountants and

any other accountant, and any other accounting fees, charges and expenses incurred by Centene (including any expenses arising from any “comfort” letters or any special audits incident to or required by any registration or qualification).

- (ii) The Holders of Registrable Securities sold pursuant to a Registration Statement shall bear the expense of any broker’s commission or underwriter’s discount or commission and transfer taxes and other fees relating to the registration and sale of such Holders’ Registrable Securities and shall bear all fees and expenses of their own counsel.

6. Indemnification; Contribution.

- (a) Indemnification by Centene. Centene shall indemnify and hold harmless each Holder, its members, managers and officers, and each Person who controls (within the meaning of Section 15 of the Securities Act) such Holder as well as each Approved Underwriter and each Person, if any, who controls (within the meaning of Section 15 of the Securities Act) such Approved Underwriter from and against any and all losses, claims, damages, liabilities and expenses, or any action or proceeding in respect thereof (including reasonable costs of investigating, defending against or appearing as a third-party witness in connection with any losses, claims, damages, liabilities and expenses, or any action or proceeding in respect thereof and reasonable and documented attorneys’ fees and out-of-pocket expenses) (each, a “Liability”) arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in a Registration Statement pursuant to which Registrable Securities were registered or a Prospectus or an Issuer Free Writing Prospectus or in any amendment or supplement to such Registration Statement, Prospectus or an Issuer Free Writing Prospectus or, (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in the case of any Prospectus or Issuer Free Writing Prospectus, in the light of the circumstances under which they were made, to make the statements therein not misleading; provided, however, that Centene shall not be liable in any such case to the extent that any such Liability arises (A) out of or is based upon an untrue or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to Centene by or on behalf of the Holder (including the information provided pursuant to Section 5(b)(i) expressly for use therein) or any Approved Underwriters or (B) out of sales of Registrable Securities made during a period specified in, and after notice is given pursuant to, Section 3(b).
- (b) Indemnification by Holders. In connection with any offering in which a Holder is participating pursuant to Section 3, such Holder shall indemnify and hold harmless Centene, its Affiliates, its directors, managers and officers, and each Person who controls Centene (within the meaning of Section 15 of the Securities Act) from and against any and all Liabilities arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in a Registration

Statement pursuant to which Registrable Securities were registered or a Prospectus, a Holder Free Writing Prospectus or an Issuer Free Writing Prospectus included in any such Registration Statement or in any amendment or supplement thereto, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary in the case of any Prospectus, Holder Free Writing Prospectus or Issuer Free Writing Prospectus, in the light of the circumstances under which they were made, to make the statements therein not misleading, in each case, to the extent (except with respect to a Holder Free Writing Prospectus) such Liabilities arise out of or are based upon written information furnished by such Holder or on such Holder's behalf expressly for inclusion therein (including the information provided pursuant to Section 5(b)(i)) and is so included in reliance upon and in conformity with written information furnished to Centene by or on behalf of the Holder; provided, however, that the obligation to indemnify shall be several, not joint and several, for each Holder and the total amount to be indemnified by such Holder pursuant to this Section 6(b) shall be limited to the net proceeds (after deducting the underwriters' discounts and commissions but without giving effect to any other offering expenses) received by such Holder in the offering to which the Registration Statement, Prospectus, Holder Free Writing Prospectus or Issuer Free Writing Prospectus relates.

- (c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder (the "Indemnified Party") shall give prompt written notice to the indemnifying party (the "Indemnifying Party") after the receipt by the Indemnified Party of any written notice of the commencement of any action, suit, proceeding or investigation or threat thereof made in writing for which the Indemnified Party intends to claim indemnification or contribution pursuant to this Agreement; provided, however, that the failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any Liability that it may have to the Indemnified Party hereunder (except to the extent that the Indemnifying Party forfeits substantive rights or defenses by reason of such failure). If notice of commencement of any such action is given to the Indemnifying Party as above provided, the Indemnifying Party shall be entitled to participate in and, to the extent it may wish, jointly with any other Indemnifying Party similarly notified, to assume the defense of such action at its own expense, with counsel chosen by it and reasonably satisfactory to such Indemnified Party. The Indemnified Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be paid by the Indemnified Party unless (i) the Indemnifying Party agrees to pay the same, (ii) the Indemnifying Party fails to assume the defense of such action with counsel reasonably satisfactory to the Indemnified Party within a reasonable time after receipt by the Indemnifying Party of the notice of such action or (iii) the named parties to any such action (including any impleaded parties) include both the Indemnifying Party and the Indemnified Party and either (A) representation of such Indemnified Party and the Indemnifying Party by the same counsel would be inappropriate under applicable standards of professional conduct or (B) there may be one or more legal defenses available to the Indemnified Party that are different

from or additional to those available to the Indemnifying Party. In any case specified in sub-clause (A) or (B) above, the Indemnifying Party shall not have the right to assume the defense of such action on behalf of such Indemnified Party; it being understood, however, that the Indemnifying Party shall not be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all Indemnified Parties. No Indemnifying Party shall be liable for any settlement entered into without its written consent, which consent shall not be unreasonably withheld. No Indemnifying Party shall, without the written consent of such Indemnified Party, effect any settlement of any pending or threatened proceeding in respect of which such Indemnified Party is a party and indemnity has been sought hereunder by such Indemnified Party, unless such settlement (A) includes an unconditional release of such Indemnified Party from all liability for claims that are the subject matter of such proceeding and (B) does not include any statement as to an admission of fault, culpability or failure to act by or on behalf of any Indemnified Party.

- (d) Contribution. If for any reason the indemnification provided for in this Section 6 from the Indemnifying Party is unavailable to an Indemnified Party hereunder in respect of any Liabilities referred to herein (other than as a result of the exceptions contained in the provisos to Sections 6(a) and 6(b)), then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Liabilities in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions which resulted in such Liabilities, as well as any other relevant equitable considerations. The relative faults of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the Liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 6(a), 6(b) and 6(c), any documented legal or other fees, charges or out-of-pocket expenses reasonably incurred by such party in connection with any investigation or proceeding; provided, that the total amount to be contributed by such Holder shall be limited to the net proceeds (after deducting the underwriters' discounts and commissions but without giving effect to any other offering expenses) received by such Holder in the offering. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this paragraph. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

7. Exchange Act Reporting and Rule 144. Centene covenants that from and after the date of Agreement it shall (a) file any reports required to be filed by it under the Exchange Act (or, if Centene is not required to file such reports, it will, upon the request of any of the Holders, make publicly available other information for so long as necessary to permit sales of Registrable Securities pursuant to Rule 144 promulgated under the Securities Act) and (b) take such further action as each Holder may reasonably request (including providing any information necessary to comply with Rule 144 promulgated under the Securities Act), all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 promulgated under the Securities Act, as such rule may be amended from time to time, or Regulation S promulgated under the Securities Act or (ii) any similar rules or regulations hereafter adopted by the SEC.
8. Miscellaneous.
- (a) Conversions, Mergers, Recapitalizations, Exchanges, etc. The provisions of this Agreement shall apply to the full extent set forth herein with respect to (i) the shares of Common Stock and (ii) any and all equity securities of Centene or any successor or assign of Centene (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in conversion of, in exchange for or in substitution of, the shares of Common Stock, as the case may be, and shall be appropriately adjusted for any stock dividends, splits, reverse splits, combinations, recapitalizations and the like occurring after the date hereof. Centene shall cause any successor or assign (whether by merger, consolidation, sale of assets or otherwise) to assume this Agreement or enter into a new registration rights agreement with the Holders on terms substantially the same as this Agreement as a condition of any such transaction.
- (b) Amendments and Waivers. Except as otherwise provided herein, the provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given unless consented to in writing by (i) Centene and (ii) the Holders holding Registrable Securities representing (after giving effect to any adjustments) at least a majority of the aggregate number of Registrable Securities owned by Fidelis; provided, however, that no amendment, modification or supplement to this Agreement may materially adversely affect the rights of any Holder in a disproportionate manner unless consented to in writing by such Holder. Any such written consent shall be binding upon Centene and all of the Holders.
- (c) Notices. All notices, demands and other communications (each, a “Notice”) provided for or permitted hereunder shall be made in writing and shall be given or made by personal hand-delivery, by facsimile transmission, by electronic mail, or by a nationally recognized courier service (next day delivery requested), as follows:

(i) if to Centene:

Centene Corporation

[●]

[●]

Attn: [●]

E-Mail: [●]

With a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP

Four Times Square

New York, New York 10036

Attn: Paul T. Schnell, Esq. and Laura A. Kaufmann Belkhat, Esq.

E-Mail: paul.schnell@skadden.com and laura.kaufmann@skadden.com

(ii) if to Fidelis:

New York State Catholic Health Plan, Inc.

95-25 Queens Boulevard

Rego Park, New York 11374

Attn: Chief Executive Officer and Chief Legal Officer

E-Mail: pfrawley@fideliscare.org and srusso@fideliscare.org

With a copy (which shall not constitute notice) to:

Norton Rose Fulbright US LLP

1301 Avenue of the Americas

New York, New York 10019

Attn: Andrew B. Roth, Esq.

E-Mail: andrew.roth@nortonrosefulbright.com

(iii) if to any other Holder, at its address as it appears on the record books of Centene.

Each Notice shall be deemed to be delivered (i) if delivered by hand, when delivered at the address specified in this Section 8(c), (ii) if delivered by a nationally recognized overnight courier service, on the date of delivery by such courier service, and (iii) if given by facsimile or electronic mail, when such facsimile or electronic mail is received by the recipient thereof prior to 5:00 p.m. at the place of receipt on a day that is a Business Day at the place of receipt. Notwithstanding the foregoing, no Notice shall be deemed ineffective because of refusal of delivery to the address specified for the giving of such Notice in accordance herewith. Notice shall be effective only upon receipt or refusal of receipt after delivery in accordance with the methods set forth in this Section 8(c).

- (d) Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto as hereinafter provided. This Agreement and the rights hereunder with respect to any Registrable Security shall be Transferred to any Person who is

the Transferee of such Registrable Security, provided, that, any such Transfer constitutes more than 20.0% of the Registrable Securities on the Closing Date and for so long as the Transferee is an Affiliate of Fidelis. At the time of the Transfer of any Registrable Security as contemplated by this Section 8(d), such Transferee shall execute and deliver to Centene an instrument, in form and substance reasonably satisfactory to Centene, to evidence its agreement to be bound by, and to comply with, this Agreement as a Holder. All of the obligations of Centene hereunder shall survive any such Transfer. Except as provided in Section 6, no Person other than the parties hereto and their successors and permitted assigns is intended to be a beneficiary of this Agreement.

- (e) Governing Law; Consent To Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE ANY COURT OF THE STATE OF NEW YORK OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE AFFAIRS OF CENTENE. To the fullest extent they may effectively do so under applicable law, the parties hereto irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim that they are not subject to the jurisdiction of any such court, any objection that they may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (f) Waiver of Jury Trial. **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE OR CONTROVERSY THAT MAY ARISE, WHETHER IN WHOLE OR IN PART, UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**
- (g) Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof.



- (h) Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto with respect to the subject matter contained herein. There are no restrictions, promises, representations, warranties or undertakings with respect to the subject matter contained herein, other than those set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the parties with respect to such subject matter.
- (i) Further Assurances. Each of the parties shall execute such documents and perform such further acts as may be reasonably required or desirable to carry out or to perform the provisions of this Agreement.
- (j) Other Agreements. Nothing contained in this Agreement shall be deemed to be a waiver of, or release from, any obligations any party hereto may have under, or any restrictions on the Transfer of Registrable Securities or other securities of Centene imposed by, any other agreement.
- (k) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- (l) Termination. The obligations of Centene and of any holders of Centene's securities that have rights under this Agreement, other than those obligations contained in Section 6, shall terminate with respect to Centene and any such holder if such holder no longer holds any Registrable Securities. Notwithstanding anything to the contrary contained herein, this Agreement will terminate at any time by a written instrument signed by each Holder.
- (m) Specific Performance. The parties hereto agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event any provision of this Agreement was not performed in accordance with the specific terms hereof or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled (in addition to any other remedies available to them) to specific performance of the terms of this Agreement and injunctive relief (without bond or other security being required and without the necessity of proving the inadequacy of money damages) to prevent breaches or threatened breaches of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the undersigned have executed, or have caused to be executed, this Agreement on the date first written above.

**CENTENE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC. (D/B/A FIDELIS  
CARE NEW YORK)**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT L**

**TOTAL ADJUSTED NET ASSETS CALCULATION EXAMPLE**

(See attached)

## EXHIBIT L

### TOTAL ADJUSTED NET ASSETS CALCULATION EXAMPLE

<i>(\$ in 000s)</i>	<b>2017E</b>
<b>Adjusted Net Assets</b>	
Total Net Assets <sup>(1)</sup>	\$2,209,679
Non Admitted Assets (SAP) <sup>(2)</sup>	(148,687)
<u>Excluded Assets</u>	
Rego Park Office Tower Net Assets	(140,000)
Temporarily Restricted Net Assets	(564)
<u>Excluded Liabilities</u>	
Seller Employee Costs	TBD
Seller Transaction Expenses	TBD
Other	TBD
<b>Total Adjusted Net Assets</b>	<b>\$1,920,428</b>
<i>Implied Statutory Contingency Reserve Ratio</i>	<i>20.0%</i>
<b>Minimum Capital Amount (Exhibit J) <sup>(3)</sup></b>	<b>\$1,178,726</b>
<b>Excess Cash</b>	<b>\$741,702</b>

Note: The above calculation example is based on management's forecasted balance sheet on December 31, 2017 and further adjusted by the transaction structure by excluding any Excluded Assets and Excluded Liabilities and reflects assumption the term loan will be repaid with cash on the balance sheet. The above methodology will be used when calculating (i) the Estimated Total Adjusted Net Assets, Estimated Acquired Cash Amount, as described in Section 2.07(a), (ii) the Closing Total Adjusted Net Assets and Closing Acquired Cash Amount, as described in Section 2.07(b) and (iii) the Final Acquired Cash Amount, as described in Section 2.08(b); provided, however, that, in each case, such calculation shall be based upon the actual balance sheet of the Seller as of immediately prior to Closing (adjusted to give effect to any working capital true-ups under the Agreement) and giving effect to the actual Excluded Assets and Excluded Liabilities as at such date.

(1) Net of term loan repayment from cash on balance sheet.

(2) Estimate derived by applying 2017 premium revenue to ratio of 2016 Non-Admitted Assets over 2016 premium revenue.

(3) See Exhibit J for description

**EXHIBIT M**

**FORM OF TRANSITION SERVICES AGREEMENT**

(See attached)

**EXHIBIT M**

**FORM OF  
TRANSITION SERVICES AGREEMENT**

TRANSITION SERVICES AGREEMENT (this "**Agreement**") dated as of \_\_\_\_\_ (the "**Effective Date**"), by and between [NAME OF BUYER], a [●] ("**Buyer**"), and NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation ("**Seller**").

WHEREAS, concurrently with the execution of this Agreement, CENTENE CORPORATION, a Delaware corporation and the ultimate corporate parent of Buyer ("**Centene**"), and Seller are closing the transactions contemplated by that certain Asset Purchase Agreement (the "**Asset Purchase Agreement**") dated as of \_\_\_\_\_, 2017, pursuant to which Seller is selling, and Buyer is purchasing, certain assets, properties and rights, subject to the assumption by Buyer of certain liabilities and obligations; and

WHEREAS, in connection with the closing of the transactions contemplated by the Asset Purchase Agreement, Buyer and Seller have agreed to enter into this Agreement to set forth the terms on which Buyer or one or more of its Affiliates are willing to provide transitional services to Seller with respect to the business and the assets retained by Seller pursuant to the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which the parties hereby acknowledge, Buyer and Seller agree as follows:

SECTION 1. **Definitions.** Capitalized terms that are not otherwise defined in this Agreement shall have the meanings ascribed to them in the Asset Purchase Agreement.

SECTION 2. **Transition Services.** During the term of this Agreement as set forth in **Section 4**, Buyer shall use commercially reasonable efforts to provide to Seller the services set forth on **Schedule A** hereto (the "**Services**"), in the manner, to the extent and at a level of service contemplated by **Section 8** and **Schedule A**.

SECTION 3. **Compensation for Transition Services.** As consideration for the Services, Seller shall pay the amount specified for each such Service as set forth in **Schedule A** to Buyer.<sup>1</sup> To the extent not expressly covered by **Schedule A**, Seller shall also reimburse Buyer for all costs and expenses incurred by Buyer in connection with the provision of Services. After the end of each month during the term of this Agreement, Buyer shall prepare and submit a single itemized invoice to Seller for all such Services provided during such month. All invoices shall be sent to Seller's address set forth in **Section 12** or to such other address as Seller shall

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<sup>1</sup> **Note to Draft:** Scope, duration and pricing of transition services to be agreed between the parties prior to closing.

have specified by notice in writing. All invoices shall be paid by Seller to Buyer within thirty (30) days of receipt of such invoice.

**SECTION 4. Term of Agreement.** The term of this Agreement shall commence as of the Closing Date and, unless earlier terminated pursuant to **Section 5**, shall continue for a term ending on \_\_\_\_\_.

**SECTION 5. Termination.**

(a) All Services are immediately terminable by Seller on written notice to Buyer, provided that (i) if another Service is dependent on such terminated Service then such other Service shall also terminate to the extent of such dependency, and (ii) Seller shall reimburse Buyer for all costs and expenses incurred by Buyer in connection with any terminated Services (including any costs and expenses in connection with providing such Services to the end of the term of this Agreement to the extent such costs and expenses cannot be mitigated by Buyer without cost to Buyer and using commercially reasonable efforts).

(b) This Agreement may be terminated by Seller prior to the expiration of its stated term, upon written notice to Buyer (i) if Buyer commits a material breach of any provision of this Agreement and such breach continues for a period of thirty (30) days following a written request by Seller to cure such breach; or (ii) if Buyer files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law or makes or seeks to make a general assignment for the benefit of its creditors or applies for or consents to the appointment of a trustee, receiver or custodian for it or a substantial part of its property.

(c) This Agreement may be terminated by Buyer prior to the expiration of its stated term, upon written notice to Seller (i) if Seller commits a material breach of any provision of this Agreement and such breach continues for a period of thirty (30) days following a written request by Buyer to cure such breach; or (ii) if Seller files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law or makes or seeks to make a general assignment for the benefit of its creditors or applies for or consents to the appointment of a trustee, receiver or custodian for it or a substantial part of its property.

**SECTION 6. Consequential and Other Damages.** No party shall be liable, whether in contract, in tort (including negligence and strict liability), or otherwise, for any special, indirect, incidental, punitive, exemplary, or consequential damages whatsoever, which in any way arise out of, relate to, or are a consequence of, its performance or nonperformance hereunder, or the provision of or failure to provide any of Services hereunder, including, but not limited to, loss of profits, business interruptions and claims of customers or employees. In no event shall Buyer's liability in the aggregate for Damages hereunder exceed the amount paid by Seller to Buyer hereunder.

**SECTION 7. Indemnity.** Subject to **Section 6**, Buyer agrees to indemnify and hold Seller and its members, Subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof harmless from and against any damages, liabilities, losses, taxes, fines, penalties, costs and expenses (the "**Damages**") (including, without limitation, reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising out of third-



party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any of them arising out of or based on any gross negligence or willful misconduct on the part of Buyer. Subject to **Section 6**, Seller agrees to indemnify and hold Buyer and its members, Subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof harmless from and against any Damages which may be sustained or suffered by any of them arising out of or based on the provision, receipt or use of Services by or on the part of Seller.

#### **SECTION 8. Standards of Performance.**

(a) Except as otherwise provided in this Agreement, Buyer shall use commercially reasonable efforts to perform each Service in a professional manner and consistent with the standards of performance set forth in **Schedule A** for such Service; provided that, in the event **Schedule A** does not specify standards of performance with respect to a Service, Buyer shall use commercially reasonable efforts to provide such Service in the manner, to the extent and at a level of service generally consistent with that provided for such Service by the Hired Employees in connection with the operation of the Business immediately preceding the date of this Agreement (the "*Legacy Standards of Performance*"). For the avoidance of doubt, each Service identified on **Schedule A** may designate standards of performance for the Service described therein that differ from the Legacy Standards of Performance. Buyer shall, in its provision of such Service, use commercially reasonable efforts to meet or exceed all applicable performance specifications, criteria and metrics required by for an applicable Service set forth on **Schedule A**.

(b) Buyer shall use commercially reasonable efforts to perform the Services and any other obligations hereunder in compliance in all material respects with all applicable Laws, including without limitation local, state and federal licensing, certification, accreditation, permitting and compliance obligations relevant to the Services.

(c) Notwithstanding any other provision of this Agreement, Buyer shall have no obligation to provide Services or liability hereunder to the extent that (i) Seller has not transferred to Buyer, or Buyer has not reasonably been able to retain, the Hired Employees or other assets used in connection with the Services prior to the date hereof, (ii) a third-party consent, permission or license is required to provide such Service and Seller has not secured such consents, permissions or licenses prior to the date hereof, or (iii) Seller has not reasonably cooperated with Buyer in connection with the provision of a Service (including, without limitation, providing to Buyer access to resources or personnel reasonably requested by Buyer or failing to comply with Buyer's reasonable policies and procedures).

**SECTION 9. Force Majeure.** Any failure or omission by Buyer in the performance of any obligation under this Agreement shall not be deemed a breach of this Agreement or create any liability, if the same arises from any cause or causes beyond Buyer's control, including but not limited to, the following, which, for purposes of this Agreement shall be regarded as beyond Buyer's control: acts of God, fire, storm, flood, earthquake, governmental regulation or direction, acts of the public enemy, war, terrorism, rebellion, health crisis, insurrection riot, invasion, strike or lockout; provided, however that Buyer shall resume the performance whenever such causes are removed.

SECTION 10. **Assignment.** Neither this Agreement nor any of the rights and obligations of the parties hereunder may be assigned (by operation of law or otherwise) by any of the parties hereto without the prior written consent of the other party hereto, provided that Buyer, without the prior written consent of Seller, (i) may assign all or any part of this Agreement to any of its Affiliates and (ii) may assign this Agreement in connection with the transfer or other assignment of all or substantially all of its business or assets to which this Agreement relates. Any attempted assignment or transfer in violation of this **Section 10** shall be void.

SECTION 11. **Governing Law; Submission to Jurisdiction; Jury Trial Waiver.** Section 10.10 of the Asset Purchase Agreement is hereby incorporated herein by reference, *mutatis mutandis*.

SECTION 12. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; provided that such communication is also sent via another method permitted hereby or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this SECTION 12):

If to Seller:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

With copies (which shall not constitute notice) to:

Norton Rose Fulbright US LLP  
1301 Avenue of the Americas  
New York, New York 10019  
Attention: Andrew B. Roth, Esq.  
Fax: (212) 318-3400  
E-Mail: andrew.roth@nortonrosefulbright.com

If to Buyer:

[NAME OF BUYER]  
[ADDRESS OF BUYER]  
Attention: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

With a copy (which shall not constitute notice) to:

[NAME OF BUYER COUNSEL]  
[ADDRESS OF BUYER COUNSEL]

Attention: \_\_\_\_\_

E-Mail: \_\_\_\_\_

SECTION 13. **Headings.** The descriptive headings of the several Sections of this Agreement and all schedules to this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. All references herein to "Sections" shall be deemed to be references to Sections hereof or the schedules hereto unless otherwise indicated.

SECTION 14. **Integrated Contract; Schedules.** This Agreement, including the schedules hereto, any written amendments to the foregoing, the Asset Purchase Agreement and all ancillary agreements to the foregoing, constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any previous agreements and understandings between the parties with respect to such matters.

SECTION 15. **Severability; Enforcement.** The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by law, and each party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

SECTION 16. **Amendments.** This Agreement may be amended, modified, superseded or canceled and any of the terms, covenants or conditions hereof may be waived only by an instrument in writing signed by each of the parties hereto or, in the case of a waiver, by or on behalf of the party waiving compliance.

SECTION 17. **Independent Contractor.** At all times during the term of this Agreement, Buyer shall be an independent contractor in providing the Services. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationships of employee/employer or principal/agent, or otherwise create any liability whatsoever of any party with respect to the indebtedness, liabilities, obligations or actions of the other party or any of its respective officers, directors, employees, stockholders, agents or representatives, or any other person or entity.

SECTION 18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, but all of which shall constitute but one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

[NAME OF BUYER]

By: \_\_\_\_\_  
Name:  
Title:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE A

SERVICES

**EXHIBIT N**

**WORKING CAPITAL CALCULATION EXAMPLE**

(See attached)

## EXHIBIT N

### WORKING CAPITAL CALCULATION EXAMPLE

<i>(\$ in 000s)</i>	June 30, 2017	December 31, 2017E Normalized
Current Assets		
Premiums Receivable, Net	\$253,130	\$297,707
Reinsurance Receivable	124,449	115,148
Pharmacy Rebates & Other Receivables	148,169	131,005
Prepaid Expenses and Other Current Assets	15,776	9,932
<b>Total Current Assets</b>	<b>\$541,523</b>	<b>\$553,792</b>
Current Liabilities		
Accounts Payable and Accrued Expenses	\$165,886	\$172,000
Premiums Received In Advance	95,909	22,538
Capital Lease Obligations - Current Portion	7	405
Claims Payable and IBNR	1,273,550	1,403,079
Due To Third Parties	274,047	157,000
<b>Total Current Liabilities</b>	<b>\$1,809,400</b>	<b>\$1,755,022</b>
<b>Net Working Capital</b>	<b>(\$1,267,876)</b>	<b>(\$1,201,230)</b>
<b>Target Net Working Capital</b>	<b>(\$1,200,000)</b>	<b>(\$1,200,000)</b>

Note: The Estimated Working Capital will be prepared in accordance with the example above 10 days prior to closing, as referenced in Section 2.08(a), and will be based on Claims Payable and IBNR reserve equal to best estimate reserves as at Closing plus (i) a provision for adverse deviation of 15% and (ii) a loss adjustment expense allowance of 3%. Closing Working Capital will be prepared in accordance with Section 2.07(b), and will be based on Claims Payable and IBNR reserve as at Closing equal to best estimate reserves plus (i) a provision for adverse deviation of 14% and (ii) a loss adjustment expense allowance of 3%. Final Working Capital will be prepared in accordance with Section 2.08(b), and will be based on actual amounts paid in respect of claims incurred prior to the Closing plus (i) 14% and (ii) a loss adjustment expense allowance of 3%.



**EXHIBIT O**  
**WORKING CAPITAL METHODOLOGIES**

(See attached)

## EXHIBIT O

### WORKING CAPITAL METHODOLOGIES

#### SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Principles of Consolidation**—The consolidated financial statements include the accounts of Fidelis and its wholly owned subsidiaries, Salus and RPOT. All significant intercompany balances and transactions have been eliminated in consolidation.

**Basis of Accounting**—The accompanying consolidated financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (GAAP).

**Use of Estimates**—The preparation of the consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Accounts affected by significant estimates include premium receivables, pharmacy rebates receivable, other receivables, reinsurance receivables, ACA reinsurance, risk adjustment and risk corridor receivables and payables, recoverability of goodwill, claims payable, accrued expenses, amounts due to third parties, premium revenues, and cost of health care provided. Actual results could differ from these estimates.

**Premium Receivables and Revenues**—Premium receivables and revenues are recorded in the month for which members are entitled to service. Premiums represent payment in full for the complete Medicaid, Child Health Plus, Medicare Advantage, Medicaid Dual Advantage, MAP, FCAH, Health Benefit Exchange, FIDA, HARP and EP with the exception of the standard exclusions and the following additional exclusions: family planning, childcare, and methadone maintenance treatment program physician/clinic. As a prepaid health services plan, premium revenues are provided by the State of New York and U.S. government agencies, and therefore, there is no need for an allowance for uncollectible accounts. However, the amounts due from members under the Health Benefit Exchange, FCAH and EP programs include provisions for uncollectible accounts.

During 2016 and 2015, changes were made to the Medicaid benefit package whereby New York State transitioned services and populations covered by fee-for-service Medicaid to managed care plans. Nursing home benefits were carved into Medicaid and FCAH beginning with New York City region effective February 1, 2015, with additional counties carved in throughout the rest of the year on April 1, 2015, July 1, 2015 and October 1, 2015. In addition, behavioral health benefits were carved into Medicaid effective October 1, 2015. The State continued its carve-out of the transportation benefit in 2015. The Plan also received rate changes at various dates during 2016 and 2015, which included premium rates between Aliessa and non-Aliessa populations. The Aliessa population represents legal immigrants who are eligible for New York's Medicaid program as a result of a recent court decision. New York State does not receive federal matching funds for this population. As a result, the NYSDOH adjusted for the Aliessa population in its Managed Care premiums. For the Plan's Medicare products, the rates paid to Fidelis by the Centers for Medicare and Medicaid Services (CMS) are adjusted for the member's age, gender, county of residence, plan-specific bid, disability, income, and health status (risk-adjusted formula). Under this model, there is a potential for the collection of additional premium. However, the adjustment does not occur in the initial year of enrollment, but in subsequent periods after the Plan has compiled and submitted medical diagnosis information to CMS. The Plan records revenues and a receivable from CMS based on the estimate of the members' risk scores, and may be adjusted in the following year as a result of the annual settlement with CMS. As of December 31, 2016 and 2015, the Plan recorded prior-year risk score revenue adjustments that increased current-year revenues by approximately \$4,488,000 and \$6,448,000, respectively.

The Plan serves as a plan sponsor offering Medicare Part D prescription drug benefits under a contract with CMS. Certain elements of the payments the Plan receives, including catastrophic reinsurance subsidy and low-

income member cost-sharing subsidies, represent cost reimbursements. In addition, premium payments received from CMS are subject to risk corridor adjustments whereby variances, which exceed certain thresholds from a target amount, result in CMS making additional premium payments to the Plan or require the Plan to refund to CMS a portion of previous premiums received. Risk corridor variances of more than 5% above the target amount will result in CMS making additional payments to plan sponsors, and variances of more than 5% below the target amount will require plan sponsors to refund CMS. The Medicare Part D receivables as of December 31, 2016 and 2015 were approximately \$18,457,000 and \$17,985,000, respectively, which are included in premium receivables—net in the accompanying consolidated balance sheets. The Medicare Part D payables as of December 31, 2016 and 2015 were approximately \$4,967,000 and \$1,934,000, respectively, which are included in due to third parties in the accompanying consolidated balance sheets.

**Premiums Received in Advance**—Premiums collected in advance are reported as a liability in the accompanying consolidated balance sheets. Any billed premiums that have not been received by the end of the period are included as premium receivables.

**Health Care Reform or ACA**—The Plan is a participant in the New York Health Benefit Exchange within the NYSDOH established pursuant to Health Care Reform. Under regulations established by the U.S. Department of Health and Human Services (HHS), HHS pays the Plan a portion of the premium (“Premium Subsidy”) and/or a portion of the health care costs (“Cost Sharing Subsidy”) for low-income individual members. In addition, HHS administers certain risk management programs as described below.

Fidelis recognizes monthly premiums received from members and the Premium Subsidy as premium revenue ratably over the contract period. The Cost Sharing Subsidy offsets health care costs when incurred. A liability is recorded if the Cost Sharing Subsidy is paid in advance or a receivable if incurred health care costs exceed the Cost Sharing Subsidy received to date. As of December 31, 2016 and 2015, liabilities for cost sharing subsidy were approximately \$747,000 and \$17,870,000, respectively, which are included in due to third parties in the accompanying consolidated balance sheets.

#### **Health Care Reform’s Reinsurance, Risk Adjustment and Risk Corridor (the “3Rs”)**

**Reinsurance**—Health Care Reform established a temporary three-year reinsurance program, whereby all issuers of major medical commercial insurance products and self-insured plan sponsors are required to contribute funding in amounts set by HHS. Funds collected will be utilized to reimburse issuers’ high claims costs incurred for qualified individual members. The expense related to this required funding is reflected as a reduction of premium revenue. When annual claim costs incurred by the Plan’s qualified individual members exceed a specified attachment point, the Plan is entitled to certain reimbursements from this program. HHS may change this formula after year-end depending on the monies available to pay reimbursements. The Plan records a receivable and offsets health care costs to reflect an estimate of these recoveries. The Plan recorded approximately \$10,344,000 and \$14,279,000 in ACA reinsurance recoveries in 2016 and 2015, respectively, which are reflected as reductions to cost of healthcare provided in the accompanying consolidated statements of operations. Included in the 2016 ACA reinsurance recoveries is approximately \$5,044,000 in prior year adjustments based on the final reconciliation and settlement of 2015 reinsurance amounts with HHS. As of December 31, 2016 and 2015, ACA reinsurance receivables were approximately \$6,818,000 and \$8,820,000, respectively, which are included in reinsurance receivables in the accompanying consolidated balance sheets.

**Risk Adjustment**—Health Care Reform established a permanent risk adjustment program to transfer funds from qualified individual and small group insurance plans with below average risk scores to those respective plans with above average risk scores. Based on the risk of Fidelis’ qualified plan members relative to the average risk of members of other qualified plans in comparable markets, Fidelis estimates the ultimate risk adjustment receivable or payable and reflects the pro-rata year-to-date impact as an adjustment to its premium revenue. The Plan recorded approximately \$51,941,000 and \$57,907,000 in premium adjustment payables in 2016 and 2015, respectively, which are included in premium revenues in the accompanying consolidated statement of operations. Included in the 2016 premium adjustment payable is approximately \$18,072,000 in prior year adjustments based on the final reconciliation and settlement of 2015 risk adjustment amounts with HHS. As of December 31, 2016

and 2015, risk adjustment payables were approximately \$69,994,000 and \$74,692,000, respectively, which are included in due to third parties in the accompanying consolidated balance sheets.

**Risk Corridor**—Health Care Reform established a temporary three-year risk sharing program for qualified individual and small group insurance plans. Under this program the Plan makes (or receives) a payment to (or from) HHS based on the ratio of allowable costs to target costs (as defined by Health Care Reform). The Plan records a risk corridor receivable or payable as an adjustment to premium revenue on a pro-rata year-to-date basis based on the estimate of the ultimate risk sharing amount. As of December 31, 2016 and 2015, the Plan has no risk corridor payables. However, in 2015, the Plan has paid approximately \$3,500,000 in 2014 risk corridor adjustments upon final reconciliation and settlement with HHS.

The Plan will perform a final reconciliation and settlement with HHS of the 2016 3Rs and the 2015 Cost Sharing Subsidy during 2017. As permitted by HHS, in 2015, the Plan recognized approximately \$10,261,000 in deferred rebate liability representing estimated rebates due to its members for the 2014 calendar year. The Plan does not anticipate any rebate liability due its members for calendar year 2016.

**Pharmacy Rebates Receivable**—The Plan has an arrangement with a Pharmacy Benefit Management (PBM) company to administer pharmaceutical benefits to the Plan's members. The Plan accrues pharmacy rebates monthly based on the terms of the applicable contracts, historical billing and payment data, and other variables. Pharmacy rebates receivable are recorded as a reduction of health care costs. Pharmacy rebates are billed by the PBM to the pharmaceutical manufacturers within two months of the completion of the quarter depending on the contractual terms.

**Other Receivables**—Other receivables include accrued interest receivable, insurance recoveries and other miscellaneous amounts due to the Plan.

**Reinsurance Other Than ACA Reinsurance**—Reinsurance premiums are reported in health care costs and reinsurance recoveries are deducted from health care costs.

**Claims Payable**—Claims payable consists of amounts of payments to be made on individual claims that have been reported to the Plan, as well as estimates of claims incurred that have not yet been reported as of the consolidated balance sheet dates. Components of claims payable are estimated, with the assistance of an external actuary, using various statistical methods that use both historical financial and operating data. Management estimates additional components of claims payable using historical information and other operating data.

Claims payable also includes amounts payable for a quality incentive program (QIP) whereby certain of the Plan's providers may qualify for additional remuneration by achieving certain quality score thresholds based on the NYSDOH Quality Assurance Reporting Requirements. Management estimates a liability for QIP payments based on historical information and estimates of the providers who will achieve the required thresholds. As of December 31, 2016 and 2015, the Plan recorded approximately \$60,365,000 and \$54,837,000, respectively, for payments under the QIP that management estimates the Plan will pay.

The Plan has a process to review claims from providers that were previously denied or pended for administrative reasons. At December 31, 2016 and 2015, the Plan recorded approximately \$13,238,000 and \$7,127,000, respectively, for estimates pertaining to such claims. These amounts are considered in the determination of the overall claims payable.

Management believes that the liability for claims payable is adequate to satisfy the ultimate claim liabilities. However, there is at least a possibility that the estimates will change by a material amount in the near term since claims payable recorded in the accompanying consolidated balance sheets was determined using a range of estimated amounts based on information available to management. The estimates for claims payable are continually reviewed and adjusted as necessary as experience develops or new information becomes known. Such adjustments are included in current operations.

**Due to Third Parties**—Due to third parties primarily consists of Health Care Reform Act of 2000 surcharges, adjustments to the quality incentive and other components of the Medicaid premium rates, estimated amounts pertaining to potential premium overpayments, unrecouped reinsurance premiums, Medicare risk payables, and liabilities associated with the 3Rs.

**EXHIBIT P**

**ENROLLMENT PURCHASE PRICE ADJUSTMENT**

(See attached)

## EXHIBIT P

### ENROLLMENT PURCHASE PRICE ADJUSTMENT EXAMPLE

<b>Business Segment</b>	<b>Base Enrollment Number<sup>(1)</sup></b>	<b>Base Projected Enrollment Number<sup>(2)</sup></b>	<b>Purchase Price Per Enrollee</b>
State Sponsored Segment	1,323,876	1,349,187	\$1,500
Senior Programs Segment	85,522	93,386	6,500
Exchange Segment	224,873	250,690	3,500
<b>Total</b>	<b>1,634,271</b>	<b>1,693,263</b>	

#### Illustrative Downward Purchase Price Adjustment – Triggers at 95% of Base Enrollment

<b>Business Segment</b>	<b>Closing Enrollment % of Base Enrollment Number</b>	<b>Enrollee Shortfall</b>	<b>Purchase Price Per Enrollee</b>	<b>Purchase Price Adjustment (\$mm)</b>
State Sponsored Segment	90.0%	(66,194)	\$1,500	(\$99)
Senior Programs Segment	90.0	(4,276)	6,500	(28)
Exchange Segment	90.0	(11,244)	3,500	(39)
<b>Total</b>		<b>(81,714)</b>		<b>(\$166)</b>

#### Illustrative Upward Purchase Price Adjustment – Triggers at 105% of Base Projected Enrollment

<b>Business Segment</b>	<b>Closing Enrollment % of Base Projected Enrollment Number</b>	<b>Enrollee Surplus</b>	<b>Purchase Price Per Enrollee</b>	<b>Purchase Price Adjustment (\$mm)</b>
State Sponsored Segment	110.0%	67,459	\$1,500	\$101
Senior Programs Segment	110.0	4,669	6,500	30
Exchange Segment	110.0	12,535	3,500	44
<b>Total</b>		<b>84,663</b>		<b>\$175</b>

(1) August 31, 2017 actual enrollment figures are reflected in this draft exhibit, for illustrative purposes only. Base Enrollment Number figures exclude contribution from the FIDA business (314 members), which will be discontinued by end of year 2017. [Base Enrollment Number and Low Collar Enrollment for each Business Segment to be updated to reflect actual figures as of the last date of the calendar month in which the Signing Date occurs.]

(2) Projected enrollment for January 1, 2018 (expected December 31, 2017 from management forecast). Base Projected Enrollment Number figures exclude contribution from the FIDA business (321 members), which will be discontinued by end of year 2017.

**EXHIBIT Q**  
**COMMUNICATIONS PLAN**

(See attached)



**EXHIBIT R**

**REQUIRED THIRD PARTY CONSENTS**

(See attached)

## **EXHIBIT R**

### **REQUIRED THIRD PARTY CONSENTS**

1. With respect to the Provider Contracts covering at least ninety-five percent (95%) of Enrollees for each Business Segment, in each case as may be required pursuant to the terms thereof, consent of (i) the New York State Department of Health (the “DOH”) solely to the extent such consent is not otherwise provided for in connection with the receipt of the consent set forth in Section 6.08(a)6. of the Disclosure Schedules, and (ii) the applicable Provider to assign to Buyer all of Seller’s rights and obligations thereunder.
2. With respect to each of the following Material Contracts, in each case as may be required pursuant to the terms thereof, consent of (i) the DOH solely to the extent such consent is not otherwise provided for in connection with the receipt of the consent set forth in Section 6.08(a)6. of the Disclosure Schedules, and (ii) the applicable Provider to assign to Buyer all of Seller’s rights and obligations thereunder.
  - Roswell Park Cancer Institute Corporation (Lincare, Inc.): Provider Agreement dated August 1, 2001; as amended on January 25, 2005; as amended and January 1, 2016.
  - Ancillary Services Agreement, dated March 5, 2004, between The New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York and Laboratory Corporation and Bio-Reference Laboratories, Inc., as amended March 12, 2009, as amended December 1, 2010, as amended September 9, 2013, and as amended January 1, 2015.
  - Ancillary Services Agreement 2.0, dated August 1, 2000, between The New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York and Laboratory Corporation and Quest Diagnostics Incorporated, as amended September 15, 2003, as amended January 27, 2005, as amended March 1, 2006, as amended March 1, 2006, as amended March 1, 2008, as amended April 1, 2011, as amended January 1, 2015, as amended January 1, 2015, and as amended October 1, 2015.
  - Ancillary Services Agreement 2.0, dated September 1, 2008, between The New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York and Laboratory Corporation and its designated subsidiaries, as amended January 1, 2011, as amended April 19, 2013, as amended January 1, 2014, and as amended August 15, 2014.
  - Independent Practice Association Provider Agreement, dated May 1, 2011, between The New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York and Integra Partners IPA, LLC, as amended October 1, 2012, as amended January 1, 2014, and as amended January 1, 2016.
  - Standard Ancillary Services Agreement 2.0, dated June 6, 2008, by and between New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York and CenterCare, Inc., including its affiliates and subsidiaries (Apria, Coram, etc.); as amended March 17, 2010; as amended September 1, 2011, as amended December 1, 2011; as amended October 1, 2012; as amended July 1, 2014; as amended October 1, 2015.

- Standard Ancillary Services Agreement 2.0 dated December 16, 2013, by and between New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York and New York Dialysis Services, Inc.

**EXHIBIT S**  
**FORM OF PROPOSED AMENDMENT**  
**(See attached)**

## **EXHIBIT S**

### **Form of Proposed Amendment**

Seller shall amend its Certificate of Incorporation, effective as of Closing, to state that Seller shall be exclusively organized and operated for the purposes of:

(1) improving the health and wellness of the poor, disabled, disadvantaged, elderly and underserved people of New York State and their families by engaging in, promoting, sponsoring and supporting activities, programs and initiatives that (i) enhance access to affordable quality healthcare and healthcare related services (including social determinants of health as recognized by the New York State Department of Health as being an important component of Medicaid and healthcare reform (“Social Determinants of Health”)) and (ii) addressing the unmet healthcare and healthcare related needs (including Social Determinants of Health) of communities across New York State, in the case of each of clauses (i) and (ii) consistent with the Catholic values that have historically guided the Corporation,

(2) making grants and contributions to, and otherwise supporting, sponsoring and benefitting, such other not-for-profit organizations as the Corporation shall determine in furtherance of the foregoing purposes; and

(3) subject to the limitations set forth in this Certificate of Incorporation, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL that are incidental to, and/or in furtherance of, accomplishing the foregoing purposes.

## EXHIBIT 2

### Amendment to the Asset Purchase Agreement

**AMENDMENT NO. 1  
TO  
ASSET PURCHASE AGREEMENT**

This **AMENDMENT NO. 1**, dated as of May [•], 2018 (this “Amendment”), amends the Asset Purchase Agreement (the “Agreement”), dated as of September 12, 2017, by and between New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York, a New York not-for-profit corporation (“Seller”), and Centene Corporation, a Delaware corporation (“Buyer”). Seller and Buyer are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS:**

**WHEREAS**, the Parties desire to amend certain provisions of the Agreement pursuant to Section 10.09 thereof as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and in reliance upon the representations, warranties, conditions, agreements and covenants contained herein, and intending to be legally bound hereby, the Parties do hereby agree as follows:

Section 1. Definitions. All capitalized terms used but not defined in this Amendment shall have the meaning assigned to such terms in Article I of the Agreement

Section 2. Amendments.

(a) The first recital of the Agreement is hereby amended and restated in its entirety as follows:

A. Seller holds a Certificate of Authority as a health maintenance organization under Article 44 of the New York Public Health Law issued by the New York State Department of Health (“**DOH**”), is subject to the regulatory jurisdiction of DOH and the New York State Department of Financial Services (“**DFS**”), and is a party to various contracts to provide Medicaid, Child Health Plus, Managed Long Term Care, Health Benefit Exchange, and Medicare services, including: (i) a contract with DOH dated March 1, 2014 to provide health care services under the Medicaid (the “**Medicaid Business**”) and Health and Recovery Plan programs (the “**HARP Business**”), (ii) a contract with DOH dated January 1, 2016 to provide health care services under the Child Health Plus Program (the “**CHP Business**”), (iii) a contract with DOH dated January 1, 2015 to provide health care services under the Managed Long Term Care Program (the “**MLTC Business**”), (iv) a contract with the Centers for Medicare & Medicaid Services (“**CMS**” and, together with DOH, the “**Payors**”) effective January 1, 2017 to provide health care services under the Medicare Advantage program (the “**Medicare Advantage Business**”) and a contract with CMS effective January 1, 2017 to provide health care services under the Medicare Advantage D-SNP program (the “**D-SNP Business**” and, together with the Medicare Advantage

Business, the “**Medicare Business**”), (v) a contract with DOH effective January 1, 2011 to provide health care services to members who are eligible for services under the Medicaid Advantage program (the “**Medicaid Advantage Business**”), (vi) a contract with DOH effective January 1, 2017 to provide health care services to members who are eligible for services under the Medicaid Advantage Plus program (the “**Medicaid Advantage Plus Business**”), (vii) a contract with DOH and CMS effective January 1, 2015 to provide health care services to members who are eligible for services under the Fully Integrated Duals Advantage program (the “**FIDA Business**” and, together with the Medicaid Advantage Plus Business and the Medicaid Advantage Business, the “**Duals Business**”), (viii) a contract with DOH dated October 1, 2013 to provide health care services to members through the New York State Health Benefit Exchange under the Qualified Health Plan program (the “**QHP Business**”) and (ix) a contract with DOH dated November 1, 2015 to provide health care services to members who are eligible for services under the Essential Plan (the “**EP Business**”). Collectively, the operation of the Medicaid Business, the HARP Business, the CHP Business, the MLTC Business, the Medicare Business, the Duals Business, the QHP Business and the EP Business, the “**Business**” and each, individually, a “**Line of Business**”. The foregoing contracts with Payors are collectively referred to herein as the “**Payor Contracts**.”

(b) Article I of the Agreement is hereby amended to add the following new defined terms in alphabetical order:

“**Buyer Guaranty Agreement**” means a Guaranty Agreement substantially the form attached hereto as **Exhibit T**, duly executed by Buyer, Seller and Hallmark Life Insurance Company.

“**Escrow Assignment**” has the meaning set forth in **Section 6.30**.

“**Foundation**” means Mother Cabrini Health Foundation, Inc., that certain not-for-profit corporation formed pursuant to the Not-For-Profit Corporation Law of the State of New York in connection with the transactions contemplated by that certain Verified Petition of Seller, dated May 4, 2018, filed with the New York State Attorney General pursuant to Section 6.08(a).

“**Management Agreement**” means a Management Agreement substantially the form attached hereto as **Exhibit V**, duly executed by Seller, Salus Administrative Services, Inc., Centene Management Company, LLC, and Centene Company of New York, LLC.

“**Payment and Limited Joinder Agreement**” means a Payment and Limited Joinder Agreement substantially the form attached hereto as **Exhibit U**, duly executed by Buyer, Seller and Foundation.



(c) The Buyer Guaranty Agreement attached hereto as Annex A shall be appended to the Agreement as Exhibit T.

(d) The Payment and Limited Joinder Agreement attached hereto as Annex B shall be appended to the Agreement as Exhibit U.

(e) The Management Agreement attached hereto as Annex C shall be appended to the Agreement as Exhibit V.

(f) The Medicare Reinsurance Agreement attached as Exhibit G to the Agreement is hereby amended and restated in its entirety in the form attached hereto as Annex D.

(g) The QHP Reinsurance Agreement (as defined below) attached as Exhibit J to the Agreement is hereby amended and restated in its entirety in the form attached hereto as Annex E.

(h) The Applicable Purposes (as defined below) attached as Exhibit S to the Agreement is hereby amended and restated in its entirety in the form attached hereto as Annex F.

(i) The defined term “Applicable Purposes” set forth in Article I of the Agreement is hereby amended and restated in its entirety as follows:

**“Applicable Purposes”** means the healthcare and healthcare related purposes set forth on **Exhibit S** consistent with the types and nature of activities and programs customarily conducted, and grants customarily made, by Seller prior to the Signing Date to address the social determinants of health for the population served by Seller, including such consistent activities, programs and grants in furtherance of healthcare, nutrition, substance abuse, behavioral health, home and community-based services, early intervention, education and literacy, affordable quality housing, employment, and care for the elderly (in each case, other than conduct that would violate **Section 6.07**). It being understood and agreed that nothing in the foregoing is intended to limit Applicable Purposes to the specific activities or programs or specific recipients or amounts of any grants conducted or made by the Seller prior to the Signing Date.

(j) The defined term “QHP and EP Reinsurance Agreement” set forth in Article I of the Agreement is hereby amended and restated in its entirety as follows, and except as otherwise amended and/or restated pursuant to this Amendment, each references to the “QHP and EP Reinsurance Agreement” in the Agreement shall be deemed to be a reference to the “QHP Reinsurance Agreement”:

**“QHP Reinsurance Agreement”** means an Indemnity Reinsurance Agreement, in substantially the form of **Exhibit J** attached hereto, to be entered into between Buyer (or an Affiliate of Buyer) and Seller, as may be modified prior to the Closing upon mutual agreement of Buyer and Seller in accordance with the applicable requirements of any Governmental Authority having

jurisdiction over the business that is the subject of the QHP Reinsurance Agreement.

(k) The defined term “QHP and EP Reinsurance Business” set forth in Article I of the Agreement is hereby amended and restated in its entirety as follows, and except as otherwise amended and/or restated pursuant to this Amendment, each reference to the “QHP and EP Reinsurance Business” in the Agreement shall be deemed to be a reference to the “QHP Reinsurance Business”:

“**QHP Reinsurance Business**” means the business that is the subject of the QHP Reinsurance Agreement.

(l) The defined term “Transaction Documents” set forth in Article I of the Agreement is hereby amended and restated in its entirety as follows:

“**Transaction Documents**” means this Agreement, the Escrow Agreement, the Transition Services Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the IP Assignment Agreement, the Rego Park Lease Assignment, the QHP Reinsurance Agreement, the Medicare Reinsurance Agreement, the Registration Rights Agreement, the Member Non-Compete Agreement, the Payment and Limited Joinder Agreement, the Management Agreement, the Buyer Guaranty Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.

(m) The defined term “Burdensome Condition” set forth in Article I of the Agreement is hereby amended and restated in its entirety as follows:

“**Burdensome Condition**” means (a) in respect of Buyer, any term, limitation, restriction, condition or requirement imposed by any Governmental Authority on Buyer, its Affiliates, or the Business as a condition to such Governmental Authority granting any Required Governmental Approval, or otherwise promulgated or enacted by any Governmental Authority (but only to the extent that the statute or regulation so promulgated or enacted would also constitute a Change in Healthcare Law) that would have or could reasonably be expected to have a material and adverse effect, individually or in the aggregate, on (i) the financial condition results of operations or business of Buyer and its Subsidiaries or the Business, in each case, as currently conducted, provided that, for purposes of determining whether any term, limitation, restriction or requirement imposed by any Governmental Authority would have or could reasonably be expected to have a material and adverse effect on Buyer and its Subsidiaries, Buyer and its Subsidiaries will collectively be deemed to be a company the size of the Business, (ii) the lines or types of business, in the aggregate, in which Buyer and its Subsidiaries or the Business shall be permitted to engage, and/or (iii) the overall benefits that the Buyer reasonably expects to derive from the consummation of the transactions contemplated by this Agreement, and (b) in respect of Seller or the Foundation, any term, limitation, restriction, condition or requirement imposed, promulgated or enacted by any

Governmental Authority on Seller, the Foundation or their Affiliates that would result in or could reasonably be expected to result in: (i) a reduction of the Purchase Price received by Seller or the inability of Seller or the Foundation to retain the Excluded Assets or have immediate access to the Purchase Price or Excluded Assets at Closing (except as contemplated by the Escrow Agreement), in an amount, individually or in the aggregate, greater than \$375 million dollars (\$375,000,000) (the “**Burdensome Amount**”); (ii) Foundation’s inability to operate in all material respects in furtherance of the Applicable Purposes following the Closing, it being understood and agreed that any impairment of Foundation’s ability to operate Foundation for purposes other than the Applicable Purposes shall not give rise to a Burdensome Condition; (iii) Seller’s or Foundation’s obligation to use more than a Burdensome Amount of the entire Purchase Price and Excluded Assets not in furtherance of the purposes set forth on Exhibit S (the “**Foundation Post-Closing Purposes**”); (iv) any Governmental Authority requiring Seller or Foundation to make grants or distributions to, or expenditures on behalf of, in each case specific Persons or government established programs or funds that are specifically designated or directed by a Governmental Authority, in excess individually or in the aggregate of the Burdensome Amount; or (v) a requirement imposed on Seller or Foundation such that more than a Burdensome Amount of the aggregate Purchase Price and Excluded Assets is required to be used in furtherance of purposes other than the Foundation Post-Closing Purposes. For purposes of determining (1) whether any terms, limitations, restrictions, conditions or requirements imposed, promulgated or enacted by any Governmental Authority on Buyer, its Affiliates or the Business would, individually or in the aggregate, have a material and adverse effect under clauses (a)(i), (a)(ii) or (a)(iii), all such terms, limitations, restrictions, conditions or requirements imposed, promulgated or enacted by any Governmental Authority on Buyer, its Affiliates and the Business, whether relating to clauses (a)(i), (a)(ii) or (a)(iii), shall be aggregated (but without duplication) and the level of the effects of all such terms, limitations, restrictions, conditions and requirements (even if not applicable to a particular clause) shall be taken into account in determining whether a material and adverse effect has occurred under any of such clauses (a)(i), (a)(ii) or (a)(iii) above, and (2) whether any terms, limitations, restrictions, conditions or requirements imposed, promulgated or enacted by any Governmental Authority on Seller, the Foundation or their Affiliates would, individually or in the aggregate, exceed the Burdensome Amount, amounts under clauses (b)(i), (b)(iii), (b)(iv) and (b)(v) above shall be aggregated, but without duplication.

(n) Article I of the Agreement is hereby amended to delete the defined term “Proposed Amendment” in its entirety.

(o) Section 2.01(d)(i) – (ii) of the Agreement is hereby amended and restated in its entirety as follows:

(i) Rights With Respect to Duals Enrollees. Subject to Section 6.20 and the Medicare Reinsurance Agreement, any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the Duals Business (such individuals, "**Duals Enrollees**" and such health plans, "**Seller's Duals Health Plans**") and any other Persons who would be default-assigned to Seller's Duals Health Plans from and after the Closing Date if Seller retained the right to serve Duals Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such Duals Enrollees (and other Persons);

(ii) Rights Under Provider Contracts. All of Seller's rights from and after the Medicare Novation Date under the Assumed Provider Contracts to the extent relating to the Duals Business;

(p) Section 2.01(h)(i) –(iii) of the Agreement is hereby amended and restated in its entirety as follows:

(i) Rights With Respect to EP Enrollees. Any and all rights of Seller to provide services to Enrollees in any of Seller's health plans comprising the EP Business (such individuals, "**EP Enrollees**" and such health plans, "**Seller's EP Health Plans**") and any other Persons who would be default-assigned to Seller's EP Health Plans from and after the Closing Date if Seller retained the right to serve EP Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such EP Enrollees (and other Persons);

(ii) Rights Under Provider Contracts. All of Seller's rights from and after the Effective Time under the Assumed Provider Contracts to the extent relating to the EP Business;

(iii) Claims and Rights. Claims and rights of every kind relating to the EP Purchased Assets and/or the ownership of the EP Business arising from the conduct of the EP Business by Buyer on and after the Effective Time, except to the extent such claims and rights constitute or relate to an Excluded Asset or an Excluded Liability; and

(q) The last sentence of Section 6.08(a) of the Agreement is hereby amended and restated in its entirety as follows:

Seller shall file a proposed Certificate of Incorporation of the Foundation, which shall include the purposes set forth on **Exhibit S**, with the New York Attorney General in connection with the applications to obtain the Required Governmental Approvals.

(r) Section 6.20 of the Agreement is hereby amended and restated in its entirety as follows:

(a) In accordance with **Section 2.01(e)**, as of the Non-Renewal Date, Buyer shall acquire from Seller and its Subsidiaries all of their respective Provider Contracts related to the QHP Reinsurance Business and any and all rights of Seller and its Subsidiaries, to the extent applicable, to provide services to Enrollees in any of Seller's QHP Health Plans ("***Seller's QHP Reinsured Plans***") in effect as of the Closing Date on an indemnity reinsurance basis in accordance with the terms and conditions of the QHP Reinsurance Agreement. Commencing as of the first applicable open enrollment period for the first applicable plan year after the plan year subject to the QHP Reinsurance Agreement after the Closing Date in respect of each Seller's QHP Reinsured Plan, Buyer shall make available to the Enrollee of such Seller's QHP Reinsured Plan Buyer insurance product replacement for such Seller's QHP Reinsured Plan. Buyer shall not offer Seller's QHP Reinsured Plans on a renewal basis after the applicable plan year subject to the QHP Reinsurance Agreement.

(b) In accordance with **Section 2.01(c)** and **Section 2.01(d)**, as of the Medicare Novation Date, Buyer shall acquire from Seller and its Subsidiaries any and all rights of Seller and its Subsidiaries, to the extent applicable, to provide services to Enrollees in any of Seller's Medicare Health Plans and Seller's Duals Health Plans in effect as of the Closing Date on an indemnity reinsurance basis in accordance with the terms and conditions of the Medicare Reinsurance Agreement. In accordance with the Medicare Reinsurance Agreement, Seller shall cede, and Buyer shall reinsure, on an indemnity reinsurance basis all Medicare Business and Duals Business written by Seller until the Medicare Novation Date. On the Medicare Novation Date, subject to the terms and conditions of the Medicare Reinsurance Agreement, the Payor Contracts pursuant to which such Medicare Business and Duals Business is written shall be novated or assigned to Buyer.

(s) Article VI of the Agreement is hereby amended to add the following new Sections 6.29:

**Section 6.29 Assignment of Escrow Agreement.** In the event the Closing occurs on or prior to July 3, 2018, at the Closing (i) Buyer shall deliver to Seller a duly executed Assignment Agreement (the "***Escrow Assignment***") to be effective immediately following Closing in accordance with the terms of the Escrow Agreement pursuant to which Buyer shall consent to the assignment of all of Seller's interest, right and obligations arising thereunder to the Foundation, and (ii) the parties shall cause the Escrow Agent to duly execute and deliver the Escrow Assignment at the Closing.

(t) Section 7.02(d) of the Agreement is hereby amended and restated in its entirety as follows:

(d) With respect to each Transaction Document (other than this Agreement), Seller shall have delivered to Buyer duly executed counterparts of

Seller and each Affiliate of Seller party thereto, as applicable, and, in the case of the Payment and Limited Joinder Agreement, the Foundation.

(u) Section 7.03(g) of the Agreement is hereby amended and restated in its entirety as follows:

Seller shall have received all Required Governmental Approvals to enable the Foundation to operate in all material respects in furtherance of the Applicable Purposes following the Closing.

(v) The portion of Section 10.02 of the Agreement setting forth the address and contact information for notices and communications to Seller is hereby amended and restated in its entirety as follows:

If to Seller:

New York State Catholic Health Plan, Inc.  
1011 First Avenue  
New York, New York 10022  
Attention: William E. Whiston, Chief Executive Officer  
E-Mail: William.Whiston@archny.org

With a copy to (which shall not constitute notice for purposes of this Agreement):

Loeb & Loeb LLP  
345 Park Avenue  
New York, New York 10154  
Attention: Jason R. Lilien  
E-Mail: jlilien@loeb.com

### Section 3. Miscellaneous.

(a) Except as expressly amended and/or superseded by this Amendment, the Agreement shall remain in full force and effect in accordance with its terms. Upon the execution and delivery hereof, the Agreement shall thereupon be deemed to be amended and supplemented as hereinabove set forth as fully and with the same effect as if the amendments and supplements made hereby were originally set forth in the Agreement. This Amendment and the Agreement shall each henceforth be read, taken and construed as one and the same instrument, but such amendments and supplements shall not operate so as to render invalid or improper any action heretofore taken under the Agreement. If and to the extent there are any inconsistencies between the Agreement and this Amendment with respect to the matters set forth herein, the terms of this Amendment shall control.

(b) Article X of the Agreement is hereby incorporated into this Amendment by reference *mutatis mutandis*.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLER:**

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

**BUYER:**

CENTENE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:



## **Buyer Guaranty Agreement**

## **GUARANTEE AGREEMENT**

This GUARANTEE AGREEMENT, dated as of [●] [●], [●] (this "Agreement"), has been made and entered into by and among CENTENE CORPORATION, a Delaware corporation ("Guarantor"), HALLMARK LIFE INSURANCE COMPANY, an Arizona domiciled life insurance company (the "Reinsurer"), and NEW YORK STATE CATHOLIC HEALTH PLAN, INC., a New York not-for-profit corporation ("Beneficiary" and, together with the Guarantor and the Reinsurer, the "Parties").

### **WITNESSETH:**

WHEREAS, concurrently herewith, the Reinsurer and Beneficiary have entered into certain reinsurance agreements, whereby the Beneficiary has ceded, and the Reinsurer has reinsured, the Reinsured Liabilities (as defined therein) relating to: (i) Beneficiary's qualified health plan business (such reinsurance agreement, the "QHP Reinsurance Agreement"), and (ii) Beneficiary's Medicare Business (as defined therein), Medicaid Advantage Business (as defined therein), Medicaid Advantage Plus Business and FIDA Business (as defined therein) (such reinsurance agreement, the "Medicare Reinsurance Agreement" and, together with the QHP Reinsurance Agreement, the "Guaranteed Agreements");

WHEREAS, the Reinsurer is an indirect, wholly owned subsidiary of Guarantor and Guarantor expects to derive direct or indirect benefits from the transactions contemplated by the Guaranteed Agreements;

WHEREAS, Beneficiary intends to seek the approval of the New York State Department of Health ("DOH") to permit Beneficiary to utilize the Guaranteed Agreements and this Guarantee Agreement to satisfy its statutory and regulatory reserve obligations under New York law(the "Requested Approval"); and

WHEREAS, Beneficiary has requested that Guarantor guarantee the Reinsurer's performance under the Guaranteed Agreements, subject to the terms and conditions of this Agreement, in order to provide additional financial resources, which will ensure that the Reinsurer will fully and timely perform all of its obligations under the Guaranteed Agreements in support of the Requested Approval and, subject to the receipt of the Requested Approval, fulfill the reserve obligations of the Beneficiary.

NOW THEREFORE, in consideration of the foregoing, the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Guaranteed Agreements.

Section 2. Guarantee. Guarantor hereby absolutely, unconditionally and irrevocably guarantees (the "Guarantee") to the Beneficiary the payment, performance and observation of all present and future obligations of the Reinsurer arising under the Guaranteed Agreements,

whether according to the present terms of the Guaranteed Agreements, or pursuant to any change in the terms, covenants or conditions of any Guaranteed Agreement at any time hereafter made or granted (collectively, the "Obligations").

Section 3. Certain Waivers; Acknowledgments. Guarantor acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke the Guarantee and acknowledges that the Guarantee is continuing in nature and applies to all presently existing and future Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Obligations.

(b) The Guarantee is a guarantee of payment and performance and not of collection. Beneficiary shall not be obligated to enforce or exhaust its remedies against the Reinsurer under any Guaranteed Agreement before proceeding to enforce the Guarantee under this Agreement.

(c) The Guarantee is a direct guaranty and independent of the obligations of the Reinsurer under any Guaranteed Agreement. Beneficiary may resort to Guarantor for payment and performance of the Obligations whether or not Beneficiary has proceeded against the Reinsurer or any other guarantors with respect to the Obligations. Beneficiary may, at its option, proceed against Guarantor and the Reinsurer, jointly and severally, or against Guarantor only without having obtained a judgment against the Reinsurer.

(d) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and the Guarantee and any requirement.

(e) The Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of the Reinsurer.

Section 4. Subrogation. Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under the Guarantee until all Obligations shall have been indefeasibly paid and discharged in full.

Section 5. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the

following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 5):

If to Guarantor:

Centene Corporation  
7700 Forsyth Blvd.  
St. Louis MO 63105  
Attention: Keith Williamson  
E-Mail: kwilliamson@centene.com

If to Reinsurer:

[Hallmark Life Insurance Company]  
7700 Forsyth Blvd.  
St. Louis MO 63105  
Attention: Keith Williamson  
E-Mail: kwilliamson@centene.com

If to Beneficiary:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

Section 6. Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including", unless otherwise specified, shall be deemed to be followed by the words "without limitation" whether or not such words are actually stated; (b) the word "or" is not disjunctive; (c) the words "herein," "hereof," "hereby," "hereto", "hereunder" and derivative or similar words refer to this Agreement as a whole; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) references to "dollars" or "\$" shall mean United States dollars; (f) references to "written" or "in writing" include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person's successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to "close of business" on any given day shall be deemed to refer to 11:59 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Sections mean the Sections of this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a

statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 7. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8. Severability. If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 9. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the limited subject matter contained herein, and shall supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

Section 10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

Section 11. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 12. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

Section 13. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13(c).

Section 14. Specific Performance. Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

Section 15. Counterparts. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this

Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date first set forth above.

CENTENE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

[HALLMARK LIFE INSURANCE  
COMPANY]

By: \_\_\_\_\_  
Name:  
Title:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Guarantee Agreement]*



## **Payment and Limited Joinder Agreement**

## PAYMENT AND LIMITED JOINDER AGREEMENT

This PAYMENT AND LIMITED JOINDER AGREEMENT, dated as of [●] [●], 2018 (this "Agreement"), has been made and entered into by and among MOTHER CABRINI HEALTH FOUNDATION, INC., a New York not-for-profit corporation (the "Foundation"), NEW YORK STATE CATHOLIC HEALTH PLAN, INC., a New York not-for-profit corporation ("Seller"), and CENTENE CORPORATION, a Delaware corporation ("Buyer" and, together with the Foundation and Seller, the "Parties").

### WITNESSETH:

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement, dated as of September 12, 2017, as amended by that certain Amendment No. 1 to the Asset Purchase Agreement, dated as of May [●], 2018 (as so amended, the "Asset Purchase Agreement") whereby Seller has agreed to sell substantially all of its assets to Buyer (the "Transaction");

WHEREAS, the Foundation will receive from Seller the proceeds from the Transaction and certain other assets to be owned by Seller from and after the closing of the Transaction, including any cash and investments on Seller's balance sheet upon closing of the Transaction (collectively, the "Transfer");

WHEREAS, capitalized terms used but not otherwise defined in this Agreement shall have the meanings assigned to such terms in the Asset Purchase Agreement; and

WHEREAS, in consideration of the benefits that the Foundation expects to receive from the Transaction proceeds, the Foundation agrees to pay certain obligations of Seller pursuant to the terms of the Asset Purchase Agreement, in each case, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

#### Section 1. Payment Obligations.

(a) Foundation shall pay to Buyer, on Seller's behalf, all present and future amounts that may be due and owing, from time to time, by Seller under Sections 2.07(d) and (e), Sections 2.08(d),(e) &(f), Section 2.10, Section 6.08(d), Section 6.18, Section 6.19, Section 6.21, Section 6.25, Section 6.26(b) and Section 8.02 of the Asset Purchase Agreement (the "Obligations"). The Foundation's obligations hereunder are limited exclusively to the payment of amounts determined to be owed by Seller pursuant to the terms and conditions of the Asset Purchase Agreement; except for such payment obligations and the specific Sections of the Asset Purchase Agreement set forth in Section 2 of this Agreement, the Foundation shall not be required to perform any of the obligations of Seller under the Asset Purchase Agreement. All of the Obligations shall be limited to and determined in accordance with the terms and conditions of the Asset Purchase Agreement. Nothing in this Section or otherwise in this Agreement is

intended to limit, restrict or waive, nor shall it limit, restrict or waive, any right of Seller or Buyer under the Asset Purchase Agreement or applicable Law or any right of Foundation under this Agreement or applicable Law. By agreeing to pay the Obligations in accordance with this Section 1, the Foundation shall have all rights and be entitled to all the protections and benefits of Seller with respect to such Obligations under the Asset Purchase Agreement, with the same force and effect as if originally named as a party thereto, including, without limitation, (i) in the case of Sections 2.07(d) and (e) of the Asset Purchase Agreement, the rights of Seller under Section 2.07 of the Asset Purchase Agreement, (ii) in the case of Sections 2.08(d),(e) &(f) of the Asset Purchase Agreement, the rights of Seller under Section 2.08 of the Asset Purchase Agreement and (iii) in the case of Section 8.02 of the Asset Purchase Agreement, the rights of Seller under the applicable provisions of Article VIII of the Asset Purchase Agreement, including Sections 8.04 through 8.06 and Sections 8.08 and 8.09 thereof (including the same rights that Seller has with respect to receiving notice, objecting to and defending claims). For the avoidance of doubt, the Parties expressly acknowledge and agree that the Foundation shall have no liability, responsibility or other obligation whatsoever under this Agreement or the Asset Purchase Agreement for liabilities or obligations arising under or related to the Medicare Reinsurance Agreement or the QHP Reinsurance Agreement or the operation of any managed care product, plan or business or the provision of any insurance product by Seller, in each case, following the Closing. In no event shall the Foundation be required to pay an amount for any liability under this Agreement that exceeds the amount that Seller would be required to pay for such liability pursuant to the terms and conditions of the Asset Purchase Agreement.

(b) Until such time as the Medicare Business is transferred to Buyer pursuant to the Asset Purchase Agreement, Seller shall, and the Foundation shall take such actions within its control as may be reasonably necessary (i) to enable Seller to maintain Seller's corporate existence and not adopt any plan of dissolution or institute any proceedings seeking the dissolution of the Seller, (ii) to prevent Seller from commencing a voluntary case concerning itself under any Insolvency Laws or otherwise commence any other proceeding under any bankruptcy, rehabilitation, liquidation, conservation or similar Law (each, an "Insolvency Proceeding") or (iii) to cause any involuntary Insolvency Proceeding to be promptly contested and dismissed.

(c) The Foundation shall pay, or shall make funds available to Seller to pay, all Excluded Liabilities or other uncontested liabilities of Seller owed to Persons other than Buyer or its Affiliates and that have not been assumed by Buyer under the terms and conditions of the Asset Purchase Agreement as and when such liabilities become due and payable.

Section 2. Limited Joinder. The Foundation hereby agrees to comply with the following provisions of the Asset Purchase Agreement, with the same force and effect as if originally named therein as a party: Section 6.06 (*Confidentiality*), Section 6.07 (*Non-competition; Non-solicitation*), Section 6.13 (*Reconciliation*) and Section 6.19 (*Non-disparagement*). For the avoidance of doubt, except as provided in Section 1 or this Section 2, the Foundation shall have no obligation with respect to any other provision of the Asset

Purchase Agreement, and except as provided in Section 1(a) above, no other provision of the Asset Purchase Agreement shall apply to the Foundation.

**Section 3.     Representations and Warranties.**

(a)     Seller hereby represents and warrants to Buyer that: (a) Seller has (i) attached the form of this Agreement as an exhibit to the petition to be submitted by Seller to the New York State Attorney General requesting approval of the Transaction pursuant to the New York State Not-for-Profit Corporation Law (the "Petition"), and (ii) described the material terms of this Agreement in the narrative section of the Petition; (b) the New York State Attorney General has (i) not objected to the filing of the certificate of incorporation of the Foundation with the New York Department of State, a copy of which has been provided to Buyer and (ii) authorized the Transfer and the use of the Foundation's assets for the purposes contemplated by this Agreement (a copy of such authorization has previously been provided to Buyer); and (c) assuming due authorization, execution and delivery by Buyer, this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

(b)     The Foundation hereby represents and warrants to Buyer that: (a) it is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation; (b) the New York State Attorney General has (i) not objected to the filing of the certificate of incorporation of the Foundation with the New York Department of State, a copy of which has been provided to Buyer, and (ii) authorized the Transfer and the use of the Foundation's assets for the purposes contemplated by this Agreement (a copy of such authorization has previously been provided to Buyer); and (c) assuming due authorization, execution and delivery by Buyer, this Agreement constitutes a legal, valid and binding obligation of the Foundation, enforceable against the Foundation in accordance with its terms.

(c)     Buyer hereby represents and warrants to Seller and the Foundation that, assuming due authorization, execution and delivery by Seller and the Foundation, this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

**Section 4.     Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via the methods set forth in (a) or (b) above. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 4):

**If to Foundation:**

Mother Cabrini Health Foundation, Inc.  
1011 First Avenue  
New York, NY 10022  
Attention: Chief Executive Officer  
E-Mail: [To be specified]

**If to Seller:**

New York State Catholic Health Plan, Inc.  
1011 First Avenue  
New York, NY 10022  
Attention: Chief Executive Officer  
E-Mail: [To be specified]

**If to Buyer:**

Centene Corporation  
7700 Forsyth Blvd.  
St. Louis MO 63105  
Attention:  
E-Mail:

**Section 5. Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the limited subject matter contained herein, and shall supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. Each of the Parties hereby agrees that each and every provision of this Agreement is and shall be enforceable by and between them in accordance with its terms, and each Party hereby agrees that it shall not contest the validity or enforceability of this Agreement.

**Section 6. Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

**Section 7. Amendment; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege

arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8. Counterparts. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement with effect as of the date first written above.

NEW YORK STATE CATHOLIC HEALTH PLAN,  
INC.

By: \_\_\_\_\_

Name:

Title:

MOTHER CABRINI HEALTH FOUNDATION,  
INC.

By: \_\_\_\_\_

Name:

Title:

CENTENE CORPORATION

By: \_\_\_\_\_

Name:

Title:

## **Management Agreement**



**PROPOSED FORM**

**Last Updated:** May 2, 2018

**MANAGEMENT AGREEMENT**

among

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK,**

**SALUS ADMINISTRATIVE SERVICES, INC.,**

**CENTENE MANAGEMENT COMPANY, LLC**

and

**CENTENE COMPANY OF NEW YORK, LLC**

Dated as of

[•], 2018

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## MANAGEMENT AGREEMENT

This Management Agreement, dated as of [•], 2018 (this "Agreement"), is entered into among **New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York**, a New York not-for-profit corporation with its principal office at 95-25 Queens Boulevard, Rego Park, New York 11374 or a wholly owned subsidiary of New York State Catholic Health Plan, Inc. ("Health Plan"), **Salus Administrative Services, Inc.**, a New York corporation with its principal office at 95-25 Queens Boulevard, Rego Park, New York 11374, **Centene Management Company, LLC**, a Wisconsin limited liability company with its principal office at 7700 Forsyth Boulevard, Suite 800, St. Louis, Missouri 63105 ("CMC"), and **Centene Company of New York, LLC**, a New York limited liability company with its principal office at 7700 Forsyth Boulevard, Suite 800, St. Louis, Missouri 63105 ("CCNY") and, together with CMC and Salus, each a "Provider" and, collectively, the "Providers". Health Plan, Salus, CMC and CCNY are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

## RECITALS

WHEREAS, Health Plan and Centene Corporation, a Delaware Corporation ("Centene"), are parties to that certain Asset Purchase Agreement, dated as of September 12, 2017 (the "Purchase Agreement"), pursuant to which, among other things, Centene has agreed to acquire substantially all of the assets of Health Plan on the terms and subject to the conditions set forth therein (the "Transaction"); and

WHEREAS, in order to facilitate the orderly transition of the Businesses which will temporarily remain with the Health Plan, or a wholly owned subsidiary of the Health Plan, the Health Plan requires administrative, management and other assistance in connection with its operation of a prepaid health services plan as defined in Section 4403-a of the New York Public Health Law;

WHEREAS, Providers are authorized to do business in the State of New York and are willing and able to provide the administrative, management and other services which the Health Plan requires and a description of the services to be provided by each Provider is set forth on Exhibit 3 hereto;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt of which is hereby acknowledged, Health Plan, Salus, CMC and CCNY hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Agreement" has the meaning set forth in the preamble.

"Automatic Amendment" has the meaning set forth in Section 9.5(c).

"CCNY" has the meaning set forth in the preamble.

"Change in Law" has the meaning set forth in Section 9.5(c).

"CMC" has the meaning set forth in the preamble.

"Commissioner" means the Commissioner of Health for the State of New York.

"Coverage Agreement" means any agreement, program or certificate entered into, issued or agreed to by a third party payor (including a government contract with said third party payor) under which Health Plan provides Covered Services, which shall be limited to: (a) individual market products, including its Qualified Health Plan on the New York State of Health ("Individual Products") and (b) senior programs (Medicare Advantage, Medicare Advantage D-SNP, Fully Integrated Dual Advantage, Medicaid Advantage and Medicaid Advantage Plus) ("Medicare Products")

"Covered Services" means all covered health care or other services, products or supplies (including but not limited to hospital services, physician services, diagnostic and therapeutic services, and pharmaceutical services and supplies) that (a) are rendered, or are sold or arranged for, by or on behalf of Health Plan and (b) constitute covered benefits under the terms of or in connection with an applicable Coverage Agreement.

"DOH" means the State of New York Department of Health.

"Enrollees" or "Members" means all individuals entitled to receive Covered Services in connection with a Coverage Agreement.

"Force Majeure Event" means an event that is not reasonably within the control of the affected Party or its Affiliates, including: flood; earthquake; tornado; storm; fire; explosion; public emergency; civil disobedience; labor dispute; labor or material shortage; war or terrorist acts; sabotage; failures in power, utilities or telecommunications; and changes in Law and restraint by court order or public authority (whether valid or invalid).

"Government Contract" shall mean the agreements between the Health Plan and any Governmental Authority to provide Covered Services to covered persons, comprised of the applicable Government Contract, any addenda, appendices, attachments, or amendments thereto.

"Governmental Authority" means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

"Health Plan" has the meaning set forth in the preamble.

"Health Plan Board" means the Board of Directors of Health Plan.

"Health Plan Business" means the ownership, management or operation by Health Plan of any health insurance or health benefit program offering Covered Services under a Coverage Agreement.

**“Law”** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any order having the effect of law in any jurisdiction, and applicable common law.

**“Management and Administrative Services”** means the services to be performed by Salus, CMC or CCNY, as applicable, pursuant to Section 3.

**“NCQA”** means the National Committee for Quality Assurance, a non-profit organization dedicated to improving healthcare quality that accredits and certifies a wide range of health care organizations.

**“Net Revenues”** means the total health services fees and premiums payable by third party payors, enrolling units, and/or Enrollees and their agents to Health Plan minus applicable premium taxes, fees and other similar assessments.

**“Participating Provider”** means a facility, organization or practitioner that provides Covered Services, including but not limited to a hospital, home health agency, hospice provider, skilled nursing facility, federally qualified health center, physician, dentist, allied health professional, supplier of durable medical equipment or other medical supplies, equipment or pharmaceuticals, or other service provider that meets Health Plan’s credentialing or other background requirements, as applicable, as implemented and revised from time to time, and that has entered into a participating provider agreement with Health Plan (directly as an individual or entity, or indirectly as an employee, partner or shareholder) pursuant to which such provider has agreed to provide, or arrange for the provision of, Covered Services.

**“Parties”** has the meaning set forth in the preamble.

**“Plan”** has the meaning set forth in Section 3.10(c)(i).

**“Plan President”** means an individual designated by the Health Plan and acceptable to Providers, who shall have overall day-to-day responsibility for the Management and Administrative Services provided to and on behalf of Health Plan and shall also serve as the President and Chief Executive Officer of Health Plan.

**“Planned Fee”** has the meaning set forth in Section 5.1.

**“Provider”** has the meaning set forth in the preamble.

**“Purchase Agreement”** has the meaning set forth in the recitals

**“Salus”** has the meaning set forth in the preamble.

**“Transaction”** has the meaning set forth in the recitals.

## **2. Retention of Authority by Health Plan**

2.1. Health Plan Authority. Notwithstanding any other provision in this Agreement, to the extent required by Law, the Health Plan Board shall be responsible for: (i) oversight over the management and overall operations of Health Plan and the Health Plan Business and of all medical, professional and ethical affairs of its managed care programs, (ii) the establishment and oversight of the Health Plan's policies including the general operating policies to be carried out by the Providers as specified under this Agreement, and (iii) the compliance by Health Plan and the Providers with any Coverage Agreement, including, but not limited to, any Government Contract, and with all applicable Law. Furthermore, Health Plan Board shall not delegate the following elements of management authority:

- (a) direct independent authority to hire and terminate the Plan President of the Health Plan;
- (b) adoption of budgets and independent control of the books and records;
- (c) authority over the disposition of assets and the authority to incur on behalf of the Health Plan liabilities not normally associated with the day to day operation of the Health Plan;
- (d) independent adoption and/or enforcement of policies affecting the operation of the Health Plan and the delivery of health care services;
- (e) oversight by Health Plan or any management functions delegated to a management contractor pursuant to the provisions of 10 NYCRR §§ 98-1.11 or 98-1.18;
- (f) pursuant to 10 NYCRR § 98-1.21(b)(1), primary responsibility for the development and implementation of Health Plan's fraud and abuse prevention plan.

Notwithstanding any other provision of this Agreement, Health Plan Board shall retain sufficient authority and control to discharge its responsibility as the governing authority of the Health Plan, including the authority to discharge any Provider.

The responsibilities of the governing authority of Health Plan are in no way lessened by this Agreement, and any powers not specifically delegated to a Provider pursuant to the terms of this Agreement shall remain with the governing authority of Health Plan. Health Plan shall retain ongoing responsibility for statutory and regulatory compliance.

2.2. Health Plan Oversight. Health Plan shall have the right, upon reasonable notice to any Providers, to conduct an on-site review of such Provider's management practices, protocols and procedures, and to receive a certified statement of fiscal solvency from the outside auditors of Centene, each Provider's ultimate parent company, in order to give Health Plan reasonable assurances and the ability to verify that such Provider is maintaining fiscal stability, and is providing the requisite level and quality of services in conformity with the requirements of this Agreement, and state and federal law.

2.3. Health Plan Approval. If Health Plan is required or permitted hereunder to take any action or give any approval, each Provider shall be entitled to rely upon the statements of the

Chairman of the Health Plan Board, acting on behalf of Health Plan, or one or more other representatives designated in writing by the Health Plan Board to act on Health Plan's behalf under this Agreement, to the effect that any such action or approval has been taken or given. If Health Plan does not respond to a written request by any Provider for any approval under this Agreement within ten (10) days after Health Plan's receipt of such request, the request shall be deemed to have been accepted.

### 3. Delegated Services

3.1. Management and Administrative Services. Subject to the limitations set forth in this Agreement, Health Plan hereby delegates to each Provider the responsibility and authority to manage, on behalf of Health Plan, the applicable Management and Administrative Services specified in Section 3 and, in connection therewith, to take such actions on behalf of Health Plan as such Provider deems reasonably necessary or advisable in connection with the provision of such Management and Administrative Services. The Management and Administrative Services will be provided by the Providers in a manner and at a level of service consistent in all material respect with those provided by Health Plan or its affiliates, as applicable, immediately prior to the execution of this Agreement and, in any event, in a commercially reasonable manner and at a commercially reasonable service level. Notwithstanding the foregoing, the Providers shall perform the Management and Administrative Services in compliance with (a) all Health Plan policies and procedures pertaining to the performance of the Management and Administrative Services solely to the extent such policies and procedures are in effect as of the Effective Date and have been previously provided to the Providers in writing, (b) the applicable Coverage Agreement or Government Contract, (c) applicable law, and (d) the requirements of any applicable accreditation organization as in effect as of the Effective Date. All Provider policies and procedures relating to the performance of any Management and Administrative Services must be submitted to Health Plan for review and approval prior to implementation and/or revision. The Providers shall provide all necessary assistance to Health Plan in the implementation of Health Plan's quality assurance activities and functions; provided, that Health Plan shall retain decision-making authority and responsibility for the quality assurance function. To the extent the Health Plan delegates management services with respect to disease management, pharmacy, vision, dental, behavioral health, nurse triage services or other benefits to other vendors or providers as of the date of this agreement, Providers shall provide, or shall cause New York Quality Healthcare Corporation to provide, continued access to such services to the same extent as such services are provided as of the date of this agreement.

3.2. Staffing. Each Provider shall provide, or shall cause to be provided, to the reasonable satisfaction of Health Plan, staffing adequate for the efficient and effective performance of the applicable Management and Administrative Service, which such Provider may adjust from time to time as necessary. In addition, each Provider shall (i) provide the Health Plan with credentials of management staff overseeing departments performing management services, (ii) provide copies of educational materials used for training staff performing management services, and (iii) maintain a staffing level sufficient to meet Health Plan standards for performance of the applicable Management and Administrative Services.



3.3. Participation in Meetings, Task Forces and Committees. The Providers shall participate in any meetings, task forces or committees as reasonably required by Health Plan for purposes of planning, implementation of, or oversight of the Management and Administrative Services, including participating in Health Plan quality assurance committees and compliance seminars or training.

3.4. Enrollee Communication. No Provider shall send any communication to an Enrollee unless the form of such communication has received prior approval by Health Plan.

3.5. Program Planning and Development

(a) Providers shall, as applicable:

- (i) assist Health Plan in maintaining certification under applicable Law necessary for Health Plan to operate the Health Plan Business.
- (ii) assist Health Plan in maintaining and improving its relationships with Enrollees, Participating Providers and other providers of Covered Services.
- (iii) maintain and manage an Enrollee complaint system and opinion mechanism.
- (iv) prepare and provide to the Health Plan Board information concerning the financial viability of Health Plan.

(b) With respect to each applicable Coverage Agreement, Providers shall recommend an insurance program for Health Plan, including professional liability/malpractice, reinsurance, stop-loss protection, and out-of-area and catastrophic loss insurance, and shall assist to the extent reasonably necessary in obtaining insurance requested by the Health Plan Board. The decision to purchase, maintain and terminate any and all insurance coverage shall rest solely with the Health Plan Board. To the extent that Providers can obtain insurance coverage at a reduced cost on behalf of Health Plan, Providers will make such coverage available to Health Plan at such cost.

3.6. Management Information System. Providers shall manage and maintain, for use in Health Plan's operations, a computerized management information system for the purposes of, as applicable, claim adjudication and making payment to all categories of providers, utilization review, quality assessment, determining subscriber eligibility, billing and collection, regulatory reporting, cost-sharing reduction reconciliation services, brokerage services, sales services, and enrollment management. Providers shall use commercially reasonable efforts to effect a correction or other reasonable resolution of any errors or defects detected by Health Plan or Providers in the management information system. Providers warrant that they are the sole owners of the management information system or have a right to utilize the management information system for Health Plan (including through the subcontracted services provided as permitted in accordance with the terms of this Agreement) and have full power and authority for such use and rights as are herein granted without the consent of any other person.

3.7. Financial Systems and Services. Providers shall provide Health Plan with financial systems and services that are reasonably necessary and appropriate in connection with the operation of the Health Plan Business. Such services shall include, but not be limited to, the following:

- (a) Implementing day-to day operations of a financial system;
- (b) Negotiating premium rates which shall be subject to approval by the Board;
- (c) Developing an annual operating budget and adjustments thereto for adoption by the Board consistent with continued operation of the Health Plan; and
- (d) Establishing bank accounts as authorized by the Board, and monitoring such accounts.

3.8. Other Financial Support Services. Providers shall, as applicable:

- (a) On a monthly basis and subject to the receipt of all required information from the Health Plan, provide a cash flow statement, reconciliation of bank accounts, a balance sheet and related statement of income showing the financial condition and the results of operations of the Health Plan, as compared to targeted or budgeted amounts;
- (b) On an annual basis and subject to the receipt of all required information from the Health Plan, provide a balance sheet and related statement of income, statement of changes in reserves and unassigned funds and cash flows and other schedules required in accordance with generally accepted accounting principles or statutory accounting practices, as applicable, showing the financial condition and the results of operations of the Health Plan for the year then ended;
- (c) provide assistance in providing other reports on the financial operations and any other operational data reasonably requested by the Board or as requested or required by the Commissioner of the New York State Department of Health and the Department of Financial Services of the State of New York, in each case, to the extent related to the Coverage Agreements;
- (d) prepare and provide to the Health Plan Board, by December 31 (or such other date as mutually agreed in writing by the Health Plan Board and Providers) of each year, a proposed annual operating budget for the immediately succeeding calendar year subject to the Health Plan Board's review and approval, setting forth an estimate of operating revenues and expenses for such calendar year that shall be in reasonable detail and shall contain an explanation of anticipated changes, if any, in utilization, patient charges, and other factors that may significantly affect the operating budget; and
- (e) administer actuarial services for the purpose of setting premiums for commercial products, including, but not limited to, products offered in the New York State of Health.

3.9. Claims Administration. Providers shall maintain systems and procedures reasonably necessary for the appropriate adjudication of claims submitted to Health Plan with respect to the Health Plan Business. Without limiting the foregoing, Providers shall, as applicable:

(a) maintain claim forms, which shall comply with appropriate provisions of the applicable Coverage Agreement, to be used: (i) by providers of Covered Services and supplies in requesting payment for such Covered Services or (ii) to record the information necessary to produce the management reports specified herein, such forms to be printed at the expense of Health Plan;

(b) provide computer compatible claim drafts to be used to reimburse providers of Covered Services for services provided to Enrollees;

(c) conduct on a continuing basis such educational and training programs as may be desirable to provide for the accurate and efficient submission of claims for Covered Services to Health Plan by Participating Providers, which programs may include, but shall not be limited to, the maintenance of a written instructional manual for Participating Providers;

(d) maintain equipment and other systems and materials reasonably necessary for submission of electronic medical claims and encounters for Covered Service;

(e) evaluate and process claims for prompt payment submitted to Health Plan in connection with the Health Plan Business, which claims adjudication system may include but shall not be limited to: eligibility verification, duplicate services and other appropriate editing; administration of a coordination of benefits and subrogation program; benefits computation; pricing; provider, patient, diagnostic and procedure profiling; managing integrated deductibles and cost-sharing reduction reconciliations; and check writing/electronic funds transfer;

(f) provide to the Health Plan Board, upon request, a written summary of procedures utilized by Providers in the adjudication of claims;

(g) maintain and manage a program to coordinate benefits and third-party liability recovery for Health Plan; and

(h) obtain and maintain all necessary licensures required to perform the above functions.

Providers shall comply with claims payment provisions under applicable law, including, without limitation, Sections 3224-a, 3224-b, and 3224-c of the New York Insurance Law, and with policies and time frames to be mutually agreed upon by Health Plan and Providers. Providers agrees to indemnify Health Plan for all interest and penalties paid by Health Plan solely as a result of Providers' failure to make timely payment to providers in a manner consistent with Section 3224-a of the Insurance Law or for failure to comply with claims practices requirements

prescribed by Article 26 of the Insurance law. Providers will provide Health Plan reasonable documentation evidencing timely payments to all Health Plan providers.

**3.10. Provider and Enrollee Services and Records.**

**(a) Providers shall, as applicable:**

- (i) provide and periodically update identification cards for Enrollees, and such other forms, records and documents as may be reasonably necessary or required by Law to assure the availability of appropriate and accurate information for the administration of the Health Plan Business;**
- (ii) provide and regularly update Enrollee and Participating Provider files to permit eligibility verification, claims adjudication, and efficient and timely response to inquiries from Enrollees and Participating Providers, which files shall contain complete records of enrollment and termination;**
- (iii) provide and periodically update materials for distribution to Enrollees, which instructional brochure shall be distributed at the expense of Health Plan, and shall include procedures for obtaining Covered Services within and outside of Health Plan's service area and for obtaining emergency health services, which materials shall comply with and meet the requirements of all applicable Law and any applicable Government Contract or other Coverage Agreement;**
- (iv) provide and periodically update all materials required by Law to be distributed to either Participating Providers or non-Participating Providers, which shall include instructions with regard to billing procedures, payment for services, a schedule of covered plan benefits and applicable risk-sharing arrangements, which materials shall comply with and meet the requirements of all applicable federal, state and other laws, rules and regulations and any applicable Government Contract or other Coverage Agreement; and**
- (v) provide and periodically update written grievance procedures for handling Enrollee complaints, which procedures shall meet, on a continuing basis, the minimum requirements of applicable Law and any applicable Government Contract or other Coverage Agreement.**

**(b) Providers shall provide assistance reasonably necessary to maintain and manage communication programs directed toward Enrollees and Participating Providers,**

which programs shall be developed, implemented and maintained at Health Plan. Such Assistance provided by Providers will include, as applicable:

- (i) at the request of the Health Plan Board from time to time, reports regarding the utilization and cost of Covered Services rendered to Enrollees by the providers of those services, including information regarding the types and costs of services rendered, the provider performing the services, and the frequency at which each type of service was performed;
- (ii) at the request of the Health Plan Board from time to time, and on behalf of and subject to the approval of Health Plan any report required under (A) federal or state reporting requirements applicable to the Health Plan Business, including any report required under the Social Security Act, as amended, (B) reporting requirements of accreditation agencies with authority over Health Plan, or (C) reports required under any applicable Government Contract or other Coverage Agreement; and
- (iii) prepare for each regular meeting of the Health Plan Board a report or reports describing such aspects of the operations of Health Plan as the Health Plan Board may reasonably request from time to time, including any report reasonably requested by the Health Plan Board to enable it to assess Health Plan's financial position and needs.

3.11. Utilization Review. Health Plan's utilization program shall comply and be conducted in accordance with Health Plan's policies and procedures and Salus, a Utilization Review Agent duly registered under Article 49 of the New York Public Health Law and the New York Insurance Law, shall make recommendations to the Health Plan Board regarding the form and content of the Health Plan's utilization review program. Salus shall maintain and operate systems and procedures necessary or appropriate to support the Health Plan's utilization review program and shall utilize the Health Plan's clinical review standards. Without limiting the foregoing Salus shall, as applicable:

- (a) screen individual claims against utilization criteria approved by the Health Plan Board and, if any claim fails to meet those criteria, submit claims to the Health Plan Board or its designated review committee for adjudication;
- (b) provide medical management services as mutually agreed upon and in accordance with applicable Law, including, but not limited to, prior authorization, case management and member appeals and grievance processing;
- (c) provide support and oversight in obtaining and maintaining compliance with NCQA standards; and

(d) obtain and maintain all necessary licensures and registrations required to perform the above functions.

3.12. Quality Assurance. Providers shall develop quality assurance standards and policies for adoption by the Health Plan Board, and the interpretation and application of adopted standards and policies. Providers shall maintain and operate systems and procedures reasonably necessary or appropriate to support the Health Plan's quality assurance program and shall utilize the Health Plan's quality assurance and quality improvement standards. Without limiting the foregoing, Providers shall, as applicable:

(a) maintain and periodically review and update, as necessary or desirable, template policies and procedures, consistent with NCQA requirements and applicable state and federal Law, for quality improvement and credentialing and recredentialing processes, with the understanding and requirement that Health Plan shall review and edit such policies to meet applicable Law if more stringent than NCQA;

(b) provide credentialing support and services as mutually agreed, including, but not limited to, provision of a credentialing system, all data gathering and information verification as it relates to initial review of credentialing application, primary source verifications, sanctions review, provider directory updates in compliance with applicable Law, credentialing site visits, ongoing monitoring, recredentialing and practitioner disciplinary action reporting. All necessary licensures required to perform these functions will be obtained and maintained by Providers; and

(c) in accordance with applicable Law and NCQA standards, develop and maintain corporate processes for evaluating new technologies and new applications of existing technologies for inclusion in the benefit plan and for adoption or creation of applicable preventive and clinical practice guidelines.

3.13. Premium Billing and Collections. Providers shall provide Health Plan with premium billing and collection services that are reasonably necessary and appropriate in connection with the operation of the Health Plan Business and in compliance with applicable Law. Without limiting the foregoing, Providers shall, *as applicable*:

(a) facilitate the billing of Enrollees for monthly premiums, both electronically and through a paper format, if applicable;

(b) maintain all systems necessary to accept payments from Enrollees which at a minimum shall include the ability to accept the following payment types: debit card, credit card, electronic funds transfer, echeck and physical check; and

(c) hold all premiums collected in a fiduciary capacity, deposit such funds into fiduciary bank accounts established by Providers and comply with applicable Law in the management of such funds, including the payment of claims and withdrawals from any such fiduciary accounts. Such withdrawals may be made by Providers only for purposes expressly permitted by applicable state law, which may include, but are not limited to, the following: (i) remittance to the Health Plan; (ii) deposit in an account

maintained in the name of the Health Plan; (iii) transfer to and deposit in a claims-paying account; (iv) payment to Providers of its fees or charges; and (v) remittance of return premiums to persons entitled thereto.

3.14. Management Information Services. Providers shall provide management information services, including utilization and financial reporting capabilities. On a monthly basis or as otherwise noted, Providers shall prepare the following information:

- (a) Enrollment including number of enrollees at end of prior month, new enrollees, disenrollments, net enrollees and YTD member months;
- (b) Grievance summary;
- (c) Inpatient utilization report (days and admissions) by hospital and SNF provider;
- (d) Ambulatory care utilization report on a quarterly basis.

3.15. Marketing Plan. Providers shall develop, for adoption by the Health Plan Board, and implementing a marketing plan for enrollee recruitment which shall include the following deliverables:

- (a) marketing management;
- (b) enrollment materials such as application forms and member handbooks;
- (c) program introduction materials;
- (d) telephone support; and
- (e) community outreach.

3.16. Assistance in Handling Regulatory Affairs. Providers shall be responsible for promptly responding to inquiries from government agencies concerning all aspects of the Health Plan. In carrying out this responsibility, Providers will promptly notify the Health Plan concerning such inquiries, and consult with the Health Plan in determining an appropriate response regarding any major issue.

3.17. Fraud & Abuse. Providers shall provide assistance in the development of the Health Plan's fraud and abuse prevention plan and providing all of the functions of the special investigations unit for fraud and abuse, which include investigation of cases of suspected fraudulent and abusive activity and fraud and abuse prevention and reduction activities under the Health Plan's fraud and abuse prevention plan. Providers shall provide a sufficient number of full time investigators and other staffing as required by the DOH and/or the Department of Financial Services. Providers shall also reasonably cooperate with any review and examination of the fraud and abuse prevention plan conducted by the DOH, Department of Financial Services or any other government entity.

3.18. Standards for Management and Administrative Services. Providers shall cause the Management and Administrative Services to be provided in accordance with (a) Providers' current servicing standards as these exist prior to date of this Agreement, subject to any changes to such standards required by applicable Law or effectuated by Providers with respect to the servicing of its other comparable businesses, and (b) the QHP regulatory requirements set forth in Appendix A, the Medicare regulatory requirements set forth in Appendix B and the FIDA regulatory requirements set forth in Appendix C, as applicable.

3.19. Capacity; Disaster Recovery.

(a) Providers shall, at all times during the period that Providers are performing the Management and Administrative Services pursuant to this Agreement, (i) keep, maintain or subcontract for a commercially reasonable number of appropriately trained personnel and (ii) obtain and maintain all material permits under applicable Laws (including, if required, an independent adjuster license or third party administrator license) to perform the Management and Administrative Services.

(b) For all computer programs, data, computer equipment, communications equipment and other similar items used by Providers to provide the Management and Administrative Services, Providers shall provide disaster recovery services and backup and archival services that are substantially similar to the disaster recovery services and backup and archival services, respectively, that Providers use for their own computer programs, data, computer equipment, communications equipment and other similar items.

3.20. Force Majeure. Providers shall not be deemed to be in default in the performance of any obligations under this Agreement when such a failure of performance arises out of a Force Majeure Event; provided, however, that Providers shall not be relieved of its obligations hereunder if its failure of performance is due to removable or remediable causes that Providers fail to remove or remedy using commercially reasonable efforts within a reasonable time period. If Providers are rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure Event for a period of twenty-four (24) hours, Providers (a) shall provide written notice thereof to Health Plan, (b) use commercially reasonable efforts to remove such inability and (c) following the cessation of such Force Majeure Event, provide written notice thereof to Health Plan.

4. Covenants. In furtherance of the provision by the Providers of the Management and Administrative Services, the Parties hereby agree as follows:

4.1. Personnel.

(a) Each Provider, as applicable, shall hire, maintain and supervise all personnel as are necessary to provide the Management and Administrative Services to and on behalf of Health Plan. The timing of hiring decisions regarding staffing levels, assignment and termination of such personnel shall be at the sole discretion of the applicable Provider; provided that Health Plan shall have the right to advise and consult with the Providers concerning any such personnel, the Providers shall reasonably



cooperate with Health Plan in addressing any complaints brought to its attention by Health Plan. Such personnel shall be and remain employees of the applicable Provider, and such Provider shall be solely responsible for the payment of all wages, fringe benefits and other compensation associated therewith.

(b) Providers shall provide for an Executive Director, Director of Finance and a Medical Director, each of whom is subject to approval of the Health Plan. The Executive Director shall implement the goals and objectives of the Health Plan's operating plan as defined by the Board of Directors and will advise the Board of Directors on the implementation status of these goals and objectives on a regular basis. The Director of Finance prepares all financial reports, budgets, and forecasts for presentation to and acceptance by the Finance Committee and the Board of Directors. Presentations to the Finance Committee and the Board of Directors will occur on a regular basis. The Medical Director is a New York State licensed physician whose responsibilities include, but are not limited to, the supervision of the utilization review programs and advising the Health Plan on the enforcement of the Health Plan policies concerning medical services. The Medical Director will meet with the Board of Director's Credentialing and Medical Policy Committees on a regular basis. Please note that none of the elements described in section 98-1.11(i) of the Part 98 regulations are being delegated to the Provider and the Board of Directors are retaining sufficient authority and control to discharge its responsibility as the governing authority of the Health Plan, as required by section 98-1.11(j) of the Part 98 regulations.

(c) In assisting in the performance of the Management and Administrative Services to and on behalf of Health Plan, the Plan President shall comply with such policies and procedures as are established by the Health Plan Board. The Health Plan shall have direct authority to terminate the Plan President with or without cause. Upon termination of the Plan President, the Health Plan Board shall determine an interim Plan President, in consultation with Providers, but in the Health Plan Board's sole discretion, as promptly as practicable. The Health Plan Board shall appoint a permanent Plan President, in consultation with Providers, but in Health Plan Board's sole discretion, within forty-five (45) days after removal of the prior Plan President or as soon as reasonably practicable thereafter.

(d) Each Provider, severally and not jointly, shall be liable to Health Plan for any and all damages or losses solely and directly caused by the dishonesty, willful misconduct or negligence of such Provider's employees in the provision of Management and Administrative Services. No Provider shall have any liability whatsoever for any damages or losses suffered by Health Plan because of the dishonesty or willful misconduct of any employee of Health Plan or any provider of Covered Services, including Participating Providers. Nothing in this provision shall waive, modify, delegate or shift the liability of any Provider or Health Plan.

4.2. Facilities and Support Services.

(a) Office Space. Full-time personnel or agents employed or retained by any Provider in connection with its performance of the Management and Administrative Services shall be located in office space provided or arranged for, and leased by, such Provider.

(b) Equipment and Furniture. The Providers shall be responsible for all costs associated with furnishing office space utilized by Provider personnel and for the purchase, lease or any other expenses associated with business equipment, furniture, and other supplies required in the connection with its performance of the Management and Administrative Services.

(c) Support Services. The Providers shall arrange and pay for reproduction facilities and telephone and other communications services for use by the Providers in their performance of the Management and Administrative Services.

4.3. Insurance.

(a) Health Plan shall provide and maintain at its sole cost and expense:

- (i) professional liability insurance in an amount not less than \$2,000,000 per claim, with an annual aggregate of not less than \$3,000,000; and
- (ii) such other insurance as the Parties may agree to be necessary or desirable for protection against claims, liabilities and losses arising from the operation of the Health Plan Business.

The policy for any such insurance shall name each of the Health Plan, Salus, CMC and CCNY (as their interest may appear) as insureds thereunder in such amounts as are agreed to by the Parties. Providers shall bear the cost of any additional premiums incurred by Health Plan as a result of naming Salus, CMC and CCNY as an additional insured. If Health Plan fails to effect or maintain any such insurance, it shall indemnify Salus, CMC and CCNY, as applicable, against damage, loss or liability to Salus, CMC or CCNY resulting from all risks and liabilities that would have been covered by such insurance. Nothing in this provision shall waive, modify, delegate or shift the liability of Salus, CMC, CCNY or Health Plan.

(b) Providers shall provide and maintain at their sole cost and expense general comprehensive liability insurance covering the provision of the Management and Administrative Services by the Providers. The policy for such insurance shall name Salus, CMC, CCNY and Health Plan (as its interest may appear) as insureds thereunder in such amounts as are mutually agreed to by the Parties and shall be endorsed to require ten (10) days' notice to Health Plan prior to cancellation of such insurance. If Providers fail to effect or maintain such insurance, Providers shall indemnify Health Plan against damage, loss or liability to Health Plan resulting from all risks that would have been

covered by such insurance. Nothing in this provision shall waive, modify, delegate or shift the liability of Salus, CMC, CCNY or Health Plan.

#### 4.4. Fiscal Matters.

(a) Health Plan shall maintain its books of account in accordance with United States generally accepted accounting principles and in accordance with all procedures required by applicable Law, including accounting practices prescribed or permitted by the applicable state.

(b) Health Plan shall annually engage[, at its sole cost and expense,]<sup>1</sup> an independent firm of certified public accountants designated by the Health Plan and acceptable to the Providers) to examine in accordance with all applicable procedures required by the applicable state, the annual financial statements of Health Plan and to render a certification with respect to such financial statements. A copy of those financial statements shall be delivered to the Providers promptly after they are available. Health Plan shall cooperate, at its sole cost and expense, with such firm's examination of Health Plan as part of any audit of the consolidated financial statements of Centene.

(c) Health Plan shall deposit in an appropriate bank or banks designated by the Providers, and in operating accounts established in Health Plan's name, all funds received from the operations of Health Plan. All costs and expenses incurred in the operation of Health Plan shall be paid out of these operating accounts. All persons authorized to make deposits to or draw upon the operating accounts shall be designated or approved in writing by Health Plan and shall be reasonably bonded or otherwise insured. Proof of such bonding or insurance with respect to the Provider's employees assigned to Health Plan shall be provided to Health Plan upon prior written request.

(d) All taxes and other governmental obligations properly imposed upon Health Plan, including any income tax, any premium tax, any surcharge on provider payments, and any guarantee fund or insurance pool assessments, shall be the sole obligation of Health Plan. All taxes and other governmental obligations properly imposed upon any Provider shall be the obligation of such Provider.

#### 4.5. Legal Matters.

(a) Each Provider shall comply on behalf of Health Plan with all applicable Law relating to Health Plan and shall manage the aspects of the business and operations of Health Plan for which it is responsible under this Agreement to ensure that Health Plan maintains all necessary licenses, permits, consents and approvals from all Governmental Authorities that have jurisdiction over the operations of Health Plan. Without limiting the foregoing, upon Health Plan's reasonable request, the Provider shall prepare and file on behalf of Health Plan such periodic and other reports as Health Plan shall advise the Providers are required by applicable Law. In the event any request by any Governmental

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<sup>1</sup> **Note to Draft:** If the Health Plan will be a special purpose entity with no other operations, responsibility for the cost of the audit remains subject to negotiation by the parties.

Authority is made of the Provider with respect to the Providers or Health Plan, the Providers shall notify Health Plan of such request, and shall consult and cooperate with one another, and consider in good faith the views of one another, in preparing any response required of the Providers in respect of such request. Notwithstanding the foregoing, in no event shall any Party be required to disclose to any other Party (i) any interactions between any Party with any Governmental Authorities in the ordinary course of business, (ii) any disclosure which is not permitted by Law, or (c) any disclosure containing confidential or proprietary information, or any attorney-client privileged documents or communications, including, but not limited to, legal or financial opinions, or board presentations prepared, submitted and/or reviewed in connection with any Management and Administrative Services furnished pursuant to this Agreement. No Provider shall be obligated to Health Plan for failure of Health Plan's health care coverage programs to comply with any of such laws, rules and regulations if the failure to comply is due to the financial inability of Health Plan to do so.

(b) To the extent the Health Plan is determined to be noncompliant with any state or federal law directly as a result of actions or omissions by the Providers under this Agreement, the Providers shall jointly and severally hold harmless and indemnify Health Plan for any fines, penalties or other liabilities resulting from such actions or omissions.

(c) The Providers shall, with the prior written approval of Health Plan, have the right to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Health Plan, the validity or application of any Law by any Governmental Authority. Health Plan, after giving its prior written approval, shall cooperate with the Providers with regard to any such contest, and Health Plan shall pay the reasonable costs and expenses, including reasonable attorneys' fees, incurred with regard to any such contest.

4.6. Computer Programs. Any and all computer programs and computer software developed or utilized by any Provider for claims adjudication or to provide the management reports required to fulfill a Provider's responsibilities specified herein shall be at the applicable Provider's sole cost and expense and shall remain the exclusive property of such Provider. Except as otherwise provided in this Agreement, Health Plan shall not use any of such programs or software without the express written consent of the applicable Provider.

4.7. Corporate and Regulatory Status. Each Party shall provide each other Party, upon prior written request, with evidence of its good standing and its maintenance of required certifications and licenses relative to this Agreement, Health Plan and the operations of the Health Plan Business. Each Party shall notify each other Party immediately in the event that it:

(a) loses any certification, licensure, registration or certificate of good standing necessary for the performance of its obligations hereunder (excluding technical lapses);

(b) becomes bankrupt or insolvent; or

(c) obtains a qualified opinion from an outside independent accounting firm as to its financial soundness.

4.8. Governmental Access. To the extent permitted by applicable Law and subject in all respects to any confidentiality or proprietary restrictions, including any attorney-client privileges, each Provider shall retain and permit applicable Governmental Authorities, including without limitation, the New York State Departments of Health and Financial Services, the Comptroller General of the United States, the United States Department of Health and Human Services, and their respective duly authorized representatives access to such books, documents and records of Health Plan and the Providers as are reasonably necessary to verify the nature and extent of the costs of the services supplied under this Agreement.

4.9. Cooperation. Each of the Parties shall use its commercially reasonable efforts to take all actions and to do all things reasonably necessary, proper or advisable to facilitate the provision of the Management and Administrative Services.

4.10. Compliance with Law. All actions taken by any Provider shall comply with applicable Law, including but not limited to all applicable requirements of the Americans with Disabilities Act and applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH”), and all implementing regulations, state and other laws, rules and regulations including but not limited to New York Public Health Law Article 27-F; and Mental Hygiene Law § 33.13 as applicable. The Providers shall also comply with the Government Contracts.

4.11. Business Associate and Medical Records Retention. In the event a Provider is deemed a “business associate” of Health Plan, as defined in the HIPAA Privacy Regulations, the Provider and Health Plan shall execute a Business Associate Addendum in the form attached to this Agreement as Exhibit 1. The Parties agree that medical records shall be retained for a period of 6 years after the date of service, and in the case of a minor, for 3 years after majority or 6 years after the date of service, whichever is later, or for such longer period as specified within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.

## 5. Provider Fees.

5.1. Amount. In consideration for the provision of all Management and Administrative Services to be provided by the Providers hereunder, Health Plan shall pay to CMC, on behalf of the Providers, a fee on a capitation (per Member per month or “PMPM”) basis for each calendar month (or portion thereof) during the term of this Agreement in accordance with the below table:

Line of Business	PMPM
Medicaid Adv Plus	\$719.05
Medicare Advantage	124.89
Medicaid Advantage	156.43
Essential Plan	42.42
Exchange	52.29

The above compensation for the Management and Administrative Services is estimated to reflect the actual and reasonable costs incurred by the Providers in providing such Management and Administrative Services including expenses directly and specifically incurred by the Providers in providing the Management and Administrative Services and other expenses, including the overhead of the Providers that is allocated to the Health Plan.

5.2. Payment. The management fee payable to CMC pursuant to Section 5.1 for any calendar month (or portion thereof) shall be paid by Health Plan on or before the first day of that month (or if such day is not a business day, the immediately succeeding business day) based on the estimated Enrollees for that month. The estimated Enrollees for a month shall be based on the most recent forecast then available for the Health Plan. The amount of the payment for a month shall be increased or decreased by an amount if any by which actual Enrollees for the immediately preceding month were greater than or less than, respectively, the estimated Enrollees used in computing the initial payment of the management fee for such immediately preceding month multiplied by the applicable PMPM.

5.3. Allocation of Management Fees. In consideration for the provisions of the Management and Administrative Services to be provided by CCNY or Salus hereunder, CMC shall pay CCNY and Salus, as applicable, a fee for each calendar month (or portion thereof) during which such entity performs such services. The amount of such fee shall be mutually agreed by CMC and CCNY or Salus, as applicable, from time to time be based upon (a) the management fee received by CMC hereunder, and (b) the proportion of services provided to Health Plan hereunder that are represented by the services provided by CCNY or Salus, as applicable. The fee shall be payable by CMC to CCNY and Salus, as applicable, within five (5) business days of the receipt by CMC of its management fee hereunder, and shall be adjusted within (5) business days of the adjustment of any such management fee hereunder.

6. Expenses of the Providers.

6.1. General. Except as otherwise provided herein, each Provider shall be responsible for all expenses incurred by it or on its behalf in connection with its provision of the Management and Administrative Services.

6.2. Additional Excluded Expenses. In addition to such other expenses of the Providers identified in this Agreement as being the obligation of (or reimbursable by) Health Plan, expenses incurred by Health Plan, or by any Provider on behalf of Health Plan, for the following shall be the responsibility of Health Plan:

(a) payments to providers and suppliers in connection with the delivery of Covered Services to Enrollees, including all compensation and reimbursement paid to medical and paramedical personnel and health care facilities, and the maintenance of space used in the delivery of Covered Services to Enrollees; provided however, it being understood that the administration of such payments shall be undertaken by Providers and the amount of all such payments shall be reimburseable subject to the terms of the reinsurance agreements between the Health Plan and Hallmark Life Insurance Company;

(b) expenses associated with meetings, communications and mailings to the Health Plan Board and committees thereof;

(c) except as otherwise provided in Section 4.3, all insurance costs, including professional liability/malpractice, general liability and all reinsurance, stop-loss, and out-of-area insurance that may be purchased by Health Plan;

(d) fees and expenses associated with the annual audit or certification of Health Plan's financial statements and any other corporate financial audit, including any such audit or certification required by applicable Law;

(e) fees and expenses associated with the preparation of Health Plan's tax returns;

(f) license and filing fees and other fees associated with annual reports or other reports required by applicable Law;

(g) except as otherwise provided in Section 3.7 and Section 3.8, expenses for legal, actuarial and other consulting services of firms retained by or on behalf of Health Plan; and

(h) all licensing and certification fees for Health Plan to operate the Health Plan Business, including all deposits, bonds and insurance required by applicable Law.

Upon submission by a Provider, Health Plan shall promptly pay, or reimburse such Provider for, expenses associated as provided in this Section 6.

7. Term and Termination.

7.1. Term. Subject to the requisite approval by the Commissioner, this Agreement shall be effective as of [•], 2018 (the "Effective Date") and, unless terminated earlier pursuant to the termination provisions provided herein, shall continue for five (5) years or such earlier time, as any, as the Health Plan ceases to be obligated to provide services to any Enrollees. In no event shall the term of this Agreement extend beyond such five (5) year period.

7.2. Reserved.

7.3. Event of Default by the Providers.

(a) It shall constitute an event of default hereunder by the Providers:

- (i) if a Provider shall apply for or consent to the appointment of a receiver, trustee or liquidator of such Provider or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law;
- (ii) if any order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor, adjudicating a Provider bankrupt or insolvent or approving a petition seeking reorganization of such Provider or all or a substantial part of its assets, and such order, judgment or decree continues without stay and in effect for ninety (90) consecutive days; or
- (iii) if a Provider fails to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision as provided in this Agreement and any such failure continues until: (A) a period of sixty (60) days after written notice thereof has been received by such Provider from Health Plan; or (B) with respect to any such failure that cannot reasonably be cured within sixty (60) days, a period of 120 days after written notice thereof has been received by such Provider from Health Plan.

(b) If an event of default by a Provider shall occur as contemplated by paragraph (a) of this Section 7.3, Health Plan shall, in addition to any other remedies available to it at law or in equity, be entitled to terminate this Agreement upon ten (10) days written notice and to collect from the Providers, and the Providers shall pay to Health Plan, as the case may be, reasonable attorneys' fees incurred by Health Plan as a direct result of such event of default and all costs incurred by Health Plan to correct, rectify or otherwise make Health Plan whole by reason of such Provider's failure to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision as provided in this Agreement.



7.4. Event of Default by Health Plan.

- (a) It shall constitute an event of default hereunder by Health Plan:
- (i) if Health Plan applies for or consents to the appointment of a receiver, trustee or liquidator of Health Plan or of all or a substantial part of its assets, files a voluntary petition in bankruptcy, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law.
  - (ii) if any order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Health Plan bankrupt or insolvent or approving a petition seeking reorganization of Health Plan or appointing a receiver, trustee or liquidator of Health Plan or of all or a substantial part of its assets, and such order, judgment or decree continues without stay and in effect for ninety (90) consecutive days.
  - (iii) if Health Plan fails to make any payment to any Provider hereunder within twenty (20) days after such payment becomes due in accordance with the terms hereof.
  - (iv) if Health Plan fails to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision of this Agreement to be kept, observed, paid or performed by Health Plan (other than as contemplated by the preceding clause (iii)) until: (A) a period of sixty (60) days after written notice thereof has been received by Health Plan from any Provider; or (B) with respect to any such failure that cannot reasonably be cured within sixty (60) days, a period of 120 days after written notice thereof has been received by Health Plan from such Provider.
  - (v) if Health Plan loses or has suspended its Certificate of Authority, and such loss or suspension is not revoked or cured within forty-five (45) days from the date of such loss or suspension.

(b) If an event of default by Health Plan shall occur as contemplated by paragraph (a) of this Section 7.4, the Providers shall, in addition to any other remedies available to it at law or in equity, be entitled to terminate this Agreement upon ten (10) days written notice and to collect from Health Plan reasonable attorneys' fees incurred by the Providers because of such event of default and all costs incurred by the Providers to correct, rectify or otherwise make the Providers whole by reason of Health Plan's failure to keep, observe, pay or perform any material covenant, obligation, agreement, term or

provision as provided in this Agreement. If an event of default has occurred under clause (a) (iii) of this Section 7.4, the Providers shall be further entitled to interest at the rate of 15% per annum (or, if less, the maximum interest rate payable thereon under applicable law) on any unpaid amount from the date such amount became due and payable. Notwithstanding any language to the contrary contained herein, if Health Plan's event of default resulted directly from a Change in Law (as defined in paragraph (b) of Section 9.4), then Providers' sole remedy under this Agreement for such event of default shall be those remedies specified in this paragraph (b) and Providers shall not be entitled to any incidental or consequential damages.

(c) Health Plan may terminate this Agreement immediately upon written notice to the Providers if any of the Providers' managing employees is convicted of a criminal offense related to that person's involvement in any program under Titles XVIII, XIX, XX, or XXI of the Social Security Act or has been terminated, suspended, barred, or voluntarily withdrawn as part of a settlement agreement, or otherwise excluded from any program under Titles XVIII, XIX, XX or XXI of the Social Security Act.

7.5. Termination by Order of DOH. This Agreement shall terminate and be deemed cancelled without financial penalty to the Health Plan Board or the Health Plan itself, not more than sixty (60) days after notification to the Health Plan Board and the Providers by written notice from DOH of a determination that the Health Plan is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees.

7.6. Commissioner Approval. Notwithstanding the foregoing, any termination or non-renewal of this Agreement shall require the prior written approval of the Commissioner. Health Plan shall provide the Commissioner notice of termination or non-renewal at least ninety (90) days prior to termination or non-renewal whether initiated by Health Plan or any Provider. Termination may be upon less than ninety (90) days' notice provided it is demonstrated to the satisfaction of the Commissioner prior to termination that circumstances exist which justify more immediate termination.

7.7. Certification of Financial Statements. Immediately upon the termination of this Agreement for any reason, Health Plan shall cause its independent accountants to prepare certified financial statements in accordance with all applicable procedures required by the applicable state for the period commencing on January 1 of the year in which such termination occurs and ending on the date of termination of this Agreement.

## 8. Force Majeure and Disaster Recovery

8.1. Force Majeure. No Party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement; any requirement imposed by a final judgment or decree entered by a court of competent jurisdiction, civil or military authority; or act of God, act or omission of transportation companies or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming Party or its subcontractors ("force majeure conditions"). If any force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Parties, stating the nature of the force majeure condition and any action being taken to avoid or minimize its effect.

8.2. Disaster recovery. At the direction of Health Plan, the Providers shall maintain a disaster recovery plan to ensure the continuous and orderly provision of services to Health Plan and minimize any interruptions thereof. The Providers shall take all steps reasonably necessary to enable it to promptly implement the disaster recovery plan upon the occurrence of an event of force majeure as described in Section 8.1. Such disaster recovery plan will detail the actions the Providers will take to prevent any disruption in service to Health Plan and address the replacement of Health Plan's data. The Providers shall provide a copy of the disaster recovery plan for Health Plan's review upon request. The Providers shall make all necessary changes to the disaster recovery plan as Health Plan may reasonably request.

## 9. General.

9.1. Notices. All notices, requests, demands, claims, and other communications under this Agreement shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly delivered four (4) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent for next business day delivery via a reputable nationwide overnight courier service, in each case to the intended recipient as set forth below:

Health Plan:	New York State Catholic Health Plan, Inc. 95-25 Queens Boulevard Rego Park, New York 11374 Attention: Chief Executive Officer and Chief Legal Officer
Salus:	Salus Administrative Services, Inc. 7700 Forsyth Blvd., Suite 800 St. Louis, Missouri 63105 Attention: Keith Williamson
CMC:	Centene Management Company, LLC 7700 Forsyth Blvd., Suite 800 St. Louis, Missouri 63105 Attention: Keith Williamson
CCNY:	Centene Company of New York, LLC 7700 Forsyth Blvd., Suite 800 St. Louis, Missouri 63105 Attention: Keith Williamson

Any Party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the other Party or Parties. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.1.

9.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that no Party may assign its respective obligations hereunder without the prior written consent of the other Parties and the prior approval of the Commissioner. Any assignment in contravention of this provision shall be void. No assignment shall release any Party from any obligation or liability under this Agreement.

9.3. Subcontracting. Nothing in this Agreement shall prohibit any Provider from subcontracting or delegating its duties hereunder, in whole or in part, to any other person, subject to the prior approval of the DOH under 10 NYCRR Part 98, provided that any default in performance of such Provider's obligations under this Agreement by any subcontractor shall be deemed a default in performance by such Provider, provided, further that this Agreement shall be amended to make such subcontractor or delegator a signatory to this Agreement and to expressly provide for the subcontracting or delegation of such Management and Administrative Services. Any such subcontractor or delegator shall be subject to the provisions of 10 NYCRR Part 98, including all termination provisions, provided that the subcontractor may also be terminated by the applicable Provider upon at least ninety (90) days' notice and with the prior written approval of the Commissioner.

9.4. Entire Agreement; Amendments; DOH Approval.

(a) This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between the Parties. Upon the approval of DOH, this Agreement is the sole agreement regarding the provision of management services by the Providers to the Health Plan and the compensation to be paid by Health Plan for such management services.

(b) This Agreement may be amended only with the written consent of all of the Parties. No amendment hereof shall be effective without the prior written consent of the Commissioner. No waiver of any right or remedy under this Agreement shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No right or remedy in this Agreement conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given in this Agreement, or now or hereafter legally existing upon the occurrence of any event of default under this Agreement. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to a Party may be exercised from time to time and as often as may be deemed expedient by such Party. All material amendments to this Agreement are subject to the prior written notification of the applicable state(s).

(c) Notwithstanding the foregoing, this Agreement is subject to the approval of the DOH. The Parties agree that any change to this Agreement required by DOH will be made by the Parties immediately upon receipt of written notice from DOH.

9.5. Severability and Supervening Law.

(a) The "New York State Department of Health Standard Clauses for Management Contract Agreement," attached to this Agreement as Exhibit 2 are expressly incorporated into this Agreement and are binding upon the Parties to this Agreement. In

the event of any inconsistent or contrary language between the Standard Clauses and any other part of this Agreement, including but not limited to appendices, amendments and exhibits, the Parties agree that the provisions of the Standard Clauses shall prevail, except to the extent applicable Law requires otherwise and/or to the extent a provision of this Agreement exceeds the minimum requirements of the Standard Clauses.

(b) Any provision of this Agreement that is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction, except that the Parties recognize that this Agreement at all times is to be subject to applicable Law.

(c) The Parties further recognize that this Agreement shall be subject to amendments to, or repeals of, such laws and regulations, to the enactment or promulgation of new legislation or regulations and to new interpretations thereof by judicial or regulatory bodies (each a "Change in Law"). Subject to Approval by the Department of Health, any provision of this Agreement that is rendered invalid by, or is inconsistent with, a Change in Law, or that would render one or more Parties in violation of the same, shall be deemed superseded by such Change in Law so as to render this Agreement, and the Parties hereto, in compliance therewith ("Automatic Amendment"). Notwithstanding the foregoing, if such Change in Law or Automatic Amendment materially and adversely impacts the reasonable economic expectations of one or more Parties to this Agreement, then upon the request of an adversely impacted Party, the Parties shall negotiate, in good faith, for a period of sixty (60) days in an effort to amend the financial provisions of this Agreement in a manner that preserves, to the greatest extent possible, the reasonable economic expectations of the Parties taking into consideration the Change in Law or the Automatic Amendment. If the Parties are unable to reach agreement regarding such amendment then an adversely impacted Party may terminate this Agreement upon sixty (60) days' prior written notice and with the written consent of the Commissioner.

9.6. Disputes. Any controversy or claim arising out of or relating to this Agreement or a breach hereof shall be settled by arbitration, at the election of any Party, in accordance with the commercial arbitration rules of the American Arbitration Association; provided, however, that (a) the Commissioner shall be given prior notice of all issues to be arbitrated and a copy of all arbitration decisions, and (b) such decision is not binding on the Commissioner. The judgment of the arbitrators shall be final and binding upon the parties and judgment upon such award rendered by the arbitrators may be entered in any court of competent jurisdiction. Pending final determination of any dispute hereunder, the Providers shall proceed diligently with the performance of this Agreement. Such arbitration shall take place in a mutually agreed upon location. Notwithstanding the foregoing, nothing herein shall in any way prohibit any Party from asserting equitable claims in a court of competent jurisdiction or to petition such court for and obtain injunctive relief with respect to any claim or controversy, including one arising out of or relating to this Agreement or a breach hereof.

9.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.

9.8. Construction.

(a) The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

(b) The headings of the Sections and Subsections of this Agreement are included only for convenience and shall not affect the meaning or interpretation of this Agreement.

(c) References herein to Sections and Subsections shall mean such Sections and Subsections of this Agreement, except as otherwise specified. The words "herein" and "hereof" and other words of similar import refer to this Agreement as a whole and, unless otherwise specified, not to any particular part of this Agreement. The word "including" as used in this Agreement shall not be construed so as to exclude any other thing not referred to or described.

(d) In computing any period of time under this Agreement, the day from which the designated period of time begins to run shall not be included; the last day of the period so computed shall be included, unless it is not a business day, in which event the period shall run until the end of the next day that is a business day. For purposes of this Agreement, the term "business day" shall mean a day that is not a Saturday, a Sunday or a statutory or civic holiday in either the state of Missouri or the state in which Health Plan maintains a domestic insurance license.

9.9. Exhibits. All attachments to this Agreement are hereby incorporated by reference and deemed a part of this Agreement.

9.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties to be effective as of the date first above written.

**NEW YORK STATE CATHOLIC HEALTH PLAN,  
INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SALUS ADMINISTRATIVE SERVICES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CENTENE MANAGEMENT COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**CENTENE COMPANY OF NEW YORK**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Management Agreement]*



## EXHIBIT 1

To

### MANAGEMENT AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** ("**Agreement**") is entered into on this \_\_\_\_ day of , 20 \_\_\_\_ (the "**Effective Date**"), by and between New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York, a New York not-for-profit corporation ("**Covered Entity**") and [•], a [•] ("**Business Associate**") (each, a "**Party**" and collectively, the "**Parties**").

**WHEREAS**, Covered Entity creates, receives, transmits, maintains and/or discloses (collectively, "**Use**") "**Protected Health Information**" or "**PHI**" (as such terms are defined at 45 C.F.R. Section 164.500 et seq.), and Covered Entity desires to obtain services from Business Associate that will result in the Use of such PHI by Business Associate pursuant to a contract (in effect as of, or after, the effective date of this Agreement) between Business Associate on one hand and Covered Entity on the other hand (each contract, a "**Services Agreement**");

**WHEREAS**, Covered Entity and Business Associate desire this Agreement to govern the Use of all PHI by and between the Parties and to supersede all other agreements (including all other business associate agreements) between such entities regarding the Use of PHI; and

**WHEREAS**, pursuant to the authorities set forth above, Business Associate may use PHI only in accordance with this Agreement.

**NOW, THEREFORE**, Covered Entity and Business Associate agree as follows:

#### 1. Definitions.

1.1 The Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), and the implementing regulations thereunder, including but not limited to the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 (the "**Privacy Rule**") and the Security Standards for the Protection of Electronic Health Information at 45 C.F.R. Parts 160 and 164 (the "**Security Rule**"), and the requirements of the final modifications to the HIPAA Privacy Rule, Security, Rule, et al., issued on January 25, 2013 and effective March 26, 2013, as may be amended from time to time, shall collectively be referred to herein as the "**HIPAA Authorities**." All other capitalized terms hereunder shall have the meaning ascribed to them elsewhere in this Agreement, or, if no such definition is specified herein, shall have the meaning set forth in the HIPAA Authorities.

1.2 "**Affiliate**" (capitalized or not) means any entity that controls, is controlled by or is under common control with a Party as well as any entity that is a subsidiary of an entity that controls a Party.

1.3 "Personally Identifiable Information" or "PII" shall include any data elements that identify an individual or that could be used to identify an individual, including but not limited to an individual's first name or initial and last name, all geographic subdivisions smaller than a state, all elements of dates (except year) for dates directly related to an individual including birth date, admission date, discharge date, date of death, telephone numbers, fax numbers, electronic mail addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate or drivers license numbers, vehicle identifiers and serial numbers, including license plate numbers, device identifiers and serial numbers, web universal resource locators (URLs), internet protocol (IP) address numbers, biometric identifiers, including finger and voice prints, full face photographic images and any comparable images; and any other unique identifying number, characteristic, code, or combination that allows identification of an individual.

1.4 "Protected Health Information" or "PHI" shall collectively refer to Protected Health Information, Electronic Protected Health Information ("ePHI"), each as defined by the HIPAA Authorities, and "Personal Identifiable Information" as defined above.

## **2. Interpretation of Provisions of this Agreement; Application of Agreement.**

2.1 In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the HIPAA Authorities, the terms of the HIPAA Authorities shall prevail. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Authorities. A reference in this Agreement to a section in the HIPAA Authorities means the section in effect or as amended. Titles or headings are used in this Agreement for reference only and shall not have any effect on the interpretation of this Agreement.

2.2 This Agreement governs the Use of all PHI that exists or arises in connection with a Services Agreement. Each Party hereto represents and warrants that (i) it is validly existing under the laws of the state of its formation; (ii) it has the full right, authority, capacity and ability to enter into this Agreement and to carry out its obligations hereunder; (iii) this Agreement is a legal and valid obligation binding upon it the obligations hereunder of such Party; and (iv) its execution, delivery and performance of this Agreement does not conflict with any agreement, instrument, obligation or understanding to which it is bound.

## **3. Obligations of Business Associate.**

3.1 Limits on Use and Disclosure. Business Associate agrees to not use or further disclose PHI other than as permitted by this Agreement or as Required by Law. Business Associate further agrees that to the extent it is carrying out one or more of the Covered Entity's obligations under the Privacy Rule, it shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

3.2 Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate agrees to establish, implement and

maintain appropriate safeguards, and comply with the Security Rule with respect to Electronic PHI, as necessary to prevent any use or disclosure of PHI other than as provided for by this Agreement.

3.3 Report of Improper Use or Disclosure. "Incident" means (i) any successful Security Incident, (ii) Breach of Unsecured PHI, or (iii) any loss, destruction, alteration or other event in which PHI cannot be accounted for. Successful Security Incidents shall not include pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate agrees to notify Covered Entity in writing immediately upon discovery, but not later than the same day of discovery of any Incident (by Business Associate or by a Subcontractor) involving the acquisition, access, use or disclosure of the PHI not provided for by this Agreement of which Business Associate becomes aware. As soon as reasonably possible thereafter, in no case more than seven (7) calendar days following discovery of the Incident, Business Associate shall provide Covered Entity with a written report which shall include but not be limited to: i) a description of the circumstances under which the Incident occurred; ii) the date of the Incident and the date that the Incident was discovered; iii) a description of the types of PHI involved in the Incident; iv) the identification of each Individual whose PHI is known or is reasonably believed by the Business Associate to have been affected; and v) any recommendations that the Business Associate may have, if any, regarding the steps that Individuals may take to protect themselves from harm. Business Associate shall make itself and any subcontractors and agents assisting Business Associate in the performance of its obligations available to Covered Entity to testify as witnesses, or otherwise, in the event of an Incident.

3.4 Subcontractors.

(a) Prior to the date on which any Subcontractor (including any affiliate that is a Subcontractor) creates, receives, maintains or transmits PHI on behalf of Business Associate in connection with Business Associate's obligations under the Services Agreement, Business Associate agrees to enter into a written agreement with any Subcontractor ("*Subcontractor Agreement*") to whom Business Associate provides PHI that requires them: (i) to comply with the same HIPAA Authorities that apply to Business Associate under the Agreement; and (ii) to comply with the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such PHI.

3.5 Access to Records. At the request of Covered Entity and within five (5) business days of such request and in a reasonable manner designated by Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in a manner compliance with 45 CFR §164.524 and/or other applicable provisions of the HIPAA Authorities.

3.6 Amendments to PHI. At the request of Covered Entity, or, as directed by Covered Entity, at the request of an Individual, Business Associate shall make, within fifteen (15) business days of such request and in a reasonable manner designated by Covered Entity, any amendment(s) to PHI in a Designated Record Set to which the Covered Entity has agreed

pursuant to 45 CFR §164.526, or shall otherwise assist Covered Entity in complying with Covered Entity's obligations under 45 CFR §164.526.

3.7 Availability of Internal Practices, Books and Records. Business Associate shall make its internal practices, books and records available to Covered Entity or the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Authorities, in a time and manner designated by Covered Entity or the Secretary, as applicable. Covered Entity reserves the right to request, and Business Associate shall provide, additional satisfactory assurances that Business Associate is meeting its applicable obligations under the HIPAA Privacy and Security Rules. Such requests may include, but are not limited to; an onsite audit, conducted by Covered Entity or its designee, access to policies and procedures, risk assessment documentation, incident logs or information related to the Business Associate's Subcontractors compliance with their applicable obligations under the HIPAA Privacy and Security Rules.

3.8 Accounting of Disclosures. Business Associate shall document such disclosures of PHI and information related to such disclosures (i.e., (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably states the basis for the disclosure) as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Such documentation shall be maintained with regard to all disclosures of PHI, except for those disclosures that are expressly exempted from the documentation requirement under the HIPAA Authorities (see, e.g., 45 CFR §§164.502; 164.508; 164.510; 164.512, etc.). Documentation required to be collected by the Business Associate under this Section shall be retained for a minimum of six (6) years, unless otherwise provided under the HIPAA Authorities. Business Associate shall further provide the information collected pursuant to this Section to Covered Entity or an Individual, within fifteen (15) business days of the applicable request and in a reasonable manner designated by Covered Entity, as necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 or other applicable provision of the HIPAA Authorities.

3.9 Disclosure of Minimum PHI. Business Associate agrees that it shall request, use and/or disclose only the amount and content of PHI that is the Minimum Necessary for Business Associate to fulfill its obligations under the terms and conditions of this Agreement. Business Associate acknowledges that such Minimum Necessary standard shall apply with respect to uses and disclosures by and among members of Business Associate's workforce as well as by or to third parties as permitted hereunder.

3.10 Security Rule Requirements. Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement or the HIPAA Authorities of which it becomes aware, including any Incident. Accordingly, Business

Associate agrees to report any Incident of which it becomes aware to Covered Entity immediately, but not later than the same day of discovery of the Incident.

3.11 Compliance with HIPAA Authorities. Requirements of the HIPAA Authorities that are made applicable with respect to business associates, or any other provision required to be included in this Agreement pursuant to the HIPAA Authorities, are incorporated into this Agreement by this reference.

**4. Permitted Uses and Disclosures by Business Associate.**

4.1 Use or Disclosure to Perform Functions, Activities, or Services. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform those functions, activities, or services that Business Associate performs for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Any such use or disclosure shall be limited to those reasons and those Individuals as necessary to meet the Business Associate's obligations under the Services Agreement.

4.2 Appropriate Uses of PHI. Except as may be otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

4.3 Confidentiality Assurances and Notification. Except as may be otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that such PHI will remain confidential and used or further disclosed only as Required by Law or for the purpose for which such PHI was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

4.4 Data Aggregation Services. As applicable, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B), except as may be otherwise provided by this Agreement.

5. Indemnification. Each party (the "*Indemnitor*") shall indemnify and hold harmless the other party (the "*Indemnitee*") against, and reimburse such Indemnitee for, any expense, loss, damages, fees, costs, claims or liabilities of any kind arising out of or related to any Actions asserted or threatened by a third party arising out of or related to the Indemnitor's acts and omissions associated with its obligations under this Agreement or its use or disclosure of PHI. Such indemnification shall include, but not be limited to, the payment of all reasonable attorney fees associated with any such Action.

**6. Obligations of Covered Entity.**

6.1 Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.

6.2 Change or Revocation of Permission. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's permitted or required uses and disclosures of PHI. Business Associate shall comply with any such changes or revocations.

6.3 Restrictions on Use or Disclosure. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI. Business Associate shall comply with any such restrictions. Business Associate shall immediately notify Covered Entity of any request for a restriction on the use or disclosure of an Individual's PHI that Business Associate receives from such Individual.

6.4 No Request to Use or Disclose in Impermissible Manner. Except as necessary for the Data Aggregation Services or management and administrative activities of the Business Associate as allowed herein, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## 7. Term and Termination

7.1 Term. This Agreement shall be effective as of the earlier of the date first documented above or the effective date of the Services Agreement, and shall terminate upon termination of the Services Agreement for any reason or as otherwise provided in this Agreement.

7.2 Termination with Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, or its Subcontractors, Covered Entity shall, at its option: (i) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the cure period identified in the Services Agreement, or if no cure period is identified in the Services Agreement, as specified by Covered Entity; (ii) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered Entity deems cure by Business Associate not to be possible; or (iii) if neither termination nor cure are feasible, report the violation to the Secretary.

### 7.3 Effect of Termination.

(a) Except as provided in Section 7.3(b), upon termination of this Agreement for any reason, Business Associate shall return or destroy, and shall retain no copies of, all PHI in the possession of Business Associate.

(b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written

notification of the conditions that make return or destruction infeasible. Upon Covered Entity's written approval, which shall not be unreasonably withheld, Business Associate may retain the PHI, but shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **8. Miscellaneous.**

8.1 Assignment; Waiver. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other party. Except as provided herein, this Agreement shall create no independent rights in any third party or make any third party a beneficiary hereof. No failure or delay by either party in exercising its rights under this Agreement shall operate as a waiver of such rights, or of any prior, concurrent, or subsequent breach.

8.2 Injunctive Relief. Business Associate agrees that breach of the terms and conditions of this Agreement shall cause irreparable harm for which there exists no adequate remedy at law. Covered Entity retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this Agreement, including but not limited to the unauthorized use or disclosure of PHI by Business Associate or any Subcontractor, contractor or third party that received PHI from Business Associate.

8.3 Survival; Severability. The respective rights and obligations of Business Associate under this Agreement, including but not limited to both parties indemnification obligations, shall survive the termination of this Agreement. The parties agree that if a court determines that any of the provisions of this Agreement are invalid or unenforceable for any reason, such determination shall not affect the enforceability or validity of the remaining provisions of this Agreement.

8.4 Entire Agreement; Amendment. This document, together with any written Schedules, amendments and addenda, constitutes the entire agreement of the parties and supersedes all prior oral and written agreements or understandings between them with respect to the matters provided for herein. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Authorities. Any modifications to this Agreement shall be valid only if such modifications are in accordance with the HIPAA Authorities, are made in writing, and are signed by a duly authorized agent of both parties.

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that the HIPAA Authorities do not preempt the same.

8.6 Notice. Any notice required or permitted to be given by either party under this Agreement shall be sufficient if in writing and hand delivered (including delivery by courier) or sent by postage prepaid certified mail return receipt requested, to the following address:

**If Covered Entity:**

Name:

Title:

Company:

Address:

Phone:

**If Business Associate:**

Name: Keith Williamson

Title: Secretary

Company: [•]

Address: 7700 Forsyth Blvd., Suite 800  
St. Louis, MO 63105

Phone: (314) 725-4477

8.7 Independent Contractors. For purposes of this Agreement, Covered Entity and Business Associate, and Covered Entity and any Subcontractor of Business Associate, are and will act at all times as independent contractors. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.

Each party to this Agreement warrants that it has full power and authority to enter into this Agreement, and the person signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

**COVERED ENTITY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT 2**  
**NEW YORK STATE DEPARTMENT OF HEALTH**  
**STANDARD CLAUSES**  
**FOR MANAGEMENT SERVICE AGREEMENTS**

Notwithstanding any other provision of this agreement, contract, or amendment (hereinafter "Agreement") the parties agree to be bound by the following clauses, which are hereby, made a part of the Agreement:

**A. DEFINITIONS FOR PURPOSES OF THIS APPENDIX**

1. **"MCO"** includes;
  - traditional health maintenance organizations certified pursuant to Public Health Law (PHL) Section 4403;
  - special purpose MCOs, also known as prepaid health services plans (PHSPs), certified pursuant to PHL section 4403-a;
  - HIV Special Needs Plans (HIV SNPs) certified pursuant to PHL Section 4403-e; and
  - Managed long term care plans certified or operating pursuant to PHL section 4403-f.
2. **"Management Contractor"** means any person, other than staff employed by the MCO, entering into an agreement with the governing authority of an MCO for the purpose of managing the day-to-day operations of the MCO.
3. **"IPA"** includes, in addition to independent practice associations, a pharmacy or laboratory with the legal authority to contract with other pharmacies or laboratories to arrange for or provide services to enrollees of the New York State MCO.
4. **"Management functions"** are elements of an MCO governing body's management authority. Some management functions, listed in 10 NYCRR 98-1.11(i), **must not be** delegated by an MCO to another person or entity. Other management functions, listed in 10 NYCRR 98-1.11(j), **may be** delegated to another person or entity, but only pursuant to a management contract approved by DOH.
5. **"Technical and administrative services"** refers to any functions (other than medical services) that an MCO is not prohibited from delegating by 10 NYCRR 98-1.11(i), and that are not functions listed in 10 NYCRR 98-1.11(j) requiring DOH approval of a management contract. Administrative services include administrative expenses provided through the contract that the MCO would otherwise have reported on the MCO's own cost report. They do not include administrative expenses incurred by an IPA or provider in the course of performing the IPA or provider's business.

6. **"Claims Payment"** is defined as making an independent determination to pay, deny or pend claims for payment. This is different from the ministerial task of writing a check for payment based upon the decision to act on a claim made by a different entity.

## **B. GENERAL TERMS AND CONDITIONS**

1. This Agreement is subject to approval by the Department of Health and will not become effective until such approval is received from the Department of Health.
2. This Agreement shall be limited to five years and may be renewed only when authorized by the Commissioner.
3. The governing authority of the MCO shall be responsible for establishment and oversight of the MCO's policies, management and overall operation, regardless of the existence of any management contract.
4. The governing authority of the MCO shall retain ongoing responsibility for statutory and regulatory compliance.
5. The governing authority of the MCO are in no way lessened by entering into a management contract, and any powers not specifically delegated to the management contractor through the provisions of the Agreement remain with the governing authority of the MCO.
6. The parties agree to incorporate into this Agreement any and all modifications required by the Department of Health for approval or, alternatively, to terminate this Agreement if so directed by the Department of Health effective upon at least ninety (90) days' notice.
7. The parties agree that any amendments or revisions to this Agreement shall be effective only with the prior written consent of the Department of Health.
8. The management contractor agrees that it shall not subcontract any of its obligations hereunder or the performance of any of the management contractor's services without the prior written consent of the Commissioner. In the event the management contractor proposes to subcontract any management functions, the subcontractor will be a signatory to the management contract, which will expressly provide for the subcontracting of management functions to the subcontractor. The subcontractor will be subject to the provisions of 10 NYCRR 98-1.11 to the same extent as the management contractor, including all termination provisions, provided that the subcontractor may also be terminated by the management contractor upon at least ninety (90) days notice and with the prior written approval of the Commissioner.
9. The parties to this Agreement agree to comply with all applicable requirements of the Federal Americans with Disabilities Act.

10. The parties to this Agreement agree to comply with all applicable requirements of the: Health Insurance Portability and Accessibility Act of 1996, 42 USC 1320 (d); Public Health Law Article 27-F; and Mental Hygiene Law § 33.13.
11. The MCO, IPA or management contractor which is a party to the Agreement agrees that nothing within this Agreement is intended to, or shall be deemed to, transfer liability for the parties own acts or omissions, by indemnification or otherwise, to each other or to a provider.
12. Sole Agreement. The management contract, with its exhibits, schedules and attachments, approved by the Department shall be the sole agreement between the management contractor and the governing authority of the MCO for the purpose of the management services delegated herein on behalf of the MCO and payment to the management contractor for management services.
13. The validity and interpretation of this Agreement and the rights and obligations of the parties under this Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.

#### **C. PAYMENT; RISK ARRANGEMENTS**

1. The management contractor shall compensate Participating Providers in a timely manner consistent with the provisions of Sections 3224-a, 3224-b, and 3224-c of the New York State Insurance Law, as applicable; provided, however, that nothing herein shall limit the liability of the MCO pursuant to such law for any failure to pay providers in accordance with the provisions of such law.
2. The parties agree that the management contractor cannot assume any financial risk under this Agreement.

#### **D. IPA's ROLE AS AGENT**

1. The parties understand and agree that IPA, as a signatory to this Agreement, has authority to act as agent for the Participating IPA Providers with regard to the adjudication of claims by MCO and/or MSO. IPA shall include language in its participating provider agreements and/or provider manual to inform Participating IPA Providers that MSO has initial responsibility for determining payment of claims submitted by Participating IPA Providers for the provision of covered services to members. The Parties understand and agree that IPA, in its capacity as agent for the Participating IPA Providers, has the authority to play an active role in resolving any claims adjudication issues that the provider may have with the MCO and/or MSO.

#### **E. RECORDS; ACCESS**

1. Annual reports on the financial operations will be provided to the MCO, and any other operational data when requested by the governing authority of the MCO, the Commissioner or Superintendent of Insurance, will be provided by the management contractor.
2. The parties agree that medical records shall be retained for a period of six (6) years after the date of service, and in the case of a minor, for three (3) years after majority or six (6) years after the date of service, whichever is later, or for such longer period as specified within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.

#### **F. TERMINATION AND RENEWAL**

1. Any application for renewal shall be submitted at least 90 days prior to the expiration of this Agreement and shall demonstrate that the goals and objectives of the contract have been met within specified time frames; that the quality of care provided by the MCO during the term of the Agreement has been maintained and improved; and that the reporting requirements contained in this Agreement have been met.
2. This Agreement shall terminate and be deemed cancelled, without financial penalty, to the governing authority of the MCO or the MCO itself not more than sixty (60) days after notification to the governing authority of the MCO and the management contractor by the Department of Health of a determination that the MCO is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees.
3. Any termination or non-renewal of this Agreement shall require the prior written approval of the Commissioner following 90 days' prior written notice; provided, however, that termination may occur upon less than 90 days' notice if it is demonstrated to the satisfaction of the Commissioner, prior to termination, that circumstances exist which justify more immediate termination.
4. The MCO shall provide a plan for the management of the MCO subsequent to any discharge of the management contractor, to be submitted with 90 days prior notification to the Department of Health of the MCO's decision to discharge the management contractor.

#### **G. ARBITRATION**

1. To the extent that arbitration or alternative dispute resolution is authorized elsewhere in this Agreement, the parties to this Agreement acknowledge that the Commissioner is not bound by arbitration or mediation decisions. Arbitration or mediation shall occur within New York State, and the Commissioner will be given notice of all issues going to arbitration or mediation, and copies of all decisions.

**EXHIBIT 3**  
**SCOPE OF SERVICES BY PROVIDER**

<b>Provider</b>	<b>Scope of Services</b>
Salus	Utilization Review Services
CCNY	Personnel Services
CMC	Claims Administration Provider and Enrollee Services and Records Quality Assurance Premium Billing and Collections Program Planning and Development Management Information Systems Marketing Plan and Marketing Regulatory Assistance Fraud and Abuse Assistance Financial Systems and Services Financial Planning and Analysis Treasury Other Financial Support Services Actuarial All Other Required Services

## APPENDIX A

### QHP BUSINESS REGULATORY REQUIREMENTS

This Appendix sets forth the requirements established by DOH and/or the State of New York (the “State”), in addition to those set forth elsewhere in the Agreement, applicable to the qualified health plan business (“*QHP Business*”). Unless otherwise provided in this Appendix or the Agreement (into which, for the avoidance of doubt, this Appendix shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in Contract No. C029029 by and between the DOH and Health Plan, dated October 1, 2013 (the “*QHP Contract*”). In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

1. Compliance with QHP Contract. Providers agree that the Management and Administrative Services shall be performed in accordance with the terms of the QHP Contract. Providers specifically agree to be bound by the confidentiality provisions set forth in the QHP Contract.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -Lower Tier Covered Transactions.

2.1 Each prospective lower tier participant certifies, by submission of this proposal; that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.

2.2 Where a prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Confidential Information. Each Provider shall treat all information, which is obtained by it through its performance under the QHP Contract, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

4. Ownership of Exchange Data. For purposes of this section, Exchange Data means data and information created by the Exchange and relating to the Exchange, its employees and agents, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information. Without the State’s approval (in its sole discretion), the Exchange Data will not be (1) used by any Provider other than in connection with carrying out its obligations under the QHP Contract; (2) disclosed, sold, assigned, leased or otherwise provided to third parties by any Provider other than in connection with carrying out its obligations under the QHP Contract; or (3) commercially exploited by or on behalf of any Provider. Providers hereby irrevocably assign, transfer and convey to the State without further consideration all of its right, title and interest in and to the Exchange Data. Upon request by the State, Providers will execute and deliver any documents that may be necessary or desirable under any law to preserve, or enable the State to enforce its rights with respect to the Exchange Data.

5. Maintenance of Providers Records.

5.1 Providers shall preserve and retain all records relating to Providers’ performance under the QHP Contract in readily accessible form during the term of the QHP Contract and for a period of ten

(10) years thereafter except that Providers shall retain QHP Enrollees' Medical Records that are in the custody of Providers for ten (10) years after the date of service rendered to the QHP Enrollee or cessation of Providers' operation, and in the case of a minor, for ten (10) years after majority.

5.2 All provisions of the QHP Contract relating to record maintenance and audit access shall survive the termination of the QHP Contract and shall bind Providers until the expiration of a period of ten (10) years commencing with termination of the QHP Contract or if an audit is commenced, until the completion of the audit, whichever occurs later. If Providers becomes aware of any litigation, claim, financial management review or audit relating to the fulfillment of the terms of the QHP Contract that is started before the expiration of the ten (10) year period, the records shall be retained until all litigation, claims, financial management reviews or audit findings involved in the record have been resolved and final action taken.

6. Access to Contractor Records.

6.1 Providers shall subject themselves to audits/reviews by the State or its designee to determine the correctness of QHP Enrollee premium payments and Advance Premium Tax Credit payments. Providers also agrees to audit by the State on reasonable and customary terms, subject to applicable State and federal law regarding the confidentiality of and release of confidential Protected Health Information of QHP Enrollees.

6.2 Providers acknowledge and agree that the State shall, subject to applicable State and federal law regarding the confidentiality and release of confidential Protected Health Information of QHP Enrollees, have the right to review and to copy any records and supporting documentation pertaining to the performance of the QHP Contract. Providers agree to maintain such records for possible audit for a minimum of ten (10) years, unless a longer period of records retention is agreed to. Providers agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

7. Providers Audits or Reviews. Each Provider shall promptly notify Health Plan in writing of any inquiry, audit, investigation, litigation, claim, examination or other proceeding involving such Provider that is threatened or commenced by any regulatory agency or other party that a reasonable person might believe could materially affect the ability to perform in accordance with the terms set forth in the QHP Contract. Such notice shall be provided by such Provider to Health Plan within ten (10) days of such Provider's receipt of notice regarding such action. Such Provider shall comply with the State's reasonable requests for information relating to the inquiry; provided, however than any such exchange of information shall be subject to compliance with law and shall not occur to the extent prohibited by order of the court, administrative agency, or other tribunal or regulatory authority having jurisdiction over the matter or by the laws and regulations governing the action. This section shall not be required with respect to disputes relating to claims and other matters noticed to the State in the ordinary course of business pursuant to other terms set forth in the QHP Contract or required by law.

## **APPENDIX B**

### **MEDICARE REGULATORY REQUIREMENTS**

This Appendix sets forth the requirements established by CMS, in addition to those set forth elsewhere in this Agreement, applicable to the Medicare business. Unless otherwise provided in this Appendix or in the other provisions of this Agreement (into which, for the avoidance of doubt, this Appendix shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in 42 C.F.R. Parts 422 and 423. In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

#### **I. DEFINITIONS**

1.1 Completion of Audit: Completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of Health Plan, First Tier or Downstream Entity.

1.2 Downstream Entity: Any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the Medicare Advantage or Prescription Drug benefit, below the level of the arrangement between Health Plan and Providers. These written arrangements continue down to the level of the ultimate provider of both health and administrative services. [42 C.F.R. §§ 422.500; 423.501]

1.3 Final Contract Period: The final term of the contract between CMS and Health Plan.

1.4 First Tier Entity: Any party that enters into a written arrangement, acceptable to CMS, with Health Plan to provide administrative services or health care services for a Medicare eligible individual under the Medicare Advantage or Prescription Drug Programs. [42 C.F.R. §§ 422.500; 423.501]

#### **II. REQUIRED PROVISIONS**

Providers, as First Tier Entities, agree to the following:



2.1 Medicare Compliance. Each Provider shall comply with all applicable Medicare laws, regulations and CMS instructions. [42 C.F.R. § 422.504(i)(4)(v)] Each Provider acknowledges that the Management and Administrative Services performed hereunder shall be consistent and comply with Health Plan's contractual obligations under Contract Number H3328 by and between Health Plan and CMS for the operation of Medicare Advantage (including the Medicare Advantage D-SNP) coordinated care plan(s) with and without Part D prescription drug coverage, effective January 1, 2017 through December 31, 2017 (as amended, renewed or replaced from time to time, the "*CMS Contract*"). [42 C.F.R. §§ 422.504(i)(3)(iii); 423.505(i)(3)(iii)]

2.2 Monitoring by Health Plan. Health Plan shall, on an ongoing basis, monitor the performance of Providers. [42 C.F.R. §§ 422.504(i)(4)(iii); 423.505(i)(4)(iii)]

2.3 Confidentiality and Accuracy of Medicare Enrollee Records. Providers shall:

2.3.1 Abide by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information;

2.3.2 Ensure that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas;

2.3.3 Maintain Medicare Enrollee records and information in an accurate and timely manner; and

2.3.4 Ensure timely access by Medicare Enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13); 422.118; 423.505(b)(14); 423.136].

2.4 Services Performed Outside the United States. Providers shall not perform or contract with any third parties to perform any of the Management and Administrative Services to be provided under the Agreement outside of the United States without the prior written approval of Health Plan. Providers shall not utilize an offshore subcontractor to receive, process, transfer, handle, store or access beneficiary protected health information in connection with this Agreement. Should Health Plan in its discretion grant such approval, Providers agree to timely supply Health Plan timely information necessary for Health Plan to comply with, and attest to compliance with, all applicable CMS requirements regarding any such approved offshore arrangement within thirty (30) days after its effective date. [HPMS Memos 07/23/2007 and 09/20/2007]

2.5 Hold Harmless. Providers shall accept as payment in full for the Management and Administrative Services provided to Medicare Enrollees the compensation specified in the Agreement. Providers shall not hold any Medicare Enrollee liable for any fees that are the legal obligation of Health Plan under the Agreement. Providers agree that in no event, including nonpayment by Health Plan, Health Plan's insolvency or breach of this Agreement, shall Providers bill, charge, collect a deposit from, or seek compensation, remuneration or reimbursement from, or have any recourse against a Medicare Enrollee or persons other than Health Plan acting on a Health Plan Medicare Enrollee's behalf. [42 C.F.R. §§ 422.504(i)(3)(i); 422.504(g)(1)(i); 423.505(i)(3)(i); 423.505(g)(1)(i)]

2.6 Audits/Record Retention. The parties agree that the Department of Health and Human Services ("HHS"), the Comptroller General and their designees have the right to evaluate, through inspection, audit or other means, any books, contracts, records, computer or other electronic systems, including medical records and documentation of Providers, directly from Providers or a Downstream Entity, that pertain to any aspect of the Management and Administrative Services performed, reconciliation of benefit liabilities, and determination of amounts payable under, or are otherwise related to the CMS Contract, or as the Secretary of the HHS may deem necessary to enforce the CMS Contract. Providers further agree that such right of HHS, the Comptroller General and their designees to inspect, evaluate and audit any pertinent information for any particular contract period will exist through ten (10) years from the Final Contract Period or from the date of Completion of Audit, whichever is later. [42 C.F.R. §§ 422.504(e)(1); 422.504(i)(2); 423.505(e)(1); 423.505(i)(2)]

2.7 Accountability; Delegation. Health Plan will only delegate any of its activities or responsibilities under the CMS Contract to Providers if such delegation is set forth in a written contract that:

2.7.1 Specifies the delegated activities and reporting responsibilities;

2.7.2 Provides for revocation of the delegation activities and reporting requirements, or specifies other remedies in instances where CMS or Health Plan determines that Providers have not performed satisfactorily;

2.7.3 Specifies that the performance of Providers is monitored by Health Plan on an ongoing basis;

2.7.4 To the extent applicable, specifies that either (i) the credentials of medical professionals affiliated with Providers will be reviewed by Health Plan, or (ii) the credentialing process will be reviewed and approved by Health Plan. Health Plan shall audit the credentialing process on an ongoing basis.

2.7.5 To the extent applicable, specifies that in the event Health Plan delegates the selection of providers, written arrangements must state that Health Plan retains the right to approve, suspend, or terminate such arrangement(s);

2.7.6 Specifies that Providers must comply with all applicable Medicare laws, regulations, CMS instructions, and CMS requirements; and

2.7.7 Specifies that any delegated service or activity will be consistent with and comply with the CMS Contract.

[42 C.F.R. §§ 422.504(i)(4)-(5); 423.505(i)(5)]

2.8 Subcontractors. If Providers contract with any Downstream Entity for the provision of the Management and Administrative Services, such contract shall incorporate the requirements of this Appendix, as it may be amended from time to time, into such Downstream Entity contract.

2.9 Medicare Participation; Program Integrity. Providers shall not employ or contract with any individual who is excluded from participation in Medicare under Section 1128 or 1128A of the Social Security Act (or with any entity that employs or contracts with such an individual or entity) for the provision of health care, utilization review, medical social work or administrative services. Providers shall immediately notify Health Plan in the event that Providers or any employed or contracted individual or entity is excluded from participating in Medicare under Section 1128 or 1128A of the Social Security Act. Providers shall further immediately notify Health Plan in the event that Providers or any employed or contracted individual or entity is criminally convicted or has a civil judgment entered against it for fraudulent activities or is sanctioned under any Federal health care program involving the provision of health care or prescription drug services. [42 C.F.R. § 422.752(a)(8); 423.752(a)(6); CMS Contract, Article III.H.1]

2.10 Compliance with Other Federal Laws. Health Plan and Providers agree to comply with Federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, including but not limited to, applicable provisions of Federal criminal law, the False Claims Act (31 U.S.C. § 3729 *et seq.*) and the anti-kickback statute (42 U.S.C. § 1320a-7b(b)); the HIPAA administrative simplification rules at 45 C.F.R. parts 160, 162 and 164; and all laws applicable to recipients of federal funds. [42 C.F.R. § 422.504(h)(1); 423.505(h)(1)]

2.11 Compliance Training, Education and Communications. Each Provider agrees and certifies that it, as well as its employees and Downstream Entities who provide services under the Agreement, shall participate in applicable compliance training, education or communications as reasonably requested by Health Plan or as otherwise required by Law, and must be made a part of the orientation for a new employee or new Downstream Entity. Providers shall annually take the compliance training made available by CMS, and Health Plan shall accept the certificate of completion of the CMS training as satisfaction of the training requirement. [42 C.F.R. §§ 422.503(b)(4)(vi)(C); 423.504(b)(vi)(C)]

2.12 Federal Funds. Each Provider acknowledges that the payments that it receives from Health Plan pursuant to the Agreement are, in whole or part, from Federal funds. Therefore, each Provider and any of its Downstream Entities are subject to certain laws that are applicable to individuals and entities receiving Federal funds, which may include, Title VI of the Civil Rights Act of 1964 as implemented by 45 C.F.R. Part 80, the Age Discrimination Act of 1975 as implemented by 45 C.F.R. Part 91, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 C.F.R. Part 84. [Medicare Managed Care Manual, Chapter 11, Section 120]

2.13 Accountability. Providers hereby acknowledge and agree that Health Plan shall oversee the provision of Management and Administrative Services hereunder and be accountable under the CMS Contract for such services. [42 C.F.R. §§ 422.504(i)(4)(iii); 423.505(i)(1)]

2.14 Corrective Action. In the event that CMS or Health Plan determines that Providers have not performed the Management and Administrative Services satisfactorily, Health Plan may request Providers to prepare for Health Plan's review and approval a written corrective action plan for the remediation of the unsatisfactory performance. Such corrective action plan shall be provided within thirty (30) days of receipt of Health Plan's request. Upon Health Plan's approval of Providers' corrective action plan, Providers shall promptly implement corrective action in accordance with the approved plan.

2.15 Modification of Appendix. The parties agree to include in this Appendix such other terms and conditions as CMS may find necessary and appropriate in order to implement requirements of Medicare Part C and Part D. [42 C.F.R. §§ 422.504(j); 423.505(j)]

## APPENDIX C

### FIDA REGULATORY REQUIREMENTS

This Appendix sets forth the requirements established by CMS, in addition to those set forth elsewhere in the Agreement, applicable to the Fully Integrated Dual Advantage business (“*FIDA Business*”). Unless otherwise provided in this Appendix or the Agreement (into which, for the avoidance of doubt, this Appendix shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in Contract Number H1916 by and among Health Plan, CMS and DOH for the operation of FIDA coordinated care plan(s), effective January 1, 2015 (as amended, renewed or replaced from time to time, the “*FIDA Contract*”). In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

#### I. DEFINITIONS

1.1 First Tier, Downstream and Related Entity: An individual or entity that enters into a written arrangement with Health Plan, acceptable to CMS and DOH, to provide administrative or health care services of Health Plan under the FIDA Contract.

1.2 Medical Record: A complete record of items and services rendered by all contracted providers and non-contracted providers documenting the specific items and services rendered to the FIDA Enrollee, including but not limited to inpatient, outpatient, emergency care, routine, and Long-Term Services and Supports items and services. The record must be kept in accordance with all applicable Federal, State and local laws, rules and regulations. Such record shall be signed by the provider rendering the services.

1.3 Privacy: Requirements established in the Health Insurance Portability and Accountability Act of 1996, and implementing regulations, Medicaid regulations, including 42 C.F.R. §§ 431.300 through 431.307, as well as relevant New York privacy laws for the purpose for protecting personal and individually identifiable health and other information from being shared without the approval or consent of the FIDA Enrollee.

1.4 Provider Preventable Condition: Such policies and procedures shall be consistent with Federal law, including but not limited to 42 C.F.R. § 434.6(a)(12), 42 C.F.R. § 438.6(f)(2), and 42 C.F.R. § 447.26, and guidance and be consistent with Title 10, Sub-part 86-1.42 and the DOH’s policies, procedures and guidance on Provider Preventable Conditions as outlined in the NY Register and on the [www.health.ny.gov](http://www.health.ny.gov) website.

1.5 State: The State of New York.

## II. FIDA CONTRACT REQUIRED PROVISIONS

### 2.1 Access. Providers agree as follows:

2.1.1 HHS, the Comptroller General, DOH, the New York State Office of the Medicaid Inspector General, Office of State Comptroller and Office of Attorney General, and their designees, and other State and Federal agencies with monitoring authority related to Medicare and Medicaid, have the right to audit, evaluate, and inspect any books, contracts, computer or other electronic systems, including Medical Records, documentation, and any pertinent information of the First Tier and Downstream Entities; and

2.1.2 HHS's, the Comptroller General's, DOH, the New York State Office of the Medicaid Inspector General, Office of State Comptroller and Office of Attorney General, or their designees right to inspect, evaluate and audit any pertinent information for any particular contract period for ten years from the final date of the contract period or from the date of completion of any audit, whichever is later.

### 2.2 Health Plan and Providers agree as follows:

2.2.1 Any Management and Administrative Services or other activity performed by Providers must be in accordance with Health Plan's contractual obligations to CMS and DOH.

2.2.2 In the event that CMS, DOH or Health Plan determines that Providers have not performed the Management and Administrative Services satisfactorily, Health Plan may request Providers to prepare for Health Plan's review and approval a written corrective action plan for the remediation of the unsatisfactory performance. Such corrective action plan shall be provided within thirty (30) days of receipt of Health Plan's request. Upon Health Plan's approval of Providers' corrective action plan, Providers shall promptly implement corrective action in accordance with the approved plan.

2.2.3 Health Plan shall monitor Providers' performance on an ongoing basis and must impose corrective action as necessary.

2.2.4 Providers shall safeguard FIDA Enrollee Privacy and the confidentiality of FIDA Enrollee health records.

2.2.5 Providers shall comply with all Federal and State laws, regulations and CMS instructions.

2.3 Payments to Providers. In processing claims for services rendered to FIDA Enrollees, Providers agree that:

and 2.3.1 No payment shall be made to a provider for a Provider Preventable Condition;

2.3.2 As a condition of payment, the provider shall comply with the reporting requirements as set forth in 42 C.F.R. § 447.26(d) and as may be specified by Health Plan.

## **APPENDIX E**

### **STAFF LEASING REQUIREMENTS**

This Appendix sets forth the requirements established by DOH and/or the State of New York (the "State"), in addition to those set forth elsewhere in the Agreement, applicable to the leasing of personnel to the managed care organizations. In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

1. The Health Plan has sole authority and control for leased staff to the extent related to their provision of services to the Health Plan under this Agreement.
2. The Health Plan may terminate leased staff's services, discipline staff as necessary in context of services performed for the Health Plan and determine means and methods by which staff provides services to the Health Plan without affecting staff's status as employee of Providers.
3. The Providers shall ensure that there is a clear and obvious delineation of the services provided to the Health Plan relative to other managed care organizations to which services are provided.
4. The title and FTE of leased staff are set forth on Exhibit A to this Appendix E.
5. None of the leased staff will serve as a member of the board of directors of the Health Plan.
6. The Providers are solely responsible for compensation and benefits for the leased staff.
7. The Providers are responsible for maintaining payroll records for leased employees.
8. The Health Plan and each Provider are separate legal entities and, for purposes of this Agreement, the Providers, on the one hand, and the Health Plan, on the other hand, are and will act at all times as independent contractors. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.
9. The board of directors of the Health Plan shall remain ultimately responsible for assuring legal compliance with regard to the Health Plan's operations and by implication the actions of the leased staff when acting on behalf of the Health Plan.
10. The Health Plan's obligations under this agreement shall be binding upon its successors and permitted assigns.
11. The Providers shall not retaliate against any leased employees for actions taken by the employee at the direction of, or on behalf of, the Health Plan. This clause 10 shall survive the termination of this Agreement.
12. In addition to the leasing of staff, the other management and administrative services to be provided to the Health Plan under this Agreement are elsewhere described in this Agreement.
13. This Agreement is subject to the prior approval of the DOH.
14. The board of directors of the Health Plan shall oversee the operations of the Providers in compliance with 10 NYCRR 98-1.11.
15. The terms of this Agreement are subject to the requirements of 10 NYCRR 98-1.11.



## Medicare Reinsurance Agreement

Draft – April 15, 2018

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**MEDICARE REINSURANCE AGREEMENT**

by and between

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

and

**HALLMARK LIFE INSURANCE COMPANY**

Dated as of

\_\_\_\_\_, 2018

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**SCHEDULE 3.01   TRANSFERRED INVESTMENT ASSETS**  
**SCHEDULE 4.01   NET SETTLEMENT STATEMENT**

## MEDICARE REINSURANCE AGREEMENT

This Medicare Reinsurance Agreement (this "**Agreement**"), dated as of \_\_\_\_\_, 2018, is entered into by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation ("**Ceding Company**"), [or a wholly owned subsidiary or affiliate of the Ceding Company,] and HALLMARK LIFE INSURANCE COMPANY, an Arizona life insurance company ("**Reinsurer**"). Ceding Company and Reinsurer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

### RECITALS

A. Ceding Company and Centene Corporation, a Delaware corporation ("**Buyer**") are parties to that certain Asset Purchase Agreement, dated as of September 12, 2017 (the "**Asset Purchase Agreement**").

B. Ceding Company is a party to (i) that certain contract with the Centers for Medicare & Medicaid Services ("**CMS**"), effective January 1, 2017, to provide covered services, including Medicare Part D prescription drug benefits, pursuant to the Medicare Advantage and Medicare Prescription Drug programs (the "**Medicare Advantage Business**") and pursuant to the Medicare Advantage D-SNP program (the "**D-SNP Business**," and together with the Medicare Advantage Business, the "**Medicare Business**"), (ii) that certain contract with the New York State Department of Health (the "**DOH**"), effective January 1, 2011, to provide covered services to members who are eligible for services under the Medicaid Advantage program (the "**Medicaid Advantage Business**"), (iii) that certain contract with the DOH, effective January 1, 2017, to provide covered services to members who are eligible for services under the Medicaid Advantage Plus program (the "**Medicaid Advantage Plus Business**") and (iv) that certain contract with CMS and the New York State Department of Health (collectively, each a "**Payor**" and together the "**Payors**"), effective January 1, 2015, to provide covered services under the Fully Integrated Dual Advantage program (the "**FIDA Business**," and together with the Medicare Business, the Medicaid Advantage Business and the Medicaid Advantage Plus Business, the "**Business Covered**").

C. As contemplated by the Asset Purchase Agreement, subject to the terms and conditions set forth in this Agreement, Ceding Company desires to cede to Reinsurer, and Reinsurer desires to accept and reinsure, on a one hundred percent (100%) coinsurance basis, the Reinsured Liabilities (as hereinafter defined).

D. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to obtain the requisite approvals required to effectuate the novation of the CMS Contract so that all Medicare Enrollees at the time of such novation shall be enrolled in a Medicare Advantage plan operated by Reinsurer or its Affiliate pursuant to the CMS Contract.

E. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to obtain the requisite approvals required to effectuate the assignment of the Medicaid Advantage Contracts so that all Medicaid Advantage Enrollees at the time of such assignment shall be enrolled in a Medicaid Advantage or Medicaid Advantage Plus plan operated by Reinsurer or its Affiliate pursuant to the Medicaid Advantage Contracts.

F. Concurrently herewith, Buyer, Reinsurer and the Ceding Company have entered into that certain Guarantee Agreement pursuant to which Buyer has guaranteed Reinsurer's payment and performance obligations hereunder.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

The following terms have the definitions set forth below or ascribed thereto in the section of this Agreement identified below:

**"Action"** means any claim, action, suit, corrective action plan, cause of action, lawsuit, arbitration, audit, written notice of violation, administrative proceeding, litigation, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, before or by any Governmental Authority.

**"Affiliate"** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms **"controlled by"** and **"under common control with"**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** has the meaning set forth in the Preamble.

**"Asset Purchase Agreement"** has the meaning set forth in the Recitals.

**"Assignment"** means an assignment of the Medicaid Advantage Contracts whereby Reinsurer or its Affiliate shall be substituted for Ceding Company as a party to the Medicaid Advantage Contracts.

**"Authorized Change"** has the meaning set forth in Section 2.02.

**"Business Associate Agreement"** means the Business Associate Agreement by and between Ceding Company and Reinsurer, dated as of the date hereof, attached hereto as Exhibit A.

**"Business Covered"** has the meaning sets forth in the Recitals.

***“Business Day”*** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by Law to be closed for business.

***“Buyer”*** has the meaning set forth in the Recitals.

***“Closing”*** has the meaning set forth in the Asset Purchase Agreement.

***“CMS”*** has the meaning set forth in the Recitals.

***“CMS Contract”*** means Contract Number H3328 by and between Ceding Company and CMS for the operation of Medicare Advantage (including the Medicare Advantage D-SNP) coordinated care plan(s) with and without Part D prescription drug coverage, effective January 1, 2017 through December 31, 2017, as such contract may be amended, renewed or replaced from time to time.

***“Code”*** means the Internal Revenue Code of 1986, as amended.

***“Contract”*** means any agreement, contract, lease, deed, mortgage, license, instrument, promissory note, evidence of Indebtedness (as defined in the Asset Purchase Agreement), security agreement, commitment, undertaking, indenture or joint venture, whether written or oral.

***“Court”*** means any court, arbitrator or tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

***“Covered Enrollees”*** means, as applicable, the FIDA Enrollees, Medicaid Advantage Enrollees and the Medicare Enrollees.

***“Covered Policies”*** means all evidences of coverage issued pursuant to the CMS Contract, the FIDA Contract or the Medicaid Advantage Contracts.

***“Effective Time”*** means 12:00:01 a.m., Eastern Time, on the first day of the month in which Closing occurs.

***“Encumbrance”*** means any encumbrance, charge, claim, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, hypothecation, easement, encroachment, right of way, right of first refusal, restriction, levy or charge of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

***“Excluded Liabilities”*** has the meaning set forth in the Asset Purchase Agreement; it being understood that any additional liabilities or obligations imposed under applicable Law after the date hereof on Persons engaging in Medicare Businesses or Medicaid Advantage Businesses generally shall not constitute “Excluded Liabilities” hereunder.

***“Expenses”*** means, with respect to any Person, all reasonable and documented out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, financial advisors and investment bankers of such Person and its Affiliates), incurred by such Person or on



its behalf in connection with or related to the authorization, preparation, negotiation, execution or performance of this Agreement and any transactions related hereto, any litigation with respect thereto, or in connection with other regulatory approvals, and all other matters related to transactions contemplated hereby.

***“Extra Contractual Obligations”*** means all Liabilities arising out of or relating to Covered Policies (other than Liabilities arising under the express terms and conditions of Covered Policies), whether to Covered Enrollees, Governmental Authorities or any other Person (including any liability for fines, overpayments, penalties, forfeitures, punitive, special, exemplary or other form of extra contractual damages, including all legal fees and expenses relating thereto), in each case, to the extent such Liabilities arise from any act, error or omission, (whether or not intentional, negligent, in bad faith or otherwise) relating to: (i) the design, marketing, sale, underwriting, production, issuance, rating, cancellation or administration of Covered Policies; (ii) the investigation, defense, trial, settlement or handling of claims, benefits or payments under Covered Policies; or (iii) the failure to pay, the delay in payment or errors in calculating or administering the payment of benefits or claims under or in connection with Covered Policies.

***“FIDA Contract”*** means Contract Number H1916 by and among Ceding Company, CMS and DOH for the operation of FIDA coordinated care plan(s), effective January 1, 2015, as such contract may be amended, renewed or replaced from time to time.

***“FIDA Enrollees”*** means Enrollees (as defined in the Asset Purchase Agreement) of any of Ceding Company’s coordinated care plans comprising the FIDA Business.

***“GAAP”*** means United States generally accepted accounting principles in effect as of the date hereof, consistently applied.

***“Governmental Authority”*** means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

***“Law”*** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any Order having the effect of law in any jurisdiction, and applicable common law.

***“Liabilities”*** means any debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, monetary or non-monetary, direct or indirect, determined or determinable or any other nature whether due or to become due, and regardless of when asserted or whether it is accrued or required to be accrued or disclosed pursuant to GAAP or statutory accounting principles, as applicable.

***“Management Agreement”*** means that certain Management Agreement, dated as of the date hereof, by and among Ceding Company, Salus Administrative Services, Inc., a New York corporation (***“Salus”***), Centene Management Company, LLC, a Wisconsin limited liability company (***“CMC”***), and Centene Company of New York, LLC, a New York limited liability company (***“CCNY”*** and, collectively with Salus and CMC, the ***“Administrator”***).

***“Medicaid Advantage Business”*** has the meaning set forth in the Recitals.

***“Medicaid Advantage Contracts”*** means (i) Contract Number C027206 by and between Ceding Company and DOH for the operation of Medicaid Advantage coordinated care plan(s), effective January 1, 2011, and (ii) Contract Number C031803 by and between Ceding Company and DOH for the operation of Medicaid Advantage Plus coordinated care plan(s), effective January 1, 2017, in each case, as such contracts may be amended, renewed or replaced from time to time.

***“Medicaid Advantage Enrollees”*** means the members enrolled under the Medicaid Advantage Contracts.

***“Medicaid Advantage Plus Business”*** has the meaning set forth in the Recitals.

***“Medicare Business”*** has the meaning set forth in the Recitals.

***“Medicare Enrollees”*** has the meaning set forth in the Asset Purchase Agreement.

***“Medicare Novation Date”*** means the effective date of the Novation, as determined by Reinsurer, subject to receipt of the Novation Authorization.<sup>1</sup>

***“Net Settlement Amount”*** has the meaning set forth in Section 4.01.

***“Net Settlement Statement”*** has the meaning set forth in Section 4.01.

***“Novation”*** means a novation of the CMS Contract whereby, pursuant to a Novation Agreement, Reinsurer or its Affiliate shall be substituted for Ceding Company as a party to the CMS Contract.

***“Novation Agreement”*** means a novation agreement substantially in the form attached as Exhibit B, subject to any modifications mutually agreed upon by Ceding Company and Reinsurer in accordance with applicable CMS requirements.

***“Novation Authorization”*** has the meaning set forth in Section 6.01.

***“Order”*** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority (in each such case, whether preliminary or final).

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<sup>1</sup> **Note to Draft:** Buyer expects to target a novation date of January 1, 2020, subject to regulatory approval.

***“Party”*** and ***“Parties”*** have the meanings set forth in the Preamble.

***“Payor”*** has the meaning set forth in the Recitals.

***“Payor Contracts”*** means the CMS Contract, the FIDA Contract and the Medicaid Advantage Contracts.

***“Permits”*** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

***“Person”*** means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

***“Premium”*** means all premiums, contributions and capitations (including all Covered Enrollee premiums and capitations paid by a Payor) relating to the Covered Policies.

***“Premium Adjustments”*** means any portion of the Premium ceded hereunder that is required to be refunded or otherwise paid by Ceding Company to a Covered Enrollee or Payor due to (i) changes in or cancellations of Covered Policies, (ii) contractual requirements under the terms of the Covered Policies or the applicable Payor Contract, (iii) applicable Law, including any such refunds or payments resulting from a finding in a risk adjustment data validation audit or other similar audit or examination conducted by CMS or another Governmental Authority (or its designee), or a self-audit performed by or on behalf of Ceding Company or (iv) the reconciliation of the Part D reinsurance and risk corridor provisions of the CMS Contract.

***“Provider”*** means any physician, hospital, pharmacy or other health care professional, independent practice association, facility, supplier, vendor or administrator that has contracted to provide or arrange for the provision to Covered Enrollees of health care services and supplies, including in respect of prescription drugs, that are required to be provided by Ceding Company pursuant to a Payor Contract.

***“Provider Contract”*** means any Contract between Ceding Company and any Provider to the extent related to the Business Covered.

***“Provider Payments”*** means all contractual payments made to Providers under the terms and conditions of the applicable Provider Contract for the provision of covered health care services or supplies to a Covered Enrollee under a Covered Policy.

***“Quarterly Accounting Period”*** means each calendar-quarterly period ending after the Effective Time and prior to the termination of this Agreement; *provided* that (i) the initial Quarterly Accounting Period shall commence at the Effective Time and (ii) the final Quarterly Accounting Period shall commence at the start of the first day of the applicable calendar month and end at the end of the Termination Date.

***“Quarterly Report”*** has the meaning set forth in Section 4.01.

***“Recoverables”*** has the meaning set forth in Section 3.02.

***“Reinsured Liabilities”*** means all Liabilities arising under or relating to the Covered Policies, the Payor Contracts or the Provider Contracts, in each case, that are payable by Ceding Company in respect of the Business Covered whether arising before or after the Effective Time (including all such Liabilities relating to claims, including those that are incurred but not reported or in the course of settlement both as of the Effective Time and as of the termination of this Agreement), collectively, “covered losses”, including, but not limited to, (i) all Provider Payments, (ii) to the extent permitted by applicable Law, all Extra Contractual Obligations, (iii) all commissions, fees or other compensation payable to producers, agents or brokers, (vi) all amounts paid to Covered Enrollees to reimburse for out-of-pocket expenses paid to providers that are not under contract with Ceding Company that are the financial responsibility of Ceding Company under a Covered Policy or Payor Contract, (vii) any federal, state or local tax imposed on Premiums or otherwise in respect of the Covered Policies (other than any Health Insurer Fee imposed under Section 9010 of the Patient Protection and Affordable Care Act), (viii) all Premium Adjustments, (ix) all liabilities with respect to any risk adjustment data or other similar data or information submitted to CMS, including as arising from any risk adjustment data validation audit or other similar examination under or with respect to the CMS Contract, and (x) any fees and other related costs incurred under the Management Agreement (excluding costs that are expressly the responsibility of the Ceding Company thereunder); *provided, however*, “Reinsured Liabilities” shall not include any Retained Liabilities.

***“Reinsurer”*** has the meaning set forth in the Preamble.

***“Representative”*** means, with respect to any Person, any and all directors, officers, employees, partners, members, consultants, financial advisors, counsel, accountants and other agents of such Person.

***“Retained Liabilities”*** means (i) any increased liability to Reinsurer to the extent arising from any action by Ceding Company with respect to the Covered Policies or the Reinsured Liabilities, Premiums, Premium Adjustments or Recoverables, in each case, taken on or after the date hereof without the consent of Reinsurer, (ii) any failure of Ceding Company to accept a reasonable recommendation of Reinsurer provided to Ceding Company under this Agreement or the Administrator provided to Ceding Company under the Management Agreement and (iii) without duplication of the foregoing, all Excluded Liabilities.

***“Seller”*** has the meaning set forth in the Asset Purchase Agreement.

***“Termination Date”*** has the meaning set forth in Section 9.01.

## **ARTICLE II**

### **COINSURANCE OF REINSURED LIABILITIES**

**Section 2.01 Coinsurance.** Subject to the terms and conditions of this Agreement, as of the Effective Time, Ceding Company hereby cedes on a coinsurance basis to Reinsurer, and Reinsurer hereby accepts and reinsures on a coinsurance basis, one hundred percent (100%) of the Reinsured Liabilities. The reinsurance effected under this Agreement shall be maintained in force, without reduction, unless such reinsurance is terminated as provided herein.

**Section 2.02 Changes to Covered Policies; Reinsured Liabilities.** Ceding Company shall not, on its own initiative, change the terms or conditions of any Covered Policy, Payor Contract or Provider Contract except for any such change (a) directed by Reinsurer or (b) required by applicable Law, including by CMS pursuant to the annual bid process (each, an *“Authorized Change”*). If Ceding Company’s liability with respect to Reinsured Liability is changed because of an Authorized Change, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from such Authorized Change, in each case, proportionately, and on the coinsurance basis set forth in **Section 2.01**. With respect to any Authorized Change required by applicable Law, Ceding Company shall, to the extent reasonably practicable, prior to the effectiveness of such Authorized Change, (x) promptly notify Reinsurer of such proposed change and (y) afford Reinsurer the opportunity to object to such change under applicable administrative or regulatory procedures. Ceding Company shall, at Reinsurer’s request, reasonably cooperate with Reinsurer in connection with any such objection made pursuant to the preceding sentence of this **Section 2.02**. Reinsurer shall not be liable for any increase in Reinsured Liability resulting from any change in the terms or conditions of a Covered Policy made by Ceding Company other than as arising from an Authorized Change.

**Section 2.03 Underwriting Adjustments to Covered Policies.** If Ceding Company’s liability under any Covered Policy is changed because of a correction made by or on behalf of Ceding Company of a prior misstatement of age, sex, amount or nature of coverage or any other material fact or attribute made by any Covered Enrollee or any Person authorized to act on behalf of such Covered Enrollee, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from the correction of such misstatement.

**Section 2.04 Reinstatements of Covered Policies.** Upon the reinstatement of any terminated Covered Policy in accordance with the terms and conditions of such Covered Policy, Reinsurer shall reinsure the Reinsured Liabilities arising out of or relating to such reinstated Covered Policy on the coinsurance basis set forth in **Section 2.01**.

**Section 2.05 Follow the Fortunes.** Subject to the terms and conditions of this Agreement, including the retention by Ceding Company of the Retained Liabilities, Reinsurer’s liability under this Agreement shall attach simultaneously with that of Ceding Company under the Covered Policies and the Reinsured Liabilities, and Reinsurer’s liability under this Agreement shall be subject in all respects to the same risks, terms, rates, conditions, interpretations, assessments, waivers and proportion of premiums paid to Ceding Company without any deductions for brokerage, and to the same modifications, alterations and cancellations, as the respective Covered Policies and Reinsured Liabilities to which liability under this Agreement attaches, the true intent of this Agreement being that Reinsurer shall, subject to the terms, conditions and limits of this Agreement, follow the fortunes of Ceding Company under the Covered Policies, and Reinsurer shall be bound, by all payments and settlements under the Covered Policies entered into by or on behalf of Ceding Company except as otherwise provided herein.

## ARTICLE III

### CONSIDERATION; ACCOUNTING

Section 3.01 **Consideration.** As consideration for the reinsurance provided hereunder and in partial consideration for the payment of the Purchase Price (as defined by in the Asset Purchase Agreement), Ceding Company shall, subject to the terms and conditions of the Asset Purchase Agreement, transfer to Reinsurer the investment assets listed on Schedule 3.01, which represents a portion of the Purchased Assets (as defined in the Asset Purchase Agreement) to be transferred to the Buyer or its Affiliates in accordance with the Asset Purchase Agreement.<sup>2</sup>

Section 3.02 **Ongoing Liabilities of Ceding Company.** As additional consideration for the reinsurance provided hereunder, Ceding Company hereby sells, assigns, transfers and delivers to Reinsurer, and Reinsurer accepts and acquires, free and clear of all Encumbrances, effective as of the Effective Time, all of Ceding Company's right, title and interest under the Covered Policies, the Payor Contracts and the Provider Contracts,<sup>3</sup> respectively, to receive all amounts payable to Ceding Company thereunder or in respect thereof, including the following amounts: (a) Premiums; (b) amounts payable pursuant to coordination of benefits, subrogation and other third party recoveries; (c) amounts due from Providers, including settlements under risk-sharing arrangements, overpayment adjustments and network discounts; and (d) any other recovery of Ceding Company, in each case, to the extent applicable to the Business Covered (collectively, the "*Recoverables*").

Section 3.03 **Ongoing Liabilities of Reinsurer.** From and after the Effective Time, Reinsurer shall indemnify Ceding Company in accordance with the settlement procedures set forth in Article IV, for all Reinsured Liabilities.

## ARTICLE IV

### SETTLEMENT; REPORTS

Section 4.01 **Quarterly Report.** Within fifteen (15) Business Days after the end of each Quarterly Accounting Period, the Administrator in accordance with the Management Agreement shall deliver to Reinsurer a report (each, a "*Quarterly Report*") in the form of, and containing for such Quarterly Accounting Period the information reflected in, Schedule 4.01, including a statement (the "*Net Settlement Statement*") which shall set forth calculations of the net amount due to Reinsurer from Ceding Company, or to Ceding Company from Reinsurer, as applicable, under Section 3.02 and 3.03 of this Agreement for the applicable Quarterly Accounting Period (the "*Net Settlement Amount*").

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<sup>2</sup> **Note to Draft:** The fair market value of the investment assets to be listed on Schedule 3.01 would equal the reserves associated with the Reinsured Liabilities, as well as capital equal to a 350% ACL RBC.

<sup>3</sup> **Note to Draft:** If the HMO Reinsurance Agreement with Zurich American Insurance Company is not novated to Reinsurer, Ceding Company will similarly assign all reinsurance recoverables to Reinsurer.

**Section 4.02 Settlement.** If the Net Settlement Amount as shown on the Net Settlement Statement is a positive amount, Ceding Company shall pay such amount to Reinsurer, and if the Net Settlement Amount as shown on the Net Settlement Statement is a negative amount, then Reinsurer shall pay cash in an amount equal to the absolute value of such negative amount to Ceding Company. Any payment, withdrawal, transfer or crediting of amounts required under this **Section 4.02** shall be made within three (3) Business Days following the date of the delivery of the applicable Quarterly Report.

**Section 4.03 Offset and Recoupment Rights.** Any debits or credits incurred from or after the Effective Time in favor of or against either Ceding Company or Reinsurer with respect to this Agreement between the Parties shall be deemed mutual debits or credits, as the case may be, and, to the extent permitted under applicable Law (including Section 7427(a) of the New York Insurance Law), shall be set off and recouped, and only the net balance shall be allowed or paid. This **Section 4.03** shall apply, to the fullest extent permitted by applicable Law (including Section 7427(a) of the New York Insurance Law), notwithstanding the initiation or commencement of a liquidation, insolvency, rehabilitation, conservation, supervision or similar proceeding by or against Ceding Company or Reinsurer.

## **ARTICLE V**

### **ADMINISTRATION**

**Section 5.01 Administration.** The parties acknowledge and agree that from and after the Closing, the Administrator shall, in accordance with the Management Agreement, be responsible for providing all administrative services in respect of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

**Section 5.02 Compensation.** Reinsurer's sole compensation for the reinsurance provided by Reinsurer to Ceding Company hereunder shall be the consideration described in **Section 3.01** and **Section 3.02** and Ceding Company shall not be liable to Reinsurer for any additional consideration in respect thereof.

**Section 5.03 Claims Litigation.** Reinsurer shall promptly notify Ceding Company in writing of any litigation that has been instituted against the Reinsurer with respect to any matter relating to a Covered Policy, a Payor Contract or a Provider Contract. Such notice shall include a summary of the nature of the pending litigation, the alleged actions or omissions giving rise to such litigation and copies of any files that Ceding Company may reasonably require in order to review such litigation.

**Section 5.04 Inspection.** At reasonable times and upon reasonable prior notice to Ceding Company, Reinsurer, at its sole cost and expense, shall have the right to inspect the books and records of the Ceding Company relating the Covered Policies, Payor Contracts and Provider Contracts, including as pertains to the payment of Reinsured Liabilities and the administration of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

## ARTICLE VI

### NOVATION AND ASSIGNMENT

#### Section 6.01 **Novation of the CMS Contract and Assignment of the Medicaid Advantage Agreements.**

(a) Subject to the terms and conditions set forth in this Agreement, each Party shall (i) use its reasonable best efforts to obtain, or cause to be obtained, authorizations from CMS and DOH to consummate the Novation and the Assignment (such approvals, the “*Novation Authorization*”) and (ii) reasonably cooperate with the other Party and its Affiliates in seeking to obtain such Novation Authorization.

(b) The Parties agree that, with respect to the Novation Authorization, Buyer and Seller shall mutually determine (i) the scheduling of, and strategic planning for, any meeting with or filing with CMS or DOH, (ii) subject to applicable Law, the process for receipt of the Novation Authorization and (iii) the resolution of any investigation or other inquiry of CMS or DOH. Without limiting the foregoing, (A) each Party shall disclose to the other Party in advance of any filing, submission or attendance all analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments and proposals made by or on behalf of either Party before CMS or DOH or the staff or regulators of CMS or DOH, in connection with receipt of the Novation Authorization, *provided, however*, that no Party shall be required to disclose to the other Party at any time (I) any interactions between Ceding Company or Reinsurer with Governmental Authorities in the ordinary course of business, (II) any disclosure which is not permitted by Law or (III) any disclosure containing confidential or proprietary information, any attorney-client privileged documents or communications or any appraisals, valuations, market studies, legal or financial opinions, or board presentations prepared, submitted or reviewed in connection with any application for the Novation Authorization, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments and proposals and (B) each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with CMS or DOH or the staff or regulators of CMS or DOH, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact, it being understood that CMS or DOH may require, or insist upon, only communicating with and through Ceding Company or Reinsurer, as applicable.

## ARTICLE VII

### OVERSIGHTS

Section 7.01 **Oversights.** Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either Party from any liability that would have attached had such delay, error or omission not occurred; *provided* that such error or omission is rectified as soon as practicable after discovery; and *provided, further*, that the Party making such error or omission, or responsible for such delay, shall be responsible for any additional liability that attaches as a result. Subject to the foregoing, if the failure of either Party



to comply with any provision of this Agreement is unintentional or the result of a misunderstanding or oversight, the parties shall cause such failure to be promptly rectified such that both parties shall be restored as closely as possible to the positions that they would have occupied had such error or oversight not occurred.

## **ARTICLE VIII**

### **INSOLVENCY**

#### **Section 8.01 Insolvency of Ceding Company.**

(a) In the event of the insolvency of Ceding Company, all reinsurance made, ceded, renewed or otherwise becoming effective under this Agreement shall be payable by Reinsurer on the basis of the liability of Ceding Company under the Reinsured Liabilities reinsured hereunder without diminution because of the insolvency of Ceding Company. In the event of insolvency and the appointment of a liquidator, receiver or statutory successor of Ceding Company, such payments by Reinsurer shall be made directly to Ceding Company or its liquidator, receiver or statutory successor.

(b) It is agreed and understood, however, that in the event of the insolvency of Ceding Company, the liquidator, receiver or statutory successor of Ceding Company shall give written notice of the pendency of a claim against Ceding Company in connection with a Reinsured Liability within a reasonable period of time after such claim is filed in the insolvency proceedings and that during the pendency of such claim Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to Ceding Company or its liquidator, receiver or statutory successor. It is further understood that the expense thus incurred by Reinsurer shall be chargeable, subject to court approval, against Ceding Company as part of the expenses of liquidation to the extent of a proportionate share of the benefit which may accrue to Ceding Company solely as a result of the defense undertaken by Reinsurer.

## **ARTICLE IX**

### **DURATION AND TERMINATION**

**Section 9.01 Duration.** This Agreement shall commence at the Effective Time and continue in force until the termination date (the "*Termination Date*"), which shall occur at such time as (a) Ceding Company no longer has any liability with respect to the Business Covered and all Covered Policies reinsured hereunder and Ceding Company has received payments which discharge such liability in full in accordance with the provisions of this Agreement, (b) this Agreement is terminated by the mutual written consent of Reinsurer and Ceding Company or (c) the Medicare Novation Date occurs. The Parties shall provide prior written notice to the New York Department of Financial Services of any termination of this Agreement.

**Section 9.02 Survival.** Notwithstanding the other provisions of this Article IX, (a) the terms and conditions of this Article IX and of Article X (and Article I to the extent relating to the foregoing) shall remain in full force and effect after the termination of this Agreement and (b)

any Covered Policies issued prior to the termination of this Agreement shall continue to be reinsured hereunder following the termination of this Agreement (except to the extent the related rights and liabilities thereunder have transferred to the Reinsurer or its Affiliate as part of the Novation and Assignment) and all provisions of this Agreement to the extent relating to the reinsurance of such Covered Policies, including all covered losses, shall remain in full force and effect after the termination of this Agreement.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01 Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses.

**Section 10.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 10.02):

If to Ceding Company:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

If to Reinsurer:

Hallmark Life Insurance Company  
7700 Forsyth Blvd., Suite 800  
St. Louis, Missouri 63105  
Attention: Keith Williamson

**Section 10.03 Interpretation.** For purposes of this Agreement, (a) the words "include," "includes" and "including", unless otherwise specified, shall be deemed to be followed by the words "without limitation" whether or not such words are actually stated; (b) the word "or" is not disjunctive; (c) the words "herein," "hereof," "hereby," "hereto", "hereunder" and derivative or similar words refer to this Agreement as a whole, including the Exhibits hereto; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held

to include the other gender as the context requires; (e) references to "dollars" or "\$" shall mean United States dollars; (f) references to "written" or "in writing" include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person's successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to "close of business" on any given day shall be deemed to refer to 5:00 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 10.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 Severability.** If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

**Section 10.08 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto, which shall be attached as an addendum to this Agreement. Any such addendum shall be subject to the prior review and approval of the New York Department of Financial Services.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv)

SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 10.10(c)**.

**Section 10.11 Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

**Section 10.12 Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Ceding Company:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

Reinsurer:

HALLMARK LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**  
*(See Attached)*

**EXHIBIT B**  
**FORM OF NOVATION AGREEMENT**  
*(See Attached)*



**SCHEDULE 3.01**

**TRANSFERRED INVESTMENT ASSETS**

[To come]

**SCHEDULE 4.01**  
**NET SETTLEMENT STATEMENT**  
*(See Attached)*

**QHP Reinsurance Agreement**

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**QHP REINSURANCE AGREEMENT**

by and between

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

and

**HALLMARK LIFE INSURANCE COMPANY**

Dated as of

\_\_\_\_\_, 2018

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**EXHIBITS:**

**EXHIBIT A   BUSINESS ASSOCIATE AGREEMENT**

**SCHEDULES:**

**SCHEDULE 3.01   TRANSFERRED INVESTMENT ASSETS**  
**SCHEDULE 4.01   NET SETTLEMENT STATEMENT**

## **QHP REINSURANCE AGREEMENT**

This QHP Reinsurance Agreement (this "**Agreement**"), dated as of \_\_\_\_\_, 2018, is entered into by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation ("**Ceding Company**"), [or a wholly owned subsidiary or affiliate of the Ceding Company,] and HALLMARK LIFE INSURANCE COMPANY, an Arizona life insurance company ("**Reinsurer**"). Ceding Company and Reinsurer are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

### **RECITALS**

A. Ceding Company and Centene Corporation, a Delaware corporation ("**Buyer**") are parties to that certain Asset Purchase Agreement, dated as of September 12, 2017 (the "**Asset Purchase Agreement**").

B. Ceding Company is a party to that certain contract with the New York State Department of Health (the "**DOH**") dated October 1, 2013, to provide health care services to members through the New York State Health Benefit Exchange under the Qualified Health Plan program (the "**QHP Business**") and has written certain other individual commercial market products (together with the QHP Business, the "**Business Covered**").

C. As contemplated by the Asset Purchase Agreement, subject to the terms and conditions set forth in this Agreement, Ceding Company desires to cede to Reinsurer, and Reinsurer desires to accept and reinsure, on a one hundred percent (100%) coinsurance basis, the Reinsured Liabilities (as hereinafter defined).

D. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to transition the Business Covered to Reinsurer following the Non-Renewal Date (as defined herein).

E. Concurrently herewith, Buyer, Reinsurer and the Ceding Company have entered into that certain Guarantee Agreement pursuant to which Buyer has guaranteed Reinsurer's payment and performance obligations hereunder.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

The following terms have the definitions set forth below or ascribed thereto in the section of this Agreement identified below:



**"Action"** means any claim, action, suit, corrective action plan, cause of action, lawsuit, arbitration, audit, written notice of violation, administrative proceeding, litigation, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, before or by any Governmental Authority.

**"Affiliate"** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "*controlled by*" and "*under common control with*") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** has the meaning set forth in the Preamble.

**"Asset Purchase Agreement"** has the meaning set forth in the Recitals.

**"Authorized Change"** has the meaning set forth in Section 2.02.

**"Business Associate Agreement"** means the Business Associate Agreement by and between Ceding Company and Reinsurer, dated as of the date hereof, attached hereto as **Exhibit A**.

**"Business Covered"** has the meaning sets forth in the Recitals.

**"Business Day"** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by Law to be closed for business.

**"Buyer"** has the meaning set forth in the Recitals.

**"Closing"** has the meaning set forth in the Asset Purchase Agreement.

**"CMS"** means the Centers for Medicare & Medicaid Services.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Contract"** means any agreement, contract, lease, deed, mortgage, license, instrument, promissory note, evidence of Indebtedness (as defined in the Asset Purchase Agreement), security agreement, commitment, undertaking, indenture or joint venture, whether written or oral.

**"Court"** means any court, arbitrator or tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

**"Covered Enrollees"** means Enrollees (as defined in the Asset Purchase Agreement) of any of Ceding Company's coordinated care plans comprising the Covered Business.

**"Covered Policies"** means all policies or Contracts of insurance issued by Ceding Company that are individual commercial market products, including pursuant to a Payor Contract.

**"Effective Time"** means 12:00:01 a.m., Eastern Time, on the first day of the month in which Closing occurs.

**"Encumbrance"** means any encumbrance, charge, claim, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, hypothecation, easement, encroachment, right of way, right of first refusal, restriction, levy or charge of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**"Excluded Liabilities"** has the meaning set forth in the Asset Purchase Agreement; it being understood that any additional liabilities or obligations imposed under applicable Law after the date hereof on Persons engaging in the Covered Business generally shall not constitute "Excluded Liabilities" hereunder.

**"Expenses"** means, with respect to any Person, all reasonable and documented out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, financial advisors and investment bankers of such Person and its Affiliates), incurred by such Person or on its behalf in connection with or related to the authorization, preparation, negotiation, execution or performance of this Agreement and any transactions related hereto, any litigation with respect thereto, or in connection with other regulatory approvals, and all other matters related to transactions contemplated hereby.

**"Extra Contractual Obligations"** means all Liabilities arising out of or relating to Covered Policies (other than Liabilities arising under the express terms and conditions of Covered Policies), whether to Covered Enrollees, Governmental Authorities or any other Person (including any liability for fines, overpayments, penalties, forfeitures, punitive, special, exemplary or other form of extra contractual damages, including all legal fees and expenses relating thereto), in each case, to the extent such Liabilities arise from any act, error or omission, (whether or not intentional, negligent, in bad faith or otherwise) relating to: (i) the design, marketing, sale, underwriting, production, issuance, rating, cancellation or administration of Covered Policies; (ii) the investigation, defense, trial, settlement or handling of claims, benefits or payments under Covered Policies; or (iii) the failure to pay, the delay in payment or errors in calculating or administering the payment of benefits or claims under or in connection with Covered Policies.

**"GAAP"** means United States generally accepted accounting principles in effect as of the date hereof, consistently applied.

**"Governmental Authority"** means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental

authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

**“Law”** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any Order having the effect of law in any jurisdiction, and applicable common law.

**“Liabilities”** means any debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, monetary or non-monetary, direct or indirect, determined or determinable or any other nature whether due or to become due, and regardless of when asserted or whether it is accrued or required to be accrued or disclosed pursuant to GAAP or statutory accounting principles, as applicable.

**“Management Agreement”** means that certain Management Agreement, dated as of the date hereof, by and among Ceding Company, Salus Administrative Services, Inc., a New York corporation (**“Salus”**), Centene Management Company, LLC, a Wisconsin limited liability company (**“CMC”**), and Centene Company of New York, LLC, a New York limited liability company (**“CCNY”** and, collectively with Salus and CMC, the **“Administrator”**).

**“Non-Renewal Date”** means [December 31, 2018].

**“Net Settlement Amount”** has the meaning set forth in Section 4.01.

**“Net Settlement Statement”** has the meaning set forth in Section 4.01.

**“Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority (in each such case, whether preliminary or final).

**“Party”** and **“Parties”** have the meanings set forth in the Preamble.

**“Payor”** means, as applicable, the DOH and CMS.

**“Payor Contract”** means Contract No. C029029 by and between the DOH and Ceding Company, dated October 1, 2013.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

**“Premium”** means all premiums, contributions and capitations (including all Covered Enrollee premiums and capitations paid by a Payor) relating to the Covered Policies.

***“Premium Adjustments”*** means any portion of the Premium ceded hereunder that is required to be refunded or otherwise paid by Ceding Company to a Covered Enrollee or Payor due to (i) changes in or cancellations of Covered Policies, (ii) contractual requirements under the terms of the Covered Policies or the applicable Payor Contract or (iii) applicable Law, including any such refunds or payments resulting from a finding in a risk adjustment data validation audit or other similar audit or examination conducted by CMS or another Governmental Authority (or its designee), or a self-audit performed by or on behalf of Ceding Company.

***“Provider”*** means any physician, hospital, pharmacy or other health care professional, independent practice association, facility, supplier, vendor or administrator that has contracted to provide or arrange for the provision to Covered Enrollees of health care services and supplies, including in respect of prescription drugs, that are required to be provided by Ceding Company pursuant to a Payor Contract.

***“Provider Contract”*** means any Contract between Ceding Company and any Provider to the extent related to the Business Covered.

***“Provider Payments”*** means all contractual payments made to Providers under the terms and conditions of the applicable Provider Contract for the provision of covered health care services or supplies to a Covered Enrollee under a Covered Policy.

***“QHP Business”*** has the meaning sets forth in the Recitals.

***“Quarterly Accounting Period”*** means each calendar-quarterly period ending after the Effective Time and prior to the termination of this Agreement; *provided* that (i) the initial Quarterly Accounting Period shall commence at the Effective Time and (ii) the final Quarterly Accounting Period shall commence at the start of the first day of the applicable calendar month and end at the end of the Termination Date.

***“Quarterly Report”*** has the meaning set forth in Section 4.01.

***“Recoverables”*** has the meaning set forth in Section 3.02.

***“Reinsured Liabilities”*** means all Liabilities arising under or relating to the Covered Policies, the Payor Contracts or the Provider Contracts, in each case, that are payable by Ceding Company in respect of the Business Covered whether arising before or after the Effective Time (including all such Liabilities relating to claims, including those that are incurred but not reported or in the course of settlement both as of the Effective Time and as of the termination of this Agreement), collectively, “covered losses”, including, but not limited to, (i) all Provider Payments, (ii) to the extent permitted by applicable Law, all Extra Contractual Obligations, (iii) all commissions, fees or other compensation payable to producers, agents or brokers, (vi) all amounts paid to Covered Enrollees to reimburse for out-of-pocket expenses paid to providers that are not under contract with Ceding Company that are the financial responsibility of Ceding Company under a Covered Policy or Payor Contract, (vii) any federal, state or local tax imposed on Premiums or otherwise in respect of the Covered Policies (other than any Health Insurer Fee imposed under Section 9010 of the Patient Protection and Affordable Care Act), (viii) all Premium Adjustments, and (ix) any fees and other related costs incurred under the Management

Agreement (excluding costs that are expressly the responsibility of the Ceding Company thereunder); *provided, however*, "Reinsured Liabilities" shall not include any Retained Liabilities.

**"Reinsurer"** has the meaning set forth in the Preamble.

**"Renewal Rights"** has the meaning set forth in Section 6.01(a).

**"Representative"** means, with respect to any Person, any and all directors, officers, employees, partners, members, consultants, financial advisors, counsel, accountants and other agents of such Person.

**"Retained Liabilities"** means (i) any increased liability to Reinsurer to the extent arising from any action by Ceding Company with respect to the Covered Policies or the Reinsured Liabilities, Premiums, Premium Adjustments or Recoverables, in each case, taken on or after the date hereof without the consent of Reinsurer, (ii) any failure of Ceding Company to accept a reasonable recommendation of Reinsurer provided to Ceding Company under this Agreement or the Administrator provided to Ceding Company under the Management Agreement and (iii) without duplication of the foregoing, all Excluded Liabilities.

**"Termination Date"** has the meaning set forth in Section 9.01.

## ARTICLE II

### COINSURANCE OF REINSURED LIABILITIES

**Section 2.01 Coinsurance.** Subject to the terms and conditions of this Agreement, as of the Effective Time, Ceding Company hereby cedes on a coinsurance basis to Reinsurer, and Reinsurer hereby accepts and reinsures on a coinsurance basis, one hundred percent (100%) of the Reinsured Liabilities. The reinsurance effected under this Agreement shall be maintained in force, without reduction, unless such reinsurance is terminated as provided herein.

**Section 2.02 Changes to Covered Policies; Reinsured Liabilities.** Ceding Company shall not, on its own initiative, change the terms or conditions of any Covered Policy, Payor Contract or Provider Contract except for any such change (a) directed by Reinsurer or (b) required by applicable Law (each, an **"Authorized Change"**). If Ceding Company's liability with respect to Reinsured Liability is changed because of an Authorized Change, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from such Authorized Change, in each case, proportionately, and on the coinsurance basis set forth in Section 2.01. With respect to any Authorized Change required by applicable Law, Ceding Company shall, to the extent reasonably practicable, prior to the effectiveness of such Authorized Change, (x) promptly notify Reinsurer of such proposed change and (y) afford Reinsurer the opportunity to object to such change under applicable administrative or regulatory procedures. Ceding Company shall, at Reinsurer's request, reasonably cooperate with Reinsurer in connection with any such objection made pursuant to the preceding sentence of this Section 2.02. Reinsurer shall not be liable for any increase in Reinsured Liability resulting from any change in the terms or conditions of a Covered Policy made by Ceding Company other than as arising from an Authorized Change.

**Section 2.03 Underwriting Adjustments to Covered Policies.** If Ceding Company's liability under any Covered Policy is changed because of a correction made by or on behalf of Ceding Company of a prior misstatement of age, sex, amount or nature of coverage or any other material fact or attribute made by any Covered Enrollee or any Person authorized to act on behalf of such Covered Enrollee, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from the correction of such misstatement.

**Section 2.04 Reinstatements of Covered Policies.** Upon the reinstatement of any terminated Covered Policy in accordance with the terms and conditions of such Covered Policy, Reinsurer shall reinsure the Reinsured Liabilities arising out of or relating to such reinstated Covered Policy on the coinsurance basis set forth in **Section 2.01**.

**Section 2.05 Follow the Fortunes.** Subject to the terms and conditions of this Agreement, including the retention by Ceding Company of the Retained Liabilities, Reinsurer's liability under this Agreement shall attach simultaneously with that of Ceding Company under the Covered Policies and the Reinsured Liabilities, and Reinsurer's liability under this Agreement shall be subject in all respects to the same risks, terms, rates, conditions, interpretations, assessments, waivers and proportion of premiums paid to Ceding Company without any deductions for brokerage, and to the same modifications, alterations and cancellations, as the respective Covered Policies and Reinsured Liabilities to which liability under this Agreement attaches, the true intent of this Agreement being that Reinsurer shall, subject to the terms, conditions and limits of this Agreement, follow the fortunes of Ceding Company under the Covered Policies, and Reinsurer shall be bound, by all payments and settlements under the Covered Policies entered into by or on behalf of Ceding Company except as otherwise provided herein.

### **ARTICLE III**

#### **CONSIDERATION; ACCOUNTING**

**Section 3.01 Consideration.** As consideration for the reinsurance provided hereunder and in partial consideration for the payment of the Purchase Price (as defined by in the Asset Purchase Agreement), Ceding Company shall, subject to the terms and conditions of the Asset Purchase Agreement, transfer to Reinsurer the investment assets listed on Schedule 3.01, which represents a portion of the Purchased Assets (as defined in the Asset Purchase Agreement) to be transferred to the Buyer or its Affiliates in accordance with the Asset Purchase Agreement.<sup>1</sup>

**Section 3.02 Ongoing Liabilities of Ceding Company.** As additional consideration for the reinsurance provided hereunder, Ceding Company hereby sells, assigns, transfers and delivers to Reinsurer, and Reinsurer accepts and acquires, free and clear of all Encumbrances, effective as of the Effective Time, all of Ceding Company's right, title and interest under the

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<sup>1</sup> **Note to Draft:** The fair market value of the investment assets to be listed on Schedule 3.01 would equal the reserves associated with the Reinsured Liabilities, as well as capital equal to a 350% ACL RBC.

Covered Policies, the Payor Contracts and the Provider Contracts,<sup>2</sup> respectively, to receive all amounts payable to Ceding Company thereunder or in respect thereof, including the following amounts: (a) Premiums; (b) amounts payable pursuant to coordination of benefits, subrogation and other third party recoveries; (c) amounts due from Providers, including settlements under risk-sharing arrangements, overpayment adjustments and network discounts; and (d) any other recovery of Ceding Company, in each case, to the extent applicable to the Business Covered (collectively, the "*Recoverables*").

**Section 3.03 Ongoing Liabilities of Reinsurer.** From and after the Effective Time, Reinsurer shall indemnify Ceding Company in accordance with the settlement procedures set forth in **Article IV**, for all Reinsured Liabilities.

## **ARTICLE IV**

### **SETTLEMENT; REPORTS**

**Section 4.01 Reinsurer Quarterly Report.** Within fifteen (15) Business Days after the end of each Quarterly Accounting Period, the Administrator in accordance with the Management Agreement shall deliver to Reinsurer a report (each, a "*Quarterly Report*") in the form of, and containing for such Quarterly Accounting Period the information reflected in, **Schedule 4.01**, including a statement (the "*Net Settlement Statement*") which shall set forth calculations of the net amount due to Reinsurer from Ceding Company, or to Ceding Company from Reinsurer, as applicable, under **Section 3.02** and **3.03** of this Agreement for the applicable Quarterly Accounting Period (the "*Net Settlement Amount*").

**Section 4.02 Settlement.** If the Net Settlement Amount as shown on the Net Settlement Statement is a positive amount, Ceding Company shall pay such amount to Reinsurer, and if the Net Settlement Amount as shown on the Net Settlement Statement is a negative amount, then Reinsurer shall pay cash in an amount equal to the absolute value of such negative amount to Ceding Company. Any payment, withdrawal, transfer or crediting of amounts required under this **Section 4.02** shall be made within three (3) Business Days following the date of the delivery of the applicable Quarterly Report.

**Section 4.03 Offset and Recoupment Rights.** Any debits or credits incurred from or after the Effective Time in favor of or against either Ceding Company or Reinsurer with respect to this Agreement between the Parties shall be deemed mutual debits or credits, as the case may be, and, to the extent permitted under applicable Law (including Section 7427(a) of the New York Insurance Law), shall be set off and recouped, and only the net balance shall be allowed or paid. This **Section 4.03** shall apply, to the fullest extent permitted by applicable Law (including Section 7427(a) of the New York Insurance Law), notwithstanding the initiation or commencement of a liquidation, insolvency, rehabilitation, conservation, supervision or similar proceeding by or against Ceding Company or Reinsurer.

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<sup>2</sup> **Note to Draft:** If the HMO Reinsurance Agreement with Zurich American Insurance Company is not novated to Reinsurer, Ceding Company will similarly assign all reinsurance recoverables to Reinsurer.

## ARTICLE V

### ADMINISTRATION

Section 5.01 **Administration.** The parties acknowledge and agree that from and after the Closing, the Administrator shall, in accordance with the Management Agreement, be responsible for providing all administrative services in respect of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

Section 5.02 **Compensation.** Reinsurer's sole compensation for the reinsurance provided by Reinsurer to Ceding Company hereunder shall be the consideration described in Section 3.01 and Section 3.02 and Ceding Company shall not be liable to Reinsurer for any additional consideration in respect thereof.

Section 5.03 **Claims Litigation.** Reinsurer shall promptly notify Ceding Company in writing of any litigation that has been instituted against the Reinsurer with respect to any matter relating to a Covered Policy, a Payor Contract or a Provider Contract. Such notice shall include a summary of the nature of the pending litigation, the alleged actions or omissions giving rise to such litigation and copies of any files that Ceding Company may reasonably require in order to review such litigation.

Section 5.04 **Inspection.** At reasonable times and upon reasonable prior notice to Ceding Company, Reinsurer, at its sole cost and expense, shall have the right to inspect the books and records of the Ceding Company relating the Covered Policies, Payor Contracts and Provider Contracts, including as pertains to the payment of Reinsured Liabilities and the administration of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

## ARTICLE VI

### RENEWAL RIGHTS

#### Section 6.01 **Renewal Rights.**

(a) Effective as of the Closing, Ceding Company shall sell, transfer, convey and deliver to Reinsurer, and Reinsurer shall purchase from Ceding Company, the Renewal Rights. As used in this Agreement, "**Renewal Rights**" means the rights of Ceding Company to (i) renew or replace all Covered Policies issued, written or renewed by or otherwise in the name of Ceding Company and (ii) enter into, amend, terminate, renew or replace any Payor Contract or Provider Contract in respect of the same, including, (A) the right to solicit such renewals of, or replacement coverages for, the Covered Policies from applicable Enrollees and (B) the right to negotiate and contract with Payors and Providers of the Business Covered, including the development of a transition plan with the DOH.

(b) Subject to the requirements of Applicable Law, Ceding Company shall take all reasonable actions and execute any additional documents, instruments or conveyances of any kind which may be reasonably necessary to carry out any of the provisions of this Section 6.01, so as to effect fully the transfer of the Renewal Rights from Ceding Company to Reinsurer,



including by (upon Reinsurer's reasonable request), subject to Applicable Law, reasonably cooperating with Reinsurer to assist Reinsurer and its Affiliates in (i) soliciting policyholders in respect of the issuance, renewal or replacement of Covered Policies and (ii) negotiating and contracting with Payors and Providers in connection with the entrance into, amendment, termination, renewal or replacement of Payor Contracts and Provider Contracts, respectively, including the development of a transition plan with the DOH. Without limiting the foregoing, Ceding Company shall also, and shall cause its applicable Affiliates to, furnish to Reinsurer any additional information as may be reasonably requested by Reinsurer in furtherance of Reinsurer's exercise of the Renewal Rights.

## **ARTICLE VII**

### **OVERSIGHTS**

Section 7.01 **Oversights.** Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either Party from any liability that would have attached had such delay, error or omission not occurred; *provided* that such error or omission is rectified as soon as practicable after discovery; and *provided, further*, that the Party making such error or omission, or responsible for such delay, shall be responsible for any additional liability that attaches as a result. Subject to the foregoing, if the failure of either Party to comply with any provision of this Agreement is unintentional or the result of a misunderstanding or oversight, the parties shall cause such failure to be promptly rectified such that both parties shall be restored as closely as possible to the positions that they would have occupied had such error or oversight not occurred.

## **ARTICLE VIII**

### **INSOLVENCY**

#### **Section 8.01 Insolvency of Ceding Company.**

(a) In the event of the insolvency of Ceding Company, all reinsurance made, ceded, renewed or otherwise becoming effective under this Agreement shall be payable by Reinsurer on the basis of the liability of Ceding Company under the Reinsured Liabilities reinsured hereunder without diminution because of the insolvency of Ceding Company. In the event of insolvency and the appointment of a liquidator, receiver or statutory successor of Ceding Company, such payments by Reinsurer shall be made directly to Ceding Company or its liquidator, receiver or statutory successor.

(b) It is agreed and understood, however, that in the event of the insolvency of Ceding Company, the liquidator, receiver or statutory successor of Ceding Company shall give written notice of the pendency of a claim against Ceding Company in connection with a Reinsured Liability within a reasonable period of time after such claim is filed in the insolvency proceedings and that during the pendency of such claim Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to Ceding Company or its liquidator, receiver or statutory successor. It is further understood that the expense thus incurred by Reinsurer shall be

chargeable, subject to court approval, against Ceding Company as part of the expenses of liquidation to the extent of a proportionate share of the benefit which may accrue to Ceding Company solely as a result of the defense undertaken by Reinsurer.

## **ARTICLE IX**

### **DURATION AND TERMINATION**

**Section 9.01 Duration.** This Agreement shall commence at the Effective Time and continue in force until the termination date (the "*Termination Date*"), which shall occur at such time as (a) Ceding Company no longer has any liability with respect to the Business Covered and all Covered Policies reinsured hereunder and Ceding Company has received payments which discharge such liability in full in accordance with the provisions of this Agreement or (b) this Agreement is terminated by the mutual written consent of Reinsurer and Ceding Company. The Parties shall provide prior written notice to the New York Department of Financial Services of any termination of this Agreement.

**Section 9.02 Survival.** Notwithstanding the other provisions of this **Article IX**, (a) the terms and conditions of this **Article IX** and of **Article X** (and **Article I** to the extent relating to the foregoing) shall remain in full force and effect after the termination of this Agreement and (b) any Covered Policies issued prior to the termination of this Agreement shall continue to be reinsured hereunder following the termination of this Agreement and all provisions of this Agreement to the extent relating to the reinsurance of such Covered Policies, including all covered losses, shall remain in full force and effect after the termination of this Agreement.

## **ARTICLE X**

### **MISCELLANEOUS**

**Section 10.01 Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses.

**Section 10.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 10.02**):

If to Ceding Company:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

If to Reinsurer:

Hallmark Life Insurance Company  
7700 Forsyth Blvd., Suite 800  
St. Louis, Missouri 63105  
Attention: Keith Williamson

**Section 10.03 Interpretation.** For purposes of this Agreement, (a) the words "include," "includes" and "including", unless otherwise specified, shall be deemed to be followed by the words "without limitation" whether or not such words are actually stated; (b) the word "or" is not disjunctive; (c) the words "herein," "hereof," "hereby," "hereto", "hereunder" and derivative or similar words refer to this Agreement as a whole, including the Exhibits hereto; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) references to "dollars" or "\$" shall mean United States dollars; (f) references to "written" or "in writing" include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person's successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to "close of business" on any given day shall be deemed to refer to 5:00 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 10.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 Severability.** If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any

Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

**Section 10.08 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto, which shall be attached as an addendum to this Agreement. Any such addendum shall be subject to the prior review and approval of the New York Department of Financial Services.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER

DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

**Section 10.11 Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

**Section 10.12 Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Ceding Company:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

Reinsurer:

HALLMARK LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**  
*(See Attached)*

**SCHEDULE 3.01**  
**TRANSFERRED INVESTMENT ASSETS**  
**[To come]**



**SCHEDULE 4.01**

**NET SETTLEMENT STATEMENT**

*(See Attached)*

## **Applicable Purposes**

## **EXHIBIT S**

### **Proposed Charitable Purposes**

The Foundation's Certificate of Incorporation shall include the following purposes:

(1) improving the health and wellness of the poor, disabled, disadvantaged, elderly and underserved people of New York State and their families by engaging in, promoting, sponsoring and supporting activities, programs and initiatives that (i) enhance access to affordable quality healthcare and healthcare related services (including social determinants of health as recognized by the New York State Department of Health as being an important component of Medicaid and healthcare reform ("Social Determinants of Health")) and (ii) addressing the unmet healthcare and healthcare related needs (including Social Determinants of Health) of communities across New York State, in the case of each of clauses (i) and (ii) consistent with the Catholic values that have historically guided the Corporation,

(2) making grants and contributions to, and otherwise supporting, sponsoring and benefitting, such other not-for-profit organizations as the Corporation shall determine in furtherance of the foregoing purposes; and

(3) subject to the limitations set forth in this Certificate of Incorporation, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL that are incidental to, and/or in furtherance of, accomplishing the foregoing purposes.

# EXHIBIT 3

Certificate of Incorporation (and all amendments)

980507000 854

RESTATED CERTIFICATE OF INCORPORATION

OF

NEW YORK STATE CATHOLIC HEALTH PLAN, INC.

Under Section 805 of the Not-For-Profit Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAY - 12 1998

TAXES

BY: *PR*

SEAN NATARO  
95-25 QUEENS Boulevard  
Rego Park, NY 11374

QUEENS

7

980507000 852

F 980507000 824

RESTATED CERTIFICATE OF INCORPORATION

OF

NEW YORK STATE CATHOLIC HEALTH PLAN, INC.

Under Section 805 of the Not-For-Profit Corporation Law

Pursuant to the provisions of Section 805 of the New York State Not-For-Profit Corporation Law, the undersigned, being respectively the Chairman of the Board and the Secretary of NEW YORK STATE CATHOLIC HEALTH PLAN, INC., (hereinafter called the "Corporation") do hereby certify as follows:

FIRST: The present name of the Corporation is NEW YORK STATE CATHOLIC HEALTH PLAN, INC. The Corporation was originally incorporated under the name "Catholic Health Services Plan of Brooklyn and Queens, Inc."

SECOND: The Corporation was incorporated on May 13, 1993 pursuant to the New York State Not-For-Profit Corporation Law. Certificates of Amendment were filed with the Department of State on April 2, 1996, July 31, 1996 and June 6, 1997.

THIRD: The Certificate of Incorporation, as amended heretofore, is further amended to effect the following amendment authorized by the Not-For-Profit Corporation Law:

A) Section 5(b)(iii) shall be amended, as follows, to reflect the Corporation's exempt status as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended:

(iii). The Corporation shall not exercise any power of authority, nor shall it engage in any activity that would prevent the Corporation from qualifying (and continuing to qualify as) an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

FOURTH: The text of the Certificate of Incorporation is hereby restated, as amended, to read as herein set forth in full:

1. The name of the Corporation is New York State Catholic Health Plan, Inc. (hereinafter referred to as the "Corporation").

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 402 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of said Not-For-Profit Corporation Law:

3. PURPOSES: The purposes for which the corporation is formed are:

(a) To perform studies, feasibility surveys and planing, as authorized pursuant to Section 4403-a of the Public Health Law of the State of New York, with respect to the development and formation of a special purpose comprehensive health services plan; in conjunction therewith, to accumulate, compile, analyze, and distribute statistics and such other data as will promote the health, safety, and welfare of the general public; and

(b) Upon obtaining a Special Purpose Certificate of Authority from the Commissioner of Health, to provide or arrange for the provision of comprehensive health services, as defined in Article 44 of the Public Health Law, on a prepaid capitated basis, to an enrolled population substantially comprised of persons eligible to receive benefits under Title XIX of the Federal Social Security Act and other public programs including but limited to Workers Compensation, to wit:

(i) To own, operate and maintain a special purpose comprehensive health services plan or plans and all services, required or appropriate for the provision of comprehensive health services, as defined in Section 4401(3) of the Public Health Law, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program, and

(ii) To enter into contracts with individuals, partnerships, associations, not-for-profit corporations, both public and private, and appropriate state and federal agencies,

for the purpose of providing health services as may be necessary to carry out the foregoing purposes; provided, however, that nothing herein contained shall authorize the Corporation to establish, operate, conduct, lease, or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a hospice as provided for in Articles 28, 36 and 40 respectively, of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital; and

- (e) To have and exercise all powers necessary and convenient to effect any and all of the foregoing purposes for which the Corporation is found, together with all the powers now or hereafter granted to it by the State of New York.

4. The Corporation shall have all power enumerated in Section 202 of the Not-For-Corporation Law. The Corporation is authorized, with the approval of its Members in each instance, and upon resolution of the Board of Directors as provided by the By-Laws of the Corporation, to accept subventions on terms and conditions not inconsistent with the Not-For-Profit Corporation Law and to issue certificates therefor.

5. (a) Under no circumstances shall the Corporation have the aforesaid powers to effectuate contracts for or otherwise operate a comprehensive health services plan unless the Corporation has first received a certificate of authority therefor pursuant to the Section 4403-a of the New York Public Health Law.

(b) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the following provisions shall apply:

- (1) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, except as authorized by the Internal Revenue Code of 1986, as amended, and the Corporation shall not participate in, or intervene in (including



the publishing or distribution of statements) any political campaign on behalf of any candidate for public office;

(ii) The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsections (b) through (v) of Section 404 of the Not-For-Profit Corporation Law of the State of New York without having the approvals or consents required by such subsections;

(iii) The Corporation shall not exercise any power of authority, nor shall it engage in any activity that would prevent the Corporation from qualifying (and continuing to qualify as) an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

6. The Corporation shall be a membership corporation. The Members shall have the authority, as further set forth in the Bylaws, to determine the approval or disapproval of any of the following:

- a. The amendment of the Corporation's Bylaws or the adoption of revised or additional Bylaws;
- b. The amendment of the Corporation's Certificate of Incorporation;
- c. The purchase, sale, mortgage, pledge or lease of real property of the Corporation, or the sale of all, or substantially all, of its assets;
- d. The dissolution, merger or consolidation of the Corporation.

7. The number of Directors of the Corporation shall be determined in accordance with the Bylaws, but shall be not fewer than three persons.

8. The Corporation has been organized exclusively to serve a public purpose. All income and earnings of the Corporation shall be used exclusively for its corporate purposes.

9. No part of the net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

10. The Corporation shall be managed by its Board of Directors except to the extent that this certificate expressly states that matters of governance are to be exercised by its Member in accordance with this certificate and with its Bylaws.

11. The office of the Corporation shall be located in the County of Queens, State of New York.

12. The duration of the Corporation shall be perpetual.

13. The Secretary of State is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is:

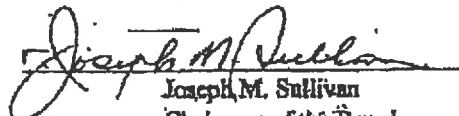
Chairman of the Board  
New York State Catholic Health Plan, Inc.  
d/b/a Fidelis Care New York  
95-25 Queens Boulevard  
Rego Park, New York 11374

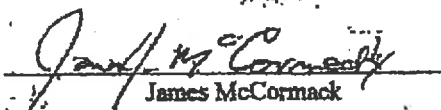
14. In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts and provisions for the payment of any other just claims and demands against it shall be conveyed or distributed only to an organization or organizations created and operated for non profit purposes similar to those of the Corporation, as provided by the Bylaws of the Corporation and subject to an order of a justice of the Supreme Court of the State of New York; provided, however, that any organization receiving such assets shall be exempt from Federal income tax under the Internal Revenue Code of 1986.

as amended.

FIFTH: This restated Certificate of Incorporation of the New York State Catholic Health Plan, Inc., was authorized by the vote of a majority of all the members of the Corporation entitled to vote thereon at a meeting thereof.

IN WITNESS THEREOF, the undersigned have made and subscribed this certificate and hereby affirm it to be true under the penalties of perjury this 27th day of April, 1998.

  
Joseph M. Sullivan  
Chairman of the Board

  
James McCormack  
Secretary

1930513000547

CERTIFICATE OF INCORPORATION

OF

CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC.

Under Section 402 of the  
Not-For-Profit Corporation Law

I, the undersigned incorporator, being a natural person over the age of eighteen years of age, for the purpose of forming a Not-for-Profit corporation pursuant to Section 402 of the Not-For-Profit Corporation Law, do hereby certify:

1. The name of the Corporation is CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC. (hereinafter referred to as the "Corporation").

2. The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of said Not-For-Profit Corporation Law.

3. PURPOSES. The purposes for which the Corporation is formed are:

(a) To perform studies, feasibility surveys and planning, as authorized pursuant to Section 4403-a of the Public Health Law of the State of New York, with respect to the development and formation of a special purpose comprehensive health services plan; in conjunction herewith, to accumulate, compile, analyze, and distribute statistics and such other data as will promote the health, safety, and welfare of the general public; and

(b) Upon obtaining a Special Purpose Certificate of Authority from the Commissioner of Health, to provide or arrange for the provision of comprehensive health services, as defined in Article 44 of the Public Health Law, on a prepaid capitated basis, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program, to wit:

(i) To own, operate and maintain a special purpose comprehensive health services plan or plans and all services required or appropriate for the provision of comprehensive health services, as defined in Section 4401(3) of the Public Health Law, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program, and

(ii) To enter into contracts with individuals, partnerships, association, not-for-profit corporations, both public and private, and appropriate state and federal agencies, for the purpose of providing health services as may be necessary to carry out the foregoing purposes, provided, however, that nothing herein contained shall authorize the Corporation to establish, operate, conduct, lease, or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a hospice as provided for in Articles 28, 36 and 40 respectively, of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital; and

(c) To have and exercise all powers necessary and convenient to effect any and all of the foregoing purposes for which the Corporation is found, together with all the powers now or hereafter granted to it by the State of New York.

4. The names and residence addresses of the initial directors are as follows:

Names	Addresses
Alvin J. Conway	145 Altamont Avenue Tarrytown, New York 10591
James Foy	90-12 68th Avenue Forest Hills, New York 11375
Mark L. Lane	8 Country Ridge Drive No. Carmel, New York 10512
Daniel J. Rinaldi	313 West Shore Drive Carmel, New York 10512

5. (a) Under no circumstances shall the Corporation have the aforesaid powers to effectuate contracts for or otherwise operate a comprehensive health services plan unless the Corporation has first received a certificate of authority therefor pursuant to the Section 4403-a of the New York Public Health Law.

(b) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the following provisions shall apply:

(i) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, except as authorized by the Internal Revenue Code of 1986, as amended, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office;

(ii) The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsections (b) through (v) of Section 404 of the Not-For-Profit Corporation Law of the State of New York without having the approvals or consents required by such subsections;

(iii) The Corporation shall not exercise any power or authority, nor shall it engage in any activity that would prevent the Corporation from qualifying (and continuing to qualify as) an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

6. The Corporation shall be a membership corporation. The sole member of the Corporation shall be the Catholic Medical Center of Brooklyn and Queens, Inc. (the "Member"), which shall be the only member of the Corporation. The Member shall have the authority, as further set forth in the Bylaws, to determine the approval or disapproval of any of the following:

- a. The amendment of the Corporation's Bylaws or the adoption of revised or additional Bylaws;
- b. The amendment of the Corporation's Certificate of Incorporation;
- c. Any material change in the general character of the operation of the Corporation;
- d. The purchase, sale, mortgage, pledge or lease of real property of the Corporation, or the sale of all, or substantially all, of its assets;
- e. The dissolution, merger or consolidation of the Corporation.

7. The number of directors of the Corporation shall be determined in accordance with the Bylaws, but shall be not fewer than three persons.

8. The Corporation has been organized exclusively to serve a public purpose. All income and earnings of the Corporation shall be used exclusively for its corporate purposes.

9. No part of the net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

10. The Corporation shall be managed by its Board of Directors except to the extent that this Certificate expressly states that matters of governance are to be exercised by its Member in accordance with this Certificate and with its Bylaws.

11. The office of the Corporation shall be located in the County of Queens, State of New York.

12. The duration of the Corporation shall be perpetual.

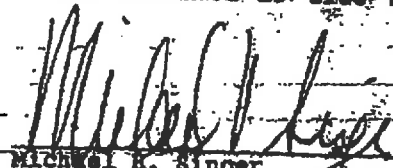
13. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is:

Office of the President  
Catholic Medical Center of Brooklyn  
and Queens, Inc.  
88-25 153rd Street  
Jamaica, Queens 11432

14. In the event of the dissolution of the corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts and provisions for the payment of any other just claims and demands against it shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation, as approved by the Member and subject to an order of a Justice of the Supreme Court of the State of New York; provided, however, that any organization receiving such assets shall be exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

6

IN WITNESS WHEREOF, I have made, subscribed and acknowledged  
this Certificate of Incorporation, this 22nd day of March, 1993,  
and the statements contained herein are affirmed as true under  
penalties of perjury.



Michael R. Singer  
401 Columbus Avenue  
Valhalla, New York 10595





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

## PUBLIC HEALTH COUNCIL

March 31, 1993

Michael H. Singer, Esq.  
401 Columbus Avenue  
Valhalla, New York 10595

Re: Proposed Certificate of Incorporation:  
Catholic Health Services Plan of Brooklyn  
and Queens, Inc.

Dear Mr. Singer:

The proposed certificate of incorporation of the above referenced corporation does not require the formal approval of the Public Health Council, since the corporation does not propose to operate a hospital or solicit funds from the public for the establishment or operation thereof, and for the further reason that paragraph "3.(b)(11)" of the proposed certificate provides that:

nothing herein contained shall authorize the Corporation to establish, operate, conduct, lease, or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a hospice as provided for in Articles 28, 36 and 40 respectively of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital; and

Sincerely,

Karen Westervelt  
Executive Secretary



MARK R. CHASSIN, M.D., M.P.P., M.P.H.  
Commissioner

STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
EMPIRE STATE PLAZA  
CORNING TOWER BUILDING  
ALBANY, NEW YORK 12217

CONSENT

TO THE FILING OF THE CERTIFICATE OF INCORPORATION

OF

CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC.

BY THE

COMMISSIONER

I, MARK CHASSIN, M.D., Commissioner of Health of the State of New York, do this 8th day of April, 1993, pursuant to sections 4402(2)(a) and 4403-a of the Public Health Law and section 404(r) of the Not-For-Profit Corporation Law, certify that I consent to the filing of the Certificate of Incorporation of CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC., as executed on the 22nd day of March, 1993 with the Secretary of State of the State of New York.

MARK CHASSIN, M.D.  
Commissioner of Health

JOHN JOSEPH DURANTE  
I, JOAN MARIE DURANTE, a Justice of the Supreme Court of the  
State of New York, 17th Judicial District, do hereby  
approve the foregoing Certificate of Incorporation of CATHOLIC  
HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC., and consent that  
the same be filed.

Dated: April 30, 1973

Jamaica, New York

ENTER

Joan Marie Durante  
Justice, Supreme Court of the  
State of New York  
17th Judicial District

The undersigned has no objection  
to the granting of judicial approval  
to the attached Certificate of  
Incorporation and waives statutory  
notice:

Robert Abrams  
Attorney General  
State of New York

By: \_\_\_\_\_

Dated: \_\_\_\_\_

CYC-8888C.D01

8.

930518000397

STATE OF NEW YORK  
DEPARTMENT OF TAXATION  
MAY 13 1998

RECEIVED

98 APR 27 P2:13

SUPREME COURT

	CATHOLIC MILITARY SERVICES PLAN OF BROOKLYN AND QUEENS, INC.		CERTIFICATE OF INCORPORATION
--	---	--	------------------------------------

Filed by

Catholic Military Services Plan

64-25 153rd Street

Queens NY 11431

Attn: Michael A. Shanley

MAY 13 10 08 AM '98

RECEIVED

9860402000642

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC.

Under Section 803 of the  
Not-For-Profit Corporation Law

We, the undersigned, being the Chairman and Secretary of the Board of Directors of Catholic Health Services Plan of Brooklyn and Queens, Inc., do hereby certify:

- (1) The name of the corporation is Catholic Health Services Plan of Brooklyn and Queens, Inc.
- (2) The certificate of incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc. was filed with the Department of State on the 13th day of May, 1993. The said corporation was formed under the Not-For-Profit Corporation Law of the State of New York.
- (3) The Catholic Health Services Plan of Brooklyn and Queens, Inc., is a corporation as defined in subparagraph (a) (5) of section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under section 201 of said Law.
- (4) The certificate of incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc., is hereby amended in the following respects:

Paragraph 3 of said certificate of incorporation, which sets forth the purposes of the Corporation, is hereby amended to substitute a new subparagraph (b) to read as follows:

- (b) Upon obtaining a Special Purpose Certificate of Authority from the Commissioner of Health, to provide or arrange for the provision of comprehensive health services, as defined in Article 44 of the Public Health Law, on a prepaid capitated basis, to an enrolled population substantially comprised of persons eligible to receive benefits under Title XIX of the Federal Social Security Act and other public programs including but not limited to Workers Compensation, to wit:

- (i) To own, operate and maintain a special purpose comprehensive health services plan or plans and all services required or appropriate for the provision of comprehensive health services, as defined in Section 4401(3) of the Public Health Law, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program, and
- (ii) To enter into contracts with individuals, partnerships, associations, not-for-profit Corporations, both public and private, and appropriate state and federal agencies, for the purpose of providing health services as may be necessary to carry out the foregoing purposes, provided, however, that nothing herein contained shall authorize the Corporation to establish, operate, conduct, lease, or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a hospice as provided for in Articles 28, 36 and 40 respectively, of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital; and
- (6) This amendment to the certificate of incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc., was authorized, as required by its Bylaws, by the affirmative vote of the Member entitled to vote thereon at a meeting of the Board of Trustees of the Member duly called and held on the 18th day of October, 1995, and by the consent of a majority of the members of the Board of Directors of Catholic Health Services Plan of Brooklyn and Queens, Inc., voting in person at a meeting duly called and held for that purpose on the 27th day of October, 1995.
- (7) The Secretary of the State of New York is hereby designated the agent of the Corporation upon whom process may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is:

Office of the President  
Catholic Medical Center of Brooklyn and Queens, Inc.  
88-25 153rd Street  
Jamaica, New York 11432

2

IN WITNESS WHEREOF, the undersigned have made and subscribed  
this certificate and hereby affirm it to be true under the  
penalties of perjury this 27th day of October, 1995.

*Mark L. Lane*

Mark L. Lane, Chairman

*Lydia Gorski*

Lydia Gorski, Secretary

3

STATE OF NEW YORK )

) ss:

COUNTY OF QUEENS )

Mark L. Lane, being duly sworn, deposes and says:

That he is the Chairman of Catholic Health Services Plan of Brooklyn and Queens, Inc., a corporation organized under the Not-For-Profit Corporation Laws of the State of New York.

That the Board of Directors of Catholic Health Services Plan of Brooklyn and Queens, Inc., has duly met and by unanimous vote determined to add an additional purpose to the certificate of incorporation of the Corporation.

That any and all current funds will be used for the current purposes of the Corporation and that future funds will be used for the purposes stated in the certificate of amendment.

*Mark L. Lane*  
Mark L. Lane, Chairman

Sworn to before me this  
13 day of *December* 1995

*Mildred Ann Shanley*

MILDRED ANN SHANLEY  
Notary Public, State of New York  
No. 41-3610085  
Qualified in Queens County  
Commission Expires March 30, 1998

4





STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.  
Commissioner

January 16, 1996

Karen Schimke  
Executive Deputy Commissioner

RECEIVED

JAN 23 1996

VLT:JANUARY/1996 AFFAIRS  
CATHOLIC MEDICAL CENTER

Thomas Chardavoyne  
Vice President, Public Affairs  
Catholic Medical Center of  
Brooklyn and Queens, Inc.  
88-25 153rd Street  
Jamaica, New York 11432

Re: Proposed Certificate of Amendment: Catholic Health Services  
Plan of Brooklyn and Queens, Inc., a Special Purpose Health  
Maintenance Organization.

Dear Mr. Chardavoyne:

The proposed certificate of amendment, dated October 27, 1995 and submitted with your letter of December 18, 1995, does not require the formal consent or approval of the Commissioner of Health for filing with the Secretary of State since, pursuant to Section 804(a)(1) of the Not-for-Profit Corporation Law (NFPCL), the proposed amendment neither adds, changes nor eliminates a purpose, power or provision the inclusion of which in a certificate of incorporation would require such consent or approval, nor does it change the name of the corporation.

The proposed amendment would add, at paragraph "(5)(b)", the power to provide or arrange for managed care services for claimants under the Workers Compensation Managed Care Pilot Program established in Section 126 of the Workers Compensation Law. Such program is a "public program" within the meaning of Section 4403-a(1) of the Public Health Law (PHL). Neither PHL Section 4403-a nor NFPCL Section 404 require the Commissioner's consent or approval for the filing of a certificate of incorporation containing only such power or purpose.

Health maintenance organizations certified pursuant to Article 44 of the Public Health Law are expressly designated as eligible for certification as Workers' Compensation managed care organizations pursuant to 10 NYCRR §730.2(a)(1). Further, Section 3 of Chapter 285 of the Laws of 1994 amends §126(5) of the Workers' Compensation Law to provide that, "notwithstanding any other provision of law, the commissioner of health...shall certify as a managed care organization any persons, corporate or otherwise, which meet the requirements of this section and regulations promulgated by the commissioner pursuant thereto to participate in the pilot program...."

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This letter should accompany the certificate of  
amendment when filed.

Sincerely,

*John E. Franz*  
John E. Franz  
Associate Attorney

6

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

THE UNDERSIGNED HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL  
APPROVAL HEREON AND WAIVES  
STATUTORY NOTICE  
DENNIS C. VACCO, ATTORNEY GEN.  
STATE OF NEW YORK

DENNIS C. VACCO  
ATTORNEY GENERAL  
STATE OF NEW YORK

by:

by *Laura Werner*  
*February 1, 1996*  
Assistant Attorney General

Date:

I, *Nathan L. Berke*, a Justice of the Supreme  
Court of the State of New York for the *11th* Judicial

District do hereby approve the foregoing Certificate of Amendment of  
the Certificate of Incorporation of *Catholic Health Services Plan of*  
*Brooklyn & Queens, Inc.* and consent that the same be filed.

Date:

*March 12, 1996*

*24B*  
JSC

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CERTIFICATE  
OF  
AMENDMENT  
OF  
CERTIFICATE  
OF  
INCORPORATION

CATHOLIC HEALTH SERVICES PLAN OF  
BROOKLYN AND QUEENS, INC.

MILDRED A. SHANLEY, ATTORNEY  
88-25 153 STREET  
JAMAICA, N.Y. 11432

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 02 1968

TAXES

BY

*Queens*

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CHANGE OF NAME

AND

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC.

Under Section 803 of the  
Not-For-Profit Corporation Law

We, the undersigned, being the Chairman and Secretary of the Board  
of Directors of Catholic Health Services Plan of Brooklyn and  
Queens, Inc. do hereby certify:

- (1) The name of the corporation is Catholic Health Services Plan  
of Brooklyn and Queens, Inc.
- (2) The certificate of incorporation of Catholic Health Services  
Plan of Brooklyn and Queens, Inc. was filed with the  
Department of State on the 13th day of May, 1993. The said  
corporation was formed under the Not-For-Profit Corporation  
Law of the State of New York.

(3) The Catholic Health Services Plan of Brooklyn and Queens, Inc. is a corporation as defined in subparagraph (a) (5) of section 102 of the Not-For-Profit Corporation Law and is a Type-B corporation under section 201 of said Law.

(4) The certificate of incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc. is hereby amended in the following respects:

A. Section 1 of the certificate of incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc., which sets forth the name of the corporation, is hereby amended to read:

1. The name of the Corporation is New York State Catholic Health Plan, Inc. (hereinafter referred to as the "Corporation").

B. Section 5(b)(iii) shall be amended to state that the corporation is qualified as an exempt organization under Section 501(c)(4) of the Internal Revenue Code, as follows:

"(iii) The Corporation shall not exercise any power or authority, nor shall it engage in any activity that would prevent the Corporation from qualifying (and continuing to qualify as) an exempt organization under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended."

C. Section 6 shall be amended to remove the provision for the determination of the Members pursuant to the Certificate of Incorporation, hereinafter to read as follows:

"The Corporation shall be a membership corporation. The Members shall have the authority, as further set forth in the Bylaws, to determine the approval or disapproval of any of the following:

a. The amendment of the Corporation's Bylaws or the adoption of revised or additional Bylaws;

b. The amendment of the Corporation's Certificate of Incorporation;

c. The purchase, sale, mortgage, pledge or lease of real property of the Corporation, or the sale of all, or substantially all, of its assets;

d. The dissolution, merger or consolidation of the Corporation."

D. Section 10, which provides for the management of the corporation, shall be deleted in its entirety so as to permit such provision to be provided by the bylaws.

E. Section 14 shall be amended to delete from the provisions for dissolution, the approval of the members, as follows:

"14. In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts and provisions for

the payment of any other just claims and demands against it shall be conveyed or distributed only to an organization or organizations created and operated for nonprofit purposes similar to those of the Corporation, as provided by the bylaws of the Corporation and subject to an order of a Justice of the Supreme Court of the State of New York; provided, however, that any organization receiving such assets shall be exempt from Federal income tax under the Internal Revenue Code of 1986, as amended."

(5) This amendment to the certificate of incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc. was authorized, as required by its Bylaws, by the affirmative vote of the Member entitled to vote thereon at a meeting of the Executive Committee of the Member duly called and held on the 24th day of January, 1996, and by the consent of a majority of the members of the Board of Directors of Catholic Health Services of Brooklyn and Queens, Inc.

voting in person at a meeting duly called and held for that purpose on the 2nd day of February, 1936.

- (7) The Secretary of the State of New York is hereby designated the agent of the corporation upon whom process may be served, the post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is:

Office of the President  
Catholic Medical Center of Brooklyn  
and Queens, Inc.  
88-25 153 Street  
Jamaica, New York 11432

IN WITNESS WHEREOF, the undersigned have made and subscribed this certificate and hereby affirm it to be true under the penalties of perjury this 2nd day of February, 1936.

*Mark L. Lane*

Mark L. Lane, Chairman

*Bydia Gorski, M.D.*

Bydia Gorski, M.D., Secretary





State of New York  
Department of Health  
Caring House, Empire State Plaza  
Albany, New York 12237

BARBARA A. DEBUONO, M.D., M.P.H.  
Commissioner

Phone: (518) 474-2011  
Fax: (518) 474-5450

CONSENT  
TO FILING A CERTIFICATE OF AMENDMENT  
OF THE CERTIFICATE OF INCORPORATION  
BY THE  
COMMISSIONER

I, BARBARA A. DEBUONO, M.D., M.P.H., Commissioner of Health of the State of New York, do this 28 day of May, 1996, consent to the filing with the Secretary of State of the Certificate of Amendment of the Certificate of Incorporation of Catholic Health Services Plan of Brooklyn and Queens, Inc. d/b/a Fidelis Care as executed on the 2nd day of February, 1996, pursuant to Section 804 of the Business Corporation Law, Section 4402(2)(a) of the Public Health Law and Section 98.4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

*Barbara A. Debuono*  
BARBARA A. DEBUONO, M.D., M.P.H.  
Commissioner of Health

CHANGE OF NAME

AND

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

CATHOLIC HEALTH SERVICES PLAN OF

BROOKLYN AND QUEENS, INC.

Good

Filed by

Mildred A. Stanley

Catholic Medical Center of Brooklyn and Queens

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STATE OF NEW YORK  
DEPARTMENT OF STATE  
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RESTATED CERTIFICATE OF INCORPORATION

OF

NEW YORK STATE CATHOLIC HEALTH PLAN, INC.

under Section 805 of the Not-For-Profit Corporation Law

Pursuant to the provisions of Section 805 of the New York State Not-For-Profit Corporation Law, the undersigned, being respectively the Chairman of the Board and the Secretary of NEW YORK STATE CATHOLIC HEALTH PLAN, INC., (hereinafter called the "Corporation") do hereby certify as follows:

FIRST: The present name of the Corporation is NEW YORK STATE CATHOLIC HEALTH PLAN, INC. The Corporation was originally incorporated under the name "Catholic Health Services Plan of Brooklyn and Queens, Inc."

SECOND: The Corporation was incorporated on May 13, 1993 pursuant to the New York State Not-For-Profit Corporation Law. Certificates of Amendment were filed with the Department of State on April 2, 1996 and July 31, 1996.

THIRD: The Certificate of Incorporation, as amended heretofore, is further amended to effect the following amendment authorized by the Not-For-Profit Corporation Law:

A) Section 4 shall be amended to add a new section empowering the Corporation to exercise powers enumerated by the Not-For-Profit Corporation Law including accepting subventions and issuing subvention certificates and to renumber sequentially the present Section 4 and each section thereafter, as follows:

"4. The Corporation shall have all power enumerated in Section 202 of the Not-For-Profit Corporation Law. The Corporation is authorized, with the approval of its Members in each instance, and upon resolution of the Board of Directors as provided by the Bylaws of the Corporation, to accept subventions on terms and conditions not inconsistent with the Not-For-Profit Corporation Law and to issue certificates therefor."

B) Section 13 shall be deleted and restated to state a new post office address to which the Secretary of State shall mail a copy of any process served against the Corporation, as follows:

"13. The Secretary of State is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is:

Chairman of the Board  
New York State Catholic Health Plan, Inc.  
d/b/a Fidelis Care  
95-25 Queens Boulevard  
Rego Park, New York 11374

FOURTH: The text of the Certificate of Incorporation is hereby restated, as amended, to read as herein set forth in full:

1. The name of the Corporation is New York State Catholic Health Plan, Inc. (hereinafter referred to as the "Corporation").

2. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation as defined in Section 201 of said Not-For-Profit Corporation Law.

3. PURPOSES: The purposes for which the corporation is formed are:

(a) To perform studies, feasibility surveys and planning, as authorized pursuant to Section 4403-a of the Public Health Law of the State of New York, with respect to the development and formation of a special purpose comprehensive health services plan; in conjunction herewith, to accumulate, compile, analyze, and distribute statistics and such other data as will promote the health, safety, and welfare of the general public; and

(b) Upon obtaining a Special Purpose Certificate of Authority from the Commissioner of Health, to provide or arrange for the provision of comprehensive health services, as defined in Article 44 of the Public Health Law, on a prepaid capitated basis, to an enrolled population substantially comprised of persons eligible to receive benefits under Title XIX of the Federal Social Security

Act and other public programs including but not limited to Workers Compensation, to wit:

- (i) To own, operate and maintain a special purpose comprehensive health services plan or plans and all services required or appropriate for the provision of comprehensive health services, as defined in Section 4401(3) of the Public Health Law, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program, and
- (ii) To enter into contracts with individuals, partnerships, associations, not-for-profit corporations, both public and private, and appropriate state and federal agencies, for the purpose of providing health services as may be necessary to carry out the foregoing purposes, provided, however, that nothing herein contained shall authorize the Corporation to establish, operate, conduct, lease, or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a hospice as provided for in Articles 28, 36 and 40 respectively, of the Public Health Law, or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital; and
- (c) To have and exercise all powers necessary and convenient to effect any and all of the foregoing purposes for which the Corporation is found, together with all the powers now or hereafter granted to it by the State of New York.

4. The Corporation shall have all power enumerated in Section 202 of the Not-For-Profit Corporation Law. The Corporation is authorized, with the approval of its Members in each instance, and upon resolution of the Board of Directors as provided by the Bylaws of the Corporation, to accept subventions on terms and conditions not inconsistent with the Not-For-Profit Corporation Law and to issue certificates therefor.

5. (a) Under no circumstances shall the Corporation have the aforesaid powers to effectuate contracts for or otherwise operate a comprehensive health

services plan unless the Corporation has first received a certificate of authority therefor pursuant to the Section 4403-a of the New York Public Health Law.

(b) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the following provisions shall apply:

(i) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, except as authorized by the Internal Revenue Code of 1986, as amended, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office;

(ii) The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsections (b) through (v) of Section 404 of the Not-For-Profit Corporation Law of the State of New York without having the approvals or consents required by such subsections;

(iii) The Corporation shall not exercise any power or authority, nor shall it engage in any activity that would prevent the Corporation from qualifying (and continuing to qualify as) an exempt organization under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended.

6. The Corporation shall be a membership corporation. The Members shall have the authority, as further set forth in the Bylaws, to determine the approval or disapproval of any of the following:

- a. The amendment of the Corporation's Bylaws or the adoption of revised or additional Bylaws;
- b. The amendment of the Corporation's Certificate of Incorporation;
- c. The purchase, sale, mortgage, pledge or lease of real property of the Corporation, or the sale of all, or substantially all, of its assets;
- d. The dissolution, merger or consolidation of the Corporation.

7. The number of Directors of the Corporation shall be determined in accordance with the Bylaws, but shall be not fewer than three persons.

8. The Corporation has been organized exclusively to serve a public purpose. All income and earnings of the Corporation shall be used exclusively for its corporate purposes.

9. No part of the net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

10. The Corporation shall be managed by its Board of Directors except to the extent that this certificate expressly states that matters of governance are to be exercised by its Member in accordance with this certificate and with its Bylaws.

11. The office of the Corporation shall be located in the County of Queens, State of New York.

12. The duration of the Corporation shall be perpetual.

13. The Secretary of State is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is:

Chairman of the Board

New York State Catholic Health Plan, Inc.

d/b/a Fidelis Care New York

99-25 Queens Boulevard

Rego Park, New York 11374

14. In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts and provisions for the payment of any other just claims and demands against it shall be conveyed or distributed only to an organization or organizations created and operated for non profit purposes similar to those of the Corporation, as provided by the

Bylaws of the Corporation and subject to an order of a justice of the Supreme Court of the State of New York; provided, however, that any organization receiving such assets shall be exempt from Federal income tax under the Internal Revenue Code of 1986, as amended.

FIFTH: This restated Certificate of Incorporation of the New York State Catholic Health Plan, Inc., was authorized by the vote of the majority of Directors of the corporation at a meeting thereof with a quorum duly present and by the vote of a majority of all the members of the Corporation entitled to vote thereon at a meeting thereof.

IN WITNESS THEREOF, the undersigned have made and subscribed this certificate and hereby affirm it to be true under the penalties of perjury this 22 day of MAY, 1997.

*Joseph M. Sullivan*  
Joseph M. Sullivan  
Chairman of the Board

*Joseph M. Sullivan*  
Secretary

State of New York ) ss:  
County of Queens

Subscribed to before me

this 22nd day of May, 1997.

*Mildred Ann Stanley*

MILDRED ANN STANLEY  
Notary Public, State of New York  
No. 41-3610089  
Qualified in Queens County  
Commission Expires March 30, 1999



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STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED JUN 8 1897  
TAXES  
BY: MMK

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RESTATE

CERTIFICATE

OF

INCORPORATION

OF

NEW YORK STATE

CATHOLIC HEALTH PLAN, INC.

Mildred A. Shanley  
Attorney-at-Law  
88-25, 153rd Street  
Jamaica, New York 11432

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# EXHIBIT 4

Current By-Laws

EW 1004

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**By-Laws**  
of

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.**

*D/B/A FIDELIS CARE NEW YORK*

*A Type B Corporation Under Section 201  
of the Not-for-Profit Corporation Law*

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*Revised*  
January 26, 2009

Amendment History of the By-Laws of  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
*D/B/A FIDELIS CARE NEW YORK*

**ADOPTED:**

January 27, 1997

**REVISED:**

February 24, 1997

May 5, 1997

January 19, 1998

September 25, 1998

March 3, 2000

December 17, 2004

June 23, 2008

January 26, 2009

**By-Laws**  
of  
**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.**  
*D/B/A FIDELIS CARE NEW YORK*

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**By-Laws**  
of  
**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.**  
*D/B/A FIDELIS CARE NEW YORK*

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**ARTICLE 1 – NAME AND ORGANIZATION**

*Section 1.01 – Name of the Corporation*

The name of this Corporation shall be NEW YORK STATE CATHOLIC HEALTH PLAN, INC. (hereinafter sometimes referred to as the "Corporation").

*Section 1.02 – Adherence to Catholic Doctrine*

The Corporation shall adhere at all times to the *Ethical and Religious Directives for Catholic Health Care Services* published by the National Conference of Catholic Bishops.

**ARTICLE 2 – MEMBERSHIP OF THE CORPORATION**

*Section 2.01 – Membership*

The Membership of the Corporation shall be limited to the Diocesan Bishops of the State and Ecclesiastical Province of New York.

*Section 2.02 – Voting*

All Members of the Corporation shall be voting members. The Members of the Corporation shall vote in person at Annual, Regular, or Special Meetings of the Members or action may be taken without a meeting on written consent, setting forth the action taken, signed by all of the Members without a meeting.

*Section 2.03 – Liability of Members*

No Member shall be liable, in any way, for the debts, liabilities, or obligations of the Corporation.

**ARTICLE 3 – POWERS AND DUTIES OF MEMBERS**

*Section 3.01 – Election of Directors and Officers*

The Members of the Corporation, at their Annual Meeting, shall elect qualified persons to the Board of Directors to fill all existing vacancies in accordance with the provisions of Sections 6.01 and 6.02 of these By-Laws. The Members of the Corporation, at their Annual Meeting, shall elect qualified persons to serve as Officers of the Corporation in accordance with the provisions of Section 5.02 of these By-Laws.

*Section 3.02 – Annual Report*

The Members of the Corporation, at their Annual Meeting, shall consider the Annual Report of the Corporation, including the audited financial statements, to be submitted and verified by the President/Chief Executive Officer and the Treasurer, or by a majority of the Directors.

*Section 3.03 – Reserved Powers*

The following powers are reserved exclusively to the Members, and no attempted exercise of any such powers by anyone other than the Members shall be valid or of any force or effect whatsoever.

*Section 3.03.01*

With the approval of the Bishop of the Diocese in which the question on interpretation arises, to interpret, finally and definitively, the *Ethical and Religious Directives for Catholic Health Care Services* published by the National Conference of Catholic Bishops as those *Directives* apply to the activities of the Corporation.

*Section 3.03.02*

To approve the philosophy and mission statement adopted by the Board of Directors according to which the Corporation will operate.

*Section 3.03.03*

To require the Corporation to operate in conformity with its philosophy and mission statement.

*Section 3.03.04*

To amend the Certificate of Incorporation of the Corporation and to amend, adopt, or repeal By-Laws for the Corporation.

*Section 3.03.05*

With the approval of the Bishop of the Diocese within which the property is located, to approve the sale, mortgage, lease, loan, or pledge of any of the Corporation's real property.

*Section 3.03.06*

To approve the actions of the Corporation whenever the Corporation acts as a member or shareholder of another corporation, provided that Member approval is not required where the Corporation (i) exercises rights as a shareholder of a publicly traded corporation in its investment portfolio or (ii) exercises rights as a member of a trade group, trade association or similar entity and such action does not constitute a matter identified in Sections 3.03.01, 3.03.02, 3.03.04 and/or 3.03.05 of these By-Laws or (iii) such action, if taken directly by Fidelis, would not constitute action subject to the Members' reserved powers under By-Laws Section 3.03.

*Section 3.03.07*

To approve the acceptance of subventions and the issuance of certificates of subvention.



*Section 3.03.08*

To approve any merger, dissolution, or consolidation of the Corporation.

*Section 3.03.09*

To remove Directors or Officers of the Corporation, except the President/Chief Executive Officer, with or without cause and to fill vacancies resulting from such removal.

*Section 3.03.10*

To approve the election of the President/Chief Executive Officer.

*Section 3.03.11*

To review annual audited financial statements of the Corporation's finances submitted by the Directors.

*Section 3.04 – Interpretation*

The provisions of these By-Laws contained in this Article 3 shall control and govern the activities of this Corporation and any provision of the By-Laws contained in any other Article which is in conflict herewith shall be null and void.

## **ARTICLE 4 – MEETINGS OF THE MEMBERSHIP OF THE CORPORATION**

*Section 4.01 – Annual Meetings*

The Annual Meeting of the Membership of the Corporation shall be held during the month of June at such time and on such date as may be designated by the Archbishop of New York, at the principal offices of the Corporation or at such other time and place as may be designated by the Archbishop of New York.

*Section 4.02 – Special Meetings*

Special meetings of the Membership of the Corporation shall be held at the discretion and call of the Archbishop of New York or at the request of any three (3) Members.

*Section 4.03 – Regular Meetings*

Regular Meetings of the Membership of the Corporation shall be held with such frequency as shall be determined by the Members.

*Section 4.04 – Chair of Meetings*

The Archbishop of New York shall preside and chair as President of the Members at all Annual, Special, and Regular Meetings of the Membership of the Corporation.

*Section 4.05 – Notice of Meetings*

Notice of a meeting of the Membership of the Corporation, either Annual, Regular or Special shall be mailed to the Members of the Corporation not less than ten (10) business days before the date of the scheduled meeting. The notice of a Special Meeting shall state the purpose of the meeting. Only business stated in the notice may be transacted at such a meeting.

*Section 4.06 – Quorum*

The presence of five (5) Members, in person, shall be a quorum for any meeting of the Membership of the Corporation.

*Section 4.07 – Meeting by Telephone Conference Call*

Except for the Annual Meeting, any Regular or Special Meeting of the Members of the Corporation may be held by telephone conference call under such circumstances that all Members participating may hear and be heard by all other Members participating.

## ARTICLE 5 – OFFICERS

*Section 5.01 – Officers*

The Officers of the Corporation shall be a President of the Members, a Chairperson, a Vice-Chairperson, a Secretary, a Treasurer of the Board of Directors; and a President/Chief Executive Officer.

*Section 5.02 – Election*

Except as otherwise provided in this Article 5, Officers, except the President/Chief Executive Officer, shall be elected from among the Directors by the Members of the Corporation at their Annual Meeting. The Board of Directors shall function as the Nominating Committee of the Corporation for the purpose of identifying one (1) candidate for each office to be elected by the Members of the Corporation under this Section 5.02. All Officers, except the President/Chief Executive Officer, shall serve for a term of one (1) year until successors are elected, such term commencing at the close of the meeting at which they are elected. Officers may be elected for successive terms. The President/Chief Executive Officer shall be elected by the Board of Directors of the Corporation by a majority of the members of the Directors qualified to vote, subject to the approval of the Members of the Corporation.

*Section 5.03 – President of the Membership*

The Archbishop of New York shall be, *ex officio*, the President of the Membership.

*Section 5.04 – Chairperson of the Board*

At all times, the Chairperson shall be a person who is a member of the Board of Directors of the Corporation. He or she shall be elected by the Members of the Corporation at their Annual Meeting except that, for the period prior to the Annual Meeting of the Members held in the year 2000, the Chairperson of the Board of Directors shall be appointed by the Bishop of Brooklyn. The Chairperson of the Board of Directors shall preside at all meetings of the Board of Directors. He or she shall be, *ex officio*, a member of all Committees of the Board of Directors, standing and *Ad Hoc*, and shall serve as Chairperson of the Executive Committee of the Board of Directors. The Chairperson shall perform such other duties as may be provided for by law, by these By-Laws, or by resolution of the Board of Directors.

*Section 5.05 – Vice-Chairperson of the Board*

The Vice-Chairperson of the Board shall be elected from among the Directors by the Members of the Corporation at their Annual Meeting except that, for the period prior to

the Annual Meeting of the Members held in the year 2000, the Vice-Chairperson of the Board of Directors shall be appointed by the Archbishop of New York. In the absence of the Chairperson, the Vice-Chairperson shall preside at meetings of the Board of Directors. When so acting as Chairperson, the Vice-Chairperson shall have all the powers and authority of the Chairperson. He or she shall serve, *ex officio*, as a member of the Executive Committee of the Board of Directors. The Vice-Chairperson shall perform such other duties as may be provided for by the Board of Directors.

#### *Section 5.06 – Secretary*

##### *Section 5.06.01*

The Secretary shall be elected from among the Directors by the Members of the Corporation at their Annual Meeting.

##### *Section 5.06.02*

The Secretary shall prepare an agenda and issue notices of all meetings of the Members and the Board of Directors at the request of the President of the Members and of the Chairperson of the Board of Directors.

##### *Section 5.06.03*

The Secretary shall record all meetings of the Members and the Board of Directors at the request of the President of the Members and of the Chairperson of the Board of Directors; affix the seal of the Corporation to written instruments when so directed by the Board of Directors and attest to such execution by his or her signature.

##### *Section 5.06.04*

The Secretary shall perform such other duties as are incidental to the office of Secretary of a not-for-profit corporation.

##### *Section 5.06.05*

The Board of Directors of the Corporation may appoint an Assistant Secretary to assist in the performance of the Secretary's duties. The Assistant Secretary need not be appointed from among the members of the Board of Directors of the Corporation.

#### *Section 5.07 – Treasurer*

##### *Section 5.07.01*

The Treasurer shall be elected from among the Directors by the Members of the Corporation at their Annual Meeting.

##### *Section 5.07.02*

The Treasurer shall serve, *ex officio*, as a member of the Finance Committee of the Board of Directors.

##### *Section 5.07.03*

The Treasurer shall perform other duties as are incidental to the office of Treasurer of a not-for-profit Corporation.

*Section 5.08 – President/Chief Executive Officer*

*Section 5.08.01*

The President/Chief Executive Officer shall be the Chief Executive Officer of the Corporation and shall report directly to and be responsible only to the Board of Directors, subject to the policies established by the Board of Directors.

*Section 5.08.02*

The authority, powers, duties and responsibilities of the President/Chief Executive Officer shall be as follows:

*Section 5.08.02.01*

to be responsible for the implementation of all policies established by the Board of Directors;

*Section 5.08.02.02*

to be responsible for the preparation of an annual budget showing the anticipated receipts and expenditures of the Corporation;

*Section 5.08.02.03*

to be responsible for the selection, employment control and discharge of all employees and the development and maintenance of personnel policies and practices for the Corporation that are not otherwise specified in these By-Laws;

*Section 5.08.02.04*

to be responsible for the supervising of the business affairs of the Corporation;

*Section 5.08.02.05*

to serve as staff to every committee of the Board of Directors and to be eligible for election to all committees of the Board of Directors, except the Executive Committee and the Audit Committee;

*Section 5.08.02.06*

to take all reasonable steps to conform to all applicable federal, state and local laws and regulations;

*Section 5.08.02.07*

to be responsible for the performance of such duties as may be in the best interests of the Corporation and such other duties as may be directed by the Board of Directors.

*Section 5.09 – Removal of Officers*

Upon the removal of an Officer of the Corporation in accordance with Section 3.03.08 of these By-Laws, the Membership of the Corporation shall request that Officer to voluntarily withdraw from and terminate his or her membership on the Board of Directors in accordance with the provisions of Section 6.05 of these By-Laws.

*Section 5.10 – Vacancies*

A vacancy occurring in any office during the year shall be filled by the Members of the Corporation except that a vacancy in the office of President/Chief Executive Officer shall be filled in accordance with the provisions of Sections 5.02 of these By-Laws.

**ARTICLE 6 – BOARD OF DIRECTORS**

*Section 6.01 – Elected and Appointed Directors*

Effective December 17, 2004, the Board of Directors shall have twenty (20) members as follows:

*Section 6.01.01*

eight (8) Directors shall be appointed by the Members of the Corporation; each Member shall appoint one (1) Director with announcement of these appointments to be made to the Board of Directors prior to the commencement of the nomination process referenced in Section 7.04.07 of these By-Laws; and

*Section 6.01.02*

eight (8) Directors elected by the Members of the Corporation from among those nominated in accordance with Section 7.04.07 of these By-Laws; and

*Section 6.01.03*

the President/Chief Executive Officer, *ex officio*, who shall be without vote; and

*Section 6.01.04*

three (3) Directors shall be elected by the Members of the Corporation from among those nominated in accordance with Section 7.04.07 of these By-Laws who are either enrolled in the Corporation's Medicaid managed care programs or who are enrollee advocates.

*Section 6.02 – Qualifications*

*Section 6.02.01*

Only persons nineteen (19) years of age or older who have a demonstrated interest in the philanthropic purposes of the Corporation and have accepted the principle that the Corporation shall operate in conformity with the *Ethical and Religious Directives for Catholic Health Care Services* as provided in Section 1.02 of these By-Laws, shall be eligible for election.

*Section 6.02.02*

In the election or appointment of Directors, the Board of Directors and the Members shall ensure that the composition of the Board of Directors encompasses a diversity of business expertise including individuals from the finance, insurance and/or managed care, law, medicine and hospital industries and participants from Catholic Charities and other Catholic Health and Human Services ministries. Hospital industry

representation shall be limited to no more than four (4) hospital/hospital system officers.

#### *Section 6.03 – Terms of Office*

##### *Section 6.03.01*

After the close of the Annual Meeting of Members held in 2009, Directors (other than *ex officio* Directors) shall be divided into three (3) classes as nearly equal in number as may from time to time be practicable. The term of office of each such class shall be three (3) years and shall expire in successive years.

##### *Section 6.03.02*

Directors may be appointed or elected to successive terms, provided, however, that commencing as of their Tenure Start Date, as defined below, Directors shall be permitted to serve a maximum of three (3) consecutive three (3) year terms. Thereafter, Directors who have served the maximum number of terms shall be eligible to be appointed or elected to new terms on the Board of Directors only after a period of not less than one (1) year has elapsed following the completion of their prior service.

##### *Section 6.03.03*

The initial terms of the three classes of Directors following the 2009 Annual Meeting of Members shall be one (1), two (2), and three (3) years, respectively. After completion of their one- and two-year initial terms, the Directors in those classes thereafter be eligible to serve three-year terms. For purposes of calculating the term limit set forth in Section 6.03.02 of these By-Laws, the "Tenure Start Date" for Directors shall be as follows:

##### *Section 6.03.03.01*

For Directors who have served initial terms of one or two years, the Tenure Start Date shall be the date on which such Directors begin service of their first three-year term thereafter.

##### *Section 6.03.03.02*

For Directors who have served initial terms of three years, the Tenure Start Date shall be the date on which such Directors begin service of their initial three-year term following the 2009 Annual Meeting of Members.

##### *Section 6.03.03.03*

For any Director who commences his or her service to complete the unexpired portion of the term of a prior Director, the Tenure Start Date shall be the date on which such Director begins service of his or her first three year term after completing the unexpired term of the prior Director.

#### *Section 6.04 – Vacancies*

Vacancies occurring on the Board of Directors may be filled by the Members in accordance with the provisions of Sections 6.01 and 6.02 of these By-Laws. The term of office of a Director appointed or elected to fill such a vacancy shall continue for the period of the unexpired term.

*Section 6.05 – Voluntary Termination of Board of Membership*

Any Director may withdraw from and terminate his or her membership on the Board of Directors by delivering a written resignation to the Secretary.

**ARTICLE 7 – POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

*Section 7.01 – Powers of the Board of Directors*

The Board of Directors shall have responsibility for the management of the property and affairs of the Corporation. Subject to the provisions of Section 3.03.05 and 7.03 relating to real property only and Section 3.03.06 relating to subventions, the Board of Directors shall have the power specifically to buy, sell, mortgage, lend, pledge and lease property; to invest and reinvest corporate funds; to borrow, make loans and issue guarantees.

*Section 7.02 – Property and Funds*

All property and funds of the Corporation shall be administered by the Board of Directors. The Board shall use all financial resources to the best advantage of the Corporation.

*Section 7.03 – Sale, Mortgage or Lease*

No sale, mortgage or lease of real property of the Corporation shall be made without the approval of the Members of the Corporation.

*Section 7.04 – Duties of the Board of Directors*

*Section 7.04.01*

Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

*Section 7.04.02*

The Board of Directors shall ensure, through the President/Chief Executive Officer, compliance with all applicable federal, state and local statutes, laws, and regulations.

*Section 7.04.03*

The Board of Directors shall ensure, through the President/Chief Executive Officer, that all personnel policies and practices are established and maintained for the Corporation.

*Section 7.04.04*

The Board of Directors shall develop a program for the orientation of newly elected members of the Board of Directors and for the continuing education of all Board members. All programs of orientation and continuing education shall include thorough explanation of the Catholic identity and mission of the Corporation of the Ethical and Religious Directives for Catholic Health Care Services.



*Section 7.04.05*

The Board of Directors shall cause written minutes to be maintained of meetings of the Board and its committees including a record of attendance, which minutes shall be retained as a permanent record in the offices of the Corporation.

*Section 7.04.06*

Subject to the reserved power of the Members pursuant to Section 3.03.10, the Board of Directors shall cause to be prepared for review, the annual budget of the Corporation. The Board shall review and approve such budget. The Board of Directors shall receive the certified annual audit and the Corporation's financial statements, and shall further review the Corporation's financial position on an ongoing basis.

*Section 7.04.07*

The Board of Directors shall function as the Nominating Committee of the Corporation for the purpose of identifying persons to be elected to the Board of Directors by the Members of the Corporation.

*Section 7.05 – Planning*

The Board of Directors shall conduct the affairs of the Corporation in a manner that advances the Corporation's Mission and employs the approach adopted by the Board of Directors and approved by the Membership in "Building Consensus" – Report of the Board of Directors' Task Force on Planning," dated April 1999.

## **ARTICLE 8 – MEETINGS OF THE BOARD OF DIRECTORS**

*Section 8.01 – Annual Meetings*

The Annual Meeting of the Board of Directors shall be held within ten (10) days after the Annual Meeting of the Membership of the Corporation.

*Section 8.02 – Regular Meetings*

Regular meetings of the Board of Directors shall be held at such times and with such frequency as may be determined by the Board.

*Section 8.03 – Special Meetings*

Special meetings of the Board of Directors shall be held at the discretion and call of the Chairperson of the Board or of any three Directors.

*Section 8.04 – Notice of Special Meeting*

Notice of Special Meetings of the Board of Directors shall state the purpose of the meeting and shall be mailed to all members of the Board of Directors not less than ten (10) business days before the date of the scheduled meeting. Only business stated in the notice may be transacted at the meeting.

*Section 8.05 – Quorum*

One-third ( $\frac{1}{3}$ ) plus two (2) of the members of the Board of Directors shall constitute a quorum for the conduct of business.



*Section 8.06 – Meeting by Telephone Conference Call*

Except for the Annual Meeting, any Regular or Special Meeting of the Board of Directors may be held by telephone conference call under such circumstances that all Directors participating may hear and be heard by all other Directors participating.

*Section 8.07 – Voting*

Each member of the Board of Directors shall be entitled to cast one (1) vote on each matter presented to the Board for its approval. Directors shall vote in person at Annual, Regular, or Special Meetings of the Board or actions may be taken without a meeting on written consent, setting forth the action taken, signed by all of the Directors without a meeting.

## ARTICLE 9 – ORGANIZATION OF THE BOARD OF DIRECTORS

*Section 9.01 – Order of Business*

The suggested order of business for Regular Meetings of the Board of Directors shall be as follows:

- (a) Opening of meeting and prayer
- (b) Roll call
- (c) Previous minutes
- (d) Report of the Chairperson of the Board of Directors
- (e) Report of the Treasurer
- (f) Report of the President/Chief Executive Officer
- (g) Reports of Committees
- (h) Unfinished business
- (i) New business
- (j) Adjournment.

*Section 9.02 – Parliamentary Procedure*

Parliamentary procedure shall be followed when not in conflict with any of these By-Laws. The rules of parliamentary procedure shall be *Robert's Rules of Order*.

### *Section 9.03 – Committees of the Board*

#### *Section 9.03.01 – Standing Committees*

Members of the Standing Committees of the Board of Directors shall be elected from among the members of the Board of Directors by vote of the majority of the Board. The following shall be the Standing Committees of the Board of Directors.

##### *Section 9.03.01.01 – Executive Committee*

The Executive Committee shall consist of the Chairperson and Vice-Chairperson of the Board plus three (3) other persons elected by the Board of Directors.

##### *Section 9.03.01.02 – Finance Committee*

The Finance Committee shall consist of the Treasurer of the Corporation plus six (6) other persons elected by the Board of Directors.

##### *Section 9.03.01.03 – Audit Committee*

The Audit Committee shall consist of three (3) persons elected by the Board of Directors.

##### *Section 9.03.01.04 – Nominating Committee*

The Nominating Committee shall consist of five (5) persons elected by the Board of Directors.

#### *Section 9.03.02 – Ad Hoc Committees*

*Ad Hoc* Committees shall be created, appointed, and charged by and at the sole discretion of the Chairperson of the Board of Directors.

## **ARTICLE 10 – INDEMNIFICATION**

### *Section 10.00 – Indemnification*

The Corporation shall indemnify any person who is, or was, a Member, a Director, an Officer of the Corporation, and such administrative officers as are identified by the Board of Directors, in accordance with, to the full extent permitted by, and subject to the limitations contained in, Article 7 of the Not-For-Profit Corporation Law of the State of New York or any successor provision of law. Directors and Officers shall be entitled to such additional indemnification and/or advancement of expenses as may be authorized by a resolution of the Board subject to the approval of the Members of the Corporation or an agreement providing for indemnification, provided that no indemnification shall be made to or on behalf of any Director or Officer if a judgment or other final adjudication adverse to the Director or Officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained, in fact, a financial profit or other advantage to which such Director or Officer was not legally entitled.

## ARTICLE 11 – AMENDMENTS

### *Section 11.00 – Amendments*

#### *Section 11.00.01*

These By-Laws may be amended or repealed at any Annual, Regular or Special Meeting of the Members of the Corporation, as provided by Section 3.03.04 of these By-Laws.

#### *Section 11.00.02*

These By-Laws may be amended or repealed at any Annual, Regular or Special Meeting called for that purpose, following the meeting at which such amendment has been introduced, by a two-thirds ( $\frac{2}{3}$ ) vote of the Board of Directors present, subject to the approval of the Members of the Corporation.

# EXHIBIT 5

Certificate of Assumed Name (and all amendments)

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS

ALBANY, NY 12231-0001

FILING RECEIPT

=====

ENTITY NAME : NEW YORK STATE CATHOLIC HEALTH PLAN, INC.

DOCUMENT TYPE : ASSUMED NAME CERTIFICATE

=====

FILER:

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FILED: 03/08/2016

CASH#: 370084

FILM#: 20160308026

ANDREW B. ROTH, ESQ.  
NORTON ROSE FULBRIGHT US  
666 FIFTH AVE., 31ST FLOOR  
NEW YORK NY 10103

PRINCIPAL LOCATION

-----

95-25 QUEENS BVD

REGO PARK  
NY 11374

COMMENT:

ASSUMED NAME

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FIDELIS CARE NEW YORK



=====

SERVICE COMPANY : CONTINENTAL CORPORATE SERVICES, INC.

CODE: 04

BOX : 66

FEES 1985.00

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FILING : 25.00  
COUNTY : 1925.00  
COPIES : 10.00  
MISC : .00  
HANDLE : 25.00

PAYMENTS: 1985.00

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CASH :  
CHECK : 1985.00  
C CARD :

REFUND :

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DO3HD108

DOS-281 (04/2007)

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on March 9, 2016.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State



Division of Corporations,  
State Records and  
Uniform Commercial Code

201603080 26

New York State  
Department of State  
Division of Corporations,  
State Records and  
Uniform Commercial Code  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231  
www.dos.ny.gov

**Certificate of Assumed Name**

(Pursuant to General Business Law §130)

1. REAL NAME OF ENTITY:  
New York State Catholic Health Plan, Inc.

1a. FICTITIOUS NAME, IF ANY, OF FOREIGN ENTITY (Not Assumed Name):

2. FORMED OR AUTHORIZED UNDER THE FOLLOWING NEW YORK LAW (Check one):

- ☐ Business Corporation Law ☐ Limited Liability Company Law ☐ Religious Corporations Law  
☐ Education Law ☒ Not-for-Profit Corporation Law ☐ Revised Limited Partnership Act  
☐ Other (specify law):

3. ASSUMED NAME:

Fidells Care New York

4. PRINCIPAL PLACE OF BUSINESS IN NEW YORK STATE (MUST INCLUDE NUMBER AND STREET). IF NONE, CHECK THIS BOX ☐ AND PROVIDE OUT-OF- STATE ADDRESS:

85-25 Queens Blvd, Rego Park, New York 11374

5. COUNTY(IES) IN WHICH ENTITY DOES OR INTENDS TO DO BUSINESS: ☒ ALL COUNTIES (or check applicable county(ies) below)

- |                                   |                                      |                                     |                                       |                                   |                                    |                                      |                                     |
|-----------------------------------|--------------------------------------|-------------------------------------|---------------------------------------|-----------------------------------|------------------------------------|--------------------------------------|-------------------------------------|
| <input type="checkbox"/> Albany   | <input type="checkbox"/> Cattaraugus | <input type="checkbox"/> Chenango   | <input type="checkbox"/> Delaware     | <input type="checkbox"/> Franklin | <input type="checkbox"/> Hamilton  | <input type="checkbox"/> Lewis       | <input type="checkbox"/> Montgomery |
| <input type="checkbox"/> Allegany | <input type="checkbox"/> Cayuga      | <input type="checkbox"/> Clinton    | <input type="checkbox"/> Dutchess     | <input type="checkbox"/> Fulton   | <input type="checkbox"/> Herkimer  | <input type="checkbox"/> Livingston  | <input type="checkbox"/> Nassau     |
| <input type="checkbox"/> Bronx    | <input type="checkbox"/> Chautauque  | <input type="checkbox"/> Columbia   | <input type="checkbox"/> Erie         | <input type="checkbox"/> Genesee  | <input type="checkbox"/> Jefferson | <input type="checkbox"/> Madison     | <input type="checkbox"/> New York   |
| <input type="checkbox"/> Broome   | <input type="checkbox"/> Chemung     | <input type="checkbox"/> Cortland   | <input type="checkbox"/> Essex        | <input type="checkbox"/> Greene   | <input type="checkbox"/> Kings     | <input type="checkbox"/> Monroe      | <input type="checkbox"/> Niagara    |
| <input type="checkbox"/> Oneida   | <input type="checkbox"/> Orleans     | <input type="checkbox"/> Queens     | <input type="checkbox"/> St. Lawrence | <input type="checkbox"/> Schuyler | <input type="checkbox"/> Sullivan  | <input type="checkbox"/> Warren      | <input type="checkbox"/> Wyoming    |
| <input type="checkbox"/> Onondaga | <input type="checkbox"/> Oswego      | <input type="checkbox"/> Rensselaer | <input type="checkbox"/> Saratoga     | <input type="checkbox"/> Seneca   | <input type="checkbox"/> Tioga     | <input type="checkbox"/> Washington  | <input type="checkbox"/> Yates      |
| <input type="checkbox"/> Ontario  | <input type="checkbox"/> Otsego      | <input type="checkbox"/> Richmond   | <input type="checkbox"/> Schenectady  | <input type="checkbox"/> Steuben  | <input type="checkbox"/> Tompkins  | <input type="checkbox"/> Wayne       |                                     |
| <input type="checkbox"/> Orange   | <input type="checkbox"/> Putnam      | <input type="checkbox"/> Rockland   | <input type="checkbox"/> Schoharie    | <input type="checkbox"/> Suffolk  | <input type="checkbox"/> Ulster    | <input type="checkbox"/> Westchester |                                     |

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON, CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE. Use page 2 if needed. The address(es) must be a number and street, city, state and zip code. The address(es) must be within the county(ies) indicated in paragraph 5.

If none, ☐ check the box: No New York State Business Location.

95-25 Queens Blvd., Rego Park, NY 11374

Name of Signer: Andrew B. Roth

Signature:

Capacity of Signer (Check one): ☒ Authorized Person ☐ Officer of the Corporation ☐ General Partner of the Limited Partnership  
☐ Member of the Limited Liability Company ☐ Manager of the Limited Liability Company

FILER: Name: Andrew B. Roth, Esq.

Mailing Address: Norton Rose Fulbright US LLP, 666 Fifth Ave., 31st Floor

City, State and Zip Code: New York, New York 10103

NOTE: You are not required to use this form. This certificate should be prepared under the guidance of an attorney.

FEE: Limited Liability Companies and Limited Partnerships - \$25.

Corporations - \$25 plus the fee for each county indicated in paragraph 5. The additional fee for each county within New York City (Bronx, Kings, New York, Queens and Richmond) is \$100 additional. The fee for each county outside New York City is \$25. Checks over \$500 must be certified.

DOS-1338-f (Rev. 12/15)

Page 1 of 2

CONTINENTAL #04

201603080 *26*

**Certificate of Assumed Name**

6. ADDRESS OF EACH LOCATION, INCLUDING NUMBER AND STREET, IF ANY, OF EACH PLACE WHERE THE ENTITY CARRIES ON OR CONDUCTS OR TRANSACTS BUSINESS IN NEW YORK STATE: (Continued)

31 British American Blvd., Latham, NY 12110 / 5010 Campuswood Dr., East Syracuse, NY 13057 / 23 Liberty Street, Bath, NY 14810

1250 Pittsford-Victor Rd., Building 200, Suite 170, Pittsford, NY 14534 / 25 Market Street, Suite 108, Poughkeepsie, NY 12601

400 Rella Boulevard, Suffern, NY 10901 / 815 East Tremont Ave., Bronx, NY 10460 / 185 Canal St., Suite 406, New York, NY 10013

100-02 Post Ave., New York, NY 10034 / 101 East Main St., Gouverneur, NY 13642 / 36-38 Main Street Suite 2SB, Flushing, NY 11354

146-01 Jamaica Ave., Jamaica, NY 11435 / 1674 Putnam Ave., Ridgewood, NY 11385 / 28 East Main St., Rochester, NY 14614

175-11 Route 59, Spring Valley, NY 10977 / 64 East Main St., Suite 1, Springville, NY 14141 / 480 CrossPoint Pkwy, Getzville, NY 14068

1686 Forest Ave., Unit D, Staten Island, NY 10302 / 837 58th Street, 4th Floor, Brooklyn, NY 11220 / 180 Post Avenue, Westbury, NY 11590

232 East Main Street, Suite D, Patchogue, NY 11772 / 419B South Broadway, Yonkers, NY 10705 / 402 Main Street, Dunkirk, NY 14136

97-77 Queens Boulevard, Rego Park, NY 11374 / 777 Clifford Avenue, Rochester, NY 14621

(For office use only)

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*JTC* CONTINENTAL #04

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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 08 2016

*CH 370084*

*JTC*

2016 MAR -8 AM 10:28

FILED



***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
July 29, 2008.

*Paul LaPointe*

Paul LaPointe  
Special Deputy Secretary of State.

New York State  
DEPARTMENT OF STATE  
CORPORATIONS AND STATE RECORDS DIVISION  
162 Washington Avenue  
Albany, NY 12231

CORPORATION — CERTIFICATE OF ASSUMED NAME  
(Pursuant to Section 130 General Business Law)

FEES: THE FILING FEE PAYABLE TO THE SECRETARY OF STATE IS \$25.00 PLUS A \$25.00 FEE FOR EACH COUNTY LISTED IN WHICH BUSINESS WILL BE CONDUCTED UNDER ASSUMED NAME.

1. Corporation name CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC.  
2. Law corporation formed under: ☐ Business ☒ Not-for-Profit ☐ Education ☐ Insurance  
☐ Other (specify) \_\_\_\_\_

3. Assumed name: FIDELIS CARE

4. Principal place of business in New York State: 26 COURT STREET  
BROOKLYN N.Y. 11201 Kings  
City State Zip Code County  
\* If none, check box and insert principal out-of-state address above.

5. Counties in which business will be conducted under assumed name.

☒ All counties

☐ If not all, circle which counties below

Albany	Chesapeake	Essex	Jefferson	New York City	Oneida	Putnam	Schuyler	Ulster
Albany	Clinton	Franklin	Lewis	<u>Bronx</u>	Onondaga	Rensselaer	Saratoga	Warren
Broome	Columbia	Fulton	Livingston	<u>Kings</u>	Ontario	Rockland	Schenectady	Washington
Cattaraugus	Delaware	Tioga	Madison	<u>New York</u>	Orange	St. Lawrence	Suffolk	Wayne
Cayuga	Dutchess	Ulster	Miner	<u>Queens</u>	Orleans	Saratoga	Sullivan	Westchester
Chautauque	Hamilton	Montgomery	Nassau	<u>Richmond</u>	Oswego	Schenectady	Tioga	Willing
Chemung	Rockland	Saratoga	Ulster	<u>Niagara</u>	Orleans	Schoharie	Tompkins	Yates

6. The addresses of each location within New York State where business is or will be conducted under assumed name — list on reverse side. If no business locations in New York State, check box.

Corporation officer signature Mark L. Lane  
Type name and office MARK L. LANE SECRETARY

ACKNOWLEDGMENT (Must be completed)

State of NEW YORK County of QUEENS  
On JUNE 28th 1993 before me personally came MARK L. LANE  
to me known who being by me duly sworn did depose and say that he is the SECRETARY  
of the CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC. and that the corporation described in the foregoing certificate, and acknowledged  
that he executed the same by order of the Board of Directors of such corporation.

Michael Ann Stanley  
MICHAEL ANN STANLEY  
Notary Public, State of New York  
No. 41-331-3085  
Oneida County, New York  
Commission Expires March 30, 1995

Date filed 1.11  
State NY Zip Code 10013

Form 10013

7. Addresses or business locations:

26 COURT STREET

No. and Street

BROOKLYN

N.Y.

City

11201

Zip Code

State

KINGS

County

No. and Street

City

State

Zip Code

County

88-25 153 STREET

No. and Street

JAMAICA

NEW YORK

City

11432

Zip Code

State

QUEENS

County

No. and Street

City

State

Zip Code

County

No. and Street

City

State

Zip Code

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Use continuation sheet if necessary  
Do not use space below.

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 29 1993

NOT OF CHECK \$ 245

PRINT FEE \$ 25

COPY FEE \$ 200

20 20

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
July 29, 2008.

*Paul LaPointe*

Paul LaPointe  
Special Deputy Secretary of State

New York State  
DEPARTMENT OF STATE  
CORPORATIONS AND STATE RECORDS DIVISION  
162 Washington Avenue  
Albany, NY 12231

**CORPORATION -- CERTIFICATE OF AMENDMENT OF ASSUMED NAME**  
(Pursuant to Section 130 General Business Law)

**FEES:** THE FILING FEE PAYABLE TO THE SECRETARY OF STATE IS \$25.00 IF THE AMENDMENT IS FOR CORPORATE NAME CHANGE OR PRINCIPAL PLACE OF BUSINESS ADDRESS CHANGE, ADD \$25.00 FOR EACH COUNTY THAT WAS PREVIOUSLY LISTED IN WHICH BUSINESS IS CONDUCTED UNDER ASSUMED NAME. IF THE AMENDMENT AFFECTS CERTAIN COUNTIES ONLY, ADD \$25.00 FOR EACH COUNTY AFFECTED BY THE AMENDMENT.

1. Present corporation name NEW YORK STATE CATHOLIC HEALTH PLAN, INC.
2. If corporation name different on last assumed name certificate or amendment, state name previously listed.  
CATHOLIC HEALTH SERVICES PLAN OF BROOKLYN AND QUEENS, INC.
3. Assumed name FIDELIS CARE
4. The date original Certificate of Assumed Name was filed JULY 29, 1993
5. The date, if any, the last Certificate of Amendment of Assumed Name was filed N.A.
6. The following changes are being made. Check appropriate box(es).
  - A. ☐ Corporate name, as indicated above.
  - B. ☒ Assumed name.
  - C. ☒ Principal place of business. (Enter change in Item 8, below.)
  - D. ☐ Counties added or deleted, in which business is conducted under an assumed name. (Enter in Item 9, below.)
  - E. ☒ Address(es) of specific business location(s) being added or deleted. (Enter in Item 10 below.)
7. The assumed name of the corporation is changed to: FIDELIS CARE NEW YORK
8. If principal place of business is being changed, state new address.  
95-25 QUEENS BLVD.

No. and Street

REGO PARK

N.Y.  
State

11374  
Zip Code

QUEENS  
County

9. Counties added ALBANY, ALLEGANY, BROOME, CATTARAUGUS, CHAUTAUGUE, CHEMUNG, CHENANGO, CLINTON, COLUMBIA, CORTLAND, DELAWARE, DUTCHESS, ERIE, ESSEX, FRANKLIN, FULTON, GENESSEE, GREENE, HAMILTON, HERKIMER, JEFFERSON, LEWIS,  
(If additional space needed, use reverse side.)

10. Specific business address(es) change. (If additional space needed, use reverse side.)

Addition

95-25 QUEENS BLVD.

No. and Street

Deletion

26 COURT STREET

No. and Street

REGO PARK, N.Y. 11374

City

Zip Code

QUEENS

County

BROOKLYN, N.Y. 11242

City

Zip Code

KINGS

County

Corporation officer signature Mark L. Lane

Type name and office MARK L. LANE

PRESIDENT/CHIEF EXECUTIVE OFFICER

**ACKNOWLEDGMENT (Must be completed)**

State of NEW YORK

County of QUEENS

On SEPTEMBER 16, 1996 before me personally came MARK L. LANE to me known, who being by me duly sworn, did depose and say that he is the PRESIDENT/CHIEF EXECUTIVE OFFICER of NEW YORK STATE CATHOLIC HEALTH PLAN, the corporation described in the foregoing certificate, and acknowledged that he/she executed the same by order of the Board of Directors of such corporation.

*Notary Public, State of New York*

*Qualified in Queens County*

*Commission Expires March 28, 1997*

Filer's address

Catholic Medical Center of Brooklyn, 143 Avenue J, Brooklyn, N.Y.

Filer's address

88-25 143 Street, Jamaica, N.Y.

No. and Street

Date filed

9/16/96

File Code

Counties deleted (cont'd)

## MONS

**Business locations to be deleted (cont'd)**

No. and Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Country \_\_\_\_\_

Mr. and Mrs. [redacted]  
City [redacted] State [redacted]  
My Code [redacted] Country [redacted]

Alt. and Street  
City  
State  
Zip Code  
Country

No. and Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Zip Code \_\_\_\_\_  
Country \_\_\_\_\_

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT-01 1996

AMT. OF CHECK \$ 1857.00  
FILING FEE \$ 25.00

TAX \$             
COUNTY FEE \$ 1925.00  
CITY FEE \$ 2.00

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8. ~~13~~

-2-

VERMONT, IN A LETTER  
TO THE NEW YORK TIMES  
ON THE 10TH OF MARCH  
1964, HE SAID THAT  
HE WAS NOT A MEMBER  
OF THE ORGANIZATION  
OF THE PEOPLE'S FRONT  
IN AMERICA.

3000

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
June 30, 2008.

*Paul LaPointe*

Paul LaPointe  
Special Deputy Secretary of State

New York State  
Department of State  
Division of Corporations, State Records & UCC  
41 State Street  
Albany, NY 12231  
www.dos.state.ny.us

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF ASSUMED NAME  
OF

New York State Catholic Health Plan, Inc.  
(Insert Name of Entity)

Under Section 130 of the General Business Law

FIRST: The name of the entity is: New York State Catholic Health Plan, Inc.

SECOND: Foreign entities only. If applicable, the fictitious name the entity agreed to use in New York State is: Not Applicable

THIRD: If the name of the entity is different on the last Certificate of Assumed Name or Certificate of Amendment of Certificate of Assumed Name, the previous name of the entity is: Not Applicable

FOURTH: The entity was formed or authorized under (indicate law):  
☐ Business Corporation Law ☒ Not-for-Profit Corporation Law  
☐ Education Law ☐ Revised Limited Partnership Act  
☐ Insurance Law ☐ Other (specify law)  
☐ Limited Liability Company Law

FIFTH: The present assumed name is Fidelis Care New York

SIXTH: The date the original Certificate of Assumed Name was filed is: July 5, 2002

SEVENTH: The date, if applicable, the last Certificate of Amendment of Certificate of Assumed Name was filed is: Not Applicable

EIGHTH: The following change(s) are being made (check the appropriate change(s)):

☐ Entity Name:

The new name of the entity is: \_\_\_\_\_

☒ Assumed Name:

The new assumed name is: Fidelis Care

☐ Principal Place of Business:

The principal place of business is changed to (include the number and street, city, state, zip code and county): \_\_\_\_\_



C 328433

County(ies), Added or Deleted, in Which Business Will be Conducted Under the  
Assumed Name:

County(ies) Added:

County(ies) Deleted:

Address(es) of Specific Business Location(s), Added or Deleted:

Business Location(s) Added (include the  
number and street, city, state, zip code and county):Business Location(s) Deleted (include the  
number and street, city, state, zip code and county):

**INSTRUCTIONS FOR SIGNING:** If a corporation, by an officer; if a limited partnership, by a general partner; if a limited liability company, by a member or manager; or by an attorney-in-fact or authorized person for such corporation, limited partnership or limited liability company.

Mark L. Lane, President & CEO  
Name and Title

Signature

/s/ Mark L. Lane

**CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF ASSUMED NAME  
OF**

New York State Catholic Health Plan, Inc.  
(Insert Name of Entity)

Under Section 130 of the General Business Law

Filer's Name: Rexana Trainor, Esq., Chief Legal Officer

Address: 95-25 Queens Blvd.

City, State and Zip Code: Rego Park, NY 11374

Note: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$25 fee. The Department of State also collects the following, additional, county clerk fees for each county affected by the amendment in which a corporation does or transacts business: \$100 for each county within New York City (Bronx, Kings, New York, Queens and Richmond) and \$25 for each county outside New York City. All checks over \$500 must be certified.

For Office Use Only

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

FILED MARCH 10 2003

Amt of CK/Charge \$ 0

Auth #

Filing Fee \$ 0

County Fee \$ 0

Copy Fee \$

Refund \$

Spec Handle \$

7/5/02 All Counties

C# 930513000547

T# C318464.2

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JHW

# EXHIBIT 6

## List of Current Directors

## Current Board of Directors of Petitioner<sup>1</sup>

**Rev. Donald J. Harrington, C.M.**  
66 Olney Road  
Bourne, MA 02532

**Karl P. Adler, M.D.**  
245 E. 93<sup>rd</sup> St. – Apt. 22G  
New York, NY 10128

**Jack Balinsky**  
1329 Wellington Drive  
Victor, NY 14564

**M. William Benedetto**  
11141 Harbour Estates Cir.  
Fort Myers, FL 33908-2947

**Sister Patricia Burkard**  
1349 Indian Church Road  
West Seneca, NY 14224

**James Corrigan**  
844 Baytree Lane  
Ponte Vedra Beach, FL 32082

**Rev. John Coughlin**  
207 West 96th Street  
New York, NY 10025-6393

**Thomas F. Doodian**  
8 Severin Place  
Huntington, NY 11743

**Rev. Patrick J. Frawley**  
25- 02 80<sup>th</sup> Street  
Jackson Heights, NY 11370

**John J. Hurley**  
708 Lafayette Ave.  
Buffalo, NY 14222

**Thomas L. Kelly**  
2206 N. 9<sup>th</sup> Street  
Phoenix, AZ 85006-1621

**Donna M. O'Brien**  
28 Chestnut Street  
Garden City, NY 11530

**Rev. Leo J. O'Donovan, S.J.**  
106 W. 56<sup>th</sup> Street  
New York, NY 10019

**Gino J. Pazzaglini**  
9201 Sanctuary Ct.  
Raleigh, NC 27617-7477

**John J. Rydzewski**  
One West 72nd St., Apartment 30  
New York, NY 10023

**Deacon Frank J. Thomas, M.D.**  
1186 Stratford Road  
Schenectady, NY 12308

**Mary Thompson**  
175 Adams Street  
Brooklyn, NY 11201

**Michael J. Tooley**  
214 Hamilton St.  
Ogdensburg, NY 13669

**John A. Werwaiss**  
56 Peacock Lane  
Locust Valley, NY 11560

---

<sup>1</sup> When the Transaction was approved in September 2017, the Board of Directors also included Joseph Slavik, who subsequently stepped down from the Board. His successor has not yet been elected.

# EXHIBIT 7

## List of Current Officers

**Officers Residence Addresses**

**President**

Cardinal Timothy M. Dolan  
Archbishop of New York  
1011 First Avenue  
New York, NY 10022

**Vice-Chair**

Gino Pazzaglini  
9201 Sanctuary Ct.  
Raleigh, NC 27617-7477

**Secretary**

Sister Patricia Burkard  
1349 Indian Church Road  
West Seneca, NY 14224

**Chairperson**

Rev. Donald J. Harrington, C.M.  
66 Olney Road  
Bourne, MA 02532

**Treasurer**

John A. Werwaiss  
56 Peacock Lane  
Locust Valley, NY 11560

**Chief Executive Officer**

Rev. Patrick J. Frawley  
Our Lady of Fatima Rectory  
25-02 80th Street  
Jackson Heights, NY 11370

# EXHIBIT 8

## Salus IPA – Caremark IPA Agreement

**INDEPENDENT PRACTICE ASSOCIATION PROVIDER  
AGREEMENT**

**Between**

**Salus IPA, LLC**

**And**

**Caremark IPA, L.L.C.**

## INDEPENDENT PRACTICE ASSOCIATION PROVIDER AGREEMENT

**THIS INDEPENDENT PRACTICE ASSOCIATION PROVIDER AGREEMENT**, made this 1st day of January, 2009, by and between **Salus IPA, LLC** (hereinafter, "**SalusIPA**"), a New York limited liability company qualified as an independent practice association under New York law, and **Caremark IPA, L.L.C.** (hereinafter, "**CaremarkIPA**"), a limited liability company qualified as an independent practice association under New York law.

WHEREAS, SalusIPA has entered into a contract pursuant to which SalusIPA is responsible for providing or arranging for the provision of IPA Services to Enrollees in connection with the operation of the Programs; and

WHEREAS, the IPA Services include pharmacy benefit management ("PBM") services; and

WHEREAS, CaremarkIPA provides PBM services that include the development and maintenance of a network of contracted pharmacies; and

WHEREAS, SalusIPA desires to engage CaremarkIPA to develop and maintain a network of pharmacies through which CaremarkIPA will provide or arrange for the provision of IPA Services to Enrollees; and

WHEREAS, CaremarkIPA desires to provide such services (and services incidental thereto) to IPA.

**NOW, THEREFORE**, in consideration of the foregoing, and of the mutual covenants and promises set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

### AGREEMENT

1. **Definitions.** As used in this Agreement, the following terms shall have the indicated meanings:

1.1 "**Average Wholesale Price**" or "**AWP**" means the "average wholesale price" for a standard package size of a prescription drug from the most current pricing information provided to CaremarkIPA by First DataBank®, Medi-Span Prescription Pricing Guide (with supplements), or any other nationally available reporting service of pharmaceutical prices as selected by CaremarkIPA. CaremarkIPA uses a single data reporting source for determining SalusIPA's AWP pricing. The data reporting source used is dependent on the service platform utilized by SalusIPA. The standard package size applicable to a retail pharmacy shall be the actual package size dispensed as reported by the retail pharmacy to CaremarkIPA. In the event First DataBank, Medi-Span or other nationally available AWP reporting source discontinues the reporting of AWP or changes the manner in which AWP is calculated, then CaremarkIPA reserves the right to modify the pricing terms of this document, to be effective as of the date of such

CaremarkSalusIPA01



discontinuation or change, so as to maintain the parties' relative economic positions as existed immediately before the effective date of such discontinuation in reporting or change in the calculation of AWP, as measured across all products on an aggregate basis. Such modifications may include the utilization of alternate pricing benchmarks.

1.2 **"Clean Claim"** shall mean a claim for Health Care Services submitted electronically or on paper in a form acceptable to SalusIPA, that contains all the data elements required by SalusIPA to process and adjudicate the claim, including but not limited to the NPI provider identification number and all the data elements contained on the NCPDP 5.1 claim record format or other current and applicable form published by the Centers for Medicare and Medicaid Services ("CMS").

1.3 **"Encounter Data"** shall mean data relating to Health Care Services rendered, submitted electronically or on paper in a form acceptable to SalusIPA, that contains all the data elements required by SalusIPA, including but not limited to the NPI provider identification number and all the data elements contained on a CMS-approved claim form, such as the NCPDP 5.1 claim record format.

1.4 **"Enrollee" or "Member"** shall mean an individual who is entitled to receive those Health Care Services arranged for by Plan: (i) under a Program identified under **Schedule 1.16** as specified in the applicable Program Contract or under an employer-sponsored coverage program in partnership with Plan for family health plus insurance coverage pursuant to Section 369-ff of the New York Social Services Law; and (ii) where applicable, pursuant to a Member Agreement.

1.5 **"Health Care Services"** shall mean those Medically Necessary hospital, medical and other health care services, including pharmacy services, covered under and all services otherwise authorized under the terms of the applicable Program Contract and, where applicable, the Member Agreement, to which an Enrollee is entitled pursuant to such Program Contract and/or Member Agreement, including all attachments, exhibits, schedules and appendices thereto. In no event shall the meaning of "Health Care Services" include those benefits covered under the applicable Program but not provided or arranged for by SalusIPA pursuant to the applicable Program Contract, including without limitation, family planning services.

1.6 **"IPA Services"** shall mean those Health Care Services set forth in **Schedule 1.6** hereto which CaremarkIPA will be obligated to provide or arrange for the provision to Enrollees pursuant to this Agreement.

1.7 **"IPA Participating Provider"** shall mean a Pharmacy, Pharmacist or other licensed or certified health care professional, professional organization or institution that is duly licensed, registered or certified by the State of New York and that contracts with CaremarkIPA to provide Health Care Services to Enrollees.

1.8 **"Management Services Agreement" or "MSA"** means the Management Services Agreement between Salus Administrative Services, Inc. and CaremarkPCS Health, LP of even date herewith.

CaremarkSalusIPA01

1.9 **"Maximum Allowable Cost" or "MAC"** means the unit price that has been established by CaremarkIPA for a multi-source drug included on its MAC drug list developed for CaremarkIPA clients, which may be amended from time to time by CaremarkIPA, in maintaining its generic pricing program. A copy of such MAC drug list shall be provided to SalusIPA following execution of this Agreement and thereafter upon SalusIPA's reasonable request.

1.10 **"Medical Director"** shall mean SalusIPA's Chief Medical Officer or his or her designees.

1.11 **"Medically Necessary"** shall mean those Health Care Services that are determined by a physician or other licensed or certified health care professional to be essential to the health of an Enrollee in accordance with professional standards accepted in the medical community. In the event of a disagreement as to whether a particular Health Care Service is Medically Necessary, the Medical Director shall make the final determination of whether it is Medically Necessary, subject to SalusIPA's utilization review ("UR") procedures and in compliance with the applicable Program Contract.

1.12 **"MSO"** shall mean CaremarkPCS Health, LP, engaged by SalusIPA for the provision of administrative and management services in connection with the pharmacy services to be provided under this IPA Provider Agreement.

1.13 **"NYSDOH"** shall mean the New York State Department of Health.

1.14 **"NYSDOI"** shall mean the New York State Department of Insurance.

1.15 **"Personnel"** shall mean physicians, nurses, other appropriate health care professionals and technical personnel who are employees on an IPA Participating Provider's staff.

1.16 **"Program"** shall mean those Federal, state or other government programs, identified in Schedule 1.16 of this Agreement, under which SalusIPA arranges to provide prepaid health services to Enrollees on a contractual basis. Schedule 1.16 may be amended by SalusIPA from time to time to add or delete Programs.

1.17 **"Program Contract"** shall mean the contracts identified in Schedule 1.16 of this Agreement, entered into by and between SalusIPA and a federal, state, or local agency, under which SalusIPA provides or arranges to provide prepaid health services to Enrollees. Schedule 1.16 may be amended by SalusIPA from time to time to add or delete Programs. Program Contract shall include the contract itself and all attachments, exhibits, schedules or appendices to such contract, as they may be amended from time to time. To the extent that Enrollees are covered by Family Health Plus, the pertinent provisions of the applicable Program Contracts are hereby incorporated by reference in their entirety as if specifically and fully set forth herein.

1.18 "Provider Manual" shall mean the description, entitled "Provider Manual" and prepared by CaremarkIPA, of certain requirements, policies and procedures of SalusIPA generally applicable to all SalusIPA Providers.

1.19 "Specialty Drug" shall mean those services and drugs in select therapeutic classes defined on Schedule 5.3 that include ancillary supplies, pharmaceutical counseling and disease education.

## 2. Responsibilities of CaremarkIPA.

### 2.1 Provision of IPA Services.

2.1.1 IPA Participating Providers and Personnel to be Bound. CaremarkIPA shall ensure that each IPA Participating Provider and its Personnel shall be bound, in writing, by the terms of this Agreement, where applicable to them, including where an obligation is placed upon CaremarkIPA by this Agreement but such obligation may be performed or could be violated by IPA Participating Providers.

2.1.2 General. CaremarkIPA shall maintain and manage a network of IPA Participating Providers through which CaremarkIPA shall provide or arrange for the provision of IPA Services to Enrollees, as set forth in Schedule 2.1.2. All IPA Services shall be provided in accordance with (i) this Agreement, (ii) the applicable Program Contract, and (iii) applicable state and federal laws regarding the provision of Program services. CaremarkIPA shall comply fully with and abide by all policies and procedures established by SalusIPA, including without limitation, those pertaining to quality improvement, quality management, utilization management (including without limitation, precertification or preauthorization procedures, referral process or protocol, and reporting of clinical Encounter Data), Enrollee grievances and credentialing. CaremarkIPA agrees to be bound by and comply with all terms and conditions of the Program Contract applicable to the provision of IPA Services by CaremarkIPA. Program Contracts will be made available by SalusIPA to CaremarkIPA upon execution of this Agreement. Thereafter, SalusIPA shall notify CaremarkIPA of any changes or modifications to such Program Contracts no later than five (5) business days after the effective date of such changes or modifications. CaremarkIPA shall notify SalusIPA within five (5) business days of receiving such changes and modifications of any objections CaremarkIPA may have to such changes and modifications. The parties agree to negotiate in good faith to resolve any such objections. If there are any inconsistencies between the terms of this Agreement and any Program Contract, the Program Contract shall control over this Agreement.

2.1.3 IPA Participating Provider Obligations. CaremarkIPA shall cause IPA Participating Providers to provide those IPA Services set forth in Schedule 1.6.

2.1.4 Notice to SalusIPA of Adverse Effects on Ability to Provide Services. CaremarkIPA shall notify SalusIPA or, if appropriate, cause IPA Participating Providers to notify SalusIPA immediately, but in any event within two (2) business days, of the occurrence of any of the following:

CaremarkSalusIPA01

2.1.4.1 any act taken to restrict, suspend or revoke any license, registration or certification held by CaremarkIPA, the applicable IPA Participating Provider or his, her or its Personnel, or any disciplinary action initiated or taken against CaremarkIPA, the applicable IPA Participating Provider or his, her or its Personnel by a government agency or professional society, including without limitation, exclusion by the Medicare or Medicaid programs or, if applicable, loss of certification by such programs;

2.1.4.2 any event or situation that is required (under applicable laws or regulations) to be reported to the New York State Department of Health, a Program, or other state or federal agencies regulating CaremarkIPA, the applicable IPA Participating Provider, or its Personnel;

2.1.4.3 any charge or conviction of a felony offense with respect to CaremarkIPA, the applicable IPA Participating Provider or its Personnel; and

2.1.5.4 any other situation which might adversely affect CaremarkIPA's ability to properly carry out its obligations under this Agreement.

## 2.2 Standards for Provision of Services.

2.2.1 Non-Discriminatory Access and Treatment. IPA Services provided to Enrollees by CaremarkIPA or IPA Participating Provider shall be performed in the same manner, on the same basis and in accordance with the same standards offered to all of the other patients of CaremarkIPA, IPA Participating Provider and said Personnel, and shall be available and accessible to all Enrollees. CaremarkIPA, IPA Participating Providers and Personnel shall not unlawfully differentiate or discriminate in the treatment of Enrollees or in the quality of the IPA Services delivered to Enrollees on the basis of race, color, religion, creed, gender, age, marital status, veteran status, national origin, disability, sexual orientation, source of payment, or type of illness or condition. The parties to this Agreement also agree to comply with the applicable requirements of the Americans with Disabilities Act. In addition, CaremarkIPA shall, and shall require IPA Participating Providers to, protect Enrollee's rights as patients, including their rights to confidentiality regarding medical information.

2.2.2 Traditional Relationships Maintained. CaremarkIPA remains responsible for ensuring that IPA Services provided to Enrollees hereunder by IPA Participating Providers and their Personnel comply with all applicable provisions of federal, state and local laws, rules and regulations, including applicable requirements for continuation of medical care and treatment of Enrollees after any termination or expiration of this Agreement or the Program Contract. Nothing contained herein shall be construed to place any limitations upon the responsibilities of IPA Participating Providers and their Personnel under applicable laws with respect to the medical care and treatment of patients. However, nothing in this Section 2.2.2 shall preclude consultation between the Medical Director and CaremarkIPA, IPA Participating Providers or any of the other Personnel regarding the manner of rendering care and services and other aspects of care and services, such as quantity and quality.

2.2.3 Qualification of CaremarkIPA's IPA Participating Providers. CaremarkIPA shall require IPA Participating Providers to engage a sufficient number of duly qualified Personnel so that IPA Services are provided in a competent and timely manner. CaremarkIPA shall require all Personnel to be duly licensed, registered or certified in their field (if required by applicable law to be so licensed, registered or certified) and to practice in accordance with all applicable laws and regulations and all rules, regulations and bylaws of CaremarkIPA.

2.2.4 Credentialing. CaremarkIPA shall determine the criteria for selection of IPA Participating Providers and Personnel, which shall, at a minimum, be consistent with applicable state laws regarding pharmacies and pharmacists.

2.2.5 Plan Design and Eligibility Data.

2.2.5.1 CaremarkIPA shall provide the Services hereunder in accordance with the plan design document provided by SalusIPA to CaremarkIPA.

2.2.5.2 SalusIPA, or SalusIPA's designee, at SalusIPA's sole expense, will provide CaremarkIPA all information concerning its prescription benefit plan ("Plan") and Enrollees needed to perform the IPA Services, including any updates thereto ("Eligibility Information"). This Eligibility Information must be complete and accurate, provided timely, and in a format and media acceptable by CaremarkIPA.

2.2.5.3 CaremarkIPA will maintain the Eligibility Information provided by SalusIPA.

2.2.5.4 CaremarkIPA, Enrollees' physicians and IPA Participating Providers are entitled to rely on the accuracy and completeness of the Eligibility Information and updates thereto.

2.2.5.5 CaremarkIPA is not liable for fraudulent claims submitted by Enrollees or by unauthorized persons using an Enrollee's identification card or number.

2.3 [Intentionally omitted.]

2.4 [Intentionally omitted.]

2.5. Enrollee Complaints and Grievance Procedures. CaremarkIPA agrees to cooperate and shall require IPA Participating Providers and their Personnel to cooperate with SalusIPA in resolving any Enrollee complaints or grievances that may arise relating to the provision of IPA Services to Enrollees. SalusIPA and CaremarkIPA agree that any complaints received by SalusIPA, Provider or any IPA Participating Provider or Personnel with respect to the provision of IPA Services shall be handled in accordance with SalusIPA's complaint and grievance procedures as set forth in the Provider Manual.

2.6 [Intentionally omitted.]

2.7 Cooperation with SalusIPA Policies and Procedures. In addition to the provisions of this Agreement, CaremarkIPA agrees to cooperate with and adhere and to require IPA Participating Providers to cooperate with and adhere to all of SalusIPA's policies, procedures and programs that are applicable to CaremarkIPA.

2.8 IPA Participating Provider-Related Services. CaremarkIPA shall be responsible for all provider relations and orientation for IPA Participating Providers and Personnel, including provider relations meetings, consultations and other programs.

2.9 Medical Director(s). CaremarkIPA shall provide the services of one (1) or more physicians and/or pharmacists to serve as medical director(s) for CaremarkIPA, as reasonably necessary, in CaremarkIPA's sole discretion, for the proper administration of CaremarkIPA and general coordination of CaremarkIPA's medical care delivery system. The responsibilities of CaremarkIPA's medical director(s) shall include: general coordination of CaremarkIPA's medical care delivery system including coordination with SalusIPA's Medical Director, appropriate professional staffing of CaremarkIPA, design and review of quality assurance protocols and utilization control procedures for CaremarkIPA, and implementation of quality assurance and utilization management programs and continuing education requirements as may be required for IPA Participating Providers. CaremarkIPA's medical director shall coordinate these activities with the credentialing and utilization review/quality assurance committees of SalusIPA, as appropriate. CaremarkIPA agrees that the Medical Director shall not perform utilization review.

2.10 Drug Classification. CaremarkIPA shall use the indicators of Medi-Span Master Drug Database (MDDDB), and their associated files, as updated regularly by Medi-Span, or another nationally available reporting service of pharmaceutical drug information in determining the classification of drugs (e.g. legend vs. over the counter, brand vs. generic, single-source vs. multi-source) for purposes of this Agreement.

### 3. Responsibilities of SalusIPA.

3.1 Administrative and Other Services. SalusIPA shall be ultimately responsible for all administration and management of, and for making available, through CaremarkIPA, Health Care Services all as necessary to establish and operate a prepaid health services plan for Enrollees and persons receiving Program benefits who seek to be Enrollees, including but not limited to the following:

3.1.1 Financial and Claims Payment Services. SalusIPA shall provide or arrange for all financial services, which shall include, at a minimum, billing under the applicable Program Contract, appropriate financial reporting to CaremarkIPA and, where applicable, claims payment to CaremarkIPA.

3.1.2 Implementation of Quality Assurance and Utilization Review. CaremarkIPA acknowledges that SalusIPA shall implement and have ultimate responsibility for the quality

assurance and utilization review programs developed by SalusIPA and set forth in the Provider Manual. Such programs shall be reviewed and approved annually by SalusIPA.

3.1.3 Enrollee Services. SalusIPA shall provide to or arrange for the provision to Enrollees all services of SalusIPA that are not IPA Services, including processing of complaints and grievances and preparation and dissemination of new Enrollee packets and other written materials given to Enrollees to explain the Health Care Services provided or arranged for by SalusIPA and the procedures for receiving same.

3.2 Enrollee Authorizations. SalusIPA represents and warrants that it has obtained from Enrollees all consents and/or authorizations required, if any, for CaremarkIPA to perform the IPA Services and for the use and disclosure of information including PHI, as permitted under this Agreement.

3.3 Control of Plan. SalusIPA retains the sole and absolute authority to design, amend, terminate or modify, in whole or in part, all or any portion of the Plan, including the sole authority to control and administer the Plan and any assets of the Plan. SalusIPA will also have complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the delivery of services under the Plan and to resolve complaints by Enrollees. Nothing in this Agreement shall be deemed to confer upon CaremarkIPA the status of plan administrator or fiduciary as defined in ERISA, or applicable state law, or any responsibility for the terms or validity of the Plan.

3.4 Changes to Plan Design. SalusIPA shall provide CaremarkIPA with sixty (60) days prior written notice of any proposed changes to the benefit plans. If the NYSDOH or other regulatory agency requires any changes to the benefit plans, within the scope and reason of CaremarkIPA Services, CaremarkIPA will make best efforts to implement such change within the timeline provided. If such change requires additional programming, charges will be mutually agreed upon in accordance with the hourly rate as set forth in this Agreement. SalusIPA agrees that it is responsible for Losses resulting from any failure to implement Plan design changes which are not communicated in writing to CaremarkIPA. In addition, SalusIPA shall notify Enrollees of any Plan design changes prior to the effective date of any such changes.

#### 4. Quality Assurance and Utilization Management.

4.1 Participation. CaremarkIPA shall participate in and comply with, and require all IPA Participating Providers and Personnel to participate in and comply with, the quality assurance program, implemented pursuant to Section 3.1.2 above, to promote the rendering of quality health care and quality service. CaremarkIPA shall provide to SalusIPA, and shall require all Personnel to provide to SalusIPA, all information identified by SalusIPA and NYSDOH necessary to support SalusIPA conducting quality assurance and utilization review or for New York State Quality Assurance Reporting Requirements and HEDIS reporting. CaremarkIPA also shall participate in and comply with, and shall require all IPA Participating Providers and Personnel to participate in and comply with, the utilization review program, implemented pursuant to Section 3.1.2 above, to review the provision of all IPA Services to Enrollees in order

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to provide cost effective care to Enrollees. In addition, to the extent applicable with respect to the IPA Services, CaremarkIPA shall, and shall cause IPA Participating Providers and Personnel to, promote SalusIPA's preventive medicine and health education programs for Enrollees.

**4.2 Provision of Information.** CaremarkIPA represents and warrants that the information provided to SalusIPA in connection with utilization review and quality assurance will be accurate and complete at all times, and any material changes in such information shall be disclosed to SalusIPA without delay. The foregoing provisions of this Section 4.2 shall not require the release or other disclosure by any person of information to the extent that such release or other disclosure is prohibited by or otherwise contrary to any applicable law.

## **5. Financial Relationship.**

### **5.1 Billing Responsibility.**

**5.1.1 Billing to SalusIPA.** CaremarkIPA shall look to SalusIPA for payment of all IPA Services rendered to Enrollees by CaremarkIPA or IPA Participating Providers pursuant to the terms of this Agreement, and shall not permit any IPA Participating Providers or Personnel to render individual bills to Enrollees unless expressly approved in advance by SalusIPA. CaremarkIPA will make available information reflecting the amount of payments that have become due with respect to SalusIPA for claims approved for payment during the applicable period. Within five (5) business days of receipt of advice, SalusIPA will wire transfer the invoiced amount to such account as CaremarkIPA may designate from time to time. CaremarkIPA may change the payment cycle upon thirty (30) days' prior written notice to SalusIPA. SalusIPA agrees that CaremarkIPA is solely responsible for payment to IPA Participating Providers of the charge for prescriptions dispensed (exclusive of any applicable Enrollee copayments), provided that the foregoing shall not release SalusIPA from any payment obligation to CaremarkIPA under this Agreement. The amount that SalusIPA pays to CaremarkIPA under this Section 5.1.1 is not an asset of SalusIPA's prescription benefit plan.

**5.1.2** If SalusIPA is fifteen (15) days in arrears on its payment obligations to CaremarkIPA under this Agreement, CaremarkIPA, after making a reasonable effort to collect and upon notice to SalusIPA may, in addition to its remedies under this Agreement, at Law or in equity, do any or all of the following: (i) suspend performance of any or all of CaremarkIPA's obligations under or in connection with this Agreement, including CaremarkIPA's obligation to process claims; (ii) apply all or any portion of any security posted by SalusIPA with CaremarkIPA to SalusIPA's delinquent account; or (iii) set off against any amounts payable to SalusIPA (including any rebates CaremarkIPA receives from a manufacturer on behalf of SalusIPA) any amounts due from SalusIPA.

**5.1.3 Security.** If at any time during the term of this Agreement CaremarkIPA reasonably determines, based on claims volume, payment record or SalusIPA's latest financial information, that SalusIPA may have difficulty meeting its financial commitments under this Agreement, CaremarkIPA may require SalusIPA to provide security in a reasonable amount and form commensurate with SalusIPA's financial commitments. SalusIPA will provide such



security within ten (10) days of CaremarkIPA's request. Additionally, SalusIPA will furnish audited financial statements to CaremarkIPA upon CaremarkIPA's request. CaremarkIPA will keep these audited financial statements confidential and will use them solely for internal review purposes to determine credit requirements.

If at any time during the term of this Agreement, SalusIPA reasonably determines, based on CaremarkIPA's payment record or latest financial information, that CaremarkIPA may have difficulty meeting its financial commitments under this Agreement, SalusIPA may require CaremarkIPA to provide security in a reasonable amount and form commensurate with CaremarkIPA's financial commitments. CaremarkIPA will provide such security within ten days of SalusIPA's request. Additionally, CaremarkIPA will furnish audited financial statements to SalusIPA upon SalusIPA's request. SalusIPA will keep these audited financial statements confidential and will use them solely for internal review purposes to determine credit requirements.

**5.2 Non-Covered Services.** In the event that an Enrollee requires or requests a service that is not covered or authorized by SalusIPA, and such service is also not covered by the Program through which Enrollee is entitled to receive services, CaremarkIPA, IPA Participating Providers or Personnel must:

5.2.1 inform the Enrollee that the Enrollee will be personally responsible for all fees related to the service and the estimated fee for the service. In the event that CaremarkIPA, IPA Participating Provider or Personnel has not been given a list of Health Care Services by SalusIPA and/or CaremarkIPA, or if IPA Participating Provider or Personnel is uncertain as to whether a service is covered, then CaremarkIPA, IPA Participating Provider or Personnel shall contact SalusIPA and obtain a coverage determination prior to advising an Enrollee as to coverage and liability for payment, prior to providing the service; and

5.2.2 obtain an executed acknowledgment of financial responsibility from Enrollee or Enrollee's legal representative prior to the time such services are provided.

Only if these steps have been taken shall CaremarkIPA be entitled to bill the Enrollee and collect for such services.

### **5.3 Sole Compensation.**

5.3.1 CaremarkIPA shall accept from SalusIPA, as full and complete payment for IPA Services rendered to Enrollees, a payment in accordance with the rates, terms and conditions set forth in **Schedule 5.2 (Rates)** and **Schedule 5.3 (Specialty Pharmacy Rates)** hereto. Rate modifications shall be agreed to by both parties in writing.

5.3.2 Under no circumstances, including, but not limited to, non-payment by or insolvency of SalusIPA or CaremarkIPA or breach of this Agreement or the applicable IPA Participating Provider's agreement with CaremarkIPA, shall CaremarkIPA (and CaremarkIPA shall cause IPA Participating Providers, Personnel and anyone carrying out any of

CaremarkIPA's obligations under this Agreement not to) bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, have any recourse against, or make any other claim against an Enrollee or any other person (other than IPA) acting on his or her behalf, for IPA Services rendered to an Enrollee pursuant to the applicable Program Contract or Member Agreement and this Agreement, for the period covered by the paid Enrollee premium. This provision shall not prohibit CaremarkIPA, IPA Participating Providers or Personnel from collecting co-payments (if any) expressly permitted by SalusIPA or fees for uncovered services provided on a fee-for-service basis as set forth in Section 5.2 above.

5.3.3 CaremarkIPA further agrees, and shall cause IPA Participating Providers and Personnel to agree, that (i) this Section shall survive the termination or expiration of this Agreement regardless of the cause giving rise to said termination and shall be construed for the benefit of the Enrollee, (ii) this Section supersedes any oral or written agreement to the contrary now existing or hereinafter entered into between CaremarkIPA and any Enrollee or any person acting on Enrollee's behalf, and (iii) CaremarkIPA shall, at SalusIPA's reasonable request, require any IPA Participating Provider or Personnel providing IPA Services to Enrollees to agree in writing to the terms of this paragraph.

5.4 Timing of Payment to CaremarkIPA Participating Providers. CaremarkIPA shall pay IPA Participating Providers in accordance with the requirements of Section 3224-a of the New York State Insurance Law.

5.5 Fee Disputes. CaremarkIPA agrees, and shall cause IPA Participating Providers and Personnel to agree, that any fee dispute shall be subject to SalusIPA's dispute resolution process set forth in the Provider Manual, and the arbitration provisions of Section 11.14 of this Agreement, which arbitration determination is binding upon SalusIPA and CaremarkIPA. CaremarkIPA agrees and acknowledges that, and shall cause IPA Participating Providers and Personnel to agree and acknowledge that, notwithstanding any payment decision made by SalusIPA or SalusIPA's Medical Director, CaremarkIPA, IPA Participating Providers and Personnel remain solely responsible for all professional and medical judgments made pursuant to this Agreement.

5.6 Coordination of Benefits ("COB"). CaremarkIPA shall, and shall cause IPA Participating Providers and Personnel to, cooperate with SalusIPA in the coordination of benefits between SalusIPA and third party insurers where applicable to any Enrollee. To the extent CaremarkIPA or its IPA Participating Providers collect(s) and maintain(s) COB records, CaremarkIPA shall make such records available to SalusIPA upon request.

## **6. Adherence to Ethical and Religious Directives.**

Nothing contained in this Agreement shall require or cause SalusIPA to pay, reimburse, arrange or provide any service or participate in any activity which is not in accordance with the Ethical and Religious Directives for Catholic Healthcare Services issued by the United States Catholic Conference, available for review upon request to CaremarkIPA, as interpreted by the Bishop of the Diocese in which CaremarkIPA renders or arranges for the provision of services to Enrollees.

## **7. Records and Reports.**

**7.1 Maintenance of Medical Records.** CaremarkIPA shall maintain, and shall require IPA Participating Providers and Personnel to maintain, medical records pursuant to established SalusIPA standards for the maintenance of medical records relating to the provision of IPA Services to Enrollees, including without limitation, in such form and containing such information as are reasonably required by SalusIPA, considering the relevant requirements of federal, state and local law. As necessary, CaremarkIPA shall forward, and shall require IPA Participating Providers and Personnel to forward, to SalusIPA, in a prompt manner, any clinical information pertaining to Enrollees. CaremarkIPA shall maintain, and shall require all IPA Participating Providers and Personnel to maintain, all records relating to Enrollees for the greater of: (i) six (6) years, (ii) six (6) years from age of majority, or (iii) the length of time physicians or other providers, as the case may be, are required to maintain patient records under applicable New York law, which obligations shall survive any termination or expiration of this Agreement.

### **7.2 Confidentiality and Access.**

**7.2.1 Confidentiality.** The parties agree, and CaremarkIPA shall cause IPA Participating Providers and Personnel to agree, that all Enrollees' records shall be treated as confidential so as to comply with all federal and state laws and the applicable Program Contract regarding the confidentiality of medical records. Any use and disclosure of such records by CaremarkIPA and IPA Participating Providers shall be done in accordance with applicable federal and state laws.

**7.2.2 Access to CaremarkIPA Records.** CaremarkIPA shall require IPA Participating Providers to make Enrollee healthcare records and other personally identifiable information available to SalusIPA and CaremarkIPA, with appropriate consent/authorization, for purposes including preauthorization, concurrent review, quality assurance, and payment processing; and to the NYSDOH, at no expense to the State, for management audits, financial audits, program monitoring and evaluation, licensure or certification of facilities or individuals and as otherwise required by State law. CaremarkIPA acknowledges and agrees that CaremarkIPA shall also provide, or shall cause IPA Participating Providers or Personnel to provide, to SalusIPA or any applicable federal, state, county or city regulatory agency, upon request, all financial data and reports and information concerning the appropriateness and quality of services provided to Enrollees, to the extent authorized by law. Additionally, where Enrollee medical records, or any financial information pertain to services provided pursuant to Medicaid, CaremarkIPA shall, or shall cause IPA Participating Providers or Personnel to, disclose the nature and extent of services provided and shall furnish such records to the NYSDOH, the United States Department of Health and Human Services, the applicable County Department of Social Services, the Comptroller of the State of New York, the New York State Attorney General and the Comptroller General of the United States and their authorized representatives upon request. CaremarkIPA, IPA Participating Providers and Personnel may not charge for the costs of any such copies or information.

7.2.3 Notification of Request for Records. CaremarkIPA shall notify, and shall require all IPA Participating Providers to notify, Salus IPA of the receipt of any request by any attorneys, courts of law or administrative bodies for information relating to the provision of IPA Services to Enrollees. SalusIPA shall notify CaremarkIPA of the receipt of any request by any attorneys, courts of law or administrative bodies for information relating to the provision of IPA Services to Enrollees.

7.2.4 Confidential Information. The term "Confidential Information" includes, but is not limited to, any information of either the SalusIPA or CaremarkIPA (whether oral, written, visual or fixed in any tangible medium of expression) relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, costs and pricing data, trade secrets, know-how, processes, plans, designs and other information of or relating to either party's business, including its therapeutic and disease management programs. "Confidential Information" does not include Protected Health Information, the use and disclosure of which is governed by 7.2.1 of this Agreement.

7.2.5 Obligations of Officers or Employees. Neither CaremarkIPA, SalusIPA, nor any of either party's officers or employees shall disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may, inter alia, be conditioned upon the execution of a confidentiality agreement prior to any disclosure to a third party. Each party will disclose Confidential Information of the other party only to its officers or, employees, attorneys, accountants, auditors and agents who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have signed a confidentiality agreement, (ii) have been informed of the confidential and proprietary nature of the Confidential Information, and (iii) have agreed not to disclose it to others and to treat it in accordance with the requirements of this Section 7.2.

7.2.6 Permitted Disclosure of Confidential Information. The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the party who disclosed the information; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; (v) the information is required to be disclosed pursuant to a non-appealable court order; or (vi) as otherwise permitted by this Agreement. If either party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, formal or informal investigation by any government or governmental agency, judicial process or otherwise) to disclose the Confidential Information of the other party such party shall promptly give such prior written notice to the other party to allow the other party to seek an appropriate protective order or modification of any disclosure. The receiving party agrees not to oppose any action by the disclosing party to obtain a protective order or other appropriate remedy. If the receiving party is ultimately legally required to disclose such

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Confidential Information, the receiving party shall disclose the minimum required pursuant to the court order or other legal compulsion.

**7.2.7 Remedies.** Any unauthorized disclosure or use of Confidential Information including but not limited to, the sharing of this Agreement or any of the financial terms related to this Agreement, or claims tapes with any consulting agents, advisors, brokers, or any other third party, except as set forth in this Section 7.2, would cause CaremarkIPA or SalusIPA immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either party fails to comply with this Section 7.2, the other party will be entitled to specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for losses caused by the breach, and to any other remedies provided by law.

**7.2.8 Survival.** The obligations set forth in this Section 7.2 shall survive any termination or expiration of this Agreement.

## **8. Term and Termination.**

**8.1 Term of Agreement.** This Agreement shall commence on January 1, 2009 (the "Effective Date"). Subject to earlier expiration or termination as provided in Sections 8.2 and 8.3 below, this Agreement shall continue for an initial term of two (2) years and shall thereafter, subject to all required government approvals under the Program Contract and any other required government approvals, automatically renew for successive one (1) year periods.

**8.2 Non-Renewal.** This Agreement shall expire at the end of the initial term and upon any anniversary of the Effective Date thereafter, provided that the party desiring not to renew this Agreement provides the other party with at least sixty (60) days' prior written notice of its intent not to renew.

**8.3 Termination of Agreement.** Notwithstanding the foregoing, this Agreement may be terminated as follows:

**8.3.1 Termination by Mutual Consent.** This Agreement may be terminated at any time by mutual written consent of the parties.

**8.3.2 Termination by CaremarkIPA.** CaremarkIPA shall have the right to terminate this Agreement immediately upon notice in the event that SalusIPA ceases to be duly licensed under applicable New York law or fails to maintain any of the insurance coverages required by Section 9.1.

**8.3.3 Suspension.** In the event SalusIPA: (i) is fifteen (15) days in arrears on its payment obligations under this Agreement or does not provide a deposit pursuant to Section 5.1.3; (ii) makes an assignment for the benefit of creditors; (iii) is the subject of a voluntary or involuntary petition for bankruptcy, or is adjudged insolvent or bankrupt; or, (iv) a receiver or trustee is appointed for any portion of its property, CaremarkIPA may immediately, and without

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penalty or any liability for any losses, upon reasonable effort to collect and upon notice to SalusIPA, suspend performance of IPA Services hereunder. Suspension of performance by CaremarkIPA shall not constitute termination of this Agreement.

8.3.4 Effective Date of Termination. The parties acknowledge that any termination or non-renewal of this Agreement requires notice to the Commissioner and the parties shall provide such notice. The effective date of termination shall be as set forth herein, however it shall not be less than ninety (90) days after receipt of notice by either party, provided however, that termination by SalusIPA may be effected on less than ninety (90) days notice when it can be demonstrated to the NYSDOH prior to termination that circumstances have arisen which justify or require immediate termination. Notice of termination to the Commissioner shall include an impact analysis of the termination or non-renewal on Enrollee access to care.

8.4 Effect of Termination or Expiration. As of the date of termination or expiration of this Agreement in accordance with this Section 8, this Agreement shall be considered of no further force or effect whatsoever, and each of the parties shall be relieved and discharged from its respective rights and obligations hereunder, except as otherwise specifically provided herein and except that:

8.4.1 The parties' rights and obligations under Sections, 5.3, 5.6, 7.1, and 7.2, above and 8.4.4, 8.4.5, 8.4.6, 9.2 and 9.3 below (regarding recourse for compensation, coordination of benefits, records, confidentiality and access, continuation of services, insurance and indemnification, respectively) of this Agreement shall not be extinguished but shall continue in effect for the time periods stated therein.

8.4.2 Any or either party's rights to receive its respective payments for claims for IPA Services (under Article 5 above) and any sums that were earned, or due and owing, as the case may be, prior to termination or expiration of this Agreement shall continue in effect.

8.4.3 CaremarkIPA, IPA Participating Providers and Personnel shall not be released from their obligation not to seek any payment from Enrollees for IPA Services provided prior to termination or expiration of this Agreement.

8.4.4 To the extent applicable to IPA Services, CaremarkIPA shall be obligated and shall cause IPA Participating Providers to be obligated to (a) continue to render IPA Services to Enrollees in accordance with the terms of this Agreement (including compensation) for the longer of the period required by the applicable Program Contract or ninety (90) calendar days from the date SalusIPA has knowledge of CaremarkIPA's disaffiliation from SalusIPA, provided that at all times after termination or expiration, SalusIPA shall use all reasonable efforts to cause Enrollees (without discrimination based on health or otherwise) to be transferred to other providers designated by SalusIPA; and (b) cooperate fully in notification of Enrollees as to the termination or expiration and in effecting a smooth transition of Enrollees to other providers designated by SalusIPA. CaremarkIPA acknowledges that in accordance with the applicable Program Contract, CaremarkIPA may be required to continue to provide or arrange for the provision of IPA Services under this Agreement with respect to Enrollees until the expiration or

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other termination of said Program Contract, subject, however, to the foregoing provisions of this Section 8.4.4.

8.4.5 Notwithstanding CaremarkIPA's obligations in section 8.4.4 above and to the extent applicable to IPA Services, CaremarkIPA shall, in addition, complete or cause IPA Participating Providers or Personnel to complete, any course of treatment to any individual Enrollee, in accordance with the terms of this Agreement (including compensation), for whom treatment was ongoing on the date of termination or expiration for a transitional period up to ninety (90) calendar days from the date the Enrollee is notified of the termination, or, if the Enrollee is a woman in her second trimester of pregnancy on the date of termination or expiration, for a transitional period that includes the provision of post-partum care directly related to the delivery. For Enrollees confined to an inpatient facility, CaremarkIPA shall also complete, or cause IPA Participating Providers or Personnel to complete, any course of treatment in progress until a medically appropriate discharge or transfer is made, or completion of the course of treatment is made, whichever first occurs, provided that the confinement or course of treatment was commenced during the paid premium period. CaremarkIPA acknowledges that it shall continue to provide or arrange for treatment during these transitional periods even when this Agreement terminates due to SalusIPA's insolvency. CaremarkIPA and SalusIPA understand and acknowledge that any decision to continue treatment with an IPA Participating Provider shall be made by the applicable Enrollee during the applicable transitional period.

8.4.6 Upon termination or expiration of this Agreement for any reason, CaremarkIPA must return to SalusIPA all proprietary information supplied respectively by SalusIPA to CaremarkIPA.

8.4.7 CaremarkIPA and SalusIPA understand and acknowledge, if required by applicable law, that SalusIPA will report any termination of this Agreement to NYSDOH and the United States Department of Health and Human Services.

8.5 Effect of Interruptions. In the event the provision of IPA Services to Enrollees is interrupted or substantially disrupted due to causes beyond the reasonable control of CaremarkIPA, including but not limited to a major disaster, the complete or substantial destruction of CaremarkIPA or CaremarkIPA's facilities, acts of God or actions by any governmental authority, war, fire, earthquake, tornado, freight embargoes, flood, epidemic, quarantine restrictions, labor disturbances including slow-down strikes and lock-outs, or any other similar causes, CaremarkIPA shall use his/her best efforts to arrange, in consultation with SalusIPA and through whatever alternative means as are necessary, and shall remain responsible for, the provision of any such interrupted or disrupted IPA Services; provided, however, that nothing contained herein shall be construed to limit or reduce the obligation of CaremarkIPA not to seek payments from Enrollees for IPA Services provided to such Enrollees.

## 9. Insurance and Indemnification.

9.1 SalusIPA Insurance. SalusIPA, at its sole cost and expense, shall maintain comprehensive general liability insurance with limits not less than \$1 million per occurrence and

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\$2 million in the aggregate and other coverages it deems appropriate with a limit not less than \$10 million in the aggregate. Such insurance shall be obtained from a commercial insurance carrier admitted to do business in the State of New York or from a duly established and funded self- or pooled- insurance program. SalusIPA shall, upon request, provide CaremarkIPA with proof of insurance coverage.

**9.2 CaremarkIPA Insurance.** CaremarkIPA shall maintain insurance coverage with limits in the amounts as required by applicable New York state law. In addition, CaremarkIPA shall cause IPA Participating Providers to maintain insurance coverage with limits in the amounts as required by applicable New York state law.

**9.3 Indemnification.** The parties agree to indemnify and hold each other, their agents and employees harmless from any and all loss, damage, injury, causes of action or liability, including court costs and reasonable legal fees that are directly caused by or arise directly out of any act or omission by such party, its directors, officers, employees or agents in connection with this Agreement. This provision shall not be deemed to transfer any liability for SalusIPA's own acts and omissions to CaremarkIPA, and CaremarkIPA may not transfer any liability for its own acts and omissions to IPA Participating Providers or Personnel.

## **10. Use of Names.**

CaremarkIPA agrees, and shall cause IPA Participating Providers and Personnel to agree, that SalusIPA may use CaremarkIPA's and/or IPA Participating Provider's and Personnel's identifying information in a roster of SalusIPA Providers for purposes of marketing SalusIPA. CaremarkIPA and IPA Participating Providers may use SalusIPA's name in a listing of plans in which CaremarkIPA participates. CaremarkIPA shall not otherwise, and shall cause IPA Participating Providers and Personnel not to otherwise, use the identifying information provided by SalusIPA in any advertising, marketing, enrollment or other promotional material without the prior written approval of SalusIPA, which shall not be unreasonably delayed, withheld or conditioned. In no event shall CaremarkIPA or IPA Participating Provider or Personnel alter any trademark or service mark of SalusIPA. CaremarkIPA agrees, and shall cause IPA Participating Providers and Personnel to agree, to follow SalusIPA's instructions in order to protect SalusIPA's trademarks or service marks.

## **11. Miscellaneous.**

**11.1 Notices.** Any notice required or permitted to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be deemed given (i) when delivered, if delivered in person, (ii) four (4) calendar days after being mailed by certified or registered mail, postage prepaid, return receipt requested, or (iii) one (1) business day after being sent by receipted overnight courier to the parties, their successors in interest or their assignees at addresses which appear on the signature page hereto, or at such other addresses as the parties may designate by written notice in the manner aforesaid.



11.2 Assignability, Subcontracting, and Parties in Interest. Neither party may assign this Agreement without the prior written consent of the other party, provided such consent will not be unreasonably withheld, subject to the prior approval of the Commissioner, if required. However, either party may assign this Agreement or delegate the duties to be performed under this Agreement without the consent of SalusIPA to any of its subsidiaries or affiliates at any time, or as part of a sale of all, or substantially all, of the assets to which this Agreement pertains. The parties acknowledge that any such assignment, delegation or transfer may require the notification and prior approval of the New York State Department of Health. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

11.3 Relationship of the Parties. None of the provisions of this Agreement are intended to create, and none shall be deemed or construed to create, any relationship between SalusIPA and CaremarkIPA other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of the Agreement. Neither the parties hereto nor any of their respective employees shall be construed under this Agreement to be the partner, joint venturer, agent, employer or representative of the other.

11.4 Waiver of Breach. No assent or waiver, express or implied, of any breach of any one or more of the covenants, conditions or provisions hereof shall be deemed or taken to be a waiver of any other covenant, condition or provision hereof or a waiver of any subsequent breach of the same covenant, condition or provision hereof.

11.5 Governing Law. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement shall be governed by, the laws of the State of New York, without giving effect to the provisions thereof regarding conflict of laws.

11.6 Severability. The provisions of this Agreement are severable, and, if any provision of this Agreement is held to be invalid, illegal or otherwise unenforceable, in whole or in part, in any jurisdiction, said provision or part thereof shall, as to that jurisdiction be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

11.7 Modifications, Amendments and Waivers. Except as otherwise noted in this Agreement, mutual written agreement signed by the parties shall be required for the following actions, which may be taken at any time prior to termination or expiration of this Agreement: (a) extending the time for the performance of any of the obligations or other acts of the parties hereto; (b) waiving compliance with any of the covenants contained in this Agreement; and (c) amending or supplementing any of the provisions of this Agreement. Notwithstanding the foregoing, CaremarkIPA acknowledges that SalusIPA may amend this Agreement immediately upon written notice in order to implement changes required by appropriate state or federal regulatory agencies. Any material waiver, modification or amendment of this Agreement shall

require the prior approval of the Commissioner of the NYSDOH and shall be submitted to the Commissioner at least thirty (30) calendar days in advance of the anticipated date of execution.

11.8 No Third Party Beneficiaries. Except as specifically provided in Section 5.2, the parties agree that they do not intend to create any enforceable rights in any third parties under this Agreement and that there are no third party beneficiaries to this Agreement.

11.9 Entire Agreement. This Agreement and the Attachments hereto contain the entire Agreement between the parties hereto with respect to the transactions contemplated herein and shall supersede all previous oral and written and all contemporaneous oral negotiations, commitments and understandings relating thereto.

11.10 Compliance with Applicable Law.

11.10.1 SalusIPA and CaremarkIPA shall, and CaremarkIPA shall cause IPA Participating Providers and Personnel to, comply with all applicable federal, state and local laws, statutes, ordinances, orders and regulations relevant to the conduct of SalusIPA's and CaremarkIPA's activities. Notwithstanding any other provision of this Agreement, the parties shall comply with the applicable provisions of the Managed Care Reform Act of 1996 (Chapter 705 of the Laws of 1996), and all amendments thereto. The parties further agree that no payment will be made, directly or indirectly, pursuant to this Agreement, as an inducement to reduce or limit medically necessary services furnished to Enrollees. In addition, the NYSDOH "Standard Clauses" for MCO and IPA Provider Contracts, attached to this Agreement as Appendix A, are expressly incorporated into this Agreement and are binding upon the parties to this Agreement. In the event of any inconsistent or contrary language between Standard Clauses, and any other part of this Agreement, including but not limited to appendices, amendments and exhibits, the provision of the Standard Clauses shall prevail.

11.10.2 Each party certifies that it shall not violate the federal anti-kickback statute, set forth at 42 U.S.C § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal "Stark Law," set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement. Further, CaremarkIPA shall ensure that individuals meeting the definition of "Covered Persons" (as such term is defined in the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and AdvancePCS) shall comply with Caremark's Compliance Program, including training related to the Anti-Kickback Statute and the Stark Law. Caremark's Code of Conduct and policies and procedures on the Anti-Kickback Statute and Stark Law may be accessed at <http://www.caremark.com/wps/portal/s.155/3370?cms=CMS-2-007764>.

11.11 Regulatory Approvals. SalusIPA shall use its best efforts to obtain, prior to the Effective Date, any regulatory approvals that may be required of this Agreement. The parties hereby acknowledge that this Agreement is subject to approval of the NYSDOH and, if implemented prior to such approval, the parties agree to incorporate into this Agreement any and all modifications required by the NYSDOH for approval or, alternatively, to terminate this Agreement effective sixty (60) calendar days after such notice, subject to New York State Public

Health Law Section 4403(6)(e), if so directed by the NYSDOH. In the event any such approval is denied, or is conditioned upon certain changes hereto, SalusIPA shall revise this Agreement to the extent necessary to obtain regulatory approval, subject to CaremarkIPA's termination rights herein.

#### 11.12 Limitation of Liability.

11.12.1 Except as otherwise expressly set forth in this Agreement, CaremarkIPA makes no additional representations or warranties, including without limitation, warranties of merchantability or fitness for a particular purpose.

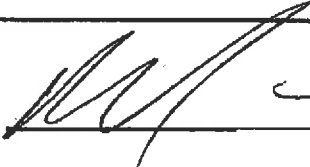
11.12.2 In no event shall either party be liable to the other for any incidental, special or consequential damages incurred by the other party as a result of the performance or any default in the performance of their respective obligations under this Agreement.

11.12.3 SalusIPA acknowledges that CaremarkIPA does not establish AWP. Except to the extent CaremarkIPA has acted negligently or wrongfully, CaremarkIPA shall have no liability to SalusIPA arising from the use of First DataBank, Medi-Span or any other nationally available reporting service.

11.13 Arbitration. Any disputes arising out of this Agreement shall be resolved, in the first instance, exclusively through the grievance process for Providers as set forth in the Provider Manual. Any appeals permitted by such grievance process, including claimed defects in the grievance process itself, shall be determined exclusively by binding arbitration before a single arbitrator selected and serving under the arbitration rules of the American Health Lawyers Association (AHLA) Alternative Dispute Resolution Service. Any such arbitration shall be held in the county in New York in which the claimant (CaremarkIPA or IPA Participating Provider) maintains its principal place of business, unless special evidentiary circumstances (as determined by the arbitrator) require another venue. Such arbitration shall be the exclusive remedy hereunder. The decision of the arbitrator may, but need not, be entered as judgment in any appropriate jurisdiction in accordance with the provisions of the laws thereof, the parties hereby submitting (subject to lawful service of papers) to the jurisdiction of such courts. Copies of all requests for arbitration and any arbitrator's decision shall be given to the Commissioner of Health of the State of New York who shall not be bound by any such arbitrator's decision.

IN WITNESS WHEREOF, and intending to be legally bound hereby, SalusIPA and CaremarkIPA have executed this Agreement as of the day of the year first above written.

Caremark IPA, L.L.C.

By: 

Its: President & CEO  
(Title)

Date: 12-31-08

SALUS IPA, LLC

95-25 Queens Boulevard  
Rego Park, New York 11374

By: 

Its: President and CEO  
(Title)

Date: 1/5/09

LEGAL  
REVIEW

## **SCHEDULE 1.6**

### **IPA SERVICES**

CaremarkIPA shall provide or arrange for the development and maintenance of a network of contracted pharmacies for the provision of Health Care Services appropriate to a pharmacy.

## **SCHEDULE 1.16**

### **IDENTIFICATION OF THE PROGRAMS AND PROGRAM CONTRACTS**

**Program:** Child Health Plus program.

**Program Contract:** The contract for the provision of managed care services under the New York State Child Health Plus program entered into by and between New York State Catholic Health Plan, Inc., doing business as Fidelis Care New York and the New York State Department of Health including all attachments thereto. This program is referred to as Fidelis Child Health Plus<sup>TM</sup>.

Salus IPA may amend this schedule to include additional Programs from time to time. CaremarkIPA agrees that CaremarkIPA will participate in all new Programs for which CaremarkIPA is qualified as determined by SalusIPA. CaremarkIPA's participation in any new Program will be effective upon thirty (30) calendar days notice of SalusIPA's amendment of this Schedule 1.16. CaremarkIPA reserves the right to modify the financial terms and conditions of this Agreement upon the addition of any new Programs.

## Schedule 2.1.2

### Pharmacy Network Management

1. CaremarkIPA agrees to provide and maintain a pharmacy network comprised of independent and chain pharmacies. CaremarkIPA will use its best efforts to build a pharmacy network that equals or exceeds the pharmacy network used by Enrollees as of the Effective Date of this Agreement.
2. CaremarkIPA shall maintain written agreements with IPA Participating Providers ("Participating Pharmacy Agreement").
3. All agreements with IPA Participating Providers shall hold SalusIPA harmless from and against any and all disputes between IPA Participating Providers and CaremarkIPA concerning the adjudication and amount of the payment of claims submitted for Health Care Services rendered to Enrollees.
4. CaremarkIPA shall require IPA Participating Providers to agree to accept compensation under the Participating Pharmacy Agreement as payment in full for all services rendered thereunder; and under no circumstances will IPA Participating Providers make any charges or claims against any Enrollee directly or indirectly for covered Health Care Services. CaremarkIPA shall require IPA Participating Providers to agree that in no event, including but not limited to non-payment of CaremarkIPA by SalusIPA, CaremarkIPA's insolvency or breach of this Agreement, shall CaremarkIPA and/or IPA Participating Providers bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against Enrollees or persons acting on their behalf, for covered Health Care Services provided pursuant to this Agreement.
5. CaremarkIPA agrees, and shall require IPA Participating Providers to agree, to cooperate and participate with CaremarkIPA and with SalusIPA in their respective complaint and appeals processes to resolve disputes that may arise with respect to IPA Participating Providers and/or Enrollees. CaremarkIPA shall comply, and shall require IPA Participating Providers to comply, with all final determinations made through said complaint and appeals processes.
6. CaremarkIPA shall investigate quality of care complaints relative to Health Care Services and report quality of care complaints, and the subsequent action taken by CaremarkIPA, to SalusIPA within thirty (30) days of receipt of said complaints. CaremarkIPA shall consider any negative comments relative to an IPA Participating Provider during the re-credentialing process or from earlier sanctioning, as necessary.
7. CaremarkIPA shall require IPA Participating Providers to notify SalusIPA within forty eight (48) hours, or such lesser period of time required by law, of any Enrollee claim alleging malpractice or the occurrence of any incident involving an Enrollee that CaremarkIPA deems may result in a legal action.

8. CaremarkIPA shall, at all times, comply with, and require the IPA Participating Providers to comply with, any applicable rules, regulations, policies and any quality improvement plans of SalusIPA, as well as applicable federal and state law, regulations and standards. CaremarkIPA shall report, and shall require IPA Participating Providers to report, all allegations of fraud and abuse directly to CaremarkIPA.
9. CaremarkIPA shall assist SalusIPA in assuring IPA Participating Provider's compliance with SalusIPA's policies and procedures, including without limitation, the requirements set forth in the Provider Manual (including, without limitation, quality assurance, quality improvement, utilization review and management, referrals, provider recruitment and sanctions).
10. IPA Participating Provider Audit.
  - (a) CaremarkIPA will conduct weekly on-site and off-site audits of CaremarkIPA selected IPA Participating Providers to verify the IPA Participating Provider's compliance with its retail pharmacy network agreement with CaremarkIPA ("Periodic Audits"). CaremarkIPA will have the sole right to audit IPA Participating Providers. Caremark will conduct an onsite pharmacy audit of three percent (3%) of IPA Participating Providers annually and desktop daily review audits of ten percent (10%) of IPA Participating Providers annually.
  - (b) To the extent CaremarkIPA determines, as the result of its Periodic Audits, that amounts have not been billed in accordance with CaremarkIPA's retail pharmacy network agreement ("Audit Discrepancies"), CaremarkIPA will make reasonable attempts to reconcile such Audit Discrepancies. In the event the Audit Discrepancy has a financial impact to SalusIPA, CaremarkIPA will reconcile SalusIPA's invoice based upon recovered Audit Discrepancies. CaremarkIPA will retain twenty percent (20%) of all recovered Audit Discrepancies to help cover its collection and audit costs. CaremarkIPA shall pay audit recoveries that are due to SalusIPA as a credit on SalusIPA's invoice. Identified discrepancies that are recovered by CaremarkIPA due to SalusIPA will be returned to SalusIPA within thirty (30) days of CaremarkIPA's collection. CaremarkIPA will notify SalusIPA of any Audit Discrepancy that has impacted SalusIPA's financial obligation to CaremarkIPA by greater than \$1,000 that CaremarkIPA determines to be reasonably uncollectible by CaremarkIPA. CaremarkIPA will not be required to institute litigation to collect any Audit Discrepancies. CaremarkIPA's obligation to conduct Periodic Audits and to attempt collection and reconciliation, as described, will be CaremarkIPA's sole obligation with respect to remedying Audit Discrepancies.
11. CaremarkIPA shall cooperate with SalusIPA in coordination of benefits/third party liability ("COB/TPL") so that Enrollee pays no out-of-pocket expenses. SalusIPA shall use best efforts to ensure that all eligibility information is accurate, includes accurate third party information, and is provided on a timely basis.



12. Upon SalusIPA's reasonable request, CaremarkIPA shall notify SalusIPA on a monthly basis of all additions to and deletions from the network of IPA Participating Providers.

## SCHEDULE 5.2

### RATES

These rates are effective through December 31, 2010.

RETAIL (Membership Less than 200,000 Members)	
BRAND	AWP-22.3%+\$1.70 dispensing fee
GENERIC	AWP-16.0%+\$1.70 dispensing fee or Caremark MAC + \$1.70 dispensing fee
	Generic effective rate guarantee of AWP- 58% (MAC and non-MAC combined)]
RETAIL (Membership Greater than 200,000 Members)	
BRAND	AWP-22.5%+\$1.65 dispensing fee
GENERIC	AWP-16.5%+\$1.65 dispensing fee or Caremark MAC + \$1.65 dispensing fee
	Generic effective rate guarantee of AWP- 59% (MAC and non-MAC combined)]
SPECIALTY MEDICATIONS	
	(See Specialty Drug List)

The pricing set forth above is contingent upon the following assumptions:

- CaremarkIPA shall be the exclusive specialty provider.
- CaremarkIPA shall retain any rebates received, including Specialty rebates.
- Retail pharmacy rates may vary and the amount paid to the retail pharmacy may not be equal to the amount billed to client and CaremarkIPA shall retain any difference. Regardless of such varying retail pharmacy rates, SalusIPA shall pay to CaremarkIPA the rates set forth above.
- CaremarkIPA may exclude the following from any pricing guarantee:
  - Specialty/biotech drugs
  - Generics that enter the market with supply limitations or restrictions that limit marketplace competition.
  - Compound drugs
- The IPA Participating Provider may collect from the Enrollee the lower of the applicable co-payment (if any), or the discounted price, or the IPA Participating Provider's usual and customary price.
- SalusIPA agrees not to participate in any other formulary or similar discount program, or enter into any direct or indirect contracts with pharmaceutical manufacturers with respect to the products and services dispensed to Enrollees.

#### Reservation of Rights:

(a) CaremarkIPA reserves the right to modify or amend the financial provisions in this document in the event of:

- A change in the scope of services to be performed by CaremarkIPA or the assumptions upon which the financial provisions included in this document are based and/or any government imposed or industry wide change that would impede CaremarkIPA's ability to provide the pricing described in this document, including any prohibition or restriction on CaremarkIPA's ability to receive rebates from pharmaceutical manufacturers
- A material change in SalusIPA's Preferred Drug Listing after the Effective Date of this Agreement;
- A greater than twenty percent (20%) decrease in the total number of Enrollees from the number provided during pricing negotiations; or

b) In the event First DataBank, Medi-Span or other nationally available AWP reporting source discontinues the reporting of AWP or changes the manner in which AWP is calculated, then CaremarkIPA reserves the right to modify the pricing terms of this document, to be effective as of the date of such discontinuation or change, so as to maintain the parties' relative economic positions as existed immediately before the effective date of such discontinuation in reporting or change in the calculation of AWP, as measured across all products on an aggregate basis. Such modifications may include the utilization of alternate pricing benchmarks.

1. Shipping Fees and/or postage will be increased by any increase in shipping fees and/or postage costs over the term of the Agreement.

2. Clinical Programs. As consideration for the clinical Services selected by SalusIPA in accordance with this Agreement, SalusIPA will pay to CaremarkIPA the fees set forth below:

Base Clinical Services (included in base administrative fee), comprised of:

Concurrent DUR  
Physician Profiling  
Formulary Management  
Generic Substitution Programs

3. Miscellaneous Fees.

Paper Submitted Claim (per processed Claim)	\$1.50/Claim
Manual Eligibility Submission	\$1.00/Manual Entry
SalusIPA Specific Programming	\$150.00/Hour

Charges or services not identified in this Schedule 5.2 shall be quoted upon request.

5. SalusIPA Credits:

This Section 5 of Schedule 5.2 sets forth various rebates and credits to be paid or credited by CaremarkIPA to SalusIPA (collectively "SalusIPA Credits"). It is the intention of the parties that, for purposes of the Federal Anti-Kickback Statute, these SalusIPA Credits shall constitute and shall be treated as discounts against the price of drugs within the meaning of 42 U.S.C. 1320a 7b(b)(3)(A).

In lieu of rebates, CaremarkIPA has provided an improved AWP discount for retail claims. Furthermore, the parties agree to renegotiate the AWP discount for retail claims if: (i) a generic version of a branded product is unexpectedly introduced in the market; or (ii) a branded product is recalled or withdrawn from the market.

**SCHEDULE 5.3**  
**SPECIALTY DRUG RATES**

**SPECIALTY FEE SCHEDULE**

Drug Names	AWP Discount
<b>HEMOPHILIA, VON WILLEBRAND DISEASE, &amp; RELATED BLEEDING DISORDERS</b>	
Advate	25.00%
Alphanate	30.00%
Alphanine SD	30.00%
Autoplex-T	30.00%
Bebulin VH	15.00%
Benefix	15.00%
Feiba VH Immuno	30.00%
Helixate FS	30.00%
Hemofil M	30.00%
Humate-P	25.00%
Hyate:C	32.00%
Koate-DVI	30.00%
Kogenate FS	30.00%
Monarc M	30.00%
Monoclalte P	25.00%
Mononine	20.00%
NovoSeven	30.00%
Profilnine SD	30.00%
Proplex T	15.00%
Recombinate	25.00%
Refacto	10.00%
Stimate	15.00%
<b>IMMUNE DEFICIENCIES &amp; RELATED DISORDERS <i>IV Immune globulins</i></b>	
Baygam	15.00%
Carimune	16.00%
Carimune NF	16.00%
Cytogam	15.00%
Flebogamma	15.00%
Gamastan S/D	15.00%
Gammagard Liquid	16.00%
Gammagard S/D	16.00%
Gammar-P I.V.	16.00%
Gamunex	16.00%
Iveegam EN	15.00%

Octagam	15.00%
Panglobulin	16.00%
Panglobulin NF	16.00%
Polygam S/D	16.00%
Venoglobulin-S	15.00%
Vivaglobin	15.00%
WinRho SDF	15.00%
<b>GROWTH HORMONE &amp; RELATED DISORDERS <i>Growth Hormone</i></b>	
Genotropin	15.00%
Genotropin Miniquick	15.00%
Humatrope	15.00%
Norditropin	15.00%
Norditropin Nordiflex	15.00%
Nutropin	15.00%
Nutropin AQ	15.00%
Nutropin AQ Pen	15.00%
Saizen	15.00%
Saizen Click.Easy	15.00%
Tev-Tropin	15.00%
Zorbtive	15.00%
<b>HEPATITIS C</b>	
Copegus	15.00%
Infergen	15.00%
Pegasys	15.00%
Peg-Intron	15.00%
Peg-Intron Redipen	15.00%
Rebetol	15.00%
Ribavirin	15.00%
<b>MULTIPLE SCLEROSIS</b>	
Avonex	15.00%
Betaseron	15.00%
Copaxone	15.00%
Mitoxantrone	15.00%
Novantrone	15.00%
Rebif	15.00%
Tysabri	15.00%
<b>OSTEOARTHRITIS</b>	
Euflexxa	15.00%
Hyalgan	15.00%
Orthovisc	15.00%
Supartz	15.00%
Synvisc	15.00%
<b>OSTEOPOROSIS</b>	
Forteo	15.00%
<b>RHEUMATOID ARTHRITIS</b>	
Enbrel	15.00%
Humira	15.00%
Kineret	15.00%

Orencia	15.00%
Remicade	15.00%
<b>RSV</b>	
Synagis	15.00%
<b>ALLERGIC ASTHMA</b>	
Xolair	15.00%
<b>HEMATOPOETICS</b>	
Aranesp	15.00%
Epogen	15.00%
Leukine	15.00%
Neulasta	15.00%
Neumega	15.00%
Neupogen	15.00%
Procrit	15.00%
<b>HIV MEDICATIONS</b>	
Fuzeon	15.00%
Serostim	15.00%
<b>HORMONAL THERAPIES</b>	
Eligard	15.00%
Leuprolide	15.00%
Lupron	15.00%
Lupron Depot	15.00%
Lupron Depot-Ped	15.00%
Trelstar Depot	15.00%
Trelstar LA	15.00%
Vantas	15.00%
Viadur	15.00%
Zoladex	15.00%
<b>INFERTILITY</b>	
Bravelle	15.00%
Cetrotide	15.00%
Chorex-10	15.00%
Chorionic Gonadotropin	15.00%
Follistim AQ	15.00%
Ganirelix Acetate	15.00%
Gonal-F	15.00%
Gonal-F RFF	15.00%
Luveris	15.00%
Menopur	15.00%
Novarel	15.00%
Ovidrel	15.00%
Pregnyl	15.00%
Profasi HP	15.00%
Repronex	15.00%
<b>LYSOSOMAL STORAGE DISEASES</b>	
Aldurazyme with per diem	14.50%
Cerezyme with per diem	20.00%
Elaprase with per diem	15.00%

Fabrazyme with per diem	14.40%
Myozyme with per diem	15.00%
Naglazyme with per diem	14.00%
<b>MACULAR DEGENERATION</b>	
Lucentis	15.00%
Macugen	15.00%
Visudyne	15.00%
<b>ONCOLOGY - ORAL</b>	
Gleevec	15.00%
Nexavar	15.00%
Revlimid	15.00%
Sprycel	15.00%
Sutent	15.00%
Tarceva	15.00%
Temodar	15.00%
Thalomid	15.00%
Xeloda	15.00%
Zolinza	15.00%
<b>ONCOLOGY - INJECTABLE</b>	
Avastin	15.00%
Herceptin	15.00%
Intron A	15.00%
Proleukin	15.00%
Rituxan	15.00%
Roferon-A	15.00%
Vectibix	15.00%
Velcade	15.00%
Vidaza	15.00%
<b>PSORIASIS</b>	
Amevive	15.00%
Raptiva	15.00%
<b>PULMONARY DISEASE</b>	
Aralast with per diem	5.00%
Pulmozyme	15.00%
TOBI	15.00%
<b>PULMONARY ARTERIAL HYPERTENSION</b>	
Remodulin with per diem	0.00%
Revatio	15.00%
Tracleer	15.00%
<b>RENAL DISEASE</b>	
Sensipar	15.00%
<b>ADDITIONAL PRODUCTS</b>	
Actimmune	15.00%
Alferon N	15.00%
Botox	15.00%
Increlex	15.00%
Myobloc	15.00%
Octreotide	15.00%



Rhophylac	15.00%
Sandostatin	15.00%
Sandostatin LAR	15.00%
Somavert	15.00%
Thyrogen	15.00%
Vivitrol	15.00%
<b>DEFAULT RATE</b>	<b>15.00%</b>

**NOTES:**

**AVERAGE WHOLESALE PRICE:**

Average Wholesale Price is based on First Data Bank®. Changes in AWP will affect a change in pricing.

Any Specialty Drug approved by the FDA after the effective date of this agreement that is not set forth in this fee schedule reimbursed at Brand Retail network rate of AWP-15% and will be based on First Data Bank®. From the date SalusIPA requests a Specialty Drug which is not set forth in this fee schedule to be covered by CaremarkIPA, either party reserves the right to adjust the pricing upon sixty (60) days written notice. The rates for Specialty Medications may vary if filled by a pharmacy other than one owned or operated by CaremarkIPA SpecialtyRx, Theracom, or Caremark, Inc.

"Average Wholesale Price" or "AWP" means the "average wholesale price" for a standard package size of a prescriptive drug from the most current pricing information provided to CaremarkIPA by a nationally available reporting service, such as Medi-Span or First Data Bank®. Should the reporting source for determining AWP not continue to support AWP, change the methodology by which AWP is calculated or reported, or in the event of a government imposed or industry-wide change that alters the economics of the agreement, the parties agree to modify the pricing terms in order to preserve the parties' respective economic positions under this Agreement such that the net price of a product is the same as before such change occurred. In such event, the parties agree to adhere to the published AWP of the day prior to the change until the parties have negotiated otherwise.

**PER DIEMS:**

Remodulin: \$60 per day

Unless otherwise stated above: \$75 per dose

Nursing Charges: \$150.00 per visit up to 2 hours, \$75.00 for each hour thereafter. Alternatively, CaremarkIPA can reimburse any medically necessary nursing services to the SalusIPA's contracted nursing agency, in which case nursing services will be billed separately by those agencies.

In further consideration of the fees and charges to be paid to CaremarkIPA under this Agreement, CaremarkIPA will bill applicable per diems to the Enrollee's medical benefit. In the event it is not possible to bill such per diems to the Enrollee's medical benefit or it is determined there is no coverage for such drugs, CaremarkIPA shall bill SalusIPA directly for any per diem associated with Specialty Drugs.

**DISPENSING FEE:**

Dispensing Fee \$0.00

**PRODUCT SHORTAGE:**

In the event of an industry-wide product shortage, CaremarkIPA reserves the right to renegotiate pricing.

**CODING & PRICING UPDATES:**

Notwithstanding anything to the contrary, CaremarkIPA will use current NDC, AWP pricing and J-Codes when billing the Payor. Payor agrees to update the rate paid to CaremarkIPA no less than monthly.

## APPENDIX A

### "STANDARD CLAUSES"

Notwithstanding any other provision of this Agreement, contract, or amendment (hereinafter "the Agreement" or "this Agreement") the parties agree to be bound by the following clauses which are hereby made a part of the Agreement. Further, if this Agreement is between a Managed Care Organization and an IPA, or between an IPA and an IPA, such clauses must be included in IPA contracts with providers, and providers must agree to such clauses.

#### A. DEFINITIONS FOR PURPOSES OF THIS APPENDIX

"Managed Care Organization" or "MCO" shall mean the person, natural or corporate, or any groups of such persons, certified under Public Health Law Article 44, who enter into an arrangement, agreement or plan or any combination of arrangements or plans which provide or offer, or which do provide or offer, a comprehensive health services plan.

"Independent Practice Association" or "IPA" shall mean an entity formed for the limited purpose of arranging by contract for the delivery or provision of health services by individuals, entities and facilities licensed or certified to practice medicine and other health professions, and, as appropriate, ancillary medical services and equipment, by which arrangements such health care providers and suppliers will provide their services in accordance with and for such compensation as may be established by a contract between such entity and one or more MCO's. "IPA" may also include, for purposes of this Agreement, a pharmacy or laboratory with the legal authority to contract with other pharmacies or laboratories to arrange for or provide services to enrollees of a New York State MCO.

"Provider" shall mean physicians, dentists, nurses, pharmacists and other health care professionals, pharmacies, hospitals and other entities engaged in the delivery of health care services which are licensed and/or certified as required by applicable federal and state law.

#### B. GENERAL TERMS AND CONDITIONS

1. This Agreement is subject to the approval of the New York State Department of Health and, if implemented prior to such approval, the parties agree to incorporate into this Agreement any and all modifications required by the Department of Health for approval or, alternatively, to terminate this Agreement if so directed by the Department of Health, effective sixty (60) days subsequent to notice, subject to Public Health Law §4403(6)(e). This Agreement is the sole agreement between the parties regarding the arrangement established herein.

2. Any material amendment to this Agreement is subject to the prior approval of the New York State Department of Health ("DOH"), and any such amendment shall be submitted for approval at least thirty (30) days, or ninety (90) days if the amendment adds or materially changes a risk sharing arrangement that is subject to DOH review, in advance of anticipated execution. To the extent the MCO provides and arranges for the provision of comprehensive health care services to enrollees served by the Medical Assistance Program, MCO shall notify and/or submit a copy of such material amendment to DOH or New York City, as may be required by the Medicaid managed care contract between the MCO and DOH (or New York City) and/or the Family Health Plus contract between the MCO and DOH.
3. Assignment of an agreement between an MCO and (1) an IPA, (2) institutional network provider, or (3) medical group provider that serves five percent or more of the enrolled population in a county, or the assignment of an agreement between an IPA and (1) an institutional provider or (2) medical group provider that serves five percent or more of the enrolled population in a county, requires the prior approval of the Commissioner of Health.
4. The provider agrees, or if the Agreement is between the MCO and an IPA, or between an IPA and an IPA, the IPA agrees and shall require the IPA's providers to agree, to comply fully and abide by the rules, policies and procedures that the MCO (a) has established or will establish to conform to statutory or regulatory requirements, or to guidelines or policies mandated by DOH or the State Insurance Department, and (b) has provided to the provider at least thirty (30) days in advance of implementation, including but not limited to:
  - quality improvement/management;
  - utilization management, including but not limited to, precertification procedures, referral process or protocols, and reporting of clinical encounter data;
  - member grievances; and
  - provider credentialing.
5. The provider or, if the Agreement is between MCO and IPA, or between an IPA and an IPA, the IPA agrees, and shall require its providers to agree, to not discriminate against an enrollee based on color, race, creed, age, gender, sexual orientation, disability, place of origin, source of payment or type of illness or condition.
6. If Provider is a primary care practitioner, Provider agrees to provide for twenty-four (24) hour coverage and back up coverage when Provider is unavailable. The Provider may use a twenty-four (24) hour back-up call service provided appropriate personnel receive and respond to calls in a manner consistent with the scope of their practice.

7. The MCO or IPA which is a party to this Agreement agrees that nothing within this Agreement is intended to, or shall be deemed to, transfer liability for the MCO's or IPA's own acts or omissions, by indemnification or otherwise, to a provider.
8. "Notwithstanding any other provision of this Agreement, the parties shall comply with the provisions of the Managed Care Reform Act of 1996 (Chapter 705 of the Laws of 1996) and Chapter 551 of the Laws of 2006, and all amendments thereto.
9. To the extent the MCO enrolls individuals covered by the Medical Assistance Program and/or Family Health Plus programs, this Agreement incorporates the pertinent MCO obligations under the Medicaid managed care contract between MCO and DOH (or New York City) and/or the Family Health Plus contract between the MCO and DOH as if set forth fully herein, including:
  - a) The MCO will monitor the performance of the Provider or IPA under the Agreement, and will terminate the Agreement and /or impose other sanctions, if the Provider's or IPA's performance does not satisfy standards set forth in the Medicaid managed care and/or Family Health Plus contracts;
  - b) The Provider or IPA agrees that the work it performs under the Agreement will conform to the terms of the Medicaid managed care contract between the MCO and DOH (or between the MCO and New York City) and/or the Family Health Plus contract between the MCO and DOH, and that it will take corrective action if the MCO identifies deficiencies or areas of needed improvement in the Provider's or IPA's performance;
  - c) The Provider or IPA agrees to be bound by the confidentiality requirements set forth in the Medicaid managed care contract between the MCO and DOH (or between the MCO and New York City) and/or the Family Health Plus contract between the MCO and DOH;
  - d) The MCO and the Provider or IPA agree that a woman's enrollment in the MCO's Medicaid managed care or Family Health Plus product is sufficient to provide services to her newborn, unless the newborn is excluded from enrollment in Medicaid managed care or the MCO does not offer a Medicaid managed care product in the mother's county of fiscal responsibility; and
  - e) The MCO shall not impose obligations and duties on the Provider or IPA that are inconsistent with the Medicaid managed care and/or Family Health Plus contracts, or that impair any rights accorded to DOH, the local Department of Social Services, or the United States Department of Health and Human Services.
10. The parties to this Agreement agree to comply with all applicable requirements of the Americans with Disability Act.

11. The Provider agrees, if the Agreement is between the MCO and an IPA or between an IPA and an IPA, the IPA agrees and shall require the IPA's providers to agree, to comply with the HIV confidentiality requirements of Article 27-F of the Public Health Law.

#### C. PAYMENT; RISK ARRANGEMENTS

1. Enrollee Non-liability. Provider agrees that in no event, including, but not limited to, nonpayment by the MCO or IPA, insolvency of the MCO or IPA, or breach of this Agreement, shall Provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a subscriber, an enrollee or person (other than the MCO or IPA) acting on his/her/their behalf, for services provided pursuant to the subscriber contract or Medicaid Managed Care contract, or Family Health Plus contract, and this Agreement, for the period covered by the paid enrollee premium. In addition, in the case of Medicaid Managed Care, provider agrees that, during the time an enrollee is enrolled in the MCO, he/she/it will not bill the New York State Department of Health or the City of New York for Covered Services within the Medicaid Managed Care Benefit Package as set forth in the agreement between the MCO and New York State Department of Health. In the case of Family Health Plus, Provider agrees that, during the time an enrollee is enrolled in the MCO, he/she/it will not bill the New York State Department of Health for Covered Services within the Family Health Plus Benefit Package, as set forth in the agreement between the MCO and the New York State Department of Health. This provision shall not prohibit Provider, unless the MCO is a managed long term care plan designated as a Program of All-Inclusive Care for the Elderly (PACE), from collecting co-payments, coinsurance amounts, or permitted deductibles, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to a covered person provided that provider shall have advised the enrollee in writing that the service is uncovered and of the enrollee's liability therefore prior to providing the service. Where the Provider has not been given a list of covered services by the MCO, and/or provider is uncertain as to whether a service is covered, the Provider shall make reasonable efforts to contact the MCO and obtain a coverage determination prior to advising an enrollee as to coverage and liability for payment and prior to providing the service. This provision shall survive termination of this Agreement for any reason, and shall supersede any oral or written agreement now existing or hereafter entered into between provider and enrollee or person acting on his or her behalf.
2. Coordination of Benefits (COB). To the extent otherwise permitted in this Agreement, Provider may participate in collection of COB on behalf of the MCO, with COB collectibles accruing to the MCO or to Provider. However, with respect to enrollees eligible for medical assistance, or participating in Child Health Plus or Family Health Plus, Provider shall maintain and make available to the MCO records reflecting COB proceeds collected by Provider or paid directly to enrollees by third party payers, and amounts thereof, and MCO shall maintain or have immediate access to records concerning collection of COB proceeds.

3. The parties agree to comply with and incorporate the requirements of Physician Incentive Plan (PIP) Regulations contained in 42 CFR §438.6(h), 42 CFR § 422.208, and 42 CFR § 422.210 into any contracts between the contracting entity (provider, IPA, hospital, etc.) and other persons/entities for the provision of services under this Agreement. No specific payment will be made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services furnished to an enrollee.

#### D. RECORDS; ACCESS

1. Pursuant to the appropriate consent/authorization by the enrollee, Provider will make enrollee's medical records and other personally identifiable information (including encounter data for government-sponsored programs) available to the MCO (and IPA if applicable), for purposes including preauthorization, concurrent review, quality assurance, provider claims processing and payment. Provider will also make enrollee medical records available to the State of New York for management audits, financial audits, program monitoring and evaluation, licensure or certification of facilities or individuals and as otherwise required by state law. Providers shall provide copies of records to DOH at no cost. Providers (or IPA if applicable) expressly acknowledge that he/she/it shall also provide to the MCO and the State (at no expense to the State), on request, all financial data and reports, and information concerning the appropriateness and quality of services provided, as required by law. These provisions shall survive termination of the contract for any reason.
2. When such records pertain to Medicaid or Family Health Plus reimbursable services, the Provider agrees to disclose the nature and extent of the services provided and to furnish records to DOH and/or the United States Department of Health and Human Services, the County Department of Social Services, Comptroller of the State of New York, the New York State Attorney General, and the Comptroller General of the United States and their authorized representatives upon request. This provision shall survive the termination of this Agreement regardless of the reason.
3. The parties agree that medical records shall be retained for a period of six (6) years after the date of service, and in the case of a minor, for three (3) years after majority or six (6) years after the date of service, whichever is later, or for such longer period as specified elsewhere within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.
4. The MCO and Provider agree that the MCO will obtain consent directly from enrollees at the time of enrollment or at the earliest opportunity, or that the Provider will obtain consents from such Enrollees at the time that service is rendered or the earliest opportunity, for disclosure of medical records to the MCO, to an IPA or to third parties. If the Agreement is between an MCO and an IPA, or between an IPA and an IPA, the IPA agrees to require

the providers with which it contracts to agree as provided above. If the Agreement is between an IPA and a Provider, Provider agrees to obtain consent from Enrollee if the Enrollee has not previously signed a consent for disclosure of medical records.

#### E. TERMINATION AND TRANSITION

1. Termination or non-renewal of an agreement between an MCO and an IPA, institutional network provider, or medical group provider that serves five percent or more of the enrolled population in a county, or the termination or non-renewal of an agreement between an IPA and an institutional provider or medical group provider that serves five percent or more of the enrolled population in a county, requires notice to the Commissioner of Health. Unless otherwise provided by statute or regulation, the effective date of termination shall not be less than 45 days after receipt of notice by either party, provided, however, that termination, by the MCO may be effected on less than 45 days notice provided the MCO demonstrates to DOH's satisfaction prior to termination that circumstances exist which threaten imminent harm to enrollees or which result in provider being legally unable to deliver the covered services and, therefore, justify or require immediate termination.
2. If this Agreement is between MCO and a health care professional, MCO shall provide to such health care professional a written explanation of the reasons for the proposed contract termination, other than non-renewal, and an opportunity for a review as required by state law. MCO shall provide the health care professional 60 days notice of its decision not to renew this Agreement.
3. If this Agreement is between an MCO and an IPA, and the Agreement does not provide for automatic assignment of the IPA's provider contracts to the MCO upon termination of the MCO/IPA contract, in the event either party gives notice of termination of the Agreement, the parties agree, and the IPA's providers agree, that the IPA providers shall continue to provide care to the MCO's enrollees pursuant to the terms of this Agreement for 180 days following the effective date of termination, or until such time as the MCO makes other arrangements, whichever first occurs. This provision shall survive termination of this Agreement regardless of the reason for the termination.
4. Continuation of Treatment. The Provider agrees that in the event of MCO or IPA insolvency or termination of this contract for any reason, the Provider shall continue, until medically appropriate discharge or transfer, or completion of a course of treatment, whichever occurs first, to provide services pursuant to the subscriber contract, Medicaid Managed Care contract, or Family Health Plus contract, to an enrollee confined in an inpatient facility, provided the confinement or course of treatment was commenced during the paid premium period. *For purposes of this clause, the term "provider" shall include the IPA and the IPA's contracted providers if this Agreement is between the MCO and an IPA.* This provision shall survive termination of this Agreement.

5. Notwithstanding any other provision herein, to the extent that the Provider is providing health care services to enrollees under the Medicaid Program and/or Family Health Plus, the MCO or IPA retains the option to immediately terminate a provider agreement when the Provider has been terminated or suspended from the Medicaid Program.
6. In the event of termination of this Agreement, Provider agrees, and, where applicable, IPA agrees to require all participating providers of its network to assist in the orderly transfer of enrollees to another provider.

#### F. ARBITRATION

1. To the extent that arbitration or alternative dispute resolution is authorized elsewhere in this Agreement, the parties to this Agreement acknowledge that the Commissioner of Health is not bound by arbitration or mediation decisions. Arbitration or mediation shall occur within New York State, and the Commissioner of Health will be given notice of all issues going to arbitration or mediation, and copies of all decisions.

#### G. IPA-SPECIFIC PROVISION

1. Any reference to IPA quality assurance (QA) activities within this Agreement is limited to the IPA's analysis of utilization patterns and quality of care on its own behalf and as a service to its contract providers.



# EXHIBIT 9

## Management Services Agreement

**MANAGEMENT SERVICES AGREEMENT**

between

**SALUS ADMINISTRATIVE SERVICES, INC.**

and

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC. d/b/a  
FIDELIS CARE NEW YORK™**

**95-25 Queens Boulevard  
Rego Park, New York 11374**

# MANAGEMENT SERVICES AGREEMENT

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## MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement, made this 1<sup>st</sup> day of January, 2008, by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., d/b/a FIDELIS CARE NEW YORK (hereinafter, "Plan"), a New York not-for-profit corporation certified as a prepaid health services plan pursuant to Article 44 of the New York State Public Health Law, and SALUS ADMINISTRATIVE SERVICES, INC. (hereinafter, "MSO").

### WITNESSETH:

WHEREAS, Plan has contracted with Salus IPA, (hereinafter "IPA") pursuant to an IPA Provider Agreement for IPA to provide or arrange for the provision of IPA Services (as defined in the IPA Provider Agreement) to Enrollees in connection with the operation of the Programs; and

WHEREAS, Plan desires to engage MSO to provide administrative and management services in connection with the IPA Services to be provided under the IPA Provider Agreement and MSO desires to deliver such services.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties hereto agree as follows:

### AGREEMENT

**Definitions.** As used in this Agreement, the following terms shall have the indicated meanings:

- A) "MSO" shall mean Salus Administrative Services, Inc. engaged by Plan for the provision of pharmacy benefit management services hereunder in connection with the IPA Services to be provided pursuant to the IPA Provider Agreement.
- B) "Claim" The request of a Pharmacy or a Member for amounts due under a Program to the Pharmacy or Member subsequent to the Pharmacy's provision of prescription drugs or of certain other healthcare-related products or services to a Member.
- C) "Commissioner" shall mean the Commissioner of the New York State Department of Health.
- D) "Emergency" shall mean a medical or behavioral condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent lay person, possessing an average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in (i) placing the health of the person afflicted with such condition in serious jeopardy, or in the case of a behavioral condition, placing the health of the person or others in serious jeopardy; (ii) serious impairment of such person's

bodily functions; (iii) serious dysfunction of any bodily organ or part of such person; or (iv) serious disfigurement of such person.

E) **"Encounter Data"** shall mean data relating to Health Care Services rendered, submitted electronically or on paper in a form acceptable to Plan, that contains all the data elements required by Plan, including but not limited to all the data elements contained on a CMS Approved Claim Form, such as the HCFA 1500 or UB04.

F) **"Enrollee" or "Member"** shall mean an individual who is entitled to receive those Health Care Services arranged for by Plan: (i) under a Program identified under **Schedule 1.18** as specified in the applicable Program Contract or under an employer-sponsored coverage program in partnership with Plan for family health plus insurance coverage pursuant to Section 369-ff of the New York Social Services Law; and (ii) where applicable, pursuant to a Member Agreement.

G) **"Covered Drug"** shall mean a drug product that is covered under the Plan's benefit design and coverage rules.

H) **"IPA Participating Provider" or "Network Pharmacy" or "Contracted Pharmacy" or "Participating Pharmacy"** shall mean a pharmacy provider, physician or other licensed or certified health care professional, professional organization or institution that is duly licensed, registered or certified by the State of New York and that contracts with IPA to provide Health Care Services (as defined in the IPA Provider Agreement) to Enrollees.

I) **"Medical Director"** shall mean the physician serving as Plan's Chief Medical Officer or his or her designee.

J) **"Medically Necessary"** shall mean those Health Care Services that are determined by a physician or other licensed or certified health care professional to be essential to the health of an Enrollee in accordance with professional standards accepted in the medical community. In the event of a disagreement as to whether a particular Health Care Service is Medically Necessary, the Medical Director shall make the final determination of whether it is Medically Necessary, subject to Plan's utilization review procedures and compliance with the applicable Program Contract.

K) **"NYSDOH"** shall mean the New York State Department of Health.

L) **"Plan"** shall mean New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York.

M) **"Program"** shall mean those products, including, but not limited to, the Child Health Plus program through which Plan arranges for the provision of prepaid health services to Enrollees on a contractual basis.

N) **"Program Contract"** shall mean the contracts entered into by and between Plan and a federal, state, or local agency or other third party, under which Plan provides or arranges to provide prepaid health services to Enrollees. Program Contract shall include the contract itself and all attachments, exhibits, schedules or appendices to such contract, as they may be amended from time to time. To the extent that Enrollees are covered by Medicaid/Family Health Plus, the pertinent provisions of the applicable Program Contracts are hereby incorporated by reference in their entirety as if specifically and fully set forth herein.

O) **"Provider Manual"** shall mean the description, entitled "Provider Manual" and prepared by Provider (as defined in the IPA Provider Agreement), of certain requirements, policies and procedures of Provider generally applicable to all IPA Participating Providers. Provider agrees to allow Plan to review the Provider Manual upon reasonable request of Plan, and shall include in the Provider Manual that material which Plan reasonably requires so as to comply with applicable law and Program Contract.

P) **"Superintendent"** shall mean the Superintendent of the New York State Department of Insurance.

Q) **"Average Wholesale Price ("AWP")**. The price for a given drug product as published in a nationally recognized compendia of wholesale drug prices used by MSO in calculating the payments for covered medications hereunder.

R) **Drug Utilization Review ("DUR")**. Includes prospective, retrospective and concurrent DUR review at the point-of-service.

S) **"CMS"** refers to the Centers for Medicare and Medicaid Services.

T) **Preferred Drug List ("PDL")**. The list of prescription medications that are approved for use/or coverage by Plan and which will be dispensed by Provider to Members.

## 1. MSO RESPONSIBILITIES

1.1 **Delegation of Plan Functions**. The governing authority of Plan delegates to MSO the responsibility for performing the services identified in **Schedule 1.1** (the "Delegated Functions") in connection with the IPA Provider Agreement. Nothing herein shall limit the governing authority of Plan's responsibility to third parties, nor the governing authority of Plan's ultimate authority, with regard to such Delegated Functions as required by applicable federal, state and local laws, statutes, regulations, rules, policies, procedures and guidelines (collectively, "Applicable Law").

1.2 **Exclusive Provider**. MSO shall be the exclusive provider of Delegated Functions in connection with the IPA Provider Agreement in the Service Area defined in **Schedule 1.2**

- 1.3 Performance Standards. In order to assure maintenance of Plan's fiscal stability and level of services and quality of care provided to Enrollees, MSO shall perform all Delegated Functions in accordance with all applicable laws, rules and regulations, the performance standards set forth in Schedule 1.3 (the "Performance Standards"), and the other terms of this Agreement.
- 1.4 Performance in Compliance with Specified Requirements. In addition to performing all Delegated Functions in accordance with the Performance Standards, MSO must perform all Delegated Functions in compliance with (i) the terms and conditions specified for each such Delegated Function in Schedules 1.4-A through 1.4-E of this Agreement; (ii) all Plan policies and procedures pertaining to the performance of the Delegated Functions; (iii) the applicable Program Contracts; (iv) Applicable Law; and (v) requirements of any applicable accreditation organization. All MSO policies and procedures relating to the performance of Delegated Functions must be submitted to Plan for review and approval prior to implementation and/or revision. In addition, MSO shall assist Plan in the implementation of Plan's quality assurance activities and functions; however, Plan retains the decision-making authority and responsibility for the quality assurance function.
- 1.5 Staffing. MSO shall provide staffing adequate for the efficient and effective performance of the Delegated Functions, which MSO may adjust from time to time as necessary. MSO will designate an Account Manager to serve as the primary contact for Salus for all matters arising under this Agreement, including but not limited to: (a) coordination of the activities of the account management team providing services hereunder; (b) providing periodic on-site briefings to Plan to review performance hereunder and to discuss strategic initiatives; (c) clinical matters involving maintenance of pharmaceutical information, preferred drug listing ("PDL") management support and prior authorization protocol development assistance, pharmacy & therapeutics committee participation and meeting attendance, development of abbreviated drug monographs; (d) performance monitoring; and (e) consulting with Plan staff on an as-needed basis. In addition, MSO shall (i) provide the governing authority of the Plan with credentials of management staff overseeing departments performing Delegated Functions, (ii) provide copies of educational materials used for training staff performing Delegated Functions, and (iii) maintain a staffing level sufficient to meet Plan standards for performance of the Delegated Functions.
- 1.6 Major Equipment. MSO shall provide the governing authority of Plan with and/or perform the Delegated Functions using the major equipment and/or computer information systems set forth in Schedule 1.6. MSO shall (i) provide forty-five (45) day notification to the governing authority of Plan of MSO's implementation of significant changes to the MSO computer information systems described in Schedule 1.6 other than those changes the MSO currently intends to implement in connection with its procurement of a new IS platform, and (ii)

perform any information system tasks required by the governing authority of Plan to ensure that the terms and conditions for Delegated Functions as provided in Schedules 1.4-A through 1.4-E are met.

- 1.7 Participation in Meetings, Task Forces and Committees. MSO shall participate in any meetings, task forces or committees as reasonably required by the governing authority of the Plan for the purpose of planning, implementation of, or oversight of Delegated Functions. As reasonably required by the governing authority of the Plan, MSO shall also participate in: (i) Plan quality assurance committees; and (ii) compliance seminars or training.
- 1.8 Enrollee Communication. MSO shall not send any communication to an Enrollee unless the form of such communication has received prior approval by the governing authority of Plan.

## **2. Plan Retention of Responsibility for Compliance**

- 2.1 Responsibility for Compliance. Plan and MSO acknowledge and agree that: (i) the governing authority of Plan retains ongoing responsibility for statutory and regulatory compliance; and (ii) the responsibilities of the governing authority of Plan are in no way lessened by entering into this Agreement, and any powers not specifically delegated to MSO through this Agreement remain with the governing authority of Plan. In order to ensure such compliance, the governing authority of Plan shall conduct audits and require corrective action as set forth in this Section 2.

### **2.2 Implementation and Audits.**

- 2.2.1 The governing authority of Plan agrees that, based upon its review of appropriate documentation and site visits of MSO, MSO has the core competency to perform the Delegated Functions. The governing authority of Plan shall delegate the Delegated Functions as of the Effective Date or such other date mutually agreeable to the parties. Throughout the term of this Agreement, the governing authority of Plan shall reassess MSO's ability to perform the Delegated Functions within a reasonable, pre-determined timeframe, but no less frequently than quarterly.
- 2.2.2 Once any or all Delegated Functions have been delegated, the governing authority of Plan shall be entitled to audit MSO (including, without limitation, using onsite visits and document requests) at any time in order to verify performance of MSO's duties under this Agreement, and shall audit at least quarterly. Any audit shall be conducted in accordance with the policies and procedures established by Plan and provided to MSO, and as otherwise required by any authorized federal, state or local regulatory agency, accreditation organization or Applicable Law. Such audit shall be



conducted during normal business hours of MSO and upon reasonable notice, unless otherwise required by such federal, state or local regulatory agency, accreditation organization or Applicable Law. During such audit, Plan may review documentation pertinent to this Agreement, including without limitation, MSO's applicable policies and procedures, clinical criteria, medical records, and other records necessary to determine the adequacy of MSO's performance pursuant to this Agreement. Plan may engage a third party to assist it in conducting such audit, provided that: (i) such third party agrees in writing to the limitations on the right to audit set forth in this paragraph; and (ii) the governing authority of the Plan retains final authority with respect to such audits.

2.2.3 MSO shall comply with Plan's reasonable recommendations and associated timeframes arising from such audits.

2.2.4 Subject to applicable confidentiality rules, MSO shall, and MSO shall cause IPA and IPA Participating Providers to, make claims payment records, provider relations records, credentialing files, encounter data records and quality improvement records, medical records and any other documents pertaining to Enrollees available for review by Plan, an accreditation organization or an authorized federal, state or local regulatory agency, including, but not limited to, the New York State Department of Health. Unless required by an accreditation organization, an authorized federal, state or local regulatory agency or Applicable Law, Plan shall notify MSO of planned surveys, regulatory visits, and other external evaluations promptly upon Plan's notification of same. Plan will invite MSO, subject to the rules of the reviewing body and where appropriate, to attend any closing meeting and provide MSO with a written copy of any report, letter or certification received as a result of such evaluation.

2.2.5 Plan shall promptly share with MSO documents and information in Plan's possession that could impact on MSO's performance of the Delegated Functions, except for documents that are subject to a confidentiality agreement or are deemed confidential under Applicable Law, or the disclosure of which in the opinion of Plan's legal counsel could abrogate a discovery privilege in an ongoing litigation. If Plan withholds a document based on confidentiality and the information contained in such document could adversely affect MSO's obligation under the Delegation Agreement, Plan shall (i) provide MSO with sufficient information to identify the documents and (ii) hold MSO harmless, as between MSO and Plan, from any damages which result from Plan's withholding of such document.

**2.3** Corrective Action Procedure. MSO shall perform all Delegated Functions appropriately, in full compliance with this Agreement. In the event that Plan

determines that MSO is not performing such activities in accordance therewith, the following procedure shall apply:

- 2.3.1 Plan shall issue a corrective action request ("CAR") to MSO;
- 2.3.2 Upon receipt of such CAR, MSO must: (i) take immediate corrective action; and (ii) submit a corrective action plan ("CAP"), including timeframes for compliance to Plan within the timeframe as reasonably specified in the CAR;
- 2.3.3 MSO shall immediately implement the CAP, provided that Plan may reject a CAP if it reasonably determines that such CAP is inadequate. If Plan rejects a CAP, Plan and MSO shall work together to develop a mutually agreeable CAP. Plan may audit MSO at any time during normal business hours and upon reasonable notice to determine MSO's compliance with the CAP;
- 2.3.4 In the event that the parties cannot reach agreement on a CAP, then MSO, with the input and approval of Plan and NYSDOH, may identify a third party to perform such Delegated Function; and
- 2.3.5 In the event that (i) MSO fails to comply with a CAP, or (ii) MSO notifies Plan that it has determined it is unable to meet the conditions of a CAP, then Plan may, in its sole discretion, take one or more of the following actions: (a) amend the CAP, (b) increase the frequency of review and audits, or (c) revoke any or all Delegated Functions in accordance with Section 2.4 of this Agreement.

2.4 Revocation of Delegated Function(s). The delegation of any Delegated Function to MSO may be revoked as follows; provided that, no such revocation shall be effective except with the prior written consent of the Commissioner:

- 2.4.1 Mutual Consent. A Delegated Function may be revoked at any time upon mutual consent of the parties, provided that any such revocation is in compliance with the requirements of 10 NYCRR § 98-1.11(n).
- 2.4.2 For Cause. In Plan's sole discretion, subject to the provisions of Section 2.3 hereof, Plan may revoke one or more Delegated Functions, in accordance with the requirements of 10 NYCRR § 98-1.11(n), in the event that:
  - 2.4.2.1 Plan determines, in its sole discretion, that MSO has failed to assure adequately the health, safety or welfare of Enrollees, has failed to comply with Applicable Law, or may subject MSO or Plan to regulatory or legal actions or adverse actions from any accreditation organization;

2.4.2.2 CMS, NYSDOH or any other authorized regulatory agency issues an adverse finding against MSO or Plan with respect to such Delegated Function(s); or

2.4.2.3 MSO fails to perform such Delegated Function(s) in compliance with this Agreement or any CAP pursuant to Section 2.3.

**2.5** Effect of Revocation. Subject to the provisions of Section 2.3 hereof, in the event that Plan revokes one or more Delegated Functions:

2.5.1 Plan shall reduce payment to MSO pursuant to a schedule that will be mutually agreed upon prior to the effective date of such revocation;

2.5.2 Such revocation shall not terminate the IPA Provider Agreement;

2.5.3 MSO shall return to Plan all proprietary information relating to such Delegated Function(s) supplied by Plan to MSO and must provide to Plan, upon request, all information, records and documents relating to the performance of such Delegated Function(s) under this Agreement so that Plan possesses all information, records and documents that Plan would have possessed had Plan performed such Delegated Function(s); and

2.5.4 Plan may subsequently re-delegate a Delegated Function to MSO if it reasonably determines that MSO can perform such Delegated Function, provided that, no such re-delegation shall be effective except with the prior written consent of the Commissioner of NYSDOH.

### **3. Adherence to Ethical and Religious Directives**

Nothing contained in this Agreement shall require or cause Plan to pay, reimburse, arrange or provide any service or participate in any activity which is not in accordance with the Ethical and Religious Directives for Catholic Healthcare Services issued by the United States Catholic Conference, available for review upon request to MSO, as interpreted by the Bishop of the Diocese in which MSO performs Delegated Functions.

### **4. Records and Reports**

**4.1** Maintenance of Records. MSO shall maintain adequate records and documentation relating to the performance of Delegated Functions, including without limitation, in such form and containing such information as are reasonably required by Plan., considering the relevant requirements of Applicable Law. MSO shall maintain all such records relating to the performance of Delegated Functions during the term of this Agreement and for a period of six (6) years thereafter, which obligations shall survive any termination or expiration of this Agreement, except that all fiscal, statistical records, and reports shall be subject to the record retention requirements of 10 NYCRR § 98-1.17(d).

## 4.2 Confidentiality and Access.

4.2.1 Confidentiality/Privacy. Each party agrees to keep confidential and not to use or to disclose to others, during the term of this Agreement or any time thereafter, except as expressly consented to in writing by the other party, as required by this Agreement, or as required by law, the other parties' Confidential Information, or any other matter or thing learned or acquired by the party through this Agreement that is not otherwise available to the public. In the event of a disclosure required by law, a party will use its best efforts to provide the other party with at least two (2) business days' written notice prior to any such disclosure, except that a party is not required to notify the other party prior to a disclosure to an appropriate regulatory agency, including, but not limited to, the New York State Department of Health. "Confidential Information" shall mean all information of a party, whether written, electronic or oral, that contains "Protected Health Information" as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or New York State Insurance Regulation 173 (11 NYCRR 421), secrets or confidential technology, proprietary information, patient or customer lists, trade secrets, any non public personal financial information as defined by New York State Insurance Regulation 173 (11 NYCRR 421), or other confidential information of the party. Each party agrees that it shall maintain adequate safeguards to prevent use or disclosure of Confidential Information in violation of this Agreement or in violation of applicable federal or state law or regulation. Specifically, each party agrees that it will comply with the following:

- (i) Each party shall ensure that any employee, subcontractor or agent to whom such party may disclose Confidential Information to is required to comply with the confidentiality provisions contained in this Agreement;
- (ii) Each party shall make available to the other party or its designee and any federal or state regulators its internal policies and procedures, books and records relating to its use and disclosure of Confidential Information;
- (iii) Each party shall notify the other party in writing within two (2) business days of any use or disclosure of Confidential Information outside the purpose of this Agreement of which the party becomes aware;
- (iv) Each party shall have privacy and security policies and procedures consistent with federal and state law and regulations, including, but not

limited to, HIPAA and New York State Insurance Regulation 173 (11 NYCRR 421); and

(v) Each party shall use best industry practices to maintain the integrity and confidentiality of electronically transmitted information, if applicable.

4.2.2 Access to Records. Unless expressly prohibited by Applicable Law regarding confidentiality or otherwise, MSO shall permit (i) Plan and/or authorized federal, state, and local regulatory agencies to have access to or to receive copies of records; and (ii) upon request, an authorized federal, state or local regulatory agency, including, but not limited to, the New York State Department of Health, to receive copies at no charge, of any records maintained by MSO pertaining to the performance of Delegated Functions, including but not limited to annual reports on the financial operation and any other operational data requested by the Plan's governing authority, the Commissioner or the Superintendent.

4.2.3 Notification of Request for Records. MSO shall notify Plan of the receipt of any request by any attorneys, courts of law or administrative bodies for information relating to the performance of Delegated Functions.

4.2.4 Survival. The obligations of this Section 4.2 shall survive any termination or expiration of this Agreement or the IPA Provider Agreement.

4.2.5 Reports. Annual reports on the financial operations shall be provided to Plan, as well as any other operational data requested by Plan, the Commissioner of the New York State Department of Health and the Superintendent of the New York State Insurance Department shall be provided by MSO.

## 5. Compensation

MSO acknowledges that as of the date of this Agreement the rates to be paid are to be paid to MSO in accordance with the terms and conditions set forth in Schedule 5 of this Agreement for all MSO Services provided hereunder. MSO hereby understands and agrees that the rates shall be established, and may be modified from time to time; provided, however, that any rate modifications shall be agreed to by both parties in writing, subject to the prior written approval of the New York State Department of Health. Plan specifies that the payment terms are reasonable and do not jeopardize the financial security of Plan.

6. **Term and Termination**

6.1 Term. This Agreement shall become effective on January 1, 2009 for a term of two (2) years. This Agreement may be renewed for an additional period of time agreed upon by the parties in compliance with the requirements of 10 NYCRR §98-1.11(m), if submitted to the Commissioner for approval at least ninety (90) calendar days prior to expiration of the current term and authorized by the Commissioner, in accordance with Applicable Law. Any renewal term is subject to prior NYSDOH approval and any application for renewal must be submitted to the NYSDOH at least ninety (90) days prior to expiration of the existing contract.

6.2 Termination of Agreement. Notwithstanding the foregoing, this Agreement may be terminated as follows:

6.2.1 Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties; provided that no such termination shall be effective until (i) a request for approval of the termination and a transition plan for the management of the Delegated Functions have been submitted to the Commissioner at least ninety (90) calendar days in advance of the proposed termination and (ii) the request to terminate the Agreement has been approved in writing by the Commissioner.

6.2.2 Without Cause. Either party may terminate this Agreement upon ninety (90) calendar days written notice to the other party; provided that no such termination shall be effective until (i) a request for approval of the termination and a transition plan for the management of Plan have been submitted to the Commissioner at least ninety (90) calendar days in advance of the proposed termination and (ii) the request to terminate the Agreement has been approved in writing by the Commissioner.

6.2.3 New York State Department of Health Determination. The parties agree that this Agreement shall terminate and be deemed cancelled, without financial penalty to the governing authority of Plan or Plan itself, not more than sixty (60) calendar days after receipt of written notification to the governing authority of Plan and MSO by the Commissioner or the NYSDOH of a determination that Plan is not providing adequate care or otherwise assuring the health, safety and welfare of Enrollees.

6.2.4 Termination for Cause. This Agreement may be terminated for cause, upon notice to the other party, on one or more of the following grounds; provided that no such termination shall be effective until (i) a request for approval of the termination and a transition plan for the management of the Delegated Functions have been submitted to the Commissioner at least ninety (90) calendar days prior to the proposed termination and (ii) the request to terminate the Agreement has been approved in writing by the

Commissioner. Termination may be upon less than ninety (90) days notice provided it is demonstrated to the satisfaction of the Commissioner prior to termination that circumstances exist which justify more immediate termination. The grounds for termination for cause are as follows:

6.2.4.1 Plan may terminate this Agreement, in Plan's sole discretion, in the event that:

- 6.2.4.1.1 Either party to the IPA Provider Agreement provides notice of termination to the other party to such agreement or the IPA Provider Agreement is not renewed or terminates for any reason;
- 6.2.4.1.2 Plan determines, in its sole discretion, that MSO has failed to assure adequately the health, safety or welfare of Enrollees, has failed to comply with Applicable Law, or may subject MSO or Plan to regulatory or legal actions or adverse actions from any accreditation organization;
- 6.2.4.1.3 CMS, NYSDOH or any other authorized regulatory agency issues an adverse finding against MSO or Plan with respect to a Delegated Function;
- 6.2.4.1.4 MSO fails to perform the Delegated Functions in compliance with this Agreement;
- 6.2.4.1.5 MSO applies for or consents to the appointment of a liquidator of itself or of all or a substantial part of its assets, or if a judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating MSO bankrupt or insolvent or approving a petition seeking reorganization of MSO or of all or a substantial part of its assets and such judgment or decree continues unstayed and in effect for any period of thirty (30) calendar days;
- 6.2.4.1.6 All Program Contracts terminate; or
- 6.2.4.1.7 MSO materially breaches any provision of this Agreement, in the sole judgment of Plan, and fails to cure such material breach within thirty (30) calendar days of receipt of written notice by Plan.

6.2.4.2 MSO may terminate this Agreement, in its sole discretion, in the event that:

- 6.2.4.2.1 Plan ceases to be duly licensed under applicable New York law or fails to maintain insurance coverage as required in this Agreement;
- 6.2.4.2.2 Either party to the IPA Provider Agreement provides notice of termination to the other party to such agreement or the IPA Provider Agreement is not renewed or terminates for any reason;
- 6.2.4.2.3 Plan materially breaches any provision of this Agreement, in the sole judgment of MSO, and fails to cure such material breach within thirty (30) calendar days of receipt of written notice by MSO.

6.3 Effect of Termination. As of the effective date of termination of this Agreement in accordance with this Section 6, this Agreement shall be considered of no further force or effect whatsoever, and each of the parties shall be relieved and discharged from its respective rights and obligations hereunder, except as otherwise specifically provided herein, and except that:

- 6.3.1 Survival of Certain Obligations. The parties' rights and obligations under Sections 4.1, 4.2, 6.3.3, 6.4 and 7 (regarding records maintenance, confidentiality, continuation of services, effect on IPA Provider Agreement and insurance and indemnification) of this Agreement shall not be extinguished but shall continue in effect for the time periods stated therein.
- 6.3.2 Payment. Any or either party's rights to receive its respective payments for claims for Delegated Functions (under Section 5 above) and any sums that were earned, or due and owing, as the case may be, prior to termination of this Agreement shall continue in effect.
- 6.3.3 Continuation of Services. Upon request by Plan, MSO shall be obligated to (i) continue to perform Delegated Functions in accordance with the terms of this Agreement (including compensation) for the longest of the period required by the applicable Program Contract, ninety (90) calendar days from the termination date of this Agreement or such time as specified in the transition plan submitted to and approved by the Commissioner; provided, however, that at all times after termination, Plan shall use all reasonable efforts to arrange for the transition of such Delegated Functions to another entity and shall assume responsibility for the performance of the Delegated Functions during this transition after termination.. MSO acknowledges that in accordance with the applicable Program Contract, MSO may be required to continue to perform such Delegated Functions under this Agreement until the expiration or other termination of said



Program Contract, subject, however, to the foregoing provisions of this Section 6.3.3.

6.3.4 Provision and Return of Proprietary Information. Upon termination of this Agreement for any reason, MSO must return to Plan all proprietary information supplied by Plan to MSO and must provide to Plan, upon request, all information, records and documents relating to the performance of Delegated Functions under this Agreement so that Plan possesses all information, records and documents that Plan would have possessed had Plan performed such Delegated Functions.

6.4 Effect of Interruptions. In the event the performance of Delegated Functions is interrupted or substantially disrupted due to causes beyond the control of MSO, including but not limited to major disaster, the complete or substantial destruction of MSO, acts of God or actions by any governmental authority, war, fire, earthquake, tornado, freight embargoes, flood, epidemic, quarantine restrictions, labor disturbances including slow-down strikes and lock-outs, or any other similar causes, MSO shall use its best efforts to arrange for the performance of any such interrupted or disrupted Delegated Functions, in consultation with Plan, through whatever alternative means necessary, and shall remain responsible for the performance of any such interrupted or disrupted Delegated Functions.

## 7 Insurance and Indemnification

7.1 Plan Insurance. Plan, at its sole cost and expense, shall maintain comprehensive general liability insurance with limits not less than \$1 million per occurrence and \$2 million in the aggregate and other coverage it deems appropriate with a limit of not less than \$10 million in the aggregate. Such insurance shall be obtained from a commercial insurance carrier admitted to do business in the State of New York or from a duly established and funded self- or pooled-insurance program. Plan shall, upon request, provide MSO with proof of insurance coverage.

7.2 MSO Insurance. MSO, at its sole cost and expense, shall maintain (or cause to be in effect) the following coverage in amounts consistent with managed care industry standards: (i) errors and omissions insurance to insure MSO against claims; and (ii) commercial crime coverage. Such insurance shall be obtained from a duly licensed commercial insurance carrier or from a duly established and funded self- or pooled-insurance program. MSO shall cause each insurance carrier providing such coverage to give to Plan at least thirty (30) days prior written notice of any material modification, reduction or termination of such coverage. MSO shall, upon request, provide Plan with proof of insurance coverage.

7.3 Indemnification. The parties agree to indemnify and hold each other, their agents and employees harmless from any and all loss, damage, injury, causes of action or liability, including court costs and reasonable legal fees, that are caused by or arise

out of any act or omission by such party, its directors, officers, employees or agents in connection with this Agreement.

## 8 Use of Names

Plan agrees that MSO may use Plan's name, and the names of Plan's product lines, in a listing of plans in which IPA participates. Neither party shall use the information provided by the other party in any other advertising, marketing, enrollment or other promotional material without the prior written approval of the other party. In no event shall MSO alter any trademark or service mark of Plan. MSO agrees to follow Plan's instructions in order to protect Plan's trademarks or service marks.

## 9 Miscellaneous

9.1 Notices. Any notice required or permitted to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be deemed given (i) when delivered, if delivered in person, (ii) four (4) calendar days after being mailed by certified or registered mail, postage prepaid, return receipt requested, or (iii) one (1) business day after being sent by receipted overnight courier to the parties, their successors in interest or their assignees at the addresses which appear on the signature page hereto, or at such other addresses as the parties may designate by written notice in the manner aforesaid.

9.2 Assignability. MSO shall not assign, delegate or otherwise transfer this Agreement and the rights and obligations hereunder, without the prior written consent of: (i) the New York State Department of Health; and (ii) Plan. In the event that MSO proposes to subcontract any management functions delegated pursuant to this Agreement, such subcontractor must be a signatory to this Agreement and this Agreement must be amended to expressly provide for the subcontracting of management functions to the subcontractor. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors.

9.3 Relationship of the Parties. None of the provisions of this Agreement are intended to create, and none shall be deemed or construed to create, any relationship between Plan and MSO other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of the Agreement. Neither the parties hereto nor any of their respective employees shall be construed under this Agreement to be the partner, joint venturer, agent, employer or representative of the other.

9.4 Waiver of Breach. No assent or waiver, express or implied, of any breach of any one or more of the covenants, conditions or provisions hereof shall be deemed or taken to be a waiver of any other covenant, condition or provision hereof or a waiver of any subsequent breach of the same covenant, condition or provision hereof.

9.5 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts to be performed solely within the State, without reference to New York choice of law or conflict of law provisions.

9.6 Arbitration. Any disputes arising out of this Agreement shall be resolved in the first instance, exclusively through the grievance process for Providers as set forth in the Provider Manual. Any appeals permitted by such grievance process, including claimed defects in the grievance process itself, shall be determined exclusively by binding arbitration before a single arbitrator selected and serving under the arbitration rules of the American Health Lawyers Association (AHLA) Alternative Dispute Resolution Service. Any such arbitration shall be held in the State of New York. Such arbitration shall be the exclusive remedy hereunder. The decision of the arbitrator may, but need not, be entered as judgment in any appropriate jurisdiction in accordance with the provisions of the laws thereof, the parties hereby submitting, subject to lawful service of papers, to the jurisdiction of such courts. Notwithstanding the foregoing, the New York State Commissioner of Health shall not be bound by such arbitration or mediation decisions and the Commissioner of Health shall be given notice of all issues going to arbitration or mediation, and copies of all decisions.

9.7 Severability. The provisions of this Agreement are severable, and, if any provision of this Agreement is held to be invalid, illegal or otherwise unenforceable, in whole or in part, in any jurisdiction, said provision or part thereof shall, as to that jurisdiction be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

9.8 Modifications, Amendments, Waivers and Approval. Except as otherwise noted in this Agreement, mutual written agreement signed by the parties shall be required for the following actions, which may be taken at any time prior to termination or expiration of this Agreement: (i) extending the time for the performance of any of the obligations or other acts of the parties hereto; (ii) waiving compliance with any of the covenants contained in this Agreement; and (iii) amending or supplementing any of the provisions of this Agreement. Notwithstanding the foregoing, MSO acknowledges that Plan will amend this Agreement immediately upon written notice in order to implement required changes from the appropriate state or federal regulatory agencies, including the Commissioner of the New York State Department of Health. The parties acknowledge that this Agreement is subject to approval by NYSDOH and is not effective until NYSDOH issues such approval in writing. In the event that such approval is denied or is conditioned upon certain changes hereto, the parties agree to incorporate into this Agreement any and all modifications required by NYSDOH for approval or, alternatively, to terminate this Agreement effective sixty (60) calendar days after such notice. This Agreement, as approved by the NYSDOH, shall be the sole agreement between MSO and Plan for both the Delegated Functions

and payment for such services. Any amendment or revision of this Agreement shall only be effective with the prior written approval of the Commissioner.

9.9 No Third Party Beneficiaries. The parties agree that they do not intend to create any enforceable rights in any third parties under this Agreement and that there are no third party beneficiaries to this Agreement.

9.10 Entire Agreement. This Agreement and the Schedules hereto contain the entire Agreement between the parties hereto with respect to the transactions contemplated herein and shall supersede all previous oral and written and all contemporaneous oral negotiations, commitments and understandings relating thereto.

9.11 Compliance with Applicable Law. Plan and MSO shall comply with all applicable federal, state and local laws, statutes, ordinances, orders and regulations relevant to the conduct of Plan's and MSO's activities.

IN WITNESS WHEREOF, Plan and MSO have executed this Agreement as of the day of the year first above written.

SALUS ADMINISTRATIVE SERVICES, INC.

Provider (Please print)

Address

95-25 Queens Boulevard

Rego Park, New York 11374

Tax ID #

By: Mark C. Lane  
(Please Print)

Its: President and CEO  
(Title)

By: Mark D. Dene  
(Signature)

Date: 1/5/07

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC., d/b/a FIDELIS  
CARE NEW YORK

95-25 Queens Boulevard  
Rego Park, New York 11374

By: Mark C. Lane  
(Please Print)

Its: President and CEO  
(Title)

By: Mark D. Dene  
(Signature)

Date: 1/5/07

**SCHEDULE 1.1**  
**DELEGATED FUNCTIONS**

- Claims Processing
- Credentialing
- Member services - As described in Schedule 1.4-C
- Reporting
- Utilization Review

## **SCHEDULE 1.2**

### **SERVICE AREA**

**The Service Area consists of all counties in New York State where Plan is authorized to do business.**

### SCHEDULE 1.3

### PERFORMANCE STANDARDS

MSO shall diligently attempt to maintain its performance at levels represented herein. MSO agrees that its services shall be performed in accordance with the performance guarantees set forth in this Schedule. Such performance guarantees shall be measured and reported with the frequency set forth hereinafter for each performance standard.

Service	Standard	Guarantee
Eligibility Loads	100% applied within 1 business day of receipt of correctly formatted files from the health plan	\$500 per transmission (with a maximum of \$2,000 per quarter) if standard is not met
Standard Management Report Timeliness	Standard reports to be delivered within 15 business days of end of the reporting period	\$500 per report if not generated in a timely manner
Standard Management Report Accuracy	99% accurate	\$250 per month if error rate > 1%.
Paper Claim Processing Turnaround	90% of Member-submitted claims requiring no additional information or documentation handled within 10 business days	\$500 each month where standard has not been met
Paper Claim Processing Turnaround time for claims requiring additional review	99% of claims requiring additional information or documentation handled within 30 business days.	\$500 each month where standard has not been met
On-Line Claim Processing Response Time	Average of 5.0 seconds	\$1,000 per month where standard has not been met
On-Line Claim Processing System downtime	99% system availability.	\$1,000 per month where standard is not met
Client Survey - Program Satisfaction Survey	At least 80% of participating pharmacies are expected to rate service as excellent or good.  Guaranteed to be measured, reported and reconciled at least annually. We anticipate collaborating on the development of the questions to create an objective, measurable questionnaire.	\$500 if standard is not met after one quarter grace period to review performance concerns and implement changes to improve deficiencies



Service	Standard	Guarantee
<b>Member Inquiries</b> <ul style="list-style-type: none"> <li>• Within 48 hours on normal business days</li> </ul>	MSO will forward Member Inquiries to the health plans within 48 hours and will respond to pharmacy-specific questions from Members within 48 hours, both on normal business days.	\$500 per quarter if standard is not met
<b>Provider Complaints</b> <ul style="list-style-type: none"> <li>• Will be responded to telephonically and/or in writing within 48 hours on normal business days.</li> </ul>	MSO will contact pharmacy providers within 48 hours on normal business days to address complaints.	\$500 per quarter if standard is not met
<b>ID Card Distribution (if applicable)</b>	Distributed within 15 business days assuming accurate information received by health plan	\$500 per quarter if standard is not met
<b>Encounter Data</b>	Will submit complete and accurate encounter data in the required format within 9 days after the end of the reporting period	\$200 per day for each day beyond 15 calendar days with a maximum of \$1,000 per quarter
<b>Pharmacy Audit as a Percentage of Network</b>	<ul style="list-style-type: none"> <li>• 100% of claims (rolling 12 months) reviewed systematically (system-based) monthly;</li> <li>• 1% of pharmacies reviewed at the desktop monthly;</li> <li>• 10% of pharmacy network to have an on-site audit over the course of the year.</li> </ul>	\$1,000 annually
<b>Plan Design Changes</b>	<p>Plan design changes not requiring hard coding will be completed within 5 business days from the day following the request. For example, if a request comes in on a Tuesday, the change will be made by Friday (assuming that all days from Tuesday to Friday, inclusive, are business days). <b>Exceptions:</b></p> <ul style="list-style-type: none"> <li>• Coding changes will be completed within 15 business days;</li> <li>• Changes to tables will be completed within 7 business days;</li> <li>• Addition of [CLIENTS] will be completed within 30 business days.</li> </ul>	\$250 per business day beyond the two business days. \$750 per quarter maximum.

Service	Standard	Guarantee
	Plan design changes requiring hard coding will be completed within 30 business days.	
Account Team Response Time	Will respond to requests within 1 business day excluding holidays and vacation. Activity to be completed within 30 days or a mutually agreed upon date.	\$250 for each day late with a \$1,000 quarterly maximum
Plan Implementation Procedures	Adherence to established deadlines mutually agreed upon by MSO and Plan.	\$500 per day for items directly under PBM control up to a \$10,000 maximum
Prior Authorizations (PA) turnaround time	100% of prior authorizations have an average turnaround time within 24 hours excluding weekends and holidays assuming any obligation to review by client health plan is made in a timely manner	\$500 per month if standard is not met.
Average Speed Answered	Average time to answer a Customer Call will be 30 seconds or less	\$500 per quarter if standard is not met
Abandoned Calls Rate	Less than or equal to 3%	\$500 per quarter if standard is not met

- (1) Performance Standard Report will be sent 45 days after the end of each quarter with payment of Performance Standard penalties to occur within 30 days of verified results.
- (2) With the exception of Plan Implementation Procedures, all other performance guarantees are waived for the first month of the Agreement.
- (3) Business Days – These are the weekdays, Monday through Friday, with the exception of holidays. Standard holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving Day, and Christmas Day. Nonstandard holidays may be determined prior to the beginning of each year if standard holidays occur on or around a weekend day (example, Christmas Day occurs on a Tuesday and the day before Christmas Day is deemed a holiday).
- (4) Annual Maximum for Performance Guarantee payments is \$25,000

## TERMS AND CONDITIONS FOR DELEGATED FUNCTIONS

### SCHEDULE 1.4-A

#### CLAIMS PROCESSING

MSO will make good faith efforts to load Members' claim(s) data from the Plan's existing Pharmacy Benefits Manager ("PBM"). Assuming receipt of valid data and file layout, MSO will load claim data history into the claims processing system. This conversion from the Plan's existing PBM will enable MSO to complete DUR on new and refill claims and allow existing PAs to proceed uninterrupted. MSO will work cooperatively with Plan to develop detailed pharmacy benefit parameters. MSO will ensure that the Plan's developed pharmacy benefit parameters will be implemented for the Plan prior to the effective date of the terms in this Agreement. Plan agrees to undertake good faith efforts to report MSO's effort to obtain member claim data from existing PBM within timelines established during implementation.

1. Claims Processing.
  - 1.1 MSO shall process and pay claims, as applicable, for IPA Services received by Enrollees pursuant to the IPA Provider Agreement.
  - 1.2 Plan and MSO shall direct (i) all IPA Participating Providers and (ii) as applicable, all Enrollees receiving IPA Services to submit claims for services to MSO. Plan shall forward any claims received from IPA Participating Providers or Enrollees with respect to IPA Services to MSO.
2. Encounter Data. MSO shall develop a method (that must be prior approved by Plan) for the following activities.
  - 2.1 Collecting and submitting to Plan all Encounter Data as required by authorized federal, state and local regulatory agencies and/or an accreditation organization pertaining to pharmacy services; and
  - 2.2 Monitoring IPA Participating Provider compliance with Encounter Data requirements.
3. Compliance with Applicable Law. MSO shall comply with any authorized federal, state or local regulatory agency requirement applicable to the services provided by MSO under this Schedule, including without limitation, claims processing timeframes, denial notification processes, and payment for overdue claims. MSO shall develop a method (that must be prior approved by Plan, such approval not to be unreasonably withheld) for:
  - 3.1 Identifying and processing clean and unclean claims within applicable New York State timeframes; and

3.2 If applicable, issuing proper denial notification, including notice of appeal rights.

4. Interest Payments and Penalties. In the event that MSO fails to pay claims within applicable timeframes required pursuant to Applicable Law and due to this failure Plan is required to pay interest to IPA Participating Providers and is subject to other penalties imposed by regulatory agencies, MSO shall indemnify Plan for such payments and penalties, unless such interest and penalties are due, in whole or in part, to Plan's actions or failure to act,
5. Data Feeds. MSO shall provide Plan with regular monthly data feeds of Encounter Data for all pharmacy services into Plan's data repository in the format specified by Plan consistent with industry standards.
6. Reports. MSO shall provide a standard aged-claim report on a monthly basis, and a quarterly quality report on all claims processing activity for Enrollees to Plan that details at a minimum following data: the number of claims received, processed, approved, denied or pended, as well as the average time for processing claims (i.e., number and percent of claims processed and paid within 30, 60, 90 and 120 days; the number of claims which remain unprocessed for 31-60, 61-90, 91-120, and 121+ days). Furthermore, MSO agrees to do additional ad hoc reporting as reasonably requested by Plan in order to complete oversight of claims processing and/or denial activity.
7. Eligibility and Enrollment Data. Plan shall provide MSO with monthly data feeds of Enrollee eligibility and enrollment information in the format agreed to by Plan and MSO.

## SCHEDULE 1.4-B

### CREDENTIALING

1. Credentialing Program. MSO agrees that its credentialing criteria shall meet or exceed the standards of Plan's credentialing criteria, and that its credentialing program shall be in compliance with Applicable Law and accreditation organization standards and, once reviewed and approved by Plan (the "Credentialing Program"), shall be maintained as so approved. MSO must provide thirty (30) calendar days prior written notice to Plan regarding any proposed material changes to the Credentialing Program; proposed material changes shall become effective upon approval by Plan, which approval shall not be withheld unreasonably. Plan agrees to notify MSO of its approval or disapproval of such changes within such thirty (30) calendar day period. MSO shall submit to Plan a copy of the Credentialing Program description and policies and procedures annually. MSO shall perform Credentialing Program activities in accordance with the approved Credentialing Program.
2. Reports and Documentation.
  - 2.1 MSO shall provide Plan with quarterly summary reports, in a mutually agreed upon format, of IPA Participating Providers that have been credentialed, terminated, denied privileges or voluntarily disenrolled and the percent of IPA Participating Provider turnover.
  - 2.2 At the request of Plan from time to time and with reasonable written notice, MSO shall provide to Plan such other reports, written verification or other substantiation requested by Plan to satisfy Plan's credentialing criteria.
3. Access. MSO shall provide Plan, NYSDOH, other authorized federal, state or local regulatory agencies, or any accreditation organization designated by Plan, access to the credentialing files of IPA Participating Providers, to the extent permitted by law. MSO shall notify all IPA Participating Providers that the Plan, accreditation organizations, and regulatory agencies will be allowed access to credentialing files whenever reasonably requested. MSO or IPA shall obtain consent from IPA Participating Providers to release credentialing information as needed for the purposes of this Agreement and shall keep original signatures on file.
4. Changes in Provider Network. MSO shall provide Plan with a monthly listing of IPA Participating Providers. Such notification shall be in a format approved by the Plan. IPA Participating Providers are subject to credentialing review by the Chief Medical Officer on a quarterly basis.

**SCHEDULE 1.4-C**  
**MEMBER SERVICES**

MSO shall assist Enrollees with service issues, in coordination with Plan's Member Services Department. This shall include MSO's operation of a 24-hour/7 day toll-free number for verifications, emergent/urgent care issues, problem resolution and change of provider, where indicated.

Verification. MSO shall assist Enrollees or persons empowered to act on behalf of Enrollees with verification of Enrollee status. When necessary, MSO may contact Plan for additional verification.

Problem Resolution. MSO shall assist Enrollees or persons empowered to act on their behalf with complaints, grievances, adverse determinations and appeals as well as routine problems, issues or concerns related to level of service and quality of care. Problem resolution shall occur in accordance with all applicable Program Contracts, Applicable Law and requirements of any applicable accreditation organization.

Complaints and Grievances

A. **Enrollee Complaints and Grievances.** In the event an Enrollee files a complaint or grievance about MSO, MSO agrees to comply with and participate in Plan's Enrollee complaint and grievance program and procedures, as outlined in Plan's policies and procedures, incorporated herein by reference, as they pertain to complaints and grievances filed by Enrollees.

B. **Provider Claims Disputes.** If an IPA Participating Provider disputes any amount paid by MSO, MSO agrees to ensure that IPA Participating Provider is entitled to full and fair review of its claims dispute consistent with Federal and State laws, and make best efforts to require that all IPA Participating Providers comply with MSO or Plan requests for documentation or otherwise cooperate, in accordance with Plan policies and procedures, to resolve such claims disputes.

Pharmacy Call Center. MSO shall establish and maintain a Pharmacy Call Center with a dedicated, toll-free 800 telephone number to provide information to and communication with IPA Participating Providers and prescribers from 8:30 a.m. until 6:00 p.m. (Eastern Time), Monday – Friday. MSO will develop and provide monthly status reports of Pharmacy Call Center information to the Plan and will also provide aggregate information for quarterly account meetings with the Plan.

Member Information Services. Member Services shall remain the responsibility of the Plan.

## SCHEDULE 1.4-D

### REPORTING

1. Reports Required by the Programs or Applicable Law. MSO shall collect data and prepare reports on any information requested by Plan from an IPA Participating Provider or IPA pursuant to the IPA Provider Agreement or this Agreement, including without limitation, Encounter Data (in a format acceptable to the Plan), information required pursuant to Applicable Law, information requested by the New York State Department of Health, information required by applicable accreditation organizations, and any other information necessary to carry out the terms of the IPA Provider Agreement and this Agreement, and to remain in compliance with requirements imposed by the Programs and Applicable Law. Such reports shall include, but are not limited to, the following:
  - 1.1 Reports of Medicaid Managed Care Operations;
  - 1.2 Child Health Plus reports;
  - 1.3 Medicaid Encounter Data Set;
  - 1.4 Health Provider Network reports;
  - 1.5 QARR/HEDIS;
  - 1.6 Reports on financial operations or any other operational data requested by Plan, the Commissioner, of the New York State Department of Health, or the Superintendent of the New York State Department of Insurance; and
  - 1.7 Internal utilization reports.
2. Utilization and Cost Information. MSO shall provide Plan with quarterly encounter data for Pharmacy Services provided to Enrollees served by IPA Participating Providers according to specifications reasonably established by Plan in accordance with industry standards.
3. Provider Relations.
  - 3.1 MSO shall provide Plan with a quarterly performance report of its provider relations telephone access services as they pertain to Enrollees receiving services from IPA Participating Providers.
  - 3.2 MSO shall, in accordance with approved Plan policies and procedures, accreditation organization standards and other regulatory guidelines, annually conduct satisfaction surveys of IPA Participating Providers and provide the results of such surveys to Plan within ninety (90) calendar days of receipt of such information.

4. Performance Reports. For each Delegated Function, MSO shall collect data and monitor its performance on a monthly basis and provide a copy of same to Plan on the fifth (5<sup>th</sup>) day of every month for the prior month for the first six (6) months following the Effective Date, and quarterly thereafter.



## SCHEDULE 1.4-E

### UTILIZATION MANAGEMENT

#### A. Prior Authorization

1. Prior Authorization ("PA") Procedures. MSO shall establish and maintain the following PA procedures for drugs identified in the Plan's plan design as requiring PA.
  - a. If the dispensing Pharmacy submits a prescription for a particular drug requiring PA and there is not a prior authorization in the system, the drug will be rejected via the claim processing system. This rejection will result in an online message being returned to the dispensing Pharmacy indicating the reason for rejection, and when possible, recommend an appropriate Formulary alternative, and/or provide a toll-free return telephone number for the Prescriber or pharmacist.
  - b. The Prescriber or the dispensing pharmacist may contact MSO to request PA. Clinical Requests may only come from a physician's office. Administrative requests may come from either a physician's office or Pharmacy.
  - c. Utilizing the criteria approved by the Plan ("Approved Criteria"), MSO will review the case and determine whether the drug request meets the Approved Criteria.
  - d. If the PA request meets the Approved Criteria, the request is approved and reimbursement for the prescription will be authorized for a period of up to the length of the Prescribers request, but not to exceed the period approved by the Plan.
  - e. If the PA request does not meet the Approved Criteria, the request will be forwarded to a MSO clinical pharmacist for review. In evaluating the request, the clinical pharmacist will rely upon any additional information supplied by the prescriber, claims history in the MSO system, guidelines published in recognized Compendia and accepted clinical practice guidelines. If the clinical pharmacist determines that the request meets the Approved Criteria, the request will be authorized. If the request does not meet the Approved Criteria, MSO will not approve and will forward to the Plan for a final determination.
  - f. MSO's Medical Director will electronically provide denial letters to the Plan for subsequent mailings to Members. The Plan may alternatively request MSO to issue the necessary communication to the Member (postage and material cost to provide this communication will be passed through to the Plan at the cost incurred by MSO). The Plan agrees to provide MSO with all necessary data elements on the eligibility file to support letter generation.

2. PA Review Criteria. In conjunction with the Plan, MSO shall develop PA review criteria based on generally accepted scientific evidence. The Plan shall review, modify and

approve PA criteria prior to implementation. The Plan shall review and approve any modification(s) to approve PA review criteria proposed by MSO after the initial implementation and prior to implementation of each criterion.

3. Active Assessment of PAs. MSO will actively assess the application of the PA process by MSO staff to ensure that PA procedures are being applied uniformly to Members. Further, MSO will periodically measure approvals and denials to ensure that PA procedures are being applied uniformly.
4. Temporary Emergency Supply. Depending upon the Plan's criteria for dispensing emergency supplies, and in circumstances where MSO does not have all the necessary information available to respond to the PA request, MSO will provide immediate system overrides allowing authorizations for a temporary emergency supply of a medication. In instances where a temporary emergency supply is authorized, a pharmacy will dispense at least a 72-hour emergency supply (or a temporary supply as otherwise required by State law) of a Covered Medication and will be reimbursed by MSO if, subsequent to dispensing in an emergency situation, indication is made on the Claim that the supply is for an emergency need. In order to allow for holidays, weekends, and times when a pharmacy cannot obtain PA, MSO shall use best efforts to ensure that its operational policy regarding "emergency situations" permits a pharmacy to be paid for Claims representing an emergency supply without PA. For packaging that inherently cannot be broken down to a 72-hour or less supply (example: metered dose inhalers), MSO shall advise the pharmacy to dispense the smallest quantity possible adequate for the emergency situation. MSO shall require its Network Pharmacies to internally document that the quantity dispensed was, due to manufacturer packaging constraints, the least that could be dispensed while meeting the patient needs during the emergency situation.
5. PA Exceptions. MSO may also make exceptions according to policy established by the Plan.
6. PA/Administrative Overrides. MSO will not charge the Plan for any PA or administrative override placed at the Plan offices by any of the Plan's staff.

#### **B. Drug Utilization Review**

MSO shall establish and maintain a utilization management program that promotes appropriate utilization for the Plan's pharmacy benefits program.

MSO shall routinely review and update its utilization management protocols.

MSO will provide the Plan with its existing quality-focused clinical protocols for review, modification and approval before such protocols are implemented on behalf of the Plan.

MSO will analyze the Plan's claims data and deliver an analysis to the Plan on a quarterly basis that identifies potentially inappropriate prescription or utilization patterns.

1. Establishment of Drug Utilization Review ("DUR") Program. MSO will establish and maintain a DUR Program that shall comply with guidelines and applicable laws and regulations governing the applicable state Medicaid program and shall include standards, policies, procedures and processes for concurrent, prospective and retrospective DUR. A designated MSO clinical pharmacist will be responsible for daily oversight of the DUR program. At a minimum, MSO shall provide on-line, concurrent DUR messaging to Pharmacies and will take appropriate action based on the Plan's benefit parameters and specifications.
2. Concurrent DUR System. MSO will use the claims processing system to evaluate each incoming drug claim with respect to the Member's drug history. The system alerts pharmacists to potential drug therapy problems through an online, the National Council for Prescription Drug Programs ("NCPDP") standard Concurrent DUR message system transmitted in conjunction with adjudication of the claim. Concurrent DUR shall include, but is not be limited to, the following standard edits as defined by First Data Bank parameters: (a) duplicate therapy; (b) early refills and frequency limitations; (c) duplicate drug; (d) potential drug interaction(s); (e) Preferred Drug List selection; and (f) minimum/maximum dose range. MSO's Concurrent DUR system will provide the Plan with the ability to minimize the number of potentially dangerous conditions that result from improper drug utilization by Members by:
  - a. Reviewing prescription drug claims for therapeutic appropriateness before drug dispensed;
  - b. Applying criteria that may include the Members' medical history and available clinical information; and
  - c. Focusing on Members with conditions that place them at the highest level of risk for potentially harmful outcomes.
3. Point-of-Sale Claims Processing System. When appropriate, the pharmacist receives advice through system messages and is directed to take additional steps to evaluate the order (e.g., call the prescribing physician). All therapeutic criteria will be rated using the following severity indicators:
  - a. Will cause serious harm to relatively few people (high risk and low incidence);
  - b. Will cause relatively minor harm to a large number of people (low risk and high incidence); and
  - c. Will significantly increase the cost of healthcare by increasing hospitalizations or other treatment modalities.

MSO will provide electronic adjudication of secondary claims when the Plan is a secondary payer at the pharmacy point-of-service level.

4. Prospective DUR. MSO will undertake a prospective DUR analysis on a semi annual basis to identify potentially inappropriate prescribing patterns. Prospective DUR interventions are priced separately.
5. Retrospective DUR. MSO will undertake a retrospective data analysis once a quarter to evaluate the benefits of its DUR programs that are targeted to reduce inappropriate medication usage. To provide a thorough analysis of the effectiveness of the program, MSO will evaluate the Plan's existing drug usage review programs and make appropriate recommendations to the Plan. Retrospective DUR interventions are priced separately.

### C. Preferred Drug List (PDL) Management

1. Establishment. The MSO will align its PDL with the Plan's PDL.
2. Revisions. MSO shall work with the Plan to provide for the quarterly review of and possible revision to the PDL, so as to address changes made desirable or mandated by any changes in the pharmaceutical industry, new legislation and/or regulations, the experience of PLAN and its providers with the PDL, and new recommendations developed by MSO based upon its research and experience.
3. Communication. MSO shall provide the PDL and any revisions thereto to network Pharmacies and Prescribers in writing once it has been finalized (including all required approvals), but prior to its implementation. Postage costs will be passed through the Plan.

If the Plan decides to print and distribute the PDL independently, MSO will provide the PDL and provider network mailing information to the Plan in a mutually agreed upon electronic format. If necessary, MSO will also support the Plan's web posting of the PDL via pdf., Word or Excel format.

4. Reporting. MSO will provide an electronic copy of the PDL by drug, strength and dosage form upon request so the Plan can monitor PDL benefit.
5. Outreach. MSO will conduct a one time outreach to the prescribers in the Plan's participating provider network prior to the Effective Date of the program to help transition Members to the PDL at the Plan's request.

## SCHEDULE 1.4-F

### Rebate Contracting and Management (If applicable)

1. Rebate Contracting. MSO shall arrange for Rebates of a portion of the average wholesale price ("AWP"), wholesale acquisition cost ("WAC"), or other appropriate cost measures of drugs, medical equipment or device obtained by Members. The Plan shall exclusively utilize MSO for the rebate contracting services described in this Schedule 1.4-F and shall direct pharmaceutical manufacturers to MSO for contracting discussions. All rebate agreements, and cost associated with obtaining said rebate agreements, will be disclosed to the Plan. The Plan understands and agrees that this information is proprietary and confidential to MSO and shall be treated as such by the Plan.

The Plan acknowledges that:

- a. Pharmaceutical manufacturers may discontinue payment of rebates; and
  - b. State and/or Federal laws, regulations, policies or contract provisions governing prescription drug pricing (including rebates) may be amended, changed or clarified.
2. Submission and Support of Rebates. The Plan shall allow MSO access to supporting data, including a copy of the Plan's formulary when it is revised at the end of each quarter cycle. MSO shall then calculate, per the rebate formula, the rebate due from each pharmaceutical manufacturer for which the Plan has a product on-PDL. Within thirty (30) days of the end of each revenue cycle, MSO shall electronically provide each pharmaceutical manufacturer with an invoice showing the rebate due at NDC level. MSO will provide the Plan with an electronic copy of the total rebate invoiced (at the level) within sixty (60) days after the end of each calendar quarter.
  3. MSO will pay applicable rebates to the Plan 120 days after the close of the previous quarter. Monies not collected in the quarter, but later collected will be paid to the Plan in subsequent quarters.
  4. Rebate Assessment. MSO will assess the Plan's current rebate arrangements and will make suggestions based upon (i) volume, (ii) exclusivity, and (iii) market share to optimize rebate payments.

## SCHEDULE 1.6

### MSO COMPUTER INFORMATION SYSTEMS

A. **Access to Systems.** With respect to each service MSO is to provide to Plan allowing Plan access to a MSO system or database, MSO shall provide Plan with access information. If MSO requires, Plan shall inform MSO of the identity of authorized users, of additions and deletions to the list of users, and of access rights of individual users and shall ensure that access information is not provided to users not designated to MSO. Passwords will expire periodically, which will require entry of a new password for each user on a regular interval defined by MSO. Plan shall provide, at its expense, the equipment, software and communications network transmission capabilities necessary to access MSO databases and systems.

B. **Plan Data Provided for Input.** If Plan is providing data to MSO, Plan shall keep the original source of all such data. If any media furnished by Plan are damaged due to MSO's equipment or performance of services, MSO will replace such media, but not the data on such media, at MSO's expense. MSO shall not be liable for the damage of any data on Plan media due to MSO's equipment or performance of services.

C. **Internet Security.** Plan acknowledges that the Internet is not a secure or reliable environment and that the ability of MSO to deliver Internet services is dependent upon the Internet and equipment, software, systems, data and services provided by various telecommunications carriers, equipment manufacturers, firewall providers and encryption system developers and other vendors and third-parties. Notwithstanding the above, MSO will make all reasonable efforts to maintain MSO's equipment, software, systems, data and services and will take immediate steps to remedy any problems caused by failure or malfunction of any such equipment, software, systems, data and services. Plan acknowledges that use of the Internet in conjunction with MSO's services entails confidentiality and other risks that may be beyond MSO's reasonable control. MSO agrees to maintain and make available written and commercially reasonable encryption and other protocols to protect against unauthorized interception, corruption, use of or access to proprietary information that it receives and/or disseminates over the Internet ("Internet Protocol"). Plan acknowledges that it has reviewed and agrees with the adequacy of the Internet Protocol. MSO may, but shall not be required to, modify the Internet Protocol from time to time to the extent it believes in good faith that such modifications will not diminish the security of MSO's systems. MSO shall provide the services described herein with respect to, and only with respect to, Plan.

## SCHEDULE 1.18

### IDENTIFICATION OF THE PROGRAMS AND PROGRAM CONTRACTS

**Program:** Child Health Plus program.

**Program Contract:** The contract for the provision of managed care services under the New York State Child Health Plus program entered into by and between New York State Catholic Health Plan, Inc., doing business as Fidelis Care New York and the New York State Department of Health including all attachments thereto. This program is referred to as Fidelis Child Health Plus<sup>TM</sup>.

Plan may amend this schedule to include additional Programs from time to time. Provider agrees that Provider will participate in all new Programs for which Provider is qualified as determined by Plan. Provider's participation in any new Program will be effective upon thirty (30) calendar days notice of Plan's amendment of this Schedule 1.18.

## SCHEDULE 5

### COMPENSATION SCHEDULE

Fidelis shall pay Salus Administrative Services, Inc. the following dispensing fees per paid claim as an administrative fee:

Brand/Generic Drugs	Dispensing Fee
Membership less than 200,000 members <sup>1</sup>	\$2.50
Membership greater than 200,000 members <sup>1</sup>	\$2.45

<sup>1</sup> Membership includes (1) all Salus Members or Enrollees covered pursuant to an agreement between Fidelis, Salus and Caremark; and (2) any Fidelis Care New York Members, Enrollees, or Employees covered directly by an agreement between Fidelis and Caremark.



**AMENDMENT TO MANAGEMENT SERVICES AGREEMENT BETWEEN  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC. d/b/a Fidelis Care New York  
AND SALUS ADMINISTRATIVE SERVICES, INC.**

THIS AMENDMENT to the Management Services Agreement dated this 15<sup>th</sup> day of January 2008, by and between the NEW YORK STATE CATHOLIC HEALTH PLAN INC., d/b/a Fidelis Care New York, ("Plan"), SALUS ADMINISTRATIVE SERVICES, INC. ("Salus"), and CAREMARKPCS HEALTH, LP ("Caremark").

WHEREAS, Plan and Salus have heretofore entered into a Management Services Agreement whereby Plan delegated several management functions to Salus (the "Agreement");

WHEREAS, both parties wish to amend the Agreement between Plan and Salus to provide for Salus' sub-delegation of management functions delineated in the proposed Management Services Agreement between Salus and CaremarkPCS Health, LP; and

WHEREAS, in accordance with 10 NYCRR 98-1.11(p), a purported management subcontractor must be a signatory to the management agreement from which the subcontract is derived;

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree that the Agreement shall be, and is hereby, amended as follows:

1. The parties to the sub-delegation agree to the terms of (i) the body of the Agreement between Fidelis and Salus; (ii) this Amendment; and (iii) the new schedules (Schedule 6.1, Schedule 6.3, Schedule 6.4-A, Schedule 7. and Schedule 8) attached and incorporated into this Amendment.
2. As subcontractor of the management functions expressly provided in Schedule 6.1 attached and incorporated into this Amendment, Caremark expressly acknowledges that with respect to the fulfillment of the aforementioned subcontracted management functions, Caremark is subject to the provisions of 10 NYCRR 98-1.11 to the same extent as Salus as management contractor, including all termination provisions, provided that Caremark may also be terminated by Salus upon at least ninety (90) days notice and with the prior written approval of the Commissioner of the New York State Department of Health, pursuant to 10 NYCRR 98-1.11(p).
3. With respect to Caremark's performance of the sub-delegated management functions as set forth in Schedule 6.1 of this Amendment, in the event of any inconsistencies between the performance standards set forth in the Agreement and this Amendment, the terms of this Amendment shall control.
4. All other terms and conditions of the Agreement, except as amended herein, shall remain the

same and are hereby ratified and confirmed.

5. This amendment to the Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties here have signed this AGREEMENT on the date referenced above.

**SALUS ADMINISTRATIVE SERVICES,  
INC.**

95-25 Queens Boulevard  
Rego Park, New York 11374

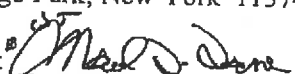
By: 

Its: President and CEO

Date: 1/5/09

**NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC., d/b/a FIDELIS  
CARE NEW YORK**

95-25 Queens Boulevard  
Rego Park, New York 11374

By: 

Its: President and CEO

Date: 1/5/09

**CAREMARKPCS HEALTH, LP**

By: 

Its: EVP Ops.

Date: 1-26-09

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NEW

## **SCHEDULE 6.1**

### **DELEGATED FUNCTIONS**

- Claims Processing
- Participating Pharmacy Credentialing
- Reporting

Caremark is in compliance with URAC standards of best practice.

### SCHEDULE 6.3

#### PERFORMANCE STANDARDS

Caremark will diligently attempt to maintain its performance at the levels represented herein, provided that failure to achieve or maintain those levels does not constitute a default for purposes of the termination provisions set forth in the Agreement. Caremark agrees that its services shall be performed in accordance with the performance standards set forth in this Schedule 6.3. Such performance standards shall be measured and reported with the frequency set forth hereinafter for each performance standard.

Salus agrees that the performance standards and related penalties set forth below shall apply to this Agreement only, and not to services provided by Caremark to Salus or a Salus affiliate or subsidiary under any previous agreement(s).

If Caremark fails to satisfy a performance standard that is measured for all Caremark clients utilizing the same process platform, Caremark will have satisfied a performance standard regarding Salus if it satisfies that standard with respect to Salus only.

If any period covered by the Agreement is less than the period covered by the proposed performance standard, and Caremark has not met such performance standard for such period, the penalty associated with such failure will be prorated to reflect the actual period during which the Agreement was in effect.

Unless otherwise indicated with respect to a specific performance standard, Caremark's satisfaction of the proposed performance standards will be:

- (i) Monitored internally by Caremark on an annual basis for all Caremark clients utilizing the same process platform, and
- (ii) Measured by Caremark on a calendar-year basis for all Caremark clients utilizing the same process platform.

The maximum penalty that Caremark will have at risk for any plan year will be \$50,000.00 for ongoing guarantees. The total amount at risk will be allocated equally among the performance guarantees.

Caremark shall provide the Performance Guarantee Report Card no later than 90 days after the end of the applicable contract year. Any applicable amounts owed to Salus will be credited on the month end invoice following the month of the reporting date.

In the event Caremark fails to meet the proposed standards, the penalties described above will be the sole and exclusive monetary remedy available to Salus for such failure.

**Eligibility Updates.** Caremark guarantees 98% of ongoing eligibility updates shall be processed within two (2) working days of receipt of a clean and complete eligibility file in an agreed upon format. This is measured on a client specific basis. Should Caremark fail to meet the stated

guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Eligibility Load Accuracy.** Caremark guarantees that 100% of usable, error-free program eligibility files received from Salus will be loaded by Caremark without error. Accuracy shall be calculated as the number of eligibility files audited and found to be processed and loaded without error divided by the total number of eligibility files received. This is measured on a client specific basis. Should Caremark fail to meet the stated guarantee in any given calendar year Caremark shall credit Salus \$3464. .

**Management Report Timeliness.** Caremark's quarterly standard management reports shall be available within forty-five (45) days after the end of each contract quarter, as measured on a contract year and client specific basis. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Management Report Accuracy.** Information contained in Caremark's standard reports is to be considered fully accurate based upon data contained in Caremark's data systems at the time the reports are produced. Caremark is exempt from this standard if incomplete or inaccurate data were received on the claim or externally processed files, and/or were due to circumstances beyond Caremark's control. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Participant Submitted Paper Claim Turnaround Time.** Within a weighted average of ten (10) business days, Caremark shall process at least 90% of all commercial paper claims submitted by plan Enrollees not requiring clarification, as measured on a contract year basis. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Online Claims Processing.** Caremark's online claims processing system will respond to transactions submitted electronically by Caremark's contracted pharmacies, on average, within two seconds. For purposes of this standard, response time will mean the time commencing immediately after receipt of the last character of a transaction submitted by a pharmacy until the time the first character of the response is sent to the pharmacy. This standard will not apply when Caremark does not have total control over the environment or communication links that impact the claims adjudication process due to third-party involvement. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**System Availability.** Caremark's online claims processing system will be available for access by Caremark's Contracted Pharmacies no less than 99% of the time, excluding normal scheduled maintenance, as measured on a contract year basis. This standard will not apply when Caremark does not have total control over the environment or communication links that impact the claims adjudication process due to third-party involvement. Scheduled maintenance will not be performed during routine pharmacy business hours. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Account Management Satisfaction.** A satisfaction survey shall be conducted annually among Salus' management team. Overall satisfaction ratings of at least 3 on a 5-point scale (5 is best rating)

shall be guaranteed. For the purposes of this guarantee, satisfaction shall be defined as Satisfied or better on the following 5-point scale; Completely Satisfied, Very Satisfied, Satisfied, Dissatisfied, Very Dissatisfied. Caremark shall be responsible for survey design, data collection, analysis and all costs associated with conducting the surveys. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Written Inquiries.** Caremark guarantees 95% of written inquiries received by Caremark's Customer Care Department from all plan Enrollees will be responded to within 10 business days following the business day on which such inquiry was received. This is measured on a client specific basis. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**ID Cards-Maintenance.** Caremark guarantees that 98% of new plan Enrollees will be mailed ID cards and/or Welcome Booklets within five (5) business days of receipt of a clean, accurate and complete electronic file for ongoing eligibility updates. Implementation and re-issues are not considered part of this guarantee. This is measured on a client specific basis. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Data Tapes Timeliness.** Caremark will submit clean and usable data tapes within 72 hours following the close of the billing cycle or other mutually agreed upon time frame. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Retail Pharmacy Audit.** Caremark guarantees it will perform an on-site audit each year of 3% of its retail pharmacies in Caremark's National Network that submit 500 or more claims a year to Caremark. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Plan Administration Turnaround Time.** Caremark guarantees that Salus' standard Plan Design changes will be implemented within 10 days Plan Design Changes during November, December and January, as well as complex Plan Design Changes, will be implemented by a mutually agreed upon date. Salus will be responsible for reporting any failure to meet the above stated guarantee to Caremark on an annual basis. This is measured on a client specific basis. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Account Management Responsiveness.** Caremark guarantees that account service representative will acknowledge receipt of 95% of calls within one business day of receipt. Should Caremark fail to meet the stated guarantee in any given calendar year, Caremark shall credit Salus \$3464.

**Specialty Prescriptions Accuracy.** Caremark's accuracy in dispensing prescriptions from its specialty pharmacies (correct drug, correct strength, correct dosage form, correct labeling) shall be at least 99.8%. This standard will be reported and measured annually on Caremark's book of business. Should Caremark fail to meet this standard in any calendar year, Caremark shall credit Salus \$1,500.00

## TERMS AND CONDITIONS FOR DELEGATED FUNCTIONS

### SCHEDULE 6.4-A

#### CLAIMS PROCESSING

1. Claims Processing.
  - 1.1 Caremark shall process and pay claims, as applicable, for IPA Services received by Enrollees pursuant to the IPA Provider Agreement.
  - 1.2 Salus and Caremark shall direct (i) all IPA Participating Providers and (ii) as applicable, all Enrollees receiving IPA Services to submit claims for services to Caremark. Salus shall forward any claims received from IPA Participating Providers or Enrollees with respect to IPA Services to Caremark.
2. Encounter Data. Caremark shall develop a method (that must be prior approved by Salus) for the following activities.
  - 2.1 Collecting and submitting to Salus all Encounter Data as required by authorized federal, state and local regulatory agencies and/or an accreditation organization pertaining to pharmacy services; and
  - 2.2 Monitoring IPA Participating Provider compliance with Encounter Data requirements.
3. Compliance with Applicable Law. Caremark shall comply with any authorized federal, state or local regulatory agency requirement applicable to the services provided by Caremark under this Schedule 6.4-A, including without limitation, claims processing timeframes, denial notification processes, and payment for overdue claims. Caremark shall develop a method (that must be prior approved by Salus, such approval not to be unreasonably withheld) for:
  - 3.1 Identifying and processing Clean Claims within applicable New York State timeframes; and
  - 3.2 If delegated to Caremark, issuing proper denial notification, including notice of appeal rights.
4. Interest Payments and Penalties. In the event that Caremark fails to pay claims within applicable timeframes required pursuant to Applicable Law and due to this failure Salus is required to pay interest to IPA Participating Providers and subject to other penalties imposed by regulatory agencies, Caremark shall indemnify Salus for such payments, unless such interest and penalties are due, in whole or in part, to Salus' actions or failure to act.

5. Data Feeds. Caremark shall provide Salus with regular monthly data feeds of Encounter Data for all pharmacy services into Salus' data repository in the format mutually agreed upon format.
6. Reports. Caremark shall cooperate with Salus to create a standard aged-claim report on a monthly basis, and a quarterly quality report on all claims processing activity for Enrollees to Salus that details at a minimum following data: the number of claims received, processed, approved, denied or pended, as well as the average time for processing claims (i.e., number and percent of claims processed and paid within 30, 60, 90 and 120 days; the number of claims which remain unprocessed for 31-60, 61-90, 91-120, and 121+ days). Furthermore, Caremark agrees to do additional ad hoc reporting as reasonably requested by Salus in order to complete oversight of claims processing and/or denial activity.
7. Eligibility and Enrollment Data. Salus shall provide Caremark with at least weekly data feeds of Enrollee eligibility and enrollment information in the format agreed to by Salus and Caremark.
8. Drug Utilization Review ("DUR") Services/Clinical Programs.
  - 8.1 Caremark will provide its automated concurrent DUR Services including but not limited to: (i) drug to drug interactions; (ii) therapeutic duplications; (iii) known drug sensitivity; (iv) over-utilization; (v) insufficient or excessive drug usage; and (vi) early or late refills.
  - 8.2 Prescribing physicians or IPA Participating Providers are individually responsible for acting or not acting upon information generated and transmitted through the DUR Services, and for performing services in each jurisdiction consistent with the scope of their licenses. The DUR Services are necessarily limited by the amount, type and accuracy of Enrollee information made available to Caremark. Caremark will update DUR databases on a reasonable basis to reflect changes in available standards for pharmaceutical prescribing.
  - 8.3 In accordance with applicable law, including HIPAA, Salus may authorize Caremark to perform the following service programs (collectively referred to herein as the "Additional Service Programs"): (i) local market clinical consulting; (ii) national clinical consulting; (iii) compliance and persistency; (iv) RxReview (participant program and prescriber program); and (v) RxViewpoints. Salus and Caremark acknowledge and agree that: (i) although the Additional Service Programs may be of benefit to Salus and its Enrollees, Caremark will not charge Salus for the performance of such Additional Service Programs; (ii) the performance of such Additional Service Programs may utilize PHI; (iii) the performance of such Additional Service Programs is at the discretion of Caremark and such performance is not an obligation of Caremark; and (iv) Caremark may contract with, and pursue and retain reimbursement from, pharmaceutical companies for the funding and provision of such Additional Service Programs.



Caremark will provide adjudication of secondary claims when Salus is a secondary payer at the pharmacy point-of-service level.

## **SCHEDULE 7**

### **AUDIT PROCEDURES**

Salus shall oversee and monitor Caremark's performance under this Agreement on an on-going basis as set forth in Section 2.2. Salus' oversight activities shall include quarterly delegation oversight meetings, regular review and audit of data and reports provided by Caremark, ad hoc conference calls, providing feedback on Caremark's performance and identifying and overseeing the resolution of any complaints or issues. In addition to the regular monitoring and oversight Salus performs of Caremark's performance under this Agreement, Salus may conduct an annual audit pursuant to Section 2. Any audit of the Services provided by Caremark would supplement Salus' oversight activities and is intended to enable Salus to confirm that Caremark has complied with its obligations under the Agreement related to administration of the plan design.

The governing authority of Salus agrees that, based upon its review of appropriate documentation and site visits of Caremark, Caremark has the core competency to perform the Delegated Functions. The governing authority of Salus shall delegate the Delegated Functions as of the Effective Date or such other date mutually agreeable to the parties. Throughout the term of this Agreement, the governing authority of Salus shall reassess Caremark's ability to perform the Delegated Functions within a reasonable, pre-determined timeframe, but no less frequently than quarterly. The parties agree that such quarterly assessment shall not be deemed an "audit", not subject to this Schedule 7; and that Salus shall perform such quarterly assessment at its sole expense and without additional audit-like support from Caremark.

Any adjustments, plan design changes, payments and/or reimbursements determined to be necessary as a result of any audit shall be paid by or implemented by the appropriate party within thirty (30) days of execution of an appropriate release document covering the audit period.

For Salus to accomplish the review in an efficient and timely manner, the following guidelines will apply to the audit process:

#### **Audit Notification Letter**

Salus will notify Caremark in writing at least thirty (30) days in advance of its intent to audit Caremark. Salus' notice shall be in writing either on Salus' letterhead or via e-mail and shall be sent to the attention of Salus' account executive at Caremark.

#### **Use of Third Party Auditor**

In the event Salus desires to use a third party auditor, the auditor shall be any independent third party retained by Salus and not prohibited by Caremark on a list provided to Salus periodically by

FidelisSalusMSA03

Caremark. The third party auditor shall execute a confidentiality agreement with Caremark in a form and substance reasonably acceptable to Caremark prior to conducting an audit.

#### Teleconference

Upon Caremark's receipt of Salus' request for an audit, Caremark will organize and conduct an initial teleconference between Salus and Caremark. This teleconference will address Salus' audit requirements, including the following:

- Individual audit participants
- Requirement and purpose of an approved confidentiality agreement (for use with outside audit firms or other Salus representatives, as applicable)
- Onsite requirements
- Mutually established timelines
- Claims
  
- Prescription copies: timelines, availability and cost
- Process for acceptable verification of audit questions
- Caremark's right to respond within a reasonable time after questions arise and before audit results are disseminated by the auditor to Salus.

#### Mutually Agreed Timelines

Salus and Caremark will mutually agree upon an audit timeline, taking into consideration individual circumstances and constraints. An example of a standard timeline is as follows (from the time a signed confidentiality agreement is secured):

- Claim tape request – two (2) weeks
- Standard screen prints – two (2) weeks
- Audit Report Reply -- one (1) month.

The parties will agree on the specific audit timeline following Salus' request to audit and identification of the information to be reviewed.

#### 1.1. Claims Tape Requests

Salus shall identify the claims tapes it wants to review during the initial teleconference. As it conducts the audit, Salus will notify Caremark if needs to review any claims tapes in addition to those originally requested. Delivery to the specified party normally takes place within two (2) weeks. The cost typically is \$125.00 per month of data.

#### 1.2 Response to Auditor Questions

Salus will provide to Caremark a copy of the auditor's report after Salus has received and agreed with audit findings. Caremark will respond to 100% of all auditor inquiries within a time period not to exceed thirty (30) days from receipt of the audit report. Caremark will either refute or accept auditor findings. If auditor findings are refuted, Caremark will supply documentation to support such refutation.

### 1.3. Third Party Audit Report

In the event of an audit by a third party, which third party shall not be an agent of either party, Caremark and Salus will be provided a copy of any proposed audit report and Caremark will have a reasonable opportunity to comment on any such report before it is finalized. This provision shall not apply to audits by governmental agencies, other oversight agencies or their agents.

### 1.4. Close of Audit

Upon finalization of audit results and agreement between Salus and Caremark on any identified financial discrepancies, the period under review will be considered closed (other than discrepancies related to instances of fraud and abuse). Caremark shall pay Salus for any claims paid in error. Caremark shall identify in writing to Salus actions taken to resolve any potential future discrepancies and shall provide a corrective action plan to Salus. Salus shall monitor Caremark's compliance with any corrective action plan.

### 1.5. Audit Costs

Salus shall be responsible for all reasonable expenses of the Claims audit, including Caremark's costs related to the provision of records.

### 1.6. Audit Document Limitations

Salus acknowledges that it shall not be entitled to audit documents that Caremark is barred from disclosing by applicable law or pursuant to an obligation of confidentiality to a third party. Caremark shall use best efforts to obtain any third party consents so that Salus may view applicable documents.

## **SCHEDULE 8**

### **COMPENSATION SCHEDULE**

Salus shall pay Caremark \$.05 per retail Claim as an administrative fee for processing and adjudicating such Claim.

# **EXHIBIT 10**

**Petitioner's Financial Statements – Years Ended December 31, 2017 and  
2016 and Independent Auditor's Report**

# **New York State Catholic Health Plan, Inc. (d/b/a Fidelis Care New York) and Subsidiaries**

**Consolidated Financial Statements as of and for the  
Years Ended December 31, 2017 and 2016, and  
Independent Auditors' Report**

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
(d/b/a FIDELIS CARE NEW YORK) AND SUBSIDIARIES**

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## **INDEPENDENT AUDITORS' REPORT**

The Board of Directors of  
New York State Catholic Health Plan, Inc.  
(d/b/a Fidelis Care New York) and Subsidiaries  
95-25 Queens Boulevard  
Rego Park, NY 11374

We have audited the accompanying consolidated financial statements of New York State Catholic Health Plan, Inc. (d/b/a Fidelis Care New York) and Subsidiaries ("Fidelis" or the "Plan"), which comprise the consolidated balance sheets as of December 31, 2017 and 2016, the related consolidated statements of operations, changes in net assets, comprehensive income, and cash flows for the years then ended, and the related notes to the consolidated financial statements.

### **Management's Responsibility for the Consolidated Financial Statements**

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditors' Responsibility**

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Plan's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Plan's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



## Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the New York State Catholic Health Plan, Inc. (d/b/a Fidelis Care New York) and Subsidiaries as of December 31, 2017 and 2016, and the results of its operations, changes in its net assets and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

*Deloitte & Touche LLP*

March 22, 2018

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.**  
**(d/b/a FIDELIS CARE NEW YORK) AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**  
**AS OF DECEMBER 31, 2017 AND 2016**  
**(In thousands)**

	2017	2016
<b>ASSETS</b>		
CURRENT ASSETS:		
Cash and cash equivalents	\$1,848,710	\$1,358,759
Short-term investments—other	550,561	431,330
Investments	780,114	697,091
Premium receivables—net	209,850	203,708
Pharmacy rebates receivable	96,398	103,959
Other receivables	12,354	8,861
Reinsurance receivables	88,282	101,169
Prepaid expenses and other current assets	<u>13,023</u>	<u>23,774</u>
Total current assets	3,599,292	2,928,651
RESTRICTED DEPOSITS	449,447	366,362
INVESTMENTS—Noncurrent	182	162
PROPERTY, EQUIPMENT AND LEASEHOLD IMPROVEMENTS—Net	210,106	57,487
GOODWILL AND INTANGIBLES—Net	<u>15,850</u>	<u>15,850</u>
TOTAL	<u>\$4,274,877</u>	<u>\$3,368,512</u>
<b>LIABILITIES AND NET ASSETS</b>		
CURRENT LIABILITIES:		
Claims payable	\$1,359,589	\$1,077,035
Accounts payable and accrued expenses	247,577	188,299
Premiums received in advance	30,785	14,245
Long-term debt—current portion	14,286	14,286
Due to third parties	429,700	218,893
Capital leases—current portion	<u>-</u>	<u>41</u>
Total current liabilities	2,081,937	1,512,799
LONG-TERM DEBT	<u>71,429</u>	<u>85,714</u>
Total liabilities	2,153,366	1,598,513
COMMITMENTS AND CONTINGENCIES (NOTE 10)		
NET ASSETS—Total net assets	<u>2,121,511</u>	<u>1,769,999</u>
TOTAL	<u>\$4,274,877</u>	<u>\$3,368,512</u>

See notes to consolidated financial statements.

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.**  
**(d/b/a FIDELIS CARE NEW YORK) AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**FOR THE YEARS ENDED DECEMBER 31, 2017 AND 2016**  
**(In thousands)**

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	<b>2017</b>	<b>2016</b>
<b>REVENUES:</b>		
Premium revenues	\$ 9,692,298	\$ 8,407,239
Other	<u>25,903</u>	<u>15,774</u>
Total revenues	<u>9,718,201</u>	<u>8,423,013</u>
<b>EXPENSES:</b>		
Cost of health care provided	8,878,505	7,684,879
General and administrative	541,340	410,144
Depreciation and amortization	<u>34,570</u>	<u>26,907</u>
Total expenses	<u>9,454,415</u>	<u>8,121,930</u>
<b>OTHER INCOME (EXPENSE):</b>		
Investment income and losses—net	95,287	39,151
Interest expense	(2,474)	(682)
Charitable donations and grants	<u>(4,669)</u>	<u>(4,663)</u>
Total other income (expense)	<u>88,144</u>	<u>33,806</u>
<b>EXCESS OF REVENUES OVER EXPENSES</b>	<u>\$ 351,930</u>	<u>\$ 334,889</u>

See notes to consolidated financial statements.

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
(d/b/a FIDELIS CARE NEW YORK) AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CHANGES IN NET ASSETS  
FOR THE YEARS ENDED DECEMBER 31, 2017 AND 2016  
(In thousands)**

	<b>2017</b>	<b>2016</b>
UNRESTRICTED NET ASSETS—Excess of revenues over expenses	<u>\$ 351,930</u>	<u>\$ 334,889</u>
CHANGE IN TEMPORARILY RESTRICTED NET ASSETS:		
Contributions	97	295
Other	<u>(515)</u>	<u>(274)</u>
(Decrease) increase in temporarily restricted net assets	<u>(418)</u>	<u>21</u>
INCREASE IN NET ASSETS	351,512	334,910
NET ASSETS—Beginning of year	<u>1,769,999</u>	<u>1,435,089</u>
NET ASSETS—End of year	<u><u>\$ 2,121,511</u></u>	<u><u>\$ 1,769,999</u></u>

See notes to consolidated financial statements.

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
(d/b/a FIDELIS CARE NEW YORK) AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME  
FOR THE YEARS ENDED DECEMBER 31, 2017 AND 2016  
(In thousands)**

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	<b>2017</b>	<b>2016</b>
CHANGE IN NET ASSETS	<u>\$ 351,512</u>	<u>\$ 334,910</u>
PENSION PLAN—Net gain arising during the period	<u>1,540</u>	<u>3,341</u>
Other comprehensive earnings	<u>1,540</u>	<u>3,341</u>
COMPREHENSIVE INCOME	<u>\$ 353,052</u>	<u>\$ 338,251</u>

See notes to consolidated financial statements.

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.**  
**(d/b/a FIDELIS CARE NEW YORK) AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31, 2017 AND 2016**  
**(In thousands)**

	2017	2016
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Change in net assets	\$ 351,512	\$ 334,910
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	34,570	26,907
Net realized and unrealized gains on trading securities	(61,278)	(18,057)
Net realized and unrealized losses (gains) on investments, other than trading	85	(57)
Purchases of investments—trading securities	(1,171,214)	(1,130,634)
Proceeds from sale of investments—trading securities	1,149,469	1,075,431
Provision for bad debts	327	4,662
Changes in:		
Premium receivables—net	(6,469)	32,811
Pharmacy rebates receivable	7,561	(38,701)
Other receivables	(3,493)	(1,450)
Reinsurance receivables	12,887	(28,891)
Prepaid expenses and other current assets	(3,236)	(17,704)
Claims payable	282,554	141,822
Accounts payable and accrued expenses	45,079	32,029
Premiums received in advance	16,540	(933)
Due to third parties	210,807	91,857
Net cash provided by operating activities	<u>865,701</u>	<u>504,002</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of investments and restricted deposits	(83,085)	(91,280)
Purchases of short-term investments—other	(119,336)	(236,011)
Acquisition of property and equipment	<u>(159,003)</u>	<u>(18,715)</u>
Net cash used in investing activities	<u>(361,424)</u>	<u>(346,006)</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Payments of capital lease obligations	(41)	(411)
Payments of long-term debt	(14,285)	-
Proceeds from long-term debt	-	100,000
Net cash (used in) provided by financing activities	<u>(14,326)</u>	<u>99,589</u>
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>489,951</b>	<b>257,585</b>
<b>CASH AND CASH EQUIVALENTS—Beginning of year</b>	<b><u>1,358,759</u></b>	<b><u>1,101,174</u></b>
<b>CASH AND CASH EQUIVALENTS—End of year</b>	<b><u>\$ 1,848,710</u></b>	<b><u>\$ 1,358,759</u></b>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>		
Cash paid during the year for interest	\$ <u>2,474</u>	\$ <u>682</u>
Accrual for acquisition of equipment	\$ <u>14,199</u>	\$ <u>13,710</u>
Capital lease obligations incurred	\$ <u>-</u>	\$ <u>-</u>

See notes to consolidated financial statements.

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
(d/b/a FIDELIS CARE NEW YORK) AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
AS OF AND FOR THE YEARS ENDED DECEMBER 31, 2017 AND 2016**

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**1. ORGANIZATION AND NATURE OF BUSINESS**

The New York State Catholic Health Plan, Inc. (d/b/a Fidelis Care New York) ("Fidelis" or the "Plan") was incorporated in the State of New York on May 13, 1993, as a not-for-profit membership corporation. Fidelis, upon obtaining a Special Purpose Certificate of Authority from the State of New York Commissioner of Health, is licensed to provide or arrange for the provision of comprehensive health services, as defined in Article 44 of the Public Health Law, on a prepaid full-risk capitation basis, to an enrolled population substantially composed of recipients of the Medical Assistance Program. Fidelis commenced operations on October 1, 1993, with member eligibility becoming effective November 1, 1993. Fidelis' historical and current contractual obligation, per county, excludes benefits for certain family planning and reproductive health services. Upon receipt of the approved Certificate of Authority, Fidelis executed a contract, effective October 1, 1996, with the City of New York Office of Medicaid Managed Care. This contract authorized Fidelis to enroll Medicaid beneficiaries in the five boroughs of the City of New York. Fidelis entered into similar contracts with other counties of the State of New York. Effective October 1, 2005, the New York State Department of Health (NYSDOH) became the sole contracting authority for all counties, except the City of New York, for Medicaid Managed Care. The NYSDOH subsequently became the contracting authority for New York City effective August 1, 2011. The contract with the NYSDOH was extended through February 28, 2019. As of December 31, 2017, Fidelis is authorized to provide services to Medicaid Managed Care members in all 62 counties in the State of New York. In October 1997, Fidelis became a participant and began enrolling members of the State of New York's Child Health Plus Program. Fidelis currently provides insurance through this program in all 62 counties in the State of New York. The Child Health Plus contract was executed in January 2016 and expires on December 31, 2019.

During July 2004, Fidelis became a participant in the Medicare Advantage Program in the State of New York. As of December 31, 2017, Fidelis is operational in 53 counties.

During May 2006, Fidelis became a participant in the Medicaid Dual Advantage Program in the State of New York. As of December 31, 2017, Fidelis is operational in 48 counties.

During July 2009, Fidelis became a participant in the Medicaid Advantage Plus Program (MAP) in the State of New York. As of December 31, 2017, Fidelis is operational in nine counties.

Fidelis became a qualified health plan in the New York Health Benefit Exchange (Health Benefit Exchange) within the NYSDOH that began on October 1, 2013, providing health coverage to individual members effective January 1, 2014, under the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively, "Health Care Reform" or "ACA"). As of December 31, 2017, Health Benefit Exchange is operational in 56 counties. Effective January 1, 2017, Fidelis began enrolling members outside of the Official Health Plan Marketplace (Off-Exchange) through licensed and contracted brokers.

During January 2015, Fidelis became a participant in the Fully Integrated Duals Advantage Plan (FIDA) in the State of New York. The Fidelis FIDA program, which was operational in six counties ended on December 31, 2017.

During October 2015, Fidelis became a participant in the Health and Recovery Plan (HARP) in the State of New York. As of December 31, 2017, Fidelis is operational in 62 counties.

Effective January 1, 2016, Fidelis became a participant in the Essential Plan (EP), a program offered to qualified individuals who are not eligible for Medicaid or the Child Health Plus programs. As of December 31, 2017, Fidelis is operational in 58 counties.

On September 30, 2005, Fidelis acquired 100% interest in CenterCare, Inc. ("CenterCare"). Effective August 1, 2008, CenterCare merged with Fidelis, and pursuant to the terms of the merger agreement, CenterCare surrendered its Certificate of Authority.

On December 30, 2008, Fidelis acquired all assets and liabilities and assumed operations of a former joint venture and established Fidelis Care at Home (FCAH), a Medicaid long-term care capitated program with the NYSDOH. This program provides an array of home, community, and institutionally based, long-term care services to persons who are eligible for Medicaid and who have been certified as appropriate candidates for nursing home placement. Enrollees in FCAH must be at least 18 years old, covered by Medicaid, nursing home-eligible but wish to remain in the community, and reside in the FCAH service area. As of December 31, 2017, FCAH is operational in all 62 counties in the State of New York.

During July 2004, Fidelis created a wholly owned subsidiary, Salus Administrative Services, Inc. ("Salus"), a New York State corporation formed under Section 402 of the Business Corporation Law. In January 2008, Salus created a wholly owned subsidiary, Salus IPA, LLC (IPA), a New York State corporation formed under Section 203 of the Limited Liability Company (LLC) Law. Salus and IPA commenced operations on January 1, 2009, providing pharmacy benefit management services to Fidelis members and Fidelis employees/dependents.

In February 2016, Fidelis created a wholly owned subsidiary, Rego Park Office Tower, LLC (RPOT), a New York State corporation formed under Section 203 of the LLC Law. RPOT was organized to operate for not-for-profit purposes consistent with the Real Property Tax Law of the State of New York. RPOT started operations on March 28, 2017 upon acquisition of the Queens Tower building, providing administrative office and retail leases to Fidelis and third parties.

The corporate members of the Plan are the eight Diocesan Bishops of the Roman Catholic Dioceses in the State of New York.

## **2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Principles of Consolidation**—The consolidated financial statements include the accounts of Fidelis and its wholly owned subsidiaries, Salus and RPOT. All significant intercompany balances and transactions have been eliminated in consolidation.

**Basis of Accounting**—The accompanying consolidated financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (GAAP).



**Use of Estimates**—The preparation of the consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Accounts affected by significant estimates include premium receivables, pharmacy rebates receivable, other receivables, reinsurance receivables, ACA reinsurance, risk adjustment and risk corridor receivables and payables, recoverability of goodwill, claims payable, accrued expenses, amounts due to third parties, premium revenues, and cost of health care provided. Actual results could differ from these estimates.

**Cash and Cash Equivalents**—Cash and cash equivalents include cash and highly liquid investments that are readily convertible to known amounts of cash and are so near their original maturity dates that they present insignificant risk of changes in value because of changes in interest rates. Cash equivalents exclude funds included in restricted deposits.

**Short-Term Investments—Other**—Short-term investments—other include certificates of deposit with original maturities greater than three months and remaining maturities are less than one year whose carrying amount approximates fair value.

**Premium Receivables and Revenues**—Premium receivables and revenues are recorded in the month for which members are entitled to service. Premiums represent payment in full for the complete Medicaid, Child Health Plus, Medicare Advantage, Medicaid Dual Advantage, MAP, FCAH, Health Benefit Exchange, FIDA, HARP and EP with the exception of the standard exclusions and the following additional exclusions: family planning, childcare, and methadone maintenance treatment program physician/clinic. As a prepaid health services plan, premium revenues are provided by the State of New York and U.S. government agencies, and therefore, there is no need for an allowance for uncollectible accounts. However, the amounts due from members under the Health Benefit Exchange, FCAH and EP programs include provisions for uncollectible accounts. The balances in such provisions for uncollectible accounts approximate \$7,798,000 and \$7,471,000 at December 31, 2017 and 2016, respectively. Premium revenues also reflect the estimated rebates for programs subject to the Minimum Medical Loss Ratio (MLR) as an adjustment to premium revenue in the consolidated statements of operations.

During 2017 and 2016, changes were made to the Medicaid benefit package whereby New York State transitioned services and populations covered by fee-for-service Medicaid to managed care plans. The Plan also received rate changes at various dates during 2017 and 2016, which included premium rates between Aliessa and non-Aliessa populations. The Aliessa population represents legal immigrants who are eligible for New York's Medicaid program as a result of a recent court decision. New York State does not receive federal matching funds for this population. As a result, the NYSDOH adjusted for the Aliessa population in its Managed Care premiums. For the Plan's Medicare products, the rates paid to Fidelis by the Centers for Medicare and Medicaid Services (CMS) are adjusted for the member's age, gender, county of residence, plan-specific bid, disability, income, and health status (risk-adjusted formula). Under this model, there is a potential for the collection of additional premium. However, the adjustment does not occur in the initial year of enrollment, but in subsequent periods after the Plan has compiled and submitted medical diagnosis information to CMS. The Plan records revenues and a receivable from CMS based on the estimate of the members' risk scores, and may be adjusted in the following year as a result of the annual settlement with CMS. As of December 31, 2017 and 2016, the Plan recorded prior-year risk score revenue adjustments that increased current-year revenues by approximately \$8,582,000 and \$4,488,000, respectively.

The Plan serves as a plan sponsor offering Medicare Part D prescription drug benefits under a contract with CMS. Certain elements of the payments the Plan receives, including catastrophic reinsurance subsidy and low-income member cost-sharing subsidies, represent cost reimbursements. In addition, premium payments received from CMS are subject to risk corridor adjustments whereby variances, which exceed certain thresholds from a target amount, result in CMS making additional premium payments to the Plan or require the Plan to refund to CMS a portion of previous premiums received. Risk corridor variances of more than 5% above the target amount will result in CMS making additional payments to plan sponsors, and variances of more than 5% below the target amount will require plan sponsors to refund CMS. The Medicare Part D receivables as of December 31, 2017 and 2016 were approximately \$35,864,000 and \$18,457,000, respectively, which are included in premium receivables—net in the accompanying consolidated balance sheets. The Medicare Part D payables as of December 31, 2017 and 2016 were approximately \$959,000 and \$4,967,000, respectively, which are included in due to third parties in the accompanying consolidated balance sheets.

**Premiums Received in Advance**—Premiums collected in advance are reported as a liability in the accompanying consolidated balance sheets. Any billed premiums that have not been received by the end of the period are included as premium receivables.

**Health Care Reform or ACA**—The Plan is a participant in the New York Health Benefit Exchange within the NYSDOH established pursuant to Health Care Reform. Under regulations established by the U.S. Department of Health and Human Services (HHS), HHS pays the Plan a portion of the premium (“Premium Subsidy”) and/or a portion of the health care costs (“Cost Sharing Subsidy”) for low-income individual members. In addition, HHS administers certain risk management programs as described below.

Fidelis recognizes monthly premiums received from members and the Premium Subsidy as premium revenue ratably over the contract period. The Cost Sharing Subsidy offsets health care costs when incurred. A liability is recorded if the Cost Sharing Subsidy is paid in advance or a receivable if incurred health care costs exceed the Cost Sharing Subsidy received to date. As of December 31, 2017 and 2016, liabilities for cost sharing subsidy were approximately \$1,613,000 and \$747,000, respectively, which are included in due to third parties in the accompanying consolidated balance sheets.

### **Health Care Reform’s Reinsurance, Risk Adjustment and Risk Corridor (the “3Rs”)**

**Reinsurance**—Health Care Reform established a temporary three-year reinsurance program, which expired December 31, 2016, whereby all issuers of major medical commercial insurance products and self-insured plan sponsors are required to contribute funding in amounts set by HHS. Funds collected will be utilized to reimburse issuers’ high claims costs incurred for qualified individual members. The expense related to this required funding is reflected as a reduction of premium revenue. When annual claim costs incurred by the Plan’s qualified individual members exceed a specified attachment point, the Plan is entitled to certain reimbursements from this program. HHS may change this formula after year-end depending on the monies available to pay reimbursements. The Plan records a receivable and offsets health care costs to reflect an estimate of these recoveries. The Plan recorded approximately \$2,242,000 and \$10,344,000 in ACA reinsurance recoveries in 2017 and 2016, respectively, which are reflected as reductions to cost of healthcare provided in the accompanying consolidated statements of operations. Included in the 2017 ACA reinsurance recoveries is approximately \$2,242,000 in prior year adjustments based on the final reconciliation and settlement of 2016 reinsurance amounts with HHS (See Note 13). As of December 31, 2017 and 2016, ACA reinsurance receivables were

approximately \$1,265,000 and \$6,818,000, respectively, which are included in reinsurance receivables in the accompanying consolidated balance sheets.

**Risk Adjustment**—Health Care Reform established a permanent risk adjustment program to transfer funds from qualified individual and small group insurance plans with below average risk scores to those respective plans with above average risk scores. Based on the risk of Fidelis' qualified plan members relative to the average risk of members of other qualified plans in comparable markets, Fidelis estimates the ultimate risk adjustment receivable or payable and reflects the pro-rata year-to-date impact as an adjustment to its premium revenue. The Plan recorded approximately \$77,202,000 and \$51,941,000 in premium adjustment payables in 2017 and 2016, respectively, which are included in premium revenues in the accompanying consolidated statement of operations. Included in the 2017 premium adjustment payable is approximately \$2,334,000 in prior year adjustments based on the final reconciliation and settlement of 2016 risk adjustment amounts with HHS (See Note 13). As of December 31, 2017 and 2016, risk adjustment payables were approximately \$74,849,000 and \$69,994,000, respectively, which are included in due to third parties in the accompanying consolidated balance sheets.

**Risk Corridor**—Health Care Reform established a temporary three-year risk sharing program, which expired on December 31, 2016, for qualified individual and small group insurance plans. Under this program the Plan makes (or receives) a payment to (or from) HHS based on the ratio of allowable costs to target costs (as defined by Health Care Reform). The Plan records a risk corridor receivable or payable as an adjustment to premium revenue on a pro-rata year-to-date basis based on the estimate of the ultimate risk sharing amount. As of December 31, 2017 and 2016, the Plan has no risk corridor payables. (See Note 13).

The Plan has performed a final reconciliation and settlement with HHS of the 2016 3Rs and the 2016 Cost Sharing Subsidy in 2017. The Plan does not anticipate any rebate liability due to its members for calendar year 2017.

**Pharmacy Rebates Receivable**—The Plan has an arrangement with a Pharmacy Benefit Management (PBM) company to administer pharmaceutical benefits to the Plan's members. The Plan accrues pharmacy rebates monthly based on the terms of the applicable contracts, historical billing and payment data, and other variables. Pharmacy rebates receivable are recorded as a reduction of health care costs. Pharmacy rebates are billed by the PBM to the pharmaceutical manufacturers within two months of the completion of the quarter depending on the contractual terms.

**Other Receivables**—Other receivables include accrued interest receivable, insurance recoveries and other miscellaneous amounts due to the Plan.

**Reinsurance Other than ACA Reinsurance**—Reinsurance premiums are reported in health care costs and reinsurance recoveries are deducted from health care costs (See Note 14).

**Investments**—Investments in equity securities with readily determinable fair value and investments in debt securities are reported at fair value in the consolidated balance sheets.

The Plan's investment portfolio is designated as trading based on the Plan's investment strategy and investment philosophies. Investment managers may execute purchases and sales of investments in accordance with the Plan's investment policy. All realized and

unrealized gains and losses on trading security investments have been recognized in investment income and losses—net in the consolidated statements of operations.

Investment income or loss includes realized gains and losses on investments, interest, dividends, and unrealized gains and losses on investments classified as trading. Realized gains and losses are determined using the first-in, first-out method. Investments recognized as current assets are available to support current operations. Investment income is recorded when earned.

The Plan invests in a commingled mutual fund. Fair value is determined by the fund manager. Because of the inherent uncertainty of valuation, the values determined by the investment managers may differ from the values that would have been used had a ready market for these investments existed. Changes in fair value are included in investment income and losses—net in the accompanying consolidated statements of operations. As of December 31, 2017 and 2016, the fair value of investment held in the commingled mutual fund was approximately \$31,616,000 and \$46,487,000, respectively.

**Restricted Deposits**—Restricted deposits relate to amounts held in escrow in accordance with regulatory requirements as discussed in Note 16.

**Investments Noncurrent**—Investments—Noncurrent include certificates of deposit with original maturities greater than three months and remaining maturities that are more than one year whose carrying amount approximates fair value.

**Impairment of Long-Lived Assets**—The Plan reviews the carrying value of its long-lived assets whenever events or changes in circumstances indicate that the historical cost-carrying value of an asset may no longer be appropriate. The Plan assesses recoverability of the carrying value of the asset by estimating the future net cash flows expected to result from the asset, including eventual disposition. If the future net cash flows are less than the carrying value of the asset, an impairment loss is recorded equal to the difference between the asset's carrying value and fair value. There was no impairment loss recorded in 2017 or 2016.

**Property, Equipment and Leasehold Improvements**—Property, equipment and leasehold improvements are recorded at historical cost, less accumulated depreciation and amortization. Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over the shorter of the term of the related lease or the life of the improvement. Costs incurred relating to major additions and improvements are capitalized and amortized over the useful life of the related project. The Plan commences the recognition of depreciation expense on these projects once the project is completed.

The Plan capitalizes the costs for acquiring, developing, and testing software to meet the Plan's internal needs. Capitalization of costs associated with developing or obtaining computer software for internal use commences when the project is completed and it is probable the project will be used to perform the function intended. Capitalized costs include (1) external direct cost of materials and services consumed in developing or obtaining internal-use software and (2) payroll and payroll-related costs for employees who are directly associated with and devote time to the internal-use software project. Capitalization of such costs cease no later than the point at which the project is substantially complete and ready for its intended use. Internal-use software costs are amortized once the software is placed in service using the straight-line method over periods ranging from three to five years.

**Goodwill and Intangible Assets**—The Plan acquired CenterCare on September 30, 2005. As a result of that acquisition, goodwill and identifiable intangible assets were recognized. Impairment testing of goodwill and identifiable intangible assets will be done whenever events or changes in circumstances indicate that the carrying amounts of these assets might not be recoverable, or at least annually. As of December 31, 2017 and 2016, the Plan performed a qualitative fair value assessment as part of its annual impairment test and determined these assets were not impaired. The net carrying value of goodwill and identifiable intangible assets of the Plan as of December 31, 2017 and 2016, is approximately \$15,850,000 for both years.

There was no amortization expense for the years ended December 31, 2017 and 2016.

**Claims Payable**—Claims payable consists of amounts of payments to be made on individual claims that have been reported to the Plan, as well as estimates of claims incurred that have not yet been reported as of the consolidated balance sheet dates. Components of claims payable are estimated, with the assistance of an external actuary, using various statistical methods that use both historical financial and operating data. Management estimates additional components of claims payable using historical information and other operating data.

Claims payable also includes amounts payable for a quality incentive program (QIP) whereby certain of the Plan's providers may qualify for additional remuneration by achieving certain quality score thresholds based on the NYSDOH Quality Assurance Reporting Requirements. Management estimates a liability for QIP payments based on historical information and estimates of the providers who will achieve the required thresholds. As of December 31, 2017 and 2016, the Plan recorded approximately \$58,448,000 and \$60,365,000, respectively, for payments under the QIP that management estimates the Plan will pay.

The Plan has a process to review claims from providers that were previously denied or pended for administrative reasons. At December 31, 2017 and 2016, the Plan recorded approximately \$2,823,000 and \$13,238,000, respectively, for estimates pertaining to such claims. These amounts are considered in the determination of the overall claims payable.

Management believes that the liability for claims payable is adequate to satisfy the ultimate claim liabilities. However, there is at least a possibility that the estimates will change by a material amount in the near term since claims payable recorded in the accompanying consolidated balance sheets was determined using a range of estimated amounts based on information available to management. The estimates for claims payable are continually reviewed and adjusted as necessary as experience develops or new information becomes known. Such adjustments are included in current operations.

**Due to Third Parties**—Due to third parties primarily consists of Health Care Reform Act of 2000 surcharges, adjustments to the quality incentive and other components of the Medicaid premium rates, estimated amounts pertaining to potential premium overpayments, unrecouped reinsurance premiums, Medicare risk payables, EP medical loss ratio rebates, and liabilities associated with the 3Rs.

**Other Income (Expense)**—The Plan has significant financial investments, which are used to finance operations. All investment gains and losses (realized gains and losses on investments, interest, dividends, and unrealized gains and losses on investments classified as trading and other than trading) and expenses and losses, including interest expense,

are reported as other income (expense). Charitable donations and grants are also reported in other income (expense).

**Contributions and Donor-Restricted Gifts**—Gifts are reported as temporarily restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or a purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the consolidated statements of operations as other revenues. In the absence of donor specifications that income and gains on donated funds are restricted, such income and gains are reported as unrestricted income.

**Cost of Health Care Provided**—Cost of health care provided consists primarily of claims paid, claims in process, claims pending to physicians, hospitals, and other health care providers, and an estimate of amounts incurred but not yet reported (IBNR). The Plan develops estimates for IBNR claims using an actuarial process that is consistently applied. The actuarial models consider factors such as time from date of service to claim receipt, provider contract rate changes, medical utilization, and other medical cost trends. Given the inherent variability of such estimates, the actual liability could differ significantly from the amounts provided.

The Plan reimburses providers on a capitation, fee-for-service, or contractual basis. The cost of health care services provided is accrued in the period in which the care is provided to a member based, in part, on estimates, including an accrual for medical services provided but not reported to the Plan. In addition, the Plan provides remuneration to providers based on its QIP.

**Fair Value of Financial Instruments**—The Plan's financial instruments consist of cash and cash equivalents, investments, restricted deposits, accounts receivable, and accounts payable. Unless otherwise specified, the carrying amounts of these financial instruments approximate their fair value (see Note 5).

**Advertising Costs**—Advertising costs are expensed as incurred. Advertising costs charged to operations were approximately \$19,174,000 and \$17,205,000 for the years ended December 31, 2017 and 2016, respectively.

**Charitable Donations and Grants**—Charitable donations and grants include unrestricted support for local organizations and projects consistent with the Plan's mission of providing services to those with special needs, the poor, and underserved.

**Tax Status**—Effective October 24, 1997, Fidelis qualified as a not-for-profit corporation as described in Section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxes. In July 2004, Salus was formed as a for-profit corporation for which tax provisions are provided. Amounts provided for income taxes have been reported as operating expenses. In February 2016, RPOT was formed as a corporation under Section 203 of the LLC Law. RPOT is treated as a disregarded entity for tax purposes.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (the "Act") was signed into legislation. The Act includes numerous changes in tax law related to tax exempt organizations, including but not limited to, a 21% excise tax assessed against executive compensation of covered individuals, unrelated business income taxes on qualified transportation fringe benefits, and a reduction in the federal income tax rate for corporations from 35% to 21%, which took effect for taxable years beginning on or after

January 1, 2018. These provisions were considered and none were identified that would impact the tax exempt status of Fidelis as of December 31, 2017.

**Recently Issued Accounting Pronouncements and Update**—In February 2016, the Financial Accounting Standards Board (FASB) issued an update on leases, ASU 2016-02. The ASU will require organizations that lease assets—referred to as “lessees”—to recognize on the balance sheet the assets and liabilities for the rights and obligations created by those leases. The ASU on leases will take effect for public companies for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. For all other organizations, the ASU on leases will take effect for fiscal years beginning after December 15, 2019, and for interim periods within fiscal years beginning after December 15, 2020. Early application will be permitted for all organizations. The Plan is currently evaluating the effect of the new leases accounting guidance.

In May 2015, the FASB issued ASU No. 2015-07—*Fair Value Measurement* (Topic 820). The amendments in this ASU remove the requirement to categorize within the fair value hierarchy all investments for which fair value is measured using the net asset value per share practical expedient. The amendments also remove the requirement to make certain disclosures for all investments that are eligible to be measured at fair value using the net asset value per share practical expedient. This ASU is effective for fiscal years beginning after December 15, 2016. The amendments should be retrospectively applied to all periods presented and earlier adoption is permitted. The adoption of this guidance did not have a material impact on the Plan’s consolidated statement of financial position, results of operations or cash flows.

In May 2014, the FASB issued ASU No. 2014-09 “*Revenue from Contracts with Customers* (Topic 606).” ASU 2014-09 will supersede existing revenue recognition standards with a single model unless those contracts are within the scope of other standards (e.g., an insurance entity’s insurance contracts). The revenue recognition principle in ASU 2014-09 is that an entity should recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In addition, new and enhanced disclosures will be required. Companies can adopt the new standard using either the full retrospective approach, a modified retrospective approach with practical expedients, or a cumulative effect upon adoption approach. In August 2015, the FASB issued ASU No. 2015-14, “*Revenue from Contracts with Customers: Deferral of the Effective Date*,” (“ASU No. 2015-14”) which deferred the effective date of ASU No. 2014-09 to annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. Early application is permitted as of annual reporting periods beginning after December 15, 2016. ASU No. 2015-14 allows for both retrospective and modified retrospective methods of adoption of ASU No. 2014-09. The majority of the Plan’s revenues are derived from insurance contracts and are excluded from the new standard. The Plan is currently evaluating the effect of the new revenue recognition guidance.

In May 2015, the FASB issued ASU 2015-09, *Financial Services—Insurance (Topic 944): Disclosures about Short-Duration Contracts*, which expands the disclosure requirements for insurance companies that issue short-duration contracts. The new standard will increase the level of disclosure around the Plan’s claims payable liability to include the following: claims development by year; claim frequency; a rollforward of the claims payable liability; and a description of methods and assumptions used for determining the liability. It is effective for annual periods beginning after December 15, 2016 and interim periods within

annual periods beginning after December 15, 2017. The Plan implemented these disclosures at December 31, 2017.

The Plan has also determined that there have been no other recently issued, but not yet adopted, accounting standards that will have a material impact on its consolidated financial statements.

### **3. PREMIUM REVENUE**

Premium revenue is derived substantially from the Medicaid and Medicare Advantage programs under capitation arrangements with the State of New York and U.S. government agencies. For 2016, the premiums recorded are based upon management's best estimate of the rates and differences between the estimated rates and the approved rates are reflected in the period in which the rate is formally approved. For 2017, management modified its policy and recorded revenues based upon draft rates received from NYSDOH, which approximated actual rates. Laws and regulations governing federal and state health care programs are complex and subject to interpretation for which noncompliance includes fines, penalties, and exclusion from these programs. The Plan believes that it is in compliance with all applicable laws and regulations and is not aware of any pending or threatened investigations involving allegations of potential wrongdoing. Additionally, any future changes in Medicaid and Medicare Advantage funding could have a material impact on the Plan.

Effective January 1, 2014, the Plan began providing health coverage to individual members through the New York Health Benefit Exchange within the NYSDOH under the provisions of the Health Care Reform. Regulations and interpretive guidance on many provisions of the Health Care Reform Law have been issued to date by various regulatory bodies, of which certain provisions of the law require additional guidance and clarification in the form of regulations and interpretations. The Plan believes that it is in compliance with the applicable Health Care Reform laws and regulations that would have a material impact on the operations and financial results of the Plan.



#### 4. INVESTMENTS AND RESTRICTED DEPOSITS

The composition of investments and restricted deposits as of December 31, 2017 and 2016, is as follows (in thousands):

	2017	2016
Short-term investments—other	<u>\$ 550,561</u>	<u>\$ 431,330</u>
Investments:		
Debt securities:		
U.S. government and agency obligations	\$ 87,466	\$ 54,615
U.S. agency mortgage-backed securities	39,825	31,636
State and municipal obligations	1,346	2,048
Corporate obligations	104,314	87,269
Non-U.S. agency mortgage-backed securities	13,166	13,385
Non-U.S. agency asset-backed securities	<u>25,100</u>	<u>20,786</u>
Total debt securities	271,217	209,739
Equity securities	167,117	156,955
Mutual funds	310,164	283,910
Alternative investments	<u>31,616</u>	<u>46,487</u>
Total investments	<u>\$ 780,114</u>	<u>\$ 697,091</u>
Restricted deposits—certificates of deposit	<u>\$ 449,447</u>	<u>\$ 366,362</u>
Total restricted deposits	<u>\$ 449,447</u>	<u>\$ 366,362</u>
Investments—noncurrent	<u>\$ 182</u>	<u>\$ 162</u>

Total restricted deposits are funds set aside to satisfy the statutorily designated escrow deposit requirements as described in Note 16.

Investment income and losses from investments, restricted deposits, short-term investments—other, investments—noncurrent and cash equivalents as of December 31, 2017 and 2016, are as follows (in thousands):

	2017	2016
Investment income and losses—net:		
Interest and dividend income	\$ 34,094	\$ 21,037
Net realized and unrealized gains on trading securities	61,278	18,057
Net realized and unrealized (losses) gains on investments, other than trading	<u>(85)</u>	<u>57</u>
Total	<u>\$ 95,287</u>	<u>\$ 39,151</u>

## 5. FAIR VALUE MEASUREMENTS

GAAP establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity (observable inputs that are classified within Levels 1 and 2 of the hierarchy) and the reporting entity's own assumption about market participant assumptions (unobservable inputs classified within Level 3 of the hierarchy). The fair value hierarchy is as follows:

**Level 1**—Quoted (unadjusted) prices for identical assets in active markets. Active markets are those in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis.

**Level 2**—Other observable inputs, either directly or indirectly, including:

- Quoted prices for similar assets in active markets
- Quoted prices for identical or similar assets in nonactive markets (few transactions, limited information, noncurrent prices, high variability over time, etc.)
- Inputs other than quoted prices that are observable for the asset (interest rates, yield curves, volatilities, default rates, etc.)
- Inputs that are derived principally from or corroborated by other observable market data

**Level 3**—Unobservable inputs that cannot be corroborated by observable market data.

In instances in which the inputs used to measure fair value fall into different levels of the fair value hierarchy, the fair value measurement has been determined based on the lowest-level input that is significant to the fair value measurement in its entirety. The Plan's assessment of the significance of a particular item to the fair value measurement in its entirety requires judgment, including the consideration of inputs specific to the asset and/or liability.

There were no transfers between Levels 1, 2, and 3 during the years ended December 31, 2017 and 2016.

The Plan measures its financial assets and liabilities at fair value on a recurring basis. The composition of financial assets measured at fair value as of December 31, 2017, is as follows (in thousands):

	Quoted Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)	Other	Total Fair Value
Cash and cash equivalents	<u>\$ 1,848,710</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 1,848,710</u>
Short-term investments—other	<u>550,561</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>550,561</u>
Assets whose use is limited—certificates of deposit	<u>449,447</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>449,447</u>
Investments:					
Debt securities:					
U.S. government and agency obligations	87,466	-	-	-	87,466
U.S. agency mortgage-backed securities	-	39,825	-	-	39,825
State and municipal obligations	-	1,346	-	-	1,346
Corporate obligations	-	104,314	-	-	104,314
Non-U.S. agency mortgage-backed securities	-	13,166	-	-	13,166
Non-U.S. agency asset-backed securities	-	25,100	-	-	25,100
Total debt securities	87,466	183,751			271,217
Equity securities	167,117	-	-	-	167,117
Mutual funds	310,164	-	-	-	310,164
Alternative investments	-	-	-	31,616	31,616
Total investments	<u>564,747</u>	<u>183,751</u>		<u>31,616</u>	<u>780,114</u>
Investments—noncurrent—other	<u>-</u>	<u>182</u>	<u>-</u>	<u>-</u>	<u>182</u>
Total investments—noncurrent	<u>-</u>	<u>182</u>	<u>-</u>	<u>-</u>	<u>182</u>
Total assets at fair value	<u>\$ 3,413,465</u>	<u>\$ 183,933</u>	<u>\$ -</u>	<u>\$ 31,616</u>	<u>\$ 3,629,014</u>

The amounts categorized as alternative investments have been measured at fair value using the net asset value per share. These investments are not classified within the fair value hierarchy. The fair value amounts presented in the table are intended to permit reconciliation of the fair value hierarchy to the amounts presented in the balance sheet.

The Plan measures its financial assets and liabilities at fair value on a recurring basis. The composition of financial assets measured at fair value as of December 31, 2016, is as follows (in thousands):

	Quoted Prices in Active Markets (Level 1)	Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)	Other	Total Fair Value
Cash and cash equivalents	\$ 1,358,759	\$ -	\$ -	\$ -	\$ 1,358,759
Short-term investments—other	431,330	-	-	-	431,330
Assets whose use is limited—certificates of deposit	366,362	-	-	-	366,362
Investments:					
Debt securities:					
U.S. government and agency obligations	54,615	-	-	-	54,615
U.S. agency mortgage-backed securities	-	31,636	-	-	31,636
State and municipal obligations	-	2,048	-	-	2,048
Corporate obligations	-	87,269	-	-	87,269
Non-U.S. agency mortgage-backed securities	-	13,385	-	-	13,385
Non-U.S. agency asset-backed securities	-	20,786	-	-	20,786
Total debt securities	54,615	155,124	-	-	209,739
Equity securities	156,955	-	-	-	156,955
Mutual funds	283,910	-	-	-	283,910
Alternative investments	-	-	-	46,487	46,487
Total investments	495,480	155,124	-	46,487	697,091
Investments—noncurrent—other	-	162	-	-	162
Total investments—noncurrent	-	162	-	-	162
Total assets at fair value	\$ 2,651,931	\$ 155,286	\$ -	\$ 46,487	\$ 2,853,704

The amounts categorized as alternative investments have been measured at fair value using the net asset value per share. These investments are not classified within the fair value hierarchy. The fair value amounts presented in the table are intended to permit reconciliation of the fair value hierarchy to the amounts presented in the balance sheet.

The following methods and assumptions were used to estimate the fair value of each class of financial instrument:

**Cash and Cash Equivalents**—The carrying value of cash and cash equivalents approximates fair value as maturities are in the near future and/or include money market funds and short-term, highly liquid investments, that are based on quoted prices and actively traded. Cash and cash equivalents are classified as Level 1.

**Short-Term Investments—Other**—The carrying value of short-term investments—other approximates fair value as maturities are in the near future. Short-term investments—other are classified as Level 1.

**Investments—Noncurrent**—Investments—noncurrent include certificates of deposit that are due in excess of one year whose carrying value approximates fair value. Investments in certificates of deposit due in excess of one year are classified as Level 1. All other investments are classified as Level 2.

**Debt Securities**—The estimated fair values of debt securities are based on quoted market prices and/or other market data for the same or comparable instruments and transactions in establishing the prices. Level 1 debt securities are comprised primarily of U.S. government and agency obligations. Fair values of debt securities that do not trade on a regular basis in active markets are classified as Level 2.

**Equity Securities**—Fair value estimates for publicly traded equity securities are based on quoted market prices and/or other market data for the same or comparable instruments and transactions in establishing the prices. Fair values of publicly traded equity securities are classified as Level 1.

**Mutual Funds**—Fair value estimates for shares of registered investment companies are based on quoted market prices that represent the net asset value (NAV) of shares held. Fair values of mutual funds are classified as Level 1 based upon publicly available NAV data.

**Alternative Investments (Equity Method)**—The estimated fair values of commingled funds (alternative investments) are accounted for using the equity method of accounting for which no quoted market prices are readily available. The estimated fair value for these types of investments are determined based upon information provided by the fund managers. Such information is based on the pro rata interest in the NAV of the underlying investments, which approximates fair value.

Included in the Plan's investment portfolio are investments in certain funds that report fair value using a calculated NAV. The attributes relating to the nature and risk of such investments as of December 31, 2017 and 2016, are as follows (in thousands):

**2017**

Investment	Fair Value	Underfunded Commitment	Redemption Frequency	Other Redemption Restrictions	Redemption Notice Period
Colchester Funds*	<u>\$31,616</u>	None	Monthly	None	Written 10 business days prior

**2016**

Investment	Fair Value	Underfunded Commitment	Redemption Frequency	Other Redemption Restrictions	Redemption Notice Period
Colchester Funds*	<u>\$46,487</u>	None	Monthly	None	Written 10 business days prior

\* The fair values of the investments have been estimated using the NAV of the investment. The objective of the fund is to obtain income-oriented returns from a globally diversified portfolio of primarily debt and debt-like securities.

## 6. PROPERTY, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

Property, equipment and leasehold improvements as of December 31, 2017 and 2016, consist of the following (in thousands):

	2017	2016	Depreciable Life
Land	\$ 26,562	\$ -	
Building and improvements	113,717	-	39 years
Furniture and fixtures	15,241	12,912	3-10 years
Equipment	9,700	7,398	3-10 years
Computers and computer software	162,554	125,441	3 - 8 years
Leasehold improvements	26,424	21,237	1-20 years
Equipment under capital lease obligations	6,526	6,526	
Automobiles	<u>1,537</u>	<u>1,247</u>	3 years
	362,261	174,761	
Less accumulated depreciation and amortization	(153,268)	(118,697)	
Work in progress	<u>1,113</u>	<u>1,423</u>	
Total	<u>\$ 210,106</u>	<u>\$ 57,487</u>	

On March 29, 2016, RPOT entered into a Purchase and Sale Agreement with Queens Office Tower Limited Partnership, (the "Seller") whereby RPOT agreed to acquire the building located at 95-25 Queens Boulevard, Rego Park, New York ("Queens Tower") owned by the Seller for approximately \$139,875,000. The agreement stipulated \$13,987,000 in downpayment during 2016 with the balance due on the date of closing, March 28, 2017.

Work in progress is comprised of construction in progress for the Queens Tower building improvements and continuing technology and infrastructure projects to support the Plan's strategic initiatives.

Depreciation and amortization expense pertaining to property, equipment and leasehold improvements for the years ended December 31, 2017 and 2016, was approximately \$34,523,000 and \$26,826,000, respectively. Amortization expense for equipment under capital lease obligations for the years ended December 31, 2017 and 2016, was approximately \$47,000 and \$81,000, respectively. Accumulated amortization on equipment under capital lease at December 31, 2017 and 2016, was approximately \$6,526,000 and \$6,478,000, respectively.

## 7. GOODWILL

The following table summarizes the change in the Plan's goodwill balance during 2017 (in thousands):

Balance—January 1, 2017	\$ 15,850
Acquisitions	<u>-</u>
Balance—December 31, 2017	<u>\$ 15,850</u>

Goodwill is reviewed annually for impairment on December 31, or more frequently upon the occurrence of trigger events. Based on the Plan's assessment, no goodwill impairment was recorded for the years ended December 31, 2017 and 2016.

## 8. ACCOUNTS PAYABLE AND ACCRUED EXPENSES

Accounts payable and accrued expenses consist of the following as of December 31, 2017 and 2016 (in thousands):

	2017	2016
Accounts payable	\$ 7,788	\$ 16,277
Accrued expenses	<u>239,789</u>	<u>172,022</u>
	<u>\$ 247,577</u>	<u>\$ 188,299</u>

## 9. LONG-TERM DEBT

On December 12, 2016, Fidelis entered into Term Loan Agreements (TLAs) with three leading financial institutions, each as a "lender" and collectively the "lenders". The lenders provided a seven-year unsecured term loan facility in the aggregate principal amount of \$100,000,000 payable in equal quarterly installments. Proceeds from the TLAs were used by Fidelis for strategic and other business purposes.

The interest rate under the TLAs is variable and is determined at Fidelis' option as: (i) the one, two, three or six month Adjusted London Interbank Offered Rate (LIBOR), plus the lender's Applicable Margin or (ii) the Prime Rate plus the lender's Applicable Margin. The Applicable Margin can range from 0.75% to 1.80% based upon Fidelis' deposit levels with the lenders. The weighted average interest rate on the TLAs during 2017 was 1.90%.

The future maturities of long-term debt consist of the following (in thousands):

**Years Ending December 31**

2018	\$ 14,286
2019	14,286
2020	14,286
2021	14,286
2022	14,286
Thereafter	<u>14,285</u>
	85,715
Less current portion	<u>(14,286)</u>
Total long-term debt	<u>\$ 71,429</u>

The Plan had unsecured lines of credit in the amount of \$180,000,000 for both December 31, 2017 and 2016, with interest rates established by the lending institutions and agreed to by the Plan. The lines of credit expire during 2018, which the Plan expects to renew. At December 31, 2017 and 2016, no amounts were outstanding under the lines of credit. The provisions of the lines of credit require the Plan to maintain specified net worth, liquidity and other conditions. At December 31, 2017, all covenant requirements associated with the unsecured lines of credit were met.

**10. COMMITMENTS AND CONTINGENCIES**

**Leases**—The Plan is the lessee of administrative facilities and equipment under noncancelable operating leases. All facility leases have early termination clauses. Rent expense for the years ended December 31, 2017 and 2016 was approximately \$12,431,000 and \$10,309,000, respectively. Future annual aggregate minimum rentals under operating leases as of December 31, 2017 are as follows (in thousands):

**Years Ending December 31**

2018	\$ 13,750
2019	13,619
2020	13,247
2021	7,424
2022	7,476
Thereafter	<u>42,845</u>
Total	<u>\$ 98,361</u>

**Other Matters**—The Plan is involved in litigation and claims disputes with providers arising in the normal course of business. The ultimate outcome of these cases cannot be predicted at this time. Management does not believe that the ultimate outcome of these matters will have a materially adverse effect on the financial position of the Plan.



The Plan is subject to ongoing examinations and oversight by the State of New York with respect to financial condition, market conduct and other regulatory matters. The Plan is not aware of any existing or pending investigations regarding noncompliance with applicable laws and regulations that would have a material impact on the operations of the Plan.

#### **11. POST RETIREMENT BENEFIT PLANS**

The Plan sponsors a defined contribution plan for eligible employees and a Supplemental Executive Retirement Plan for certain specified employees, which was approved by the Fidelis Board of Directors. The amount of net expense related to these plans that was recognized during the years ended December 31, 2017 and 2016 was approximately \$10,342,000 and \$10,764,000, respectively. The amount recognized is dependent on the number of participants in the plans.

#### **12. CLAIMS PAYABLE**

Claims payable includes reserves for IBNR claims, claims received but not processed, and other liabilities incurred in connection with the cost of health care provided, provider incentives, pharmacy costs, and other reserves in connection with health care costs. Claim frequency is not used in the calculation of the liability. In addition, it is impracticable to disclose claim frequency information for health care claims due to the inability to gather consistent claim frequency information. Any claim frequency count disclosure will not be comparable and will not be consistent from period to period based on the volume of claims processed. As a result, health care count frequency is not included in the disclosures.

The following table provides a reconciliation of the beginning and ending balances for claims payable as of December 31, 2017 and 2016 (in thousands):

	<b>2017</b>	<b>2016</b>
Claims payable—beginning of year	\$ 1,077,035	\$ 935,213
Medical expenses:		
Current year	9,085,009	7,857,246
Prior years	<u>(206,504)</u>	<u>(172,367)</u>
Total medical expenses	<u>8,878,505</u>	<u>7,684,879</u>
Paid claims:		
Current year	(7,775,563)	(6,959,590)
Prior years	<u>(825,757)</u>	<u>(618,398)</u>
Total paid claims	<u>(8,601,320)</u>	<u>(7,577,988)</u>
Reinsurance receivable	<u>(12,887)</u>	<u>28,891</u>
NYS surcharges and other assessments	<u>18,256</u>	<u>6,040</u>
Claims payable—end of year	\$ <u>1,359,589</u>	\$ <u>1,077,035</u>

**Net Incurred Medical Expenses  
for the Year Ended December 31,**

<b>Year</b>	<b>2017</b>	<b>2016</b>
2016	\$ 7,650,742	\$ 7,857,246
2017	<u>9,085,009</u>	
Total	\$ <u>16,735,751</u>	

**Net Cumulative Medical Payments  
for the Year Ended December 31,**

<b>Year</b>	<b>2017</b>	<b>2016</b>
2016	\$ (7,609,236)	\$ (6,832,880)
2017	<u>(7,775,563)</u>	
Total	\$ <u>(15,384,799)</u>	
Net remaining outstanding payable prior to 2016	\$ 3,268	
Reinsurance receivable	(12,887)	
NYS surcharges and other assessments	<u>18,256</u>	
Total claims payable	\$ <u>1,359,589</u>	

At December 31, 2017, total health care IBNR liabilities plus expected development on reported claims totaled approximately \$1,359,589,000. Substantially all of the total health care IBNR liabilities plus expected development on reported claims at December 31, 2017 related to the current year.

The following table shows the Plan's breakdown in health care provided costs (in thousands):

	<b>2017</b>	<b>2016</b>
Incurred claims	\$ 6,714,536	\$ 5,768,238
Capitation and contractual arrangements	108,691	101,180
Pharmacy costs	1,793,812	1,593,819
New York State surcharges and other assessments	206,225	201,802
Other benefit costs <sup>(1)</sup>	<u>55,241</u>	<u>19,840</u>
Cost of health care provided	<u>\$ 8,878,505</u>	<u>\$ 7,684,879</u>

<sup>(1)</sup> Other benefit costs include amounts related to incentives, reinsurance premiums, and other.

The estimate of IBNR is developed using actuarial principles and assumptions that consider numerous factors. Of those factors, the analysis of historical and projected claim payment patterns (including claims submission and processing patterns) and the assumed health care cost trend rate (the year-over-year change in per member per month health care costs) are considered to be critical assumptions. In developing the estimate of IBNR, these actuarial principles and assumptions are consistently applied each period, with consideration to the variability of related factors. There have been no significant changes to the methodologies or assumptions used to calculate IBNR in 2017.

### 13. HEALTH CARE REFORM'S 3RS

The following table provides details of the Health Care Reform's 3Rs as of and for the year ended December 31, 2017 and 2016 (in thousands):

<b>ACA Permanent Risk Adjustment Program</b>	<b>2017</b>	<b>2016</b>
Risk adjustment user fees payable	\$ 111	\$ 98
Premium adjustments payable included in due to third parties	74,849	69,994
Reported as reduction to premium revenues	77,202	51,941
Reported in expenses as ACA risk adjustment user fees	111	98
<b>ACA Transitional Reinsurance Program</b>		
Amounts recoverable for claims paid	\$ 2,242	\$ 10,344
Amounts recoverable for claims unpaid	-	-
Liabilities for contributions payable included in due to third parties—not reported as ceded premium	-	300
Ceded reinsurance premiums payable included in due to third parties	-	1,200
Ceded reinsurance premiums reported as reduction to premium revenues	-	1,200
Reinsurance recoverable due to payments or expected payments	2,242	10,344
ACA reinsurance contributions—not reported as ceded premium	-	300
<b>ACA Risk Corridor Program</b>		
Accrued retrospective premium due from ACA risk corridors	N/A	\$ -
Effect of risk corridors on net premium income (paid)	N/A	-

The Plan has no risk corridor adjustment in 2016 since the total Health Benefit Exchange medical costs and premium revenue were anticipated to fall within a range where there is neither a receivable nor payable. The risk corridor program expired on December 31, 2016.

The following table provides a roll forward of the 2016 ACA risk-sharing provisions specified asset and liability balance (in thousands):

	Accrued During the Prior Year on Business Written Before December 31 of the Prior Year		Received or Paid as of the Current Year on Business Written Before December 31 of the Prior Year		Differences		Adjustments		Ref	Unsettled Balances as of the Reporting Date	
					Prior Year Accrued Less Payments (Col 1-3)	Prior Year Accrued Less Payments (Col 2-4)	To Prior Year Balances	To Prior Year Balances		Cumulative Balance from Prior Years (Col 1-3+7)	Cumulative Balance from Prior Years (Col 2-4+8)
	1	2	3	4	5	6	7	8		10	11
	Receivable	(Payable)	Receivable	(Payable)	Receivable	(Payable)	Receivable	(Payable)		Receivable	(Payable)
<b>a. Permanent ACA Risk Adjustment Program</b>											
1. Premium Adjustment Receivable	\$ 19	\$ -	\$ -	\$ -	\$ 19	\$ -	\$ -	\$ -		\$ 19	\$ -
2. Premium Adjustment (Payable)	-	(70,013)	-	(72,347)	-	2,334	-	(2,334)	A	-	-
3. Subtotal ACA Permanent Risk Adjustment Program	19	(70,013)	-	(72,347)	19	2,334	-	(2,334)		19	-
<b>b. Transitional ACA Reinsurance Program</b>											
1. Amounts recoverable for claims paid	6,818	-	7,794	-	(976)	-	2,242	-	B	1,265	-
2. Amounts recoverable for claims unpaid (contra liability)	-	-	-	-	-	-	-	-		-	-
3. Amounts receivable relating to uninsured plans	-	-	-	-	-	-	-	-		-	-
4. Liabilities for contributions payable due to ACA Reinsurance—not reported as ceded premium	-	(1,500)	-	(1,500)	-	-	-	-		-	-
5. Ceded reinsurance premiums payable	-	-	-	-	-	-	-	-		-	-
6. Liability for amounts held under uninsured plans	-	-	-	-	-	-	-	-		-	-
7. Subtotal ACA Transitional Reinsurance Program	6,818	(1,500)	7,794	(1,500)	(976)	-	2,242	-		1,265	-
<b>c. Temporary ACA Risk Corridors Program</b>											
1. Accrued retrospective premium	-	-	-	-	-	-	-	-		-	-
2. Reserve for rate credits or policy experience rating refunds	-	-	-	-	-	-	-	-		-	-
3. Subtotal ACA Risk Corridors Program	-	-	-	-	-	-	-	-		-	-
<b>d. Total for ACA Risk-Sharing Provisions</b>	<b>\$6,837</b>	<b>\$(71,513)</b>	<b>\$ 7,794</b>	<b>\$(73,847)</b>	<b>\$ (957)</b>	<b>\$ 2,334</b>	<b>\$2,242</b>	<b>\$(2,334)</b>		<b>\$1,284</b>	<b>-</b>

**Explanation of Adjustments:**

- A Adjustment for the 2016 Metal Plans Pool final payable of approximately \$72,347,000 from CMS' June 30, 2017 notice.
- B Adjustment for the 2016 final reinsurance receivable of approximately \$7,466,000 from CMS' August 16, 2017 notice.

## 14. REINSURANCE OTHER THAN ACA REINSURANCE

The Plan has reinsurance agreements with insurance companies and the NYSDOH to limit its losses on individual claims for hospital medical services. The reinsurance agreements do not relieve the Plan from its obligations to enrollees. Under the terms of the agreements, the Plan will be reimbursed up to 90% of the cost of eligible hospital medical services, up to an annual maximum benefit per covered member of \$2,000,000. Reinsurance premiums of approximately \$47,037,000 and \$51,615,000 are included in health care costs for the years ended December 31, 2017 and 2016, respectively. Approximately \$68,703,000 and \$88,062,000 in reinsurance recoveries are deducted from health care costs in 2017 and 2016, respectively.

## 15. CONCENTRATIONS OF CREDIT RISK

At December 31, 2017, the Plan had cash balances in financial institutions that exceed federal depository insurance limits. Management believes that the credit risk related to these deposits is minimal.

The Plan receives substantially all of its premium revenue through various programs of the State of New York and U.S. government agencies. These programs are based on complex laws and regulations. Noncompliance with such laws and regulations could result in fines, penalties, and exclusion from such programs.

Premium revenue from third-party payers, other payers, and members for 2017 and 2016, is as follows:

	2017	2016
Medicaid (including long-term care and HARP)	78 %	79 %
Medicare	10	9
Health Benefit Exchange and EP	9	10
Child Health Plus	<u>3</u>	<u>2</u>
Total	<u>100 %</u>	<u>100 %</u>

## 16. REGULATORY REQUIREMENTS

The Plan is required by the NYSDOH to deposit, in the form of an escrow deposit account, an amount equal to the greater of 5% of the current year's estimated expenditures for health care services or \$100,000, for the protection of enrollees. The Plan has until March 31 of the current year to determine the required balance and fund its escrow deposit account. The required balance per the stipulations discussed above amounted to approximately \$449,447,000 and \$366,362,000 at December 31, 2017 and 2016, respectively. The escrow deposit account to fund this requirement is included in restricted deposits in the accompanying consolidated balance sheets.

The NYSDOH's minimum contingent reserve requirement applicable to premium income generated from the Medicaid program for plans such as Fidelis is 12.5%. At December 31, 2017 and 2016, the amount of the contingent reserve fund was approximately \$1,095,939,000 and \$956,306,000, respectively, which is included in net assets. At December 31, 2017 and 2016, the Plan maintained the minimum contingent reserve requirement of 5% for FCAH, MAP and FIDA, 7.25% for EP, and 12.5% for the rest of the Plan.

## 17. RECONCILIATION TO STATUTORY BASIS

A reconciliation of the Plan's 2017 and 2016 net assets and increase in net assets computed in accordance with GAAP basis to STAT basis is shown below (in thousands):

	<b>Net Assets</b>	<b>Increase in Net Assets</b>
Total 2017 GAAP basis net assets and increase in net assets	\$ 2,121,511	\$ 351,512
Add (deduct) adjustments:		
Nonadmitted assets	(110,190)	-
Adjustment to amortized cost	431	286
Net unrealized gains on investments	-	(39,737)
Net realized gains on investments	-	(2,353)
Other-than-temporary impairment	(1,670)	(3,064)
Goodwill	(15,850)	-
Total 2017 statutory basis surplus and net income	<u>\$ 1,994,232</u>	<u>\$ 306,644</u>
	<b>Net Assets</b>	<b>Increase in Net Assets</b>
Total 2016 GAAP basis net assets and increase in net assets	\$ 1,769,999	\$ 334,910
Add (deduct) adjustments:		
Nonadmitted assets	(113,158)	-
Adjustment to amortized cost	1,475	307
Net unrealized gains on investments	-	(23,771)
Net realized gains on investments	-	8,493
Other-than-temporary impairment	(2,817)	(7,514)
Goodwill	(15,850)	-
Total 2016 statutory basis surplus and net income	<u>\$ 1,639,649</u>	<u>\$ 312,425</u>

Nonadmitted assets comprise certain furniture and equipment, systems software, premiums receivable over 90 days past due from other than governmental agencies, intercompany receivables, certain leasehold improvements, and prepaid expenses which qualifies as "nonadmitted" in accordance with significant policies followed under Statutory Accounting Principles. Such assets would be included under GAAP.

## 18. CENTENE TRANSACTION

On September 12, 2017, Fidelis entered into an Asset Purchase Agreement (hereinafter, the "APA") with Centene Corporation, a Delaware corporation ("Centene"). Upon the terms and subject to the conditions set forth in the APA, substantially all of Fidelis' insurance operations, assets and liabilities will be sold to and assumed by Centene. Following the closing of the transaction, Fidelis will be divested of its insurance operations, but will remain an independent 501(c)(3) tax exempt organization.

The corporate members of Fidelis are the eight Diocesan Bishops of the Roman Catholic Dioceses in the State of New York. At the closing of the transactions contemplated by the APA, Fidelis will receive consideration, subject to certain adjustments, consisting of \$3,250,000,000 in cash and, at the option of Centene, additional cash or shares of Centene's common stock valued at \$500,000,000, of which \$375,000,000 will be placed in escrow to secure any potential indemnification obligations of Fidelis to Centene. Fidelis will retain certain cash and investment assets as well as its Queens Tower Office Building.

The closing of the transactions contemplated by the APA is subject to the satisfaction or waiver of customary closing conditions, including, without limitation, certain approval, notice or similar requirements with applicable regulatory authorities. On September 12, 2017, the Board of Directors and Members of Fidelis approved the execution of the APA and the transactions contemplated thereunder.

The completion of the transactions contemplated by the APA is not conditioned on receipt of financing by Centene. The APA is expected to close in 2018, subject to the receipt of required regulatory approvals and satisfaction or waiver of other closing conditions.

## **19. SUBSEQUENT EVENTS**

During the fourth quarter of 2017, the Plan became aware of the uncertainty of future funding related to Cost Sharing Reductions (CSRs) by the Federal government for the EP program. The NYSDOH indicated that this issue would significantly impact the State's current fiscal year performance if funding were to cease for CSRs and that additional actions would be necessary. Subsequently, on January 18, 2018, the Plan made a payment of \$117,975,000 to the NYSDOH for the 2016 EP medical loss rebates. The Plan recorded this amount in December of 2017.

The Plan has evaluated subsequent events through March 22, 2018, which is the date the consolidated financial statements were available to be issued.

\* \* \* \* \*



# EXHIBIT 11

## Petitioner's Mission Statement



**FIDELIS CARE®**  
**NEW YORK**

### **Fidelis Care Mission**

In imitation of the compassionate and healing Christ, consistent with the tradition of Catholic health care and maintaining the highest moral and ethical standards, we, at Fidelis Care New York, strive:

- To promote health through quality, accessible care and services for all;
- To join in partnership with health professionals to assist them in their healing work;
- To act as a facilitator to build linkages and systems for the coordination of care and services among healthcare, behavioral and social services, as well as educators and religious leaders, to address the spiritual, emotional, and physical needs of those we serve;
- To advocate for a health policy that accords true dignity and respect for all human persons, especially the poor and underserved.

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**Albany Regional Office**  
31 British American Boulevard  
Latham, NY 12110  
518-427-0481

**Buffalo Regional Office**  
480 CrossPoint Parkway  
Getzville, NY 14068  
716-564-3630

**New York City Regional Office**  
95-25 Queens Boulevard  
Rego Park, NY 11374  
718-896-6500

**Rochester Regional Office**  
100 WillowBrook Office Park  
Suite #100, Fairport, NY 14450  
585-383-8104

**Syracuse Regional Office**  
5010 Campuswood Drive  
East Syracuse, NY 13057  
315-437-1835

# **EXHIBIT 12**

**Petitioner's IRS 501(c)(3) Determination Letter**

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

New York State Catholic  
Health Plans, Inc.  
d/b/a Fidelis Care New York  
95-25 Queens Boulevard  
Rego Park, NY 11374

Contact Person: Lawrence M. Brauer

Telephone Number: (202) 622-6466

In Reference to: CP:E:EO:T:1:LMB

Date: MAR 9 1998

Employer Identification Number: 11-3153422

Key District: Northeast (Brooklyn, NY)

Accounting Period Ending: December 31

Foundation Status Classification: 509(a)(2)

Form 990 Required: Yes

Effective Date: October 24, 1997

Dear Applicant:

Based on the information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3), effective as of the date indicated above.

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in the section(s) indicated above.

If your sources of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change on your exempt status. In the case of an amendment to your organizational document or bylaws, please send a copy of the amended document or bylaws to your key district. Also, you should inform your key district office of all changes in your name or address.

You are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act.

Because you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, if you are involved in an excess benefit transaction, that transaction might be subject to the excise taxes of section 4958. Additionally, you are not automatically exempt from other federal excise taxes. If you have any questions about excise,

New York State Catholic Health Plan, Inc.

employment, or other federal taxes, please contact your key district office.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of Code sections 2055, 2106, and 2522.

Donors (including private foundations) may rely on this ruling unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your 509(a) status as indicated above, donors (other than private foundations) may not rely on the classification indicated above if they were in part responsible for, or were aware of, the act that resulted in your loss of such status, or they acquired knowledge that the Internal Revenue Service had given notice that you would be removed from that classification. Private foundations may rely on the classification as long as you were not directly or indirectly controlled by them or by disqualified persons with respect to them. However, private foundations may not rely on the classification indicated above if they acquired knowledge that the Internal Revenue Service had given notice that you would be removed from that classification.

Contribution deductions are allowable to donors only to the extent that their contributions are gifts, with no consideration received. Ticket purchases and similar payments in conjunction with fund-raising events may not necessarily qualify as fully deductible contributions, depending on the circumstances. If your organization conducts fund-raising events such as benefit dinners, shows, membership drives, etc., where something of value is received in return for payments, you are required to provide a written disclosure statement informing the donor of the fair market value of the specific items or services being provided. To do this you should, in advance of the event, determine the fair market value of the benefit received and state it in your fund-raising materials such as solicitations, tickets, and receipts in such a way that the donor can determine how much is deductible and how much is not. Your disclosure statement should be made, at the latest, at the time payment is received. Subject to certain exceptions, your disclosure responsibility applies to any fund-raising circumstance where each complete payment, including the contribution portion, exceeds \$75. In addition, donors must have written substantiation from the charity for any charitable contribution of \$250 or more. For further details regarding these substantiation and disclosure requirements, see the enclosed copy of Publication 1771. For additional guidance in this area, see Publication 1391, Deductibility of Payments

New York State Catholic Health Plan, Inc.

Made to Organizations Conducting Fund-Raising Events, which is available at many IRS offices or by calling 1-800-TAX-FORM (1-800-829-3676).

In the heading of this letter we have indicated whether you must file Form 990, Return of Organization Exempt from Income Tax. If "Yes" is indicated, you are required to file Form 990 only if your gross receipts each year are normally more than \$25,000. If your gross receipts each year are not normally more than \$25,000, we ask that you establish that you are not required to file Form 990 by completing Part I of that Form for your first year. Thereafter, you will not be required to file a return until your gross receipts exceed the \$25,000 minimum. For guidance in determining if your gross receipts are "normally" not more than the \$25,000 limit, see the instructions for the Form 990. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of \$20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. The maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. For organizations with gross receipts exceeding \$1,000,000 in any year, the penalty is \$100 per day per return, unless there is reasonable cause for the delay. The maximum penalty for an organization with gross receipts exceeding \$1,000,000 shall not exceed \$50,000. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it.

You are required to make your annual return available for public inspection for three years after the return is due. You are also required to make available a copy of your exemption application, any supporting documents, and this exemption letter. Failure to make these documents available for public inspection may subject you to a penalty of \$20 per day for each day there is a failure to comply (up to a maximum of \$10,000 in the case of an annual return).

You are not required to file federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

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New York State Catholic Health Plan, Inc.

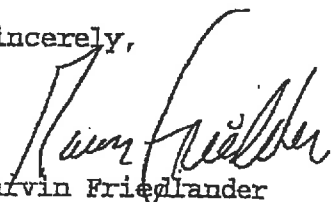
Please use the employer identification indicated in the heading of this letter on all returns you file and in all correspondence with the Internal Revenue Service.

We are informing your key district office of this ruling. Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

If you have any immediate questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact your key district office.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,



Marvin Friedlander  
Chief, Exempt Organizations  
Technical Branch 1

Enclosure:  
Pub. 1771

# EXHIBIT 13

Statewide Map Detailing Provider Network



### FIDELIS CARE PROVIDER NETWORK

#### All Lines of Business

70,298 Providers serving 1,638,656 Members  
14,755 PCPs, 52,023 Specialists  
216 Hospitals, 3,304 Other

#### Medicare Only – Included in all LOB

63,368 Providers serving 86,603 Members  
13,251 PCPs, 47,528 Specialists  
192 Hospitals, 2,397 Other

#### Health Exchange Only – Included in all LOB

58,437 Providers serving 71,324 Members  
12,469 PCPs, 43,129 Specialists  
177 Hospitals, 2,662 Other

#### Essential Plan Only – Included in all LOB

59,676 Providers serving 154,139 Members  
12,972 PCPs, 43,966 Specialists  
162 Hospitals, 2,576 Other

#### VENDOR NETWORK (Not included in the above Provider Network Count)

4,320 Dental, 1,384 Vision, 4,997 Pharmacy

#### WRO

##### All Lines of Business

11,328 Providers serving 233,189 Members  
2,287 PCPs, 8,418 Specialists  
41 Hospitals, 582 Other

##### Medicare

7,534 Providers serving 8,456 Members  
1,469 PCPs, 5,636 Specialists  
32 Hospitals, 397 Other

##### Health Exchange

10,557 Providers serving 7,749 Members  
2,211 PCPs, 7,836 Specialists  
40 Hospitals, 470 Other

##### Essential Plan

10,967 Providers serving 11,878 Members  
2,262 PCPs, 8,208 Specialists  
41 Hospitals, 456 Other

##### VENDOR NETWORK

389 Dental, 136 Vision, 596 Pharmacy

#### NERO

##### All Lines of Business

10,821 Providers serving 261,305 Members  
1,951 PCPs, 8,227 Specialists  
36 Hospitals, 607 Other

##### Medicare

10,342 Providers serving 17,193 Members  
1,869 PCPs, 8,005 Specialists  
35 Hospitals, 433 Other

##### Health Exchange

10,136 Providers serving 14,141 Members  
1,824 PCPs, 7,771 Specialists  
30 Hospitals, 511 Other

##### Essential Plan

9,377 Providers serving 17,072 Members  
1,698 PCPs, 7,190 Specialists  
25 Hospitals, 464 Other

##### VENDOR NETWORK

442 Dental, 132 Vision, 509 Pharmacy

#### CRO

##### All Lines of Business

8,292 Providers serving 237,940 Members  
1,529 PCPs, 6,239 Specialists  
34 Hospitals, 490 Other

##### Medicare

7,725 Providers serving 12,160 Members  
1,399 PCPs, 5,929 Specialists  
33 Hospitals, 364 Other

##### Health Exchange

6,603 Providers serving 8,250 Members  
1,063 PCPs, 5,109 Specialists  
23 Hospitals, 408 Other

##### Essential Plan

7,416 Providers serving 9,681 Members  
1,339 PCPs, 5,641 Specialists  
30 Hospitals, 406 Other

##### VENDOR NETWORK

250 Dental, 126 Vision, 368 Pharmacy

#### GMRO

##### All Lines of Business

41,136 Providers serving 906,222 Members  
8,852 PCPs, 30,563 Specialists  
91 Hospitals, 1,630 Other

##### Medicare

38,952 Providers serving 48,794 Members  
8,424 PCPs, 29,251 Specialists  
84 Hospitals, 1,193 Other

##### Health Exchange

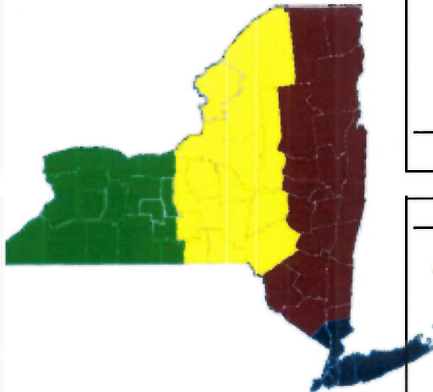
32,981 Providers serving 41,184 Members  
7,331 PCPs, 24,303 Specialists  
72 Hospitals, 1,275 Other

##### Essential Plan

34,373 Providers serving 115,508 Members  
7,777 PCPs, 25,210 Specialists  
60 Hospitals, 1,326 Other

##### VENDOR NETWORK

3,239 Dental, 990 Vision, 3,524 Pharmacy



#### \*Out Of State – Included in all LOB

##### All Lines of Business

2,692 Providers  
474 PCPs, 2,028 Specialists  
15 Hospitals, 175 Other

##### Medicare

2,392 Providers  
398 PCPs, 1,837 Specialists  
9 Hospitals, 148 Other

##### Health Exchange

1,623 Providers  
325 PCPs, 1,130 Specialists  
12 Hospitals, 156 Other

##### Essential Plan

950 Providers  
175 PCPs, 697 Specialists  
7 Hospitals, 71 Other

# EXHIBIT 14

Centene's Managed Care Organizations and Specialty Companies

# **LIST OF CENTENE'S MANAGED CARE ORGANIZATIONS AND SPECIALTY COMPANIES**

Absolute Total Care, Inc.	Comfort Hospice of Texas, LLC d/b/a Comfort Hospice
AcariaHealth Pharmacy #11, Inc.	Coordinated Care Corporation, Inc.
AcariaHealth Pharmacy #12, Inc.	Coordinated Care of Washington, Inc.
AcariaHealth Pharmacy #13, Inc.	Envolve Dental of Texas, Inc.
AcariaHealth Pharmacy #14, Inc.	Envolve Dental, Inc.
AcariaHealth Pharmacy, Inc.	Envolve Pharmacy Solutions, Inc. Envolve Vision of Florida, Inc. Envolve Vision, Inc.
AcariaHealth Solutions, Inc.	EPC, Inc. fka NurseWise, LP
AECC Total Vision Health Plan of Texas, Inc.	FH Assurance Company
Ambetter of Magnolia	Foundation Care LLC
Ambetter of Peach State, Inc.	Grace Hospice of Indiana LLC
Arkansas Health & Wellness Health Plan, Inc.	Granite State Health Plan, Inc.
Bankers Reserve Life Insurance Company of Wisconsin	Hallmark Life Insurance Company
Bridgeway Advantage Solutions, Inc.	Health Net Community Solutions of AZ, Inc.
Buckeye Community Health Plan, Inc.	Health Net Community Solutions, Inc.
California Health and Wellness Plan	Health Net Federal Services, LLC
CeltiCare Health Plan of Massachusetts, Inc. Cenpatico Behavioral Health, LLC	Health Net Health Plan of Oregon, Inc.
Cenpatico of Arizona, Inc. d/b/a Cenpatico Integrated Care	Health Net Life Insurance Company
Centene Management Company, LLC	Health Net Life Reinsurance Company

Health Net of Arizona Administrative Services, Inc.

Health Net of Arizona, Inc.

Health Net of California, Inc.

Health Net Pharmaceutical Services

Home State Health Plan, Inc.

Homescripts.com, LLC

IlliniCare Health Plan, Inc.

Integrated Mental Health Services

Iowa Total Care, Inc.

Kentucky Spirit Health Plan, Inc.

Lifeshare Management Group, LLC

Louisiana Health Care Connections, Inc.

Magnolia Health Plan, Inc.

Managed Health Network

Managed Health Services Insurance Corporation

MHN Services

Michigan Complete Health, Inc.

Nebraska Total Care, Inc.

Peach State Health Plan, Inc.

Pennsylvania Health & Wellness Inc.

Rapid Respiratory Services LLC

RMED

RX Direct, Inc.

SilverSummit Healthplan, Inc.

Specialty Therapeutic Care, LP

Sunflower State Health Plan, Inc.

Sunshine State Health Plan, Inc.

Superior Healthplan, Inc.

Trillium Community Health Plan, Inc.

# EXHIBIT 15

Navigant Opinion Letter



1180 Peachtree Street NE  
Suite 1900  
Atlanta, Georgia 30309  
404.575.4123 phone  
404.575.4123 fax

September 7, 2017

Mr. Andrew B. Roth  
Partner  
Norton Rose Fulbright US LLP  
1301 Avenue of the Americas  
New York, New York 10019-6022

Mr. Jay E. Gerzog  
Partner  
Sheppard, Mullin, Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112

**RE: Independent Fair Market Valuation Analysis Related to Substantially All of the Assets of New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York**

Dear Mr. Roth and Mr. Gerzog:

In accordance with your request, Navigant has completed its engagement to provide professional valuation services in support of the legal counsel being provided by Norton Rose Fulbright US LLP, ("NRF Law Firm") on behalf of New York State Catholic Health Plan, Inc d/b/a Fidelis Care New York ("Fidelis Care" or the "Company") and Sheppard, Mullin, Richter & Hampton LLP ("SMRH Law Firm") (Collectively with NRF Law Firm, the "Law Firms" or "Counsel") on behalf of the eight sponsors of Fidelis Care: Cardinal Timothy Dolan - Archbishop of New York, Most Rev. John O. Barres - Bishop of Rockville Centre, Most Rev. Robert J. Cunningham - Bishop of Syracuse, Most Rev. Nicholas DiMarzio - Bishop of Brooklyn, Most Rev. Richard J. Malone - Bishop of Buffalo, Most Rev. Salvatore R. Matano - Bishop of Rochester, Most Rev. Edward B. Scharfenberger - Bishop of Albany, Most Rev. Terry R. LaValley - Bishop of Ogdensburg (the "Members" and collectively with Fidelis Care, the "Clients").

It is our understanding that the Law Firms' counsel is in connection with the potential sale of substantially all of the assets of Fidelis Care, a not-for-profit, tax-exempt managed care company operating in the State of New York. We understand that Fidelis Care is considering a potential sale of substantially all of the assets to Centene Corporation ("Centene") (the "Potential Transaction") and is therefore seeking an independent appraisal of the assets as of a current date (the "Valuation Date") pursuant to the New York State Not-for-Profit Corporation Law §§ 510, 511 and 511-a, and that our appraisal will be submitted by Fidelis Care with its verified petition and proposed order to the New York State Attorney General (the "AG") and/or the New York State Supreme Court (the "Supreme Court").

We further understand that Fidelis Care, in preparing its petition, will be required to demonstrate that the proposed consideration and terms of the potential transaction are fair and reasonable. Our valuation analysis, as of August 1, 2017 (the "Valuation Date"), is being provided at the Law Firms' direction in connection with its rendering of legal advice to the Clients related to the Potential Transaction. Navigant acknowledges that its services and communications hereunder are being requested under attorney-client privilege, and we agree to treat all communications in connection with this project as privileged and confidential as set forth herein.

**CONFIDENTIAL – SUBJECT TO ATTORNEY/CLIENT PRIVILEGE  
FINAL**

# NAVIGANT

It is understood that Navigant's valuation analysis is intended to be only one of multiple inputs into Fidelis Care's transaction decision making process and Navigant assumes no responsibility for Fidelis Care to negotiate a transaction within the value range provided in Navigant's analysis.

Our valuation analysis was performed as of the Valuation Date and in accordance with the retention letter dated August 15, 2017. Our compensation for this assignment is not dependent in any way on the substance of our findings or conclusions. Our analysis reasonably relies, in part and where indicated, upon information provided by Fidelis Care management. We have assumed that the information provided to us is complete and free of material misrepresentations.

Based on our review of information provided to us, discussions with Fidelis Care management, independent research and analysis, and our informed judgment, we estimate the FMV of the assets included in the Potential Transaction is within the range of:

**\$3,400,000,000 to \$3,580,000,000**

**[Three billion, four hundred million to Three billion, five hundred eighty million dollars]**

The following report and accompanying appendices provide a detailed explanation of the basis of our analysis and conclusions. We reserve the right to respond to and explain our analysis, reasoning, and conclusions. Please contact Jerry Chang at 404.602.3462 with any questions.

Very truly yours,  
Navigant Consulting, Inc.



By: Jerry M. Chang, CFA  
Managing Director

# EXHIBIT 16

Navigant Supplemental Letter





1180 Peachtree Street, N.E.  
Suite 1900 | Atlanta, GA 30309  
404.602.3462 direct  
404.512.5422 mobile  
navigant.com

March 7, 2018

Ms. Abigail Young  
Assistant Attorney General  
Charities Bureau  
New York State Office of the Attorney General  
120 Broadway, 3<sup>rd</sup> Floor  
New York, New York 10271

**Re: Independent Fair Market Valuation Analysis Related to Substantially All of the Assets of  
New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York**

Dear Ms. Young:

Navigant Consulting, Inc. ("Navigant") was retained by counsel for the New York State Catholic Health Plan, Inc. ("Fidelis Care") and its corporate members to conduct an independent appraisal of the fair market value of substantially all of the assets of Fidelis Care proposed to be sold (the "Appraised Assets") to Centene Corporation ("Centene"). Navigant issued a fair market value appraisal report dated September 7, 2018 (the "Appraisal"), which was included as part of Fidelis Care's draft petition to the Charities Bureau of the New York State Attorney General's Office (the "Charities Bureau") for approval of the proposed sale pursuant to New York State Not-for-Profit Corporation Law §§ 510 and 511-a.

We understand that the Charities Bureau has requested additional information and clarification from Navigant regarding the following aspects of the Appraisal: (i) the methodology we used to arrive at the fair market valuation, including a plain English description of the methodology and an explanation as to why such methodology is appropriate for the fair market value appraisal of a nonprofit organization selling its assets to a for-profit public company, and (ii) a description of the way in which we evaluated working capital, excess cash and enrollment closing adjustments in the Appraisal.

Below please find our responses to the Charities Bureau's requests.

**I. Methodology**

There are three commonly accepted approaches to determining fair market value, whether in a nonprofit or for-profit context: (i) the Income Approach, (ii) the Cost Approach, and (iii) the Market Approach.<sup>1</sup> Within each approach, there are various methodologies that may be employed to calculate fair market value. The methodology Navigant used for the Appraisal was the Discounted Cash Flow Method (the

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<sup>1</sup> See "ASA Business Valuation Standards," American Society of Appraisers (2009); Charles F. Kaiser and Amy Henchey, Q. VALUATION OF MEDICAL PRACTICES IRS EO CPE Text (1996); Rev. Ruling 59-60, 1959-1 CB 237; Internal Revenue Manuals 4.48.4 (07-01-2006).

"DCF Method") under the Income Approach. Separately, we corroborated the valuation under the DCF Method by evaluating the fair market value under the Market Approach. As discussed herein, we determined that the Cost Approach was inappropriate to value the Appraised Assets.

A. Income Approach

Under the Income Approach, the value of a business or its assets is based on the projected future earnings or cash flow that one can expect to receive as a return on investment. There are two main methodologies used under the Income Approach, the DCF Method and the Direct Capitalization Method.

The DCF Method evaluates the fair market value of a business on a going concern "business enterprise value" basis, evaluating how the various aspects of a business enterprise work in concert to generate cash flow over a period of time. As a going concern, the cash flow stream of Fidelis Care is expected to continue for the foreseeable future. Thus, the DCF Method ascertains the business enterprise value by calculating the projected cash flow to be generated by a company over time, discounted to present value. See Appraisal, p. 23; Appraisal, Ex. B-1.

The Direct Capitalization Method, in turn, is based on capitalizing some measure of financial performance such as earnings or dividends, with a capitalization rate that reflects both the risk and long-term growth prospects of the subject firm. This method relies more heavily on historical performance, which presumes that historical performance is an indicator of future performance. In this context, as noted in the Appraisal on p.18, Navigant determined that historical performance was not the best indicator of Fidelis Care's future performance as Fidelis Care is likely to see robust growth in the next 7-8 years before stabilizing. Therefore, the Direct Capitalization Method was not utilized and instead Navigant valued the Appraised Assets using the DCF Method, as detailed below.

\*\*\*\*\*

In calculating business enterprise value, the DCF Method first projects future cash flow growth over a selected period of time, discounted to present value, which amount is referred to as the "Sum of Present Value of Cash Flow". That amount is then added to the enterprise's "Terminal Value," which is the estimated long-term valuation of the entity as a going concern, again discounted to present value, to determine business enterprise value.

The selected period of time for valuation is determined based on the nature of the business and several other factors. Here, with respect to Fidelis Care, Navigant noted that favorable demographic trends in Fidelis Care's service area, coupled with Fidelis Care's capability to gain market share from competitors, would result in Fidelis Care having robust growth over the foreseeable future of 7 to 8 years before reaching a more stabilized growth rate. See Appraisal, p.18. Thus, Navigant concluded that the appropriate projection period is 2017 to 2024.

To assist Navigant in calculating the Sum of Present Value of Cash Flow, Fidelis Care's management provided Navigant with a projected balance sheet and projected income statement for 2017 to 2021. Navigant extended Fidelis Care management's forecast until it is expected to achieve a stabilized state in 2024. Using this information, Navigant calculated the aggregate annual debt-free net cash flows for this period, discounted back to present value. See Appraisal, Exhibit B-1.



Next, Navigant calculated the Terminal Value based on the future cash flows from the end of the period (2024), and discounted that amount back to present value. Together, the Sum of Present Value of Cash Flow and the Terminal Value provide an estimate of Fidelis Care's expected cash flows into perpetuity. As noted above, the sum of these two amounts equal the Business Enterprise Value. The precise calculations required to arrive at the Business Enterprise Value are explained in detail on pages 22-27 and illustrated on Exhibit B-1 of the Appraisal.

**SUMMARY OF DISCOUNTED CASH FLOW METHODOLOGY UTILIZED**

1. First, the Sum of Present Value of Cash Flows is calculated to determine the projected cash flows within the projection period:
  - The debt-free net cash flow ("DFNCF") is calculated for each year within the projection period.
  - The annual DFNCFs are each then discounted back to present value by applying a discount rate of 11% (the "Present Value of Cash Flows"), a rate that represents the required rate of return demanded by debt and equity investors for investments of similar risk.
  - The Present Value of Cash Flows for each year is added together. The resulting value is identified on Exhibit B-1 of the Appraisal as "Sum of Present Value of Cash Flows."
2. Next, the Terminal Value is calculated to determine the projected cash flows after the projection period:
  - First, the cash flow after the end of the 2017-2024 time period is calculated by dividing the net cash flow available for distribution in the last year of the projection period by an appropriate capitalization rate, which assumes a constant growth rate into perpetuity. Here, the capitalization rate used was 8.5%, which reflects both the risks and long-term growth prospects of the Appraised Assets.
  - The Terminal Cash Flow is then reduced to present value by applying a present value factor (0.49). The resulting value is identified on Exhibit B-1 of the Appraisal as the "Present Value of the Terminal Year."
3. The Business Enterprise Value equals the Sum of Present Value of Cash Flows plus the Terminal Value.

Using the above DCF Method, the Business Enterprise Value of the Appraised Assets was calculated to be \$3,484,820,000. See, Ex. B-1.

Although Navigant relied primarily on the DCF Method, it corroborated its analysis by evaluating the fair market value of the Appraised Assets using the Market Approach.

The Market Approach values a going concern by using comparisons between the company being valued and similar guideline (peer or comparable) companies that are either publicly traded or involved in arms-

length transactions between actual buyers and sellers in the marketplace. The price-to-revenue, price-to-earnings, and/or the price-to-earnings before depreciation, interest and taxes (EBITDA) ratios developed from guideline public company or private transaction data are examples of metrics that are often used to derive a fair market value indication for the subject company. The specific methodologies used in the Market Approach are the Guideline Publicly Traded Company Method and the Guideline Transactions Method.

Using the Guideline Publicly Traded Company Method, Navigant identified nine guideline publicly traded companies that operate in the managed care business, focusing on those that specialize in Medicaid managed care plans. However, using this approach has limited value as Navigant was not able to identify a "pure play comparable" to Fidelis Care, primarily due to its size and geographic diversification and distinction between the entities. See Appraisal, p. 26. Nonetheless, Navigant analyzed each of the nine identified guideline companies' financial and operating performance, calculated market multiples for such companies (adjusted for differences between the companies and Fidelis Care), and applied the market multiples to Fidelis Care's fundamentals to arrive at an indication of fair market value.

Using this method, Navigant calculated the Business Enterprise Value of Fidelis Care on a marketable, controlling basis, to be approximately \$3,440,000,000. See Appraisal, p. 27-28.

Using the Guideline Transactions Method, Navigant analyzed the prices at which companies similar to Fidelis Care have sold in controlling transactions (mergers and acquisitions). Navigant identified 62 relevant transactions. Based on its review of these comparable transactions, Navigant calculated the Business Enterprise Value of Fidelis Care on a marketable, controlling basis, to be approximately \$3,360,000,000 to \$3,550,000,000. See Appraisal, p. 27-28.

Navigant also considered the arms-length offers received by Fidelis Care from [REDACTED]

Ultimately, Navigant was unable to rely on the Market Approach because, as described above and in the Appraisal, there was a relative lack of sufficiently comparable guideline public companies and transactions. Consequently, Navigant relied exclusively on the DCF Method under the Income Approach and used its calculations under the Market Approach to corroborate its assessment under the DCF Method. See Appraisal, p. 21, 28.

Based on its calculations using the DCF Method (as corroborated by the Market Approach), Navigant determined that the fair market value of the Appraised Assets is in the range of \$3,400,000,000 to \$3,580,000,000. See Appraisal, p. 28.

#### C. The Cost Approach

The Cost Approach is based on the premise of substitution; that is, a willing buyer would only pay an amount equal to the cost that would be incurred to assemble a similar group of assets after adjusting for obsolescence. Navigant concluded that the Cost Approach was inappropriate here as Fidelis Care is a



going concern and the Cost Approach cannot adequately evaluate the future economic benefits that the assets will generate over time.

**D. The Methodology Used was Appropriate**

Consistent with generally accepted standards of valuation, Navigant considered all three approaches for valuing the Appraised Assets – the Income Approach, the Market Approach and the Cost Approach. These approaches are used irrespective of whether a transaction involves a sale of assets by a nonprofit to a for-profit or by a for-profit to a nonprofit.<sup>2</sup> After consideration of each of these approaches, Navigant selected the approach and methodology that was most appropriate based on its analysis of Fidelis Care's current and projected financial and operational outlook, as well as the most likely transaction scenario. See Appraisal, p. 21.

As discussed above, Navigant determined that the DCF Method under the Income Approach was the most appropriate to use in this context for several reasons. First, it is the preferred method for valuing a going concern as it values the fair market value of a company's assets under the premise that a prospective buyer will continue to use the assets in the manner for which they were originally intended. Second, it is considered the most accurate and flexible method for valuing cash flow generating assets like Fidelis Care. Third, the alternative valuation approaches are not reliable substitutes for the DCF Method in this case – the Cost Approach is not able to adequately value the future economic benefit of the Appraised Assets, and the Market Approach cannot be reliably applied as there are not sufficiently comparable or guideline companies or transactions.

It is important to note that Navigant did not take into account the specific identity of the prospective purchaser in assessing the fair market value of the Appraised Assets. This is consistent with the general principles of fair market valuation, which, as the IRS has noted in its guidance regarding valuations in the context of an acquisition of a medical practice by a Section 501(c)(3) healthcare organization, "[f]air market value is determined within the framework of the business enterprise's value ... to a hypothetical purchaser; it is not appropriate to assume a particular purchaser, such as an exempt hospital or a commercial health care corporation."<sup>3</sup>

**II. Evaluation of Working Capital, Excess Cash and Closing Enrollment Adjustments**

As set forth in more detail below, Navigant evaluated working capital in its determination of the fair market value of the Appraised Assets. Navigant did not, however, evaluate the excess cash or closing enrollment adjustments because, as described below, doing so would be inappropriate in this context.

**A. Working Capital**

As explained above, Navigant used the DCF Method to calculate the Business Enterprise Value of the Appraised Assets. Under the DCF Method, the Business Enterprise Value is equal to the present value of expected future cash flows that a buyer can expect to earn from investing in the assets, which inherently includes working capital.

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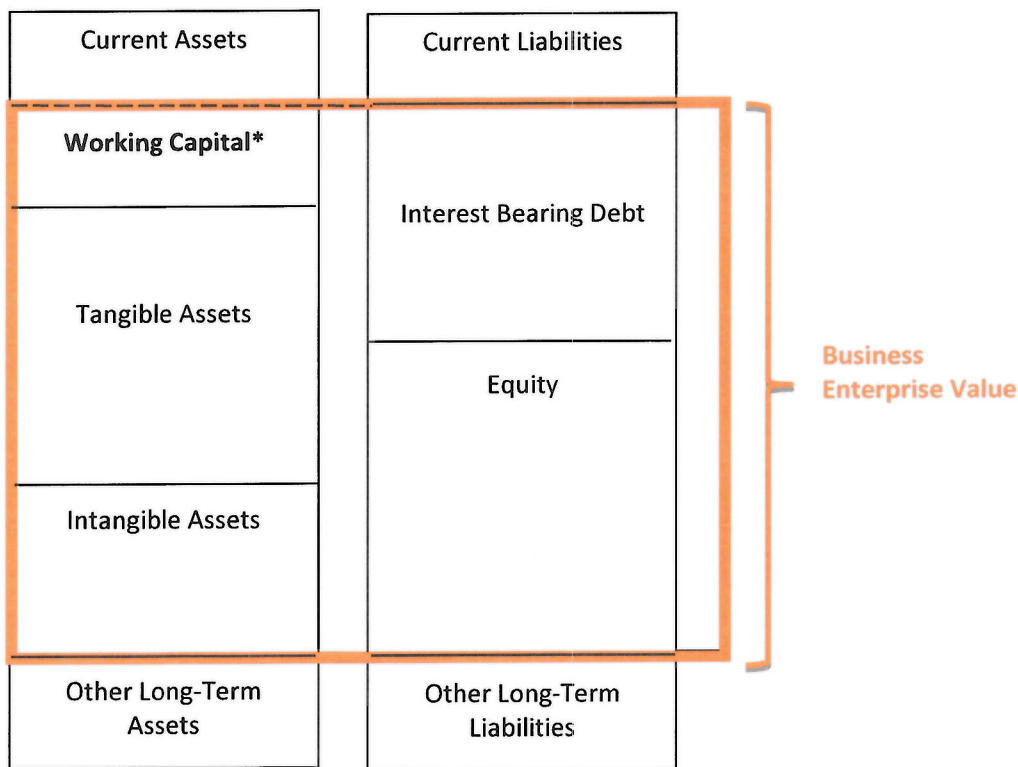
<sup>2</sup> Charles F. Kaiser and Amy Henchey, Q. VALUATION OF MEDICAL PRACTICES, IRS EO CPE Text (1996); Rev. Ruling 59-60, 1959-1 CB 237; Internal Revenue Manuals 4.48.4 (07-01-2006).

<sup>3</sup> See *id.* at p. 5 (emphasis added).

Working capital assets are necessary to provide a cushion between the timing of the receipt of cash from revenue generating activities and the payment of expenses. The amount of required working capital for health plans is determined by state insurance regulations. A portion of the debt free cash flow estimates used in the DCF Method provides for changes in working capital necessary to support future growth and a rate of return on the working capital assets.

We note that, by focusing on future cash flows, the DCF Method takes into account how the various elements of a company that make up its business enterprise value, work in concert to generate earnings and growth of the company as a going concern. Working capital is an essential element of a company that contributes to its overall business enterprise value. This is illustrated in the following diagram, which is a modified copy of the diagram included on page 3 of the Appraisal, and shows the various elements of a business enterprise that contribute to the future cash flows:

**Elements of a Business Enterprise that Contribute to Cash Flow under the DCF method:**



\*Working Capital equals the amount by which the current assets exceed the current liabilities.

**B. Excess Cash**

The valuation does not account for "excess cash" retained by Fidelis Care as excess cash is not included among the Appraised Assets being sold by Fidelis Care.

Ms. Abigail Young  
March 7, 2018

Excess cash is defined as the amount, if any, by which Fidelis Care's "Total Adjusted Net Assets"<sup>4</sup> exceeds the "Minimum Capital Amount."<sup>5</sup> The Total Adjusted Net Assets were calculated to be \$1.92 billion for 2017E based on projections from Fidelis Care's management regarding projected capital and surplus. The Minimum Capital Amount was calculated to be \$1.18 billion based on a calculation of 350% of Fidelis Care's projected authorized control level of \$0.337 billion for 2017E. Thus, the Total Adjusted Net Assets exceeded the Minimum Capital Amount by approximately \$0.74 billion (\$1.92B - \$1.18B), and this amount was excluded from Navigant's evaluation of the fair market value of Fidelis Care's Appraised Assets proposed for sale.

### C. Closing Enrollment Adjustment

As stated in Note (1) on Exhibit A-1 of the Appraisal, Navigant did not take into account "any potential closing adjustments or settlements related to . . . closing enrollment numbers." Importantly, Navigant was tasked with providing an appraisal of the fair market value of the Appraised Assets as of the date of our report. Absent facts that would suggest the likelihood of a material change in Fidelis Care's enrollment numbers following the date of the Appraisal, it would not be appropriate for Navigant to take into consideration any hypothetical enrollment closing adjustments that might occur at an uncertain future date. We were not made aware of any facts that would suggest that there would likely be a material change in the enrollment of Fidelis Care that would have a concomitant material impact on the value of the assets being sold.

Although we understand that the parties have agreed to a purchase price adjustment based on the difference between the enrollment at the time of the closing of the transaction and the enrollment at the time of signing, this does not have any impact on the *value* of the Appraised Assets as of the date of the Appraisal, which occurred prior to the date of signing. Such adjustment would merely be an adjustment to the agreed-upon purchase price.

### III. Conclusion

Navigant believes that this supplemental letter sufficiently responds to the Charities Bureau's request for additional information. But, should you have any further needs or questions, please call Jerry Chang at 404-602-3462 (office) or 404-512-5422 (mobile).

Very truly yours,

Navigant Consulting, Inc.



By: Jerry M. Chang, CFA  
Managing Director

<sup>4</sup> Defined in the Asset Purchase Agreement as the difference between Fidelis Care's consolidated total net assets and Fidelis Care's consolidated "non-admitted assets" computed in accordance with GAAP.

<sup>5</sup> Defined in the Asset Purchase Agreement as the minimum amount of Fidelis Care's assets that would be necessary to cause a purchaser of Fidelis Care's assets, immediately following the Closing, to have an "authorized control level risk based capital ratio" of 350% (determined in accordance with the risk based capital instructions adopted by the National Association of Insurance Commissioners and the adjustment procedures described on Exhibit I of the APA), excluding any assets or liabilities of the purchaser other than (a) the Purchased Assets and (b) the liabilities of Fidelis Care being assumed by the purchaser in the transaction (i.e., the Assumed Liabilities).

# EXHIBIT 17

Affidavit of Rev. Patrick J. Frawley



ATTORNEY GENERAL OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
In the Matter of the Application of :

NEW YORK STATE CATHOLIC HEALTH  
PLAN, INC. :

AFFIDAVIT OF  
REVEREND PATRICK J. FRAWLEY

For Approval to Sell Substantially All of  
the Assets pursuant to Sections 510 and 511-a  
of the Not-for-Profit Corporation Law of the  
State of New York :

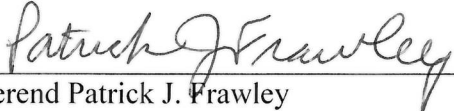
OAG No. 2017-3144-NYC

-----X

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF QUEENS )

Reverend Patrick J. Frawley, being duly sworn, deposes and says:

1. I am the current CEO of Fidelis Care and have served in that position for the last five years;
2. I have reviewed the Navigant Consulting valuation report dated September 7, 2017 and hereby affirm that the facts as laid out with respect to Fidelis Care are true and accurate in all material respects; and
3. I have also reviewed Fidelis Care's final petition dated May 7, 2018 as submitted to the Office of the New York State Attorney General, and hereby confirm that the facts as described in Paragraph 24 are true and accurate in all material respects.

  
Reverend Patrick J. Frawley

Severally sworn to before me this  
7<sup>th</sup> day of May, 2018.

  
Notary Public

SANDRA RESHEF  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RE6329033  
Qualified in Queens County  
My Commission Expires August 10, 2019

## **EXHIBIT 18**

**Fairness Opinion by Citigroup Global Markets Inc.**

September 7, 2017

The Board of Directors  
New York State Catholic Health Plan, Inc.  
d/b/a Fidelis Care New York  
95-25 Queens Boulevard  
Rego Park, NY 11374

Members of the Board:

You have requested our opinion as to the fairness, from a financial point of view, to New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York ("Company"), of the Consideration (defined below) to be received by Company pursuant to the terms and subject to the conditions set forth in an Asset Purchase Agreement (the "Agreement"), to be entered into by and between Centene Corporation ("Buyer") and Company pursuant to which Buyer will purchase the Purchased Assets subject to the Assumed Liabilities (the "Transaction"). As more fully described in the Agreement, the Buyer will purchase the Purchased Assets subject to the Assumed Liabilities from Company for \$3,750,000,000 in cash (the "Cash Consideration") or, at the election of the Buyer, a combination of cash (the "Cash Portion of the Mixed Consideration") and a number of shares of common stock, par value \$0.001 per share ("Buyer Common Stock"), of Buyer equal to the quotient of the Share Consideration Amount (as described below) divided by the daily volume weighted averages of the trading prices (the "Average Trading Price") of the Buyer Common Stock, as such prices are reported on the New York Stock Exchange Composite Transactions Tape, for the five consecutive trading days ending on the trading day which is two clear trading days prior to the closing of the Transaction (the "Stock Portion of the Mixed Consideration") and, together with the Cash Portion of the Mixed Consideration, the "Mixed Consideration" and the Cash Consideration or the Mixed Consideration, as applicable, the "Consideration"), subject to adjustments pursuant to the Agreement, as to which adjustments we express no view or opinion. We understand that, under the terms of the Agreement, the Share Consideration Amount refers to an amount ranging, at Buyer's election, from \$0 to \$500,000,000, and that the Cash Portion of the Mixed Consideration shall be the difference between \$3,750,000,000 and the Share Consideration Amount. At your direction, we have assumed for purposes of our analyses and this opinion that the value of the Stock Portion of the Mixed Consideration is equal to the Share Consideration Amount (without giving effect of any minority, illiquidity or other discounts that might otherwise be applicable to such shares or to differences between the Average Trading Price and the trading price of Buyer Common Stock as of the closing of the Transaction) and, consequently, that the value of the Mixed Consideration is equal to \$3,750,000,000. You have advised us and for purposes of our analyses and this opinion we have assumed that the Purchased Assets include all of the assets of Company necessary and sufficient for the operation of the Business as currently conducted by Company and to conduct the Business in the manner Company currently contemplates conducting the Business in order to achieve Management's Projections for the Business (as defined below). Except as otherwise defined herein, capitalized terms have the meanings ascribed to such terms in the Agreement.

In arriving at our opinion, we reviewed a draft, dated September 6, 2017, of the Agreement and held discussions with certain senior officers, directors and other representatives and advisors of Company concerning the business, operations and prospects of the Business. We examined certain publicly available business and financial information relating to the Business as well as certain financial forecasts (the "Management's Projections for the Business") and other information and data relating to the Business, which were provided to or discussed with us by the management of Company. We reviewed the financial terms of the Transaction as set forth in the Agreement in relation to, among other things: the historical and projected earnings and other operating data of the Business; and the capitalization and financial condition of

the Business. We considered, to the extent publicly available, the financial terms of certain other transactions which we considered relevant in evaluating the Transaction. In connection with our engagement and at the direction of Company, we were requested to approach, and we held discussions with, selected third parties to solicit indications of interest in the possible acquisition of the Business or Company. In addition to the foregoing, we conducted such other analyses and examinations and considered such other information and financial, economic and market criteria as we deemed appropriate in arriving at our opinion. The issuance of our opinion has been authorized by our fairness opinion committee.

In rendering our opinion, we have assumed and relied, without independent verification, upon the accuracy and completeness of all financial and other information and data publicly available or provided to or otherwise reviewed by or discussed with us and upon the assurances of the management of Company that they are not aware of any relevant information that has been omitted or that remains undisclosed to us. With respect to financial forecasts and other information and data relating to Company provided to or otherwise reviewed by or discussed with us, we have been advised by the management of Company that such forecasts and other information and data were reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of Company as to the future financial performance of the Business. We have relied, at your direction, upon the assessments of the management of Company as to, among other things, the potential impact on the Business of trends and developments in, and prospects for, governmental, regulatory and legislative matters relating to or otherwise affecting, the health insurance industry and related credit and financial markets. We have assumed, with your consent, that there will be no developments with respect to any such matters that would be material to our analyses or this opinion. With your consent, we have assumed that any adjustments to the Consideration pursuant to the Agreement or otherwise would not be material to our analyses or this opinion.

We have assumed, with your consent, that the Transaction will be consummated in accordance with its terms, without waiver, modification or amendment of any material term, condition or agreement and that, in the course of obtaining the necessary regulatory or third party approvals, consents and releases for the Transaction, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on the Business, Company, Buyer or the Transaction. Representatives of Company have advised us, and we further have assumed, that the final terms of the Agreement will not vary materially from those set forth in the draft reviewed by us. We have not made or been provided with an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of the Business or Company nor have we made any physical inspection of the properties or assets of the Business or Company. We are not expressing any opinion as to what the value of any shares of Buyer Common Stock actually will be when issued pursuant to the Transaction or the price or range of prices at which shares of Buyer Common Stock may be purchased or sold, or otherwise be transferable, at any time.

Our opinion addresses only the fairness, from a financial point of view, of the Consideration to be received by Company for the Purchased Assets, subject to the Assumed Liabilities, in the Transaction pursuant to the Agreement. Our opinion does not address any other terms, aspects or implications of the Transaction, including, without limitation, the form or structure of the Transaction or any agreement, arrangement or understanding to be entered into in connection with or otherwise contemplated by the Transaction or otherwise. Our opinion does not address the underlying business decision of Company to effect the Transaction, the relative merits of the Transaction as compared to any alternative business strategies that might exist for Company or the effect of any other transaction in which Company might engage. We also express no view as to, and our opinion does not address, the fairness (financial or otherwise) of the amount or nature or any other aspect of any compensation to any officers, directors or employees of any parties to the Transaction, or any class of such persons, relative to the Consideration. In addition, we express no view as to, and our opinion does not address, any requirement as to the determination of the promotion of the purposes of Company, or the interests of its corporate members, pursuant to sections 511 and 511-a of the New York Not-for-Profit Corporation Law. Our opinion is

necessarily based upon information available to us, and financial, stock market and other conditions and circumstances existing, as of the date hereof. Although subsequent developments may affect our opinion, we have no obligation to update, revise or reaffirm our opinion.

Citigroup Global Markets Inc. has acted as financial advisor to Company in connection with the proposed Transaction and will receive a fee for such services, a significant portion of which is contingent upon the consummation of the Transaction. We have also received a fee in connection with the delivery of this opinion and will receive an additional fee upon the execution of the Agreement. As you are aware, we and our affiliates in the past have provided services to Buyer, for which services we and such affiliates have received compensation, including, without limitation, having acted as joint lead arranger of financing and having provided bridge financing for Buyer's acquisition of Health Net, Inc. in 2016 and having acted as joint bookrunner or lead bookrunner in connection with offerings of debt securities by Buyer in January 2016, June 2016 and October 2016. We and/or our affiliates are also a participant in Buyer's revolving credit facility. In addition, with your consent, we and/or our affiliates have agreed to provide or otherwise participate in all or a portion of Buyer's financing for the Transaction. In the ordinary course of our business, we and our affiliates may actively trade or hold the securities of Buyer for our own account or for the account of our customers and, accordingly, may at any time hold a long or short position in such securities. In addition, we and our affiliates (including Citigroup Inc. and its affiliates) may maintain relationships with Company, Buyer and their respective affiliates.

Our advisory services and the opinion expressed herein are provided solely for the information of the Board of Directors of Company (solely in their capacity as such) in connection with its evaluation of the proposed Transaction and are not intended to be and do not constitute a recommendation to any member of the Board, any direct or indirect holder of an interest in Company or any other person as to how any such person should vote or act on any matters relating to the proposed Transaction. Our opinion may not be quoted, referred to or otherwise disclosed, in whole or in part, nor may any public reference to Citigroup Global Markets Inc. be made, without our prior written consent or agreement except that we may reproduce in full, and may also include references to this opinion and to Citigroup Global Markets Inc. and its relationship to the Company in any application filed with the New York State Attorney General.

Based upon and subject to the foregoing, our experience as investment bankers, our work as described above and other factors we deemed relevant, we are of the opinion that, as of the date hereof, the Consideration to be received by Company for the Purchased Assets subject to the Assumed Liabilities in the Transaction pursuant to the Agreement is fair, from a financial point of view, to Company.

Very truly yours,

*Citigroup Global Markets Inc.*

CITIGROUP GLOBAL MARKETS INC.

## EXHIBIT 19

Citigroup Global Markets Inc. – Excerpts of Presentation  
to Petitioner's Board

September 8, 2017

# Project Panorama

## Presentation to the Board of Directors

# Disclaimer

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The following pages contain material provided to the Board of Directors of New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York ("Fidelis Care" or the "Company") by Citigroup Global Markets Inc. ("Citi"). The accompanying material was compiled or prepared on a confidential basis solely for the use of the Board of Directors of the Company and not with a view toward public disclosure under any securities laws or otherwise. The information contained in the accompanying material was obtained from the Company, and other sources.

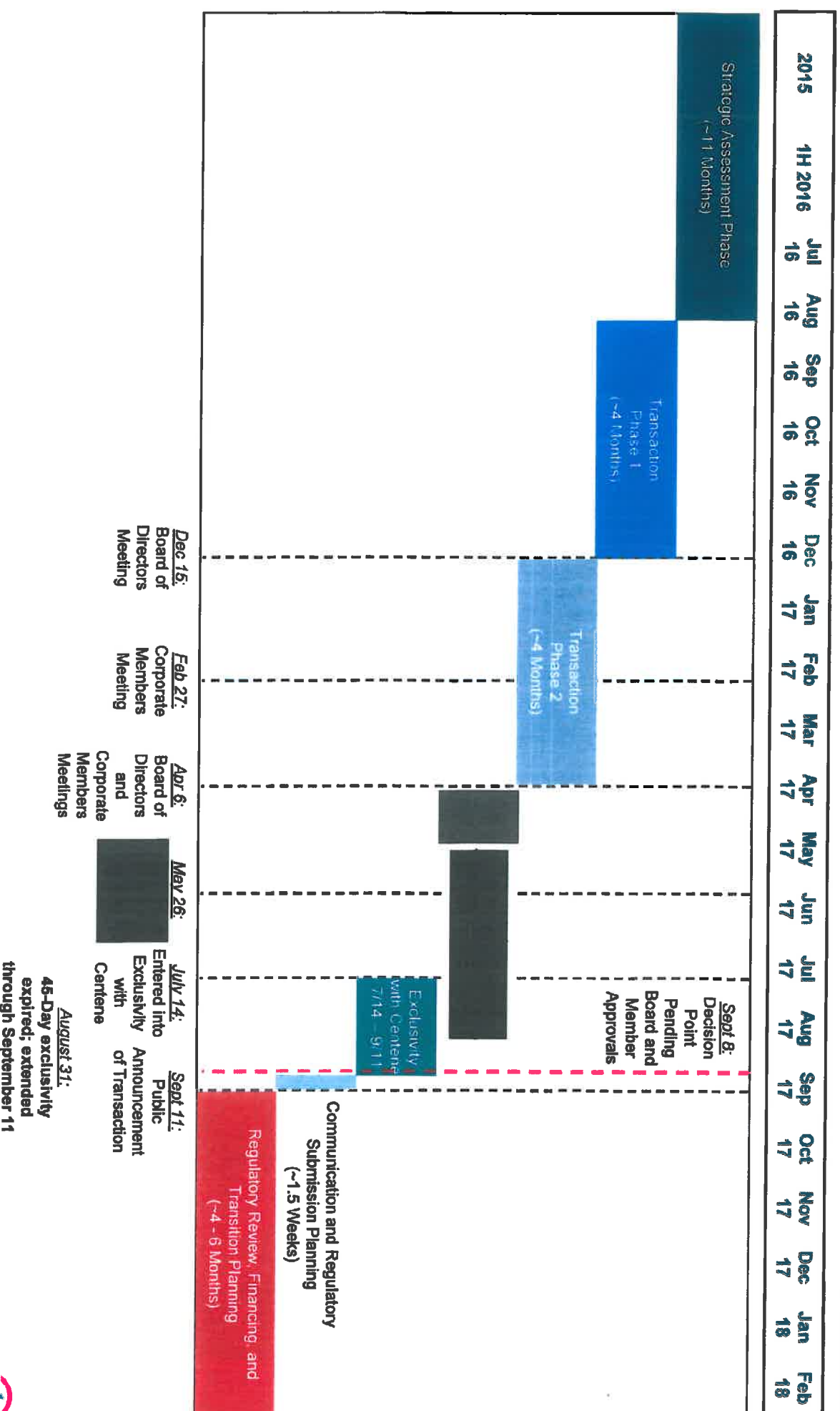
Any estimates and projections contained herein have been prepared or adopted by management of the Company, obtained from public sources, or are based upon such estimates and projections, and involve numerous and significant subjective determinations, and there is no assurance that such estimates and projections will be realized. Citi does not take responsibility for such estimates and projections, or the basis on which they were prepared. No representation or warranty, express or implied, is made as to the accuracy or completeness of such information and nothing contained herein is, or shall be relied upon as, a representation, whether as to the past, the present or the future. In preparing the accompanying material, Citi assumed and relied, without independent verification, upon the accuracy and completeness of all financial and other information and data publicly available or provided to or otherwise reviewed by or discussed with Citi and upon the assurances of the management of the Company that they are not aware of any relevant information that has been omitted or that remains undisclosed to Citi.

The accompanying material was not prepared for use by readers not as familiar with the Company as the Board of Directors of the Company and, accordingly, neither the Company nor Citi nor their respective legal or financial advisors or accountants take any responsibility for the accompanying material if used by persons other than the Board of Directors of the Company. The accompanying material is necessarily based upon information available to Citi, and financial, stock market and other conditions and circumstances existing and disclosed to Citi, as of the date of the accompanying material. Citi does not have any obligation to update or otherwise revise the accompanying material. Nothing contained herein shall be construed as legal, tax or accounting advice.




# Project Panorama – Process Update

The purpose of this meeting is to present to the Board of Directors the final terms of a potential transaction with Centene together with Citi's updated financial analysis and Fairness Opinion for consideration and a vote by the Board, and, if the Board votes to approve the transaction, to recommend approval to its Corporate Members.



# Centene is a Strong Strategic Fit for Fidelis Care

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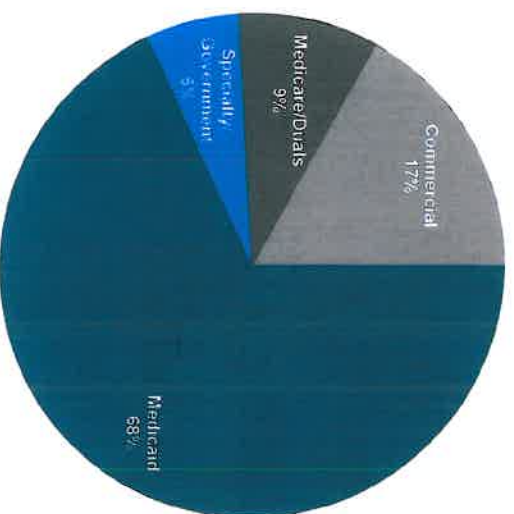
- Centene was originally identified as a potential strategic partner in Phase 1 of the process
  - Largest standalone operator of Medicaid plans in the United States
  - Proven operator of regional health plans, including record of strong growth
- The Fidelis Care and Centene management teams first met at the JP Morgan Healthcare Conference in January 2016
  - The two management teams continued to engage after the initial meeting, including a site-visit to Centene headquarters in St. Louis in March 2016
  - When Fidelis Care launched its sale process in October 2016, Centene opted not to participate 
- Centene has a long history of successful acquisition transactions
  - Of the three major managed care M&A transactions announced in Summer 2015, only Centene's \$6.8 billion acquisition of Health Net was consummated
  - The transaction was able to receive the necessary federal and state approvals, including California, which traditionally has a long and thorough review process
  - The transaction closed on schedule approximately 9 months after public announcement
- At the request of the Corporate Members, Citi submitted a reverse due diligence inquiry to Centene. Below are some highlights of the results:
  - High quality: many of Centene's health plans are rated 3 stars or higher
  - Experience acquiring multiple not-for-profit regional health plans and track record of improving growth and quality
  - Transaction success: no denials of regulatory approval associated with acquisitions in new states over the last 3 years
  - No labor unrest

# Overview of Centene (St. Louis, MO)

## Company Overview

- Centene is the largest standalone operator of Medicaid in the United States, serving 12.1 million members, of whom ~60% are enrolled in a Medicaid plan
- Conducts its business activities through two segments
  - Managed Care (92% of FY16 Revenue):** Provides Medicaid and Medicaid-related health plan coverage to individuals through government subsidized programs; operates under local health plans across multiple states
  - Specialty Services (8% of FY16 Revenue):** Products for behavioral health and specialty rehabilitation therapies, care management software, life and health management, managed vision, telehealth services, and pharmacy benefits management
- Centene completed its largest and most complex transaction with the acquisition of Health Net on March 24, 2016 (~\$6.8bn), and has successfully completed 25 acquisitions over the last 10 years

## 2017E Revenue Breakdown



## Financial Overview<sup>(1)</sup>

\$m, except per share data	Calendar Year Ending December 31,					2014A-2017E CAGR
	2014A	2015A	2016A	2017E		
Sales	\$16,560	\$22,760	\$40,607	\$47,090		41.7%
Growth (%)	52.4%	37.4%	78.4%	16.0%		
EBITDA	\$553	\$843	\$1,627	\$1,785		47.8%
Margin (%)	3.3%	3.7%	4.0%	3.8%		
EPS	\$2.23	\$3.03	\$4.43	\$4.95		30.5%
Stock Price	\$85.90					
% of 52-Week High	99.6%					
Equity Value	\$15,249					
Pus: Minority Interest	150	FV / Sales	0.9x	0.5x	0.4x	
Pus: Debt	4,720	FV / EBITDA	23.5	12.2	11.1	
Less: Cash	(291)	P/E	28.3	19.4	17.4	
Firm Value	\$19,828					

### Valuation Metrics

## Presence in 28 States



*Centene does not currently have any presence in New York*

# Summary of Selected Financial Terms

<b>Purchase Price:</b> <b>Plus: IBNR Adjustment</b> <b>Enterprise Value:</b> <b>Plus: Excess Cash</b> <b>Total Consideration:</b>	<ul style="list-style-type: none"> <li>• <b>\$3,750mm</b></li> <li>• <b>\$14mm</b></li> <li>• <b>\$3,764mm</b></li> <li>• <b>\$656mm</b></li> <li>• <b>\$4,420mm</b></li> </ul>
<b>Financing</b>	<ul style="list-style-type: none"> <li>• Offer is not subject to any financing contingency</li> <li>• Bridge Loan in the amount of Purchase Price has been secured</li> <li>• 100% cash at closing, subject to the following: <ul style="list-style-type: none"> <li>• In the event Centene does not complete its contemplated equity offering between signing and closing, Fidelis Care will, at Centene's election, receive up to \$500 million of the purchase price in the form of Centene stock, of which \$375 million would be deposited into the indemnification escrow and the remaining \$125 million would be registered Centene stock able to be sold immediately post Close</li> </ul> </li> <li>• Centene is obligated to convert \$375 million into cash no later than the Escrow end date</li> <li>• Estimated \$656mm of excess cash based on risk based capital equal of 350% of ACL and projected 12/31/2017 balance sheet, net of repayment of the outstanding term loan</li> <li>• Provides downside protection for loss of up to 5% of enrollment by business segment based on the base enrollment (as of Asset Purchase Agreement ("APA") signing). Such enrollment loss over 5% is a downward purchase price adjustment based on an agreed-upon per member value</li> <li>• Provides upside potential if the enrollment on the measurement date is more than 5% higher than the projected enrollment (as of January 1, 2018). Such enrollment increase over 5% is an upward purchase price adjustment based on an agreed-upon per member value</li> <li>• Balance Sheet will be transferred at closing with customary IBNR and reserves. At true-up dates post closing for enrollment and at 12 months, IBNR liability will be based on actual claims paid plus a 14% reserve. The difference between that amount and Fidelis Care's current 15% IBNR reserve is released to Fidelis Care as incremental payment, estimated at \$14mm based on projected 12/31/2017 balance sheet</li> <li>• Target net working capital of (\$1.2) billion, subject to a two-step true-up adjustment with final reconciliation 12 months post closing</li> </ul>
<b>Form of Consideration</b>	
<b>Purchase Price Adjustments:</b> <b>Excess Cash</b>	
<b>Enrollment</b> <b>IBNR</b> <b>Net Working Capital</b>	

Source: Draft Asset Purchase Agreement, dated August 13/1, 2017, discussions with Fidelis Care management.

Note: Citi is not expressing any view or opinion with respect to the adjustments to the consideration or the assumptions on which they are based. Citi has assumed that any such adjustments would not be material to its analyses.



# Pro Forma New Fidelis Care Post-Transaction

New Fidelis Care			
(\$ in 000s)			
Assets	Estimated Balance Sheet As of December 31, 2017E	Asset & Liabilities Sold As Part of Transaction	Pro Forma Fidelis Care Balance Sheet As of December 31, 2017E
<b>Current Assets</b>			
Cash, Cash Equivalents & Other	\$1,964,213	\$1,949,618	\$14,595
Investments - Current	828,480	341,222	487,238
Other Current Assets	512,134	512,134	-
<b>Total Current Assets</b>	<b>\$3,304,807</b>	<b>\$2,802,974</b>	<b>\$501,833</b>
<b>Non-Current Assets</b>			
Assets Whose Use Is Limited (Statutory Escrow Account)			
Investments - Noncurrent	\$435,980	\$435,980	-
Equipment and leasehold improvements, net	168,749	-	\$168,749
PP&E - Building	75,741	75,741	-
Other Non-Current Assets	140,000	-	140,000
	15,850	15,850	-
<b>Total Non-Current Assets</b>	<b>\$836,320</b>	<b>\$627,571</b>	<b>\$308,749</b>
<b>Total Assets</b>	<b>\$4,141,127</b>	<b>\$3,330,545</b>	<b>\$810,582</b>
<b>Liabilities &amp; Net Assets</b>			
<b>Current Liabilities</b>			
Accounts Payable & Accrued Expenses	\$201,183	\$201,183	-
Premiums Received In Advance	22,538	22,538	-
Capital Lease Obligations - current portion	41	41	-
Claims Payable & IBNR	1,403,079	1,389,048	-
Due to third parties	218,893	218,893	-
<b>Total Current Liabilities</b>	<b>\$1,845,733</b>	<b>\$1,831,703</b>	<b>-</b>
<b>Long-term Liabilities</b>			
Term Loan	\$85,714	-	-
<b>Total Long-term Liabilities</b>	<b>\$85,714</b>	<b>-</b>	<b>-</b>
<b>Net Assets</b>			
Statutorily designated contingent reserve	\$1,130,414	\$1,130,414	-
Undesignated	1,078,701	368,428	\$810,018
Temporarily restricted	584	-	584
<b>Total Net Assets</b>	<b>\$2,209,679</b>	<b>\$1,498,842</b>	<b>\$810,582</b>
<b>Total Liabilities and Net Assets</b>	<b>\$4,141,127</b>	<b>\$3,330,545</b>	<b>\$810,582</b>

Excess Cash Retained by Fidelis Care <sup>(1)</sup>	\$655,987
Proceeds at Closing, Net of Escrow	3,375,000
<b>Total at Closing</b>	<b>\$4,030,987</b>
<b>Post Closing Adjustments</b>	
Plus: Excess IBNR Reserve	\$14,031
Plus: Release of Escrow	375,000
<b>Total Post-Closing</b>	<b>\$4,420,018</b>

New Fidelis Care  
501(c)(3)

Board of Directors

Rego Park Office Tower LLC  
For-Profit Corporation

Source: Fidelis Care management, Draft Asset Purchase Agreement, dated August [31], 2017.

(1) Excluding transaction costs; based on RBC of 350% and Fidelis Care 2017E financial projections; net of the term loan of \$85.7mm.

# Summary of Centene's Post-Closing Commitments and Communications

Commitment to Employees	<ul style="list-style-type: none"> <li>• Offer of employment to all active employees in good standing who meet their criteria, including documentation, drug testing, and background screening, and an offer of employment for all inactive employees who return to work within 6 months of closing</li> <li>• Each employee who accepts employment shall be employed for a minimum of 1 year, except for Cause or other Material Adverse Event</li> <li>• For a 1-year period, Centene will provide each employee with base salary, other periodic cash incentive opportunities, retirement plans, and other benefits which are substantially comparable in aggregate to the employee benefits that are currently provided</li> <li>• Centene will ensure that hired employees receive credit for prior service with Fidelis Care under various applicable benefit programs</li> </ul>
Commitment to Scope and Type of Services, and Fidelis Care's Mission	<ul style="list-style-type: none"> <li>• Centene's and Panorama's missions are fully aligned in terms of promoting health through high quality, accessible care and services for all and advocating for health policy that accords true dignity and respect for all people, especially the underserved. As stated by Centene's CEO, "It is through this type of transaction that we can further enhance the well-being of Panorama's members and continue to build linkages and systems for the coordination of care and services among healthcare, behavioral and social services while doing so at an appropriate level of cost. We look forward to partnering with the state of New York's healthcare professionals as we continue to deliver on our mission of transforming the health of the community, one person at a time"</li> <li>• At Centene, it takes to heart our mission of "transforming the health of the community, one person at a time." It is eager to extend this commitment to all of the over 1.6 million Fidelis Care enrollees throughout New York State and in doing so continue to honor the mission and vision of Fidelis</li> <li>• Compliance with the protocols and policies developed by Fidelis Care relating to the Ethical and Religious Directives for Catholic Health Care Services in connection with the operations of the Business in the State of New York, for a 1-year period</li> </ul>
Commitment to NY Presence	<ul style="list-style-type: none"> <li>• Maintain a corporate presence in the State of New York at a level appropriate as the anchor of Centene's multi-line healthcare operations in the State of New York, for a 3-year period</li> </ul>
Growth and Enhancement of High Quality Performance	<ul style="list-style-type: none"> <li>• Growth is an integral strategy of Centene and it traditionally deploys capital to fuel such growth</li> <li>• Continue to invest in NY business to achieve growth and enhance quality of business and quality of service for members</li> <li>• Centene's acquisition of the Fidelis assets will serve to diversify Centene's product portfolio as well as increase its geographic footprint in New York State. Centene intends to maintain and invest and continue to grow throughout the State of New York</li> </ul>

Source: Draft Asset Purchase Agreement, dated August [31], 2017, Communication Plan and July 5, 2017 Indication of Interest.

# Selected Not-For-Profit Transactions

Implied Reference Range  
(\$ in millions)



Selected Not-For-Profit Transactions  
FV / LTM Reported EBITDA

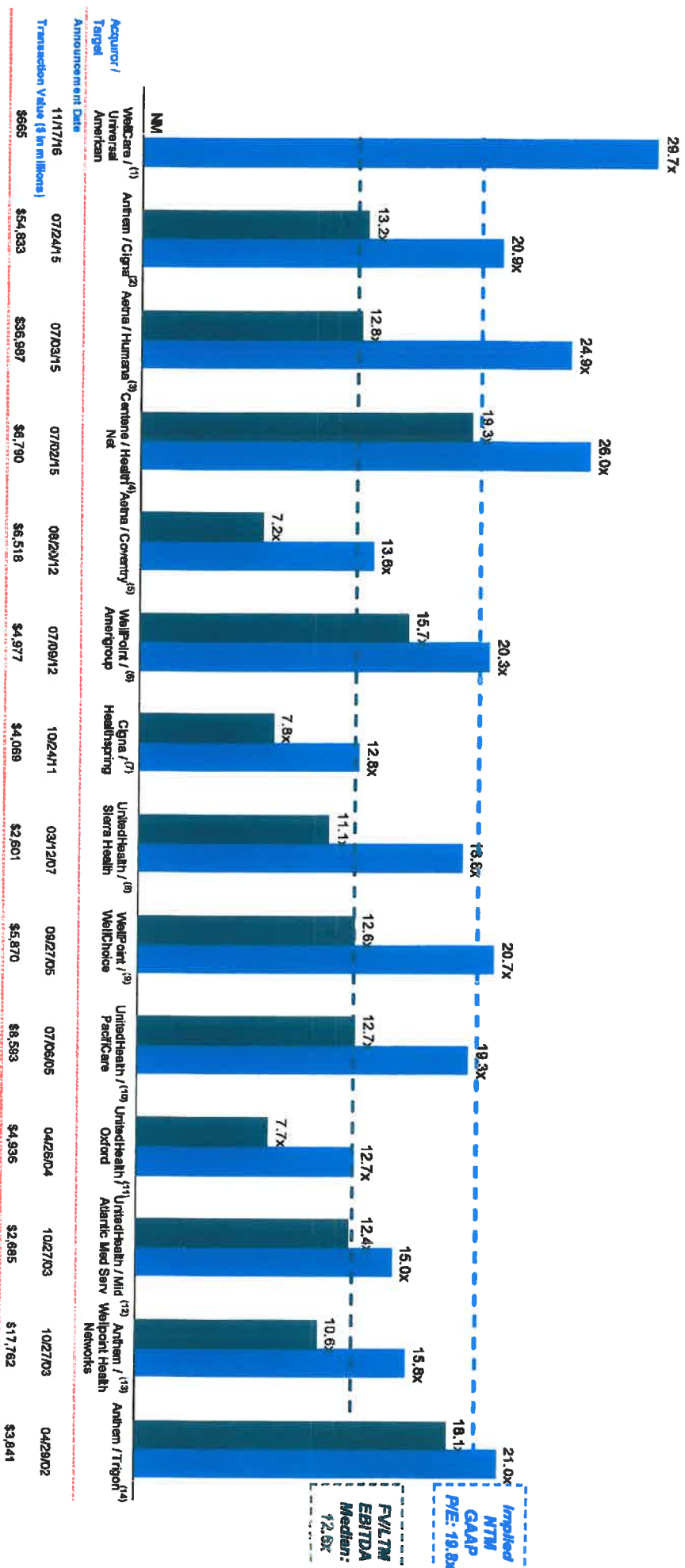
Announcement Date	Transaction Value (\$ in millions)	Kaiser Permanente / Group Health Cooperative	Anthem, Inc. / Simply Healthcare Holdings, Inc.	Blue Shield of California / Care 1st Health Plan	Humana, Inc. / Metropolitan Health Networks	UnitedHealth Group / XL Health Corp.
12/07/15	\$1,200 <sup>(2)</sup>					
12/22/14	\$489					
12/08/14	\$1,250					
11/27/12	\$851					
11/22/11	\$2,000					

Source: Levin M&A Reports Q2 2016.

(2) Does not include excess cash of approximately \$600mm, implying a total transaction value of \$1,800mm.  
(3) Transaction multiple not available because acquired company is a private entity and does not publicly report EBITDA.

# Selected Transactions

For Reference Only



- Source: Company filings, FactSet and Wall Street research.
- (1) Source: Universal American 10-Q filed November 8, 2016. Universal American 10-K filed March 3, 2015.
- (2) Source: Cigna 10-Q filed April 30, 2015. Cigna 10-K filed February 26, 2015.
- (3) Source: Humana 10-Q filed April 29, 2015. Humana 10-K filed February 18, 2015.
- (4) Source: Health Net 10-Q filed May 5, 2015. Health Net 10-K filed February 27, 2015.
- (5) Source: Coventry 10-Q filed August 6, 2012. Coventry 10-K filed February 28, 2012. Coventry 14-A filed October 17, 2012.
- (6) Source: Amerigroup 10-Q filed May 4, 2012. Amerigroup 10-K filed February 24, 2012.
- (7) Source: Healthspring 10-Q filed August 5, 2011. Healthspring 10-K filed February 25, 2011.
- (8) Source: Sierra Health 10-K filed February 27, 2007.
- (9) Source: WellChoice 10-Q filed August 3, 2005. WellChoice 10-K filed February 14, 2005.
- (10) Source: PacificCare 10-Q filed May 4, 2005. PacificCare 10-Q filed February 25, 2005.
- (11) Source: Oxford 10-Q filed April 27, 2004. Oxford 10-K filed February 4, 2004.
- (12) Source: Mid Atlantic 10-Q filed August 14, 2003. Mid Atlantic 10-K filed March 28, 2003.
- (13) Source: Wellpoint 10-Q filed May 13, 2003. Cobalt 10-Q filed August 12, 2003. Cobalt 10-K filed March 21, 2003.
- (14) Source: Trigon 10-K filed February 6, 2002.



# Selected Public Companies

Company	Price 8/25/2017	% of 52-Week High	Fully Diluted Market Value	Firm Value	Firm Value /		Firm Value /		Price /	
					EBITDA		Revenue		Earnings Per Share	
					2016A	2017E	2016A	2017E	2016A	2017E
United-Health	\$194.36	99.7%	\$193,252	\$228,420	14.7	13.4x	1.2x	1.1x	24.2	19.7x
Aetna <sup>(1)</sup>	156.10	98.5	52,927	62,071	10.9	10.6	1.0	1.0	19.0	16.3
Anthem	192.68	98.7	51,296	65,770	9.9	11.2	0.8	0.7	17.5	16.3
Cigna	179.30	99.7	46,238	48,860	12.2	10.9	1.2	1.2	22.1	17.9
Humana	253.00	99.2	37,306	39,603	11.7	10.7	0.7	0.7	26.4	21.9
Centene	85.90	99.6	15,249	19,828	12.2	11.1	0.5	0.4	19.4	17.4
WellCare	168.82	91.8	7,667	8,549	11.6	13.1	0.5	0.5	27.1	24.4
Molina <sup>(2)</sup>	50.80	84.8	2,937	4,655 <sup>(3)</sup>	10.0	10.5	0.3	0.2	39.7	19.9

<b>Median</b>	<b>11.6x</b>	<b>11.0x</b>	<b>0.8x</b>	<b>0.7x</b>	<b>23.1x</b>	<b>18.8x</b>
<b>Mean</b>	<b>11.6</b>	<b>11.4</b>	<b>0.8</b>	<b>0.7</b>	<b>24.4</b>	<b>19.2</b>

No selected public company used in this analysis for comparative purposes is identical or directly comparable to Fidelis Care.

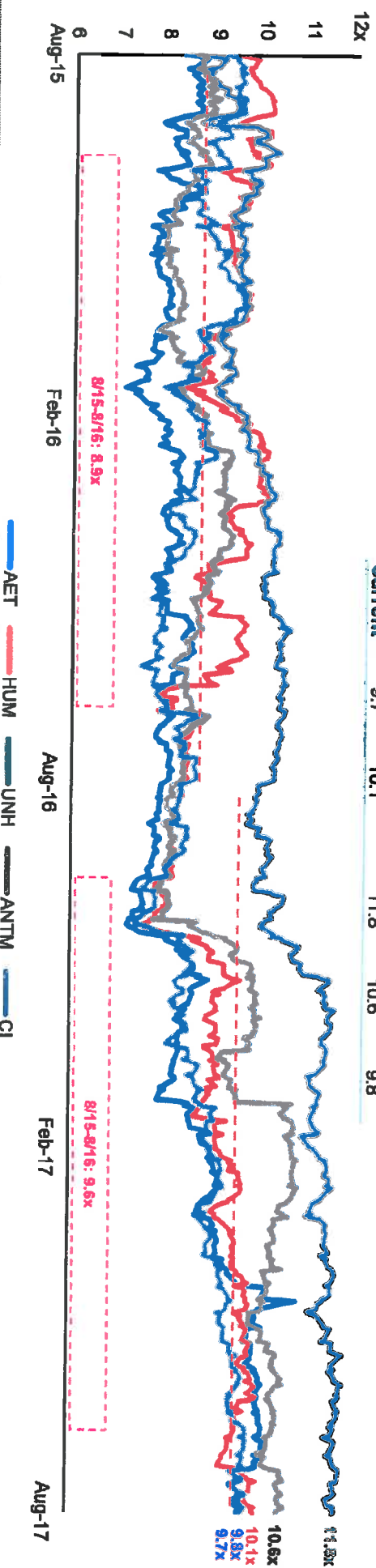
Source: FactSet, Company filings and Wall Street research.  
 Note: Market data as of August 25, 2017. UHG pro forma for acquisition of Surgical Care Affiliates, Inc. Anthem and Molina convertible notes presented on an as converted basis.  
 (1) Aetna pro forma for August 2017 \$1bn bond issuance.  
 (2) Molina stock price as of May 1, 2017, the day before the public announcement of the CEO and CFO removal.  
 (3) Reflects net impact of June 2017 financing.

# Managed Care Historical Trading Multiples – FV / NTM EBITDA

## Diversified MCO FV / NTM EBITDA

Since August 25, 2015

Average FV / NTM EBITDA Multiples					
	Aetna	Humana	UnitedHealth	Anthem	Cigna
2-Year	8.5x	9.3x	10.5x	9.2x	8.8x
1-Year	8.9	9.2	11.2	9.8	8.9
Current	9.7	10.1	11.8	10.6	9.8

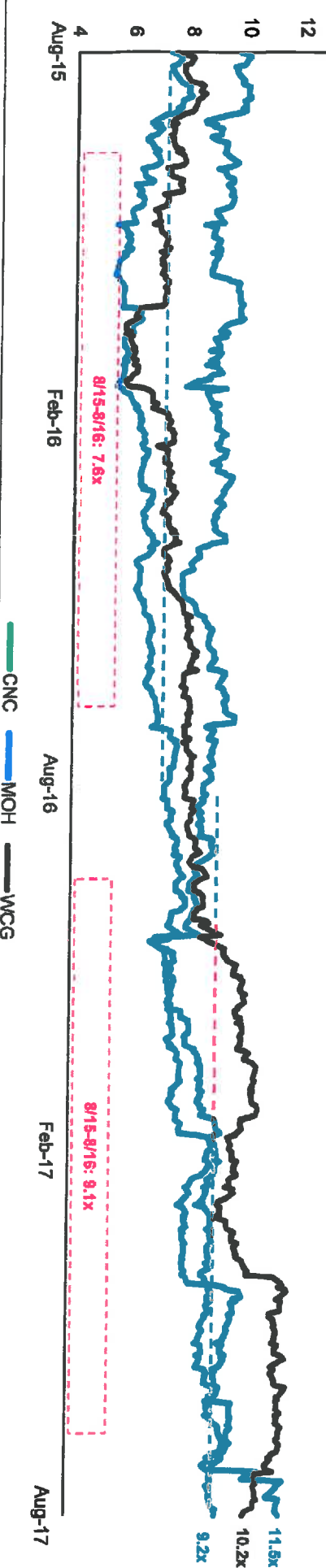


## Medicaid MCO FV / NTM EBITDA

Since August 25, 2015

Average FV / NTM EBITDA Multiples			
	Centene	Molina <sup>(1)</sup>	WellCare
2-Year	8.9x	7.0x	8.7x
1-Year	8.7	7.8	10.0
Current	9.2	8.3	10.2

Implied Fidelis Care Enterprise Value – For Reference Only <sup>(2)</sup>							
Base Case				Downside Case			
	Centene	Molina <sup>(1)</sup>	WellCare	Centene	Molina <sup>(1)</sup>	WellCare	
2-Year	\$4,889	\$3,889	\$4,805	\$4,687	\$3,728	\$4,606	
1-Year	4,785	4,317	5,526	4,587	4,138	5,297	
Current	5,107	4,564	5,641	4,896	4,375	5,407	



Source: FactSet and Company filings.

Note: Market data as of August 25, 2017.

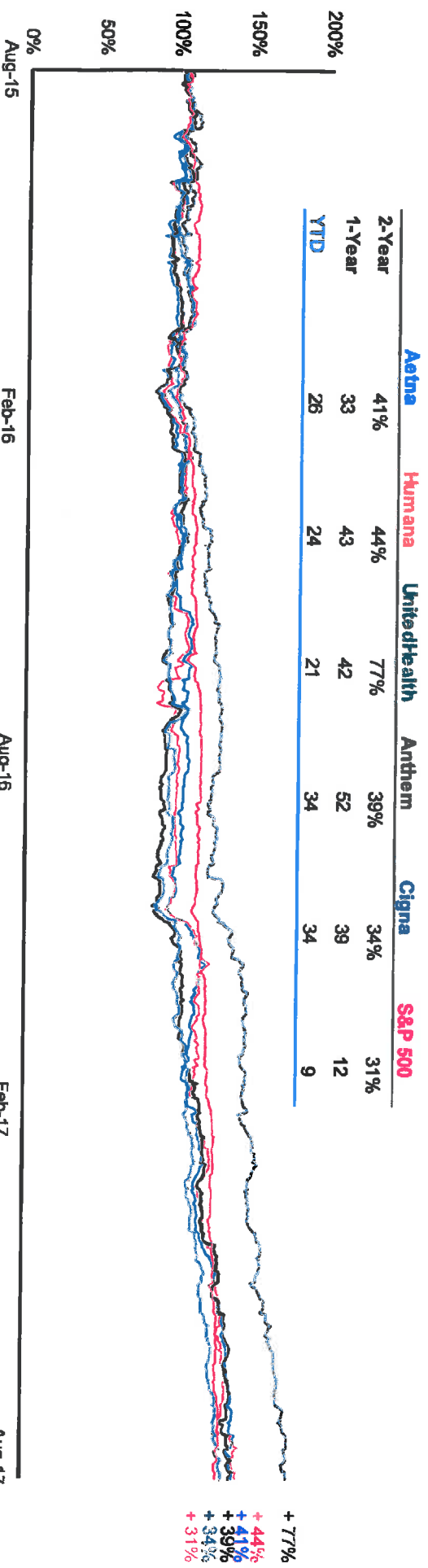
(1) Molina 2-year, 1-year average, and current FV / NTM EBITDA is as of May 1, 2017, the day before the public announcement of the CEO and CFO removal.

(2) Base Case NTM Adjusted FBITDA of \$552mm and Downside Case NTM Adjusted FBITDA of \$529mm as of June 30, 2017.

# Managed Care Stock Price Performance

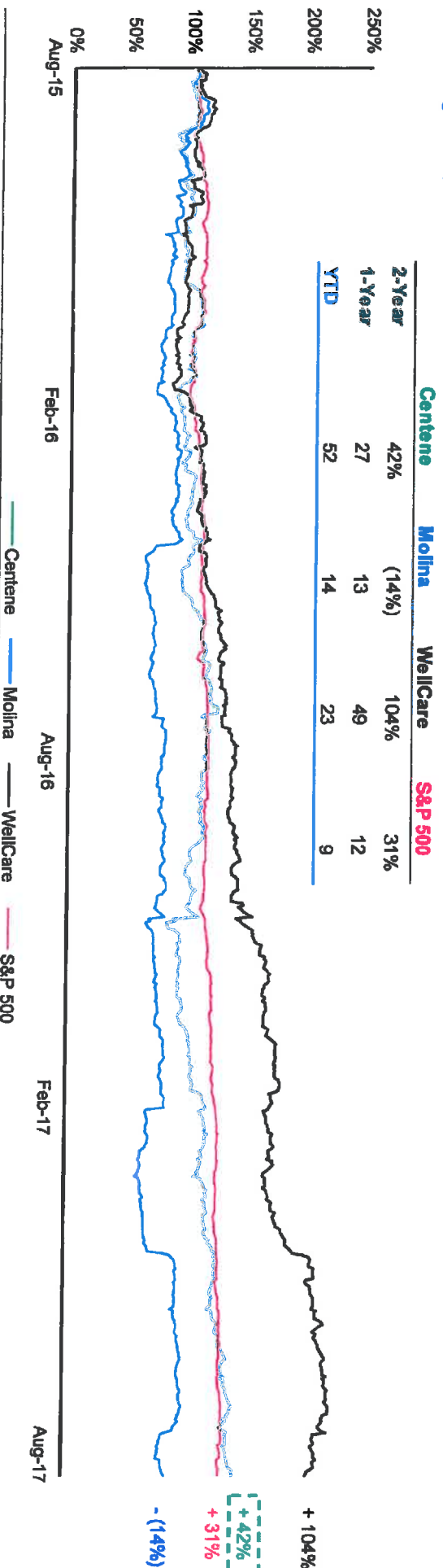
## Diversified MCO Indexed Stock Price Performance

Since August 25, 2015



## Medicaid MCO Indexed Stock Price Performance

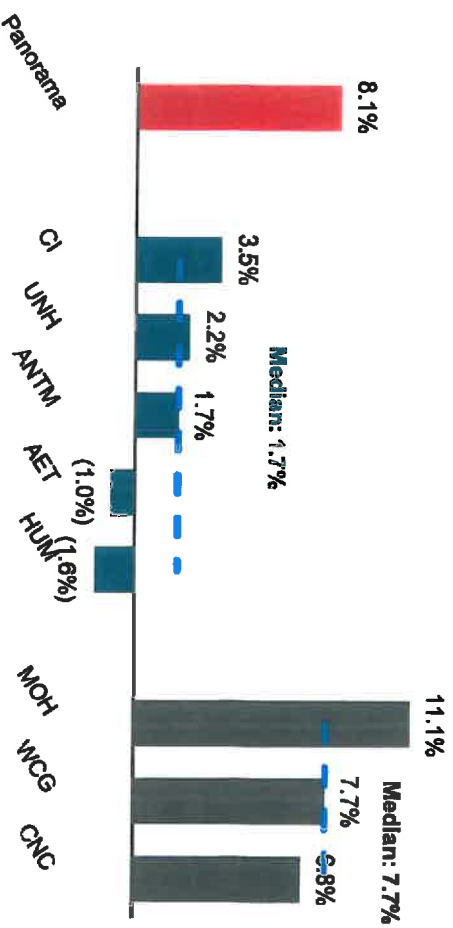
Since August 25, 2015



# Benchmarking Analysis

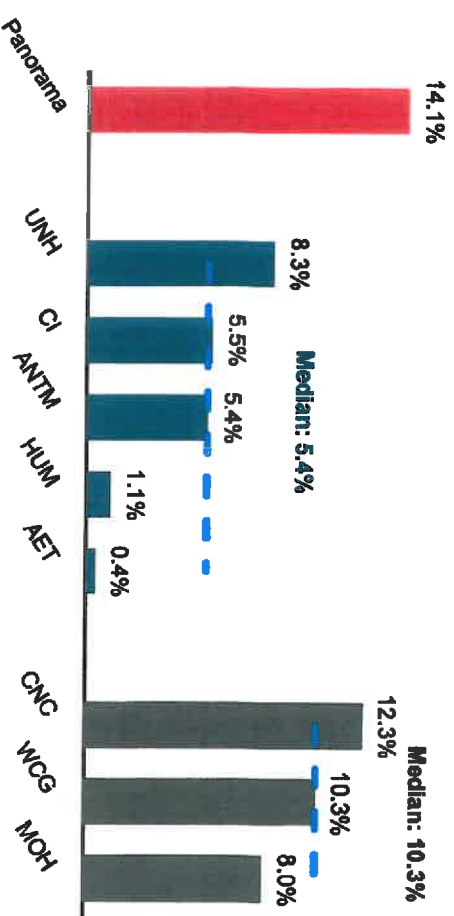
## Enrollment Growth

2016 – 2018 CAGR

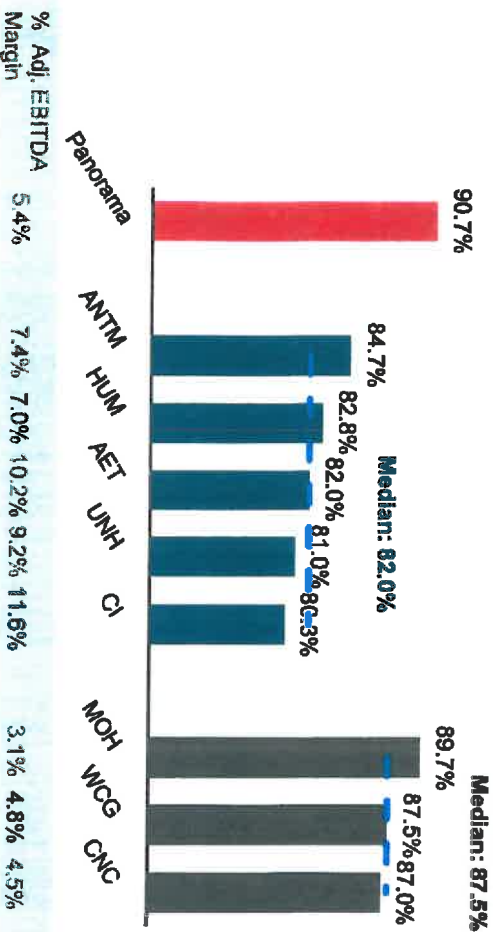


## Revenue Growth

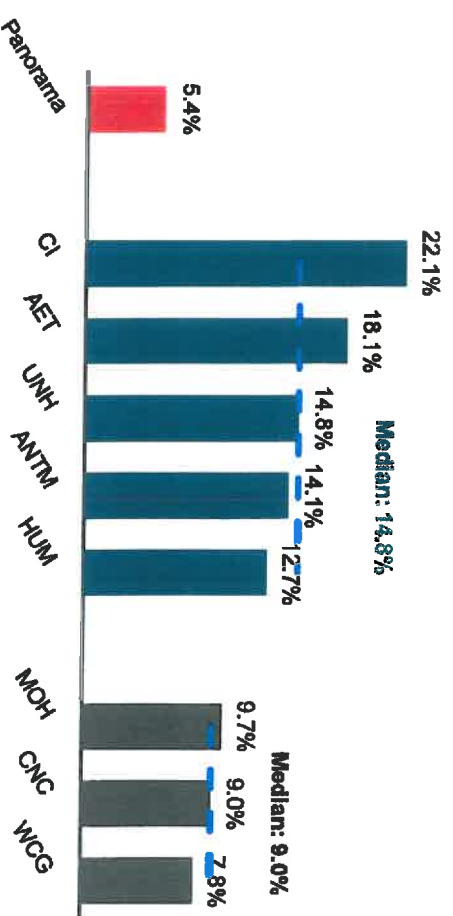
2016 – 2018 CAGR



## 2018E MER



## 2018E AER(1)



# Fidelis Care Summary Balance Sheet

(\$ in millions)

	As of 12/31/2015	As of 12/31/2016	As of 6/30/2017
<b>Assets</b>			
<b>Current Assets</b>			
Cash, Cash Equivalents & Other	\$1,101	\$1,359	\$1,448
Short-term investments - Other	30	431	524
Premiums Receivable, net	241	204	286
Reinsurance Receivable, net	72	101	124
Pharmacy Rebates Receivable, net	65	104	105
Other Receivables	7	9	9
Investments - Current	624	697	744
Prepaid Expenses & Other Current Assets	6	24	16
Assets Whose Use Is Limited - current portion	-	-	0
<b>Total Current Assets</b>	<b>\$2,147</b>	<b>\$2,929</b>	<b>\$3,257</b>
<b>Non-Current Assets</b>			
Assets Whose Use Is Limited			
Investments - Noncurrent	\$275	\$366	\$449
Equipment and leasehold improvements, net	165	0	0
Goodwill/Intangible Assets, net	52	57	200
	16	16	16
<b>Total Non-Current Assets</b>	<b>\$508</b>	<b>\$440</b>	<b>\$666</b>
<b>Total Assets</b>	<b>\$2,656</b>	<b>\$3,369</b>	<b>\$3,923</b>
<b>Liabilities &amp; Net Assets</b>			
<b>Current Liabilities</b>			
Accounts Payable & Accrued Expenses	\$143	\$188	\$167
Premiums Received in Advance	15	14	96
Capital Lease Obligations - current portion	0	0	0
Claims Payable & IBNR	935	1,077	1,274
Notes payable - current portion	-	14	14
Due to third parties	127	219	274
<b>Total Current Liabilities</b>	<b>\$1,220</b>	<b>\$1,513</b>	<b>\$1,824</b>
<b>Long-term Liabilities</b>			
Capital Lease Obligations	\$0	-	-
Term Loan	-	86	79
<b>Total Long-term Liabilities</b>	<b>\$0</b>	<b>\$86</b>	<b>\$79</b>
<b>Net Assets</b>			
Statutorily designated contingent reserve			
Undesignated	\$771	\$991	\$956
Temporarily restricted	684	778	1,063
<b>Total Net Assets</b>	<b>\$1,435</b>	<b>\$1,770</b>	<b>\$2,020</b>
<b>Total Liabilities and Net Assets</b>	<b>\$2,656</b>	<b>\$3,369</b>	<b>\$3,923</b>

Source: Fidelis Care management.

# Strategic Partner Assessment – Initial Process and Screening

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- Citi was engaged by Fidelis Care in 2015 to help review strategic alternatives for growth, during which, a broad set of alternatives was evaluated including acquisitions, joint ventures, de novo start-ups, leveraged recap, development of a management services company, and sale
  - Throughout these conversations, a wide group of companies and alternatives were considered and discussed with the Company and its Task Force
  - In addition, Citi facilitated a number of Company introductions for preliminary conversations during the strategic assessment phase, including:



- In 2016, the Company determined that a potential sale represented the alternative most consistent with their objectives. Citi, the Company and the Task Force considered a wide universe of potential buyers, which was refined based on selection criteria including strategic fit, relevant experience and capabilities, financial strength, and ability to successfully consummate a Transaction and meet Transaction Objectives



# Transaction Objectives and Partner Criteria

Management, the Task Force and the Advisors established a set of Transaction Objectives, consistent with the Company's mission and values.

## Preserve the Mission and Vision

- Consistent with the tradition of Catholic healthcare and maintaining the highest moral and ethical standards to promote health through quality, accessible care and services for all
- Commitment to serve the elderly, the poor, and the underserved
- Stronger role in the healthcare delivery system and in the communities served
- Increased reach to those who need health insurance
- Deliver on the brand and mission promise

## Enable Growth and Expansion

- Partner with health professionals with aligned mission and vision
- Continue successful growth consistent with our strategy including geographic expansion outside of New York which builds upon existing expertise in Medicaid, Medicare, Exchange, Special Needs, and Managed Long Term Care populations
- Leverage existing platform for scale and efficiency
- Accelerate care and process innovation and develop predictive health capabilities to foster healthier communities
- Create new sources of investment capital and benefit from differentiated investments for care management and population health

## Maintain the Culture

- Maintain position as a leading employer in New York with a large, stable, and engaged workforce across the State of New York
- Promote leadership growth and advancement
- Increase development opportunities for our employees
- Continue commitment to strong, competitive compensation and benefits
- Enhance ability to recruit and retain talent

## Enhance Population Health Capability and Quality Outcomes

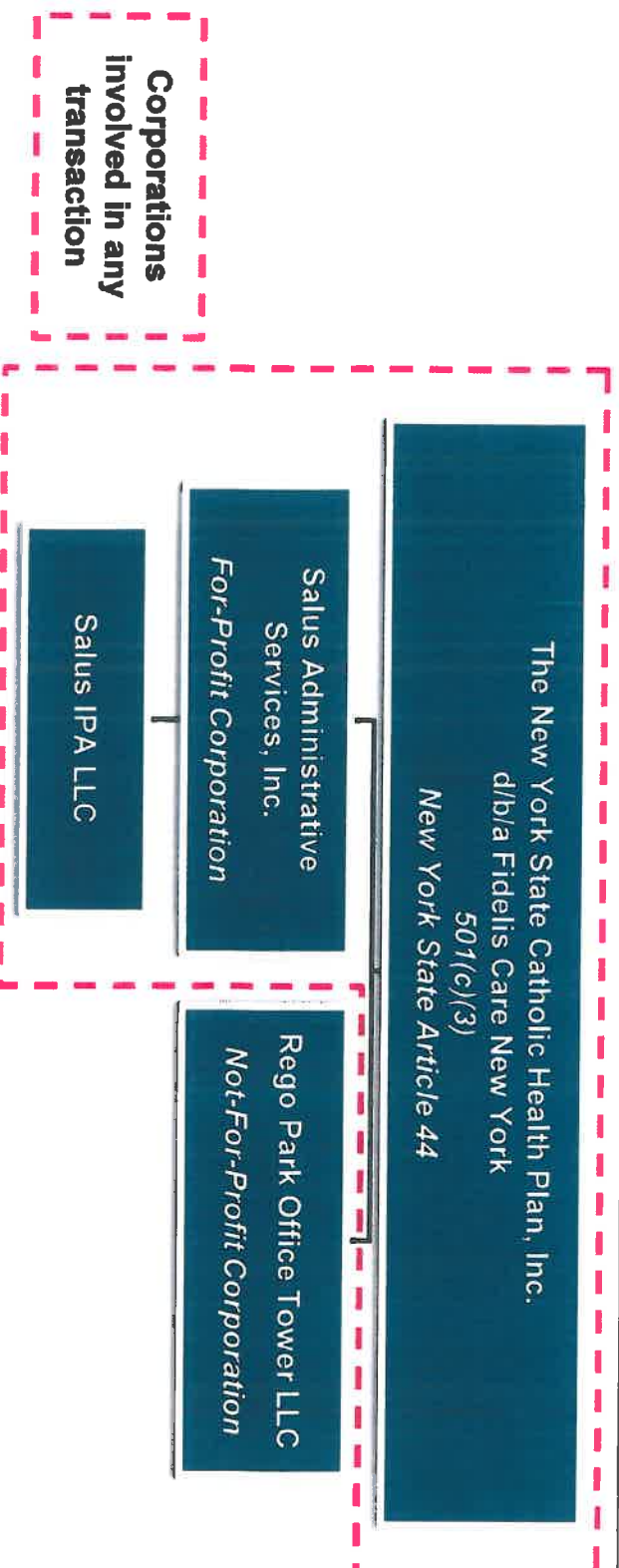
- Maintain high standards of quality which are cost effective across all populations
- Accelerate coordination of care and services among healthcare, behavioral, and social service needs of our populations
- Implement systems to attain greater standards of clinical excellence and improve the population health status
- Focus on a "person-centered" coordination of services and customer service
- Facilitate linkages and systems for coordination of care and services

## Build Value and Expand Resources

- Preserve existing financial strength
- Enhance the value of the Company through accretive opportunities
- Efficient stewardship of resources to prudently manage existing businesses while seeking profitable growth
- Enhance return via optimal deployment of balance sheet resources
- Maintain strong regulatory capital position

Source: Fidelis Care management.

# Proposed Transaction



- The proposed transaction is intended to result in the sale of the entire insurance operations, transfer of all assets and liabilities and transfer of all Fidelis Care employees and is proposed to be structured as an asset sale with the 501(c)(3) Fidelis Care selling all or substantially all of its assets, insurance operations and transferring all employees
  - Fidelis Care would retain excess cash and receive proceeds to be utilized to continue its mission
  - Rego Park Office Tower LLC would be retained by Fidelis Care and continue the existing lease arrangement
- Transaction will be governed by the following sections under the New York Not-for-Profit Corporation Law (N-PCL):
  - Section 510 (“Disposition of All or Substantially All Assets”)
  - Section 511 (“Petition for Court Approval”)
  - Section 511-a (“Petition for Attorney General Approval”)



# EXHIBIT 20

## QHP Reinsurance Agreement

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**QHP REINSURANCE AGREEMENT**

by and between

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

and

**HALLMARK LIFE INSURANCE COMPANY**

Dated as of

\_\_\_\_\_, 2018

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**EXHIBITS:**

**EXHIBIT A BUSINESS ASSOCIATE AGREEMENT**

**SCHEDULES:**

<b>SCHEDULE 3.01</b>	<b>TRANSFERRED INVESTMENT ASSETS</b>
<b>SCHEDULE 4.01</b>	<b>NET SETTLEMENT STATEMENT</b>

## QHP REINSURANCE AGREEMENT

This QHP Reinsurance Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 2018, is entered into by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“**Ceding Company**”), [or a wholly owned subsidiary or affiliate of the Ceding Company,] and HALLMARK LIFE INSURANCE COMPANY, an Arizona life insurance company (“**Reinsurer**”). Ceding Company and Reinsurer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Ceding Company and Centene Corporation, a Delaware corporation (“**Buyer**”) are parties to that certain Asset Purchase Agreement, dated as of September 12, 2017 (the “**Asset Purchase Agreement**”).

B. Ceding Company is a party to that certain contract with the New York State Department of Health (the “**DOH**”) dated October 1, 2013, to provide health care services to members through the New York State Health Benefit Exchange under the Qualified Health Plan program (the “**QHP Business**”) and has written certain other individual commercial market products (together with the QHP Business, the “**Business Covered**”).

C. As contemplated by the Asset Purchase Agreement, subject to the terms and conditions set forth in this Agreement, Ceding Company desires to cede to Reinsurer, and Reinsurer desires to accept and reinsure, on a one hundred percent (100%) coinsurance basis, the Reinsured Liabilities (as hereinafter defined).

D. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to transition the Business Covered to Reinsurer following the Non-Renewal Date (as defined herein).

E. Concurrently herewith, Buyer, Reinsurer and the Ceding Company have entered into that certain Guarantee Agreement pursuant to which Buyer has guaranteed Reinsurer’s payment and performance obligations hereunder.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

The following terms have the definitions set forth below or ascribed thereto in the section of this Agreement identified below:

***“Action”*** means any claim, action, suit, corrective action plan, cause of action, lawsuit, arbitration, audit, written notice of violation, administrative proceeding, litigation, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, before or by any Governmental Authority.

***“Affiliate”*** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms *“controlled by”* and *“under common control with”*) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

***“Agreement”*** has the meaning set forth in the Preamble.

***“Asset Purchase Agreement”*** has the meaning set forth in the Recitals.

***“Authorized Change”*** has the meaning set forth in **Section 2.02**.

***“Business Associate Agreement”*** means the Business Associate Agreement by and between Ceding Company and Reinsurer, dated as of the date hereof, attached hereto as **Exhibit A**.

***“Business Covered”*** has the meaning sets forth in the Recitals.

***“Business Day”*** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by Law to be closed for business.

***“Buyer”*** has the meaning set forth in the Recitals.

***“Closing”*** has the meaning set forth in the Asset Purchase Agreement.

***“CMS”*** means the Centers for Medicare & Medicaid Services.

***“Code”*** means the Internal Revenue Code of 1986, as amended.

***“Contract”*** means any agreement, contract, lease, deed, mortgage, license, instrument, promissory note, evidence of Indebtedness (as defined in the Asset Purchase Agreement), security agreement, commitment, undertaking, indenture or joint venture, whether written or oral.

***“Court”*** means any court, arbitrator or tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

***“Covered Enrollees”*** means Enrollees (as defined in the Asset Purchase Agreement) of any of Ceding Company’s coordinated care plans comprising the Covered Business.

***“Covered Policies”*** means all policies or Contracts of insurance issued by Ceding Company that are individual commercial market products, including pursuant to a Payor Contract.

***“Effective Time”*** means 12:00:01 a.m., Eastern Time, on the first day of the month in which Closing occurs.

***“Encumbrance”*** means any encumbrance, charge, claim, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, hypothecation, easement, encroachment, right of way, right of first refusal, restriction, levy or charge of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

***“Excluded Liabilities”*** has the meaning set forth in the Asset Purchase Agreement; it being understood that any additional liabilities or obligations imposed under applicable Law after the date hereof on Persons engaging in the Covered Business generally shall not constitute “Excluded Liabilities” hereunder.

***“Expenses”*** means, with respect to any Person, all reasonable and documented out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, financial advisors and investment bankers of such Person and its Affiliates), incurred by such Person or on its behalf in connection with or related to the authorization, preparation, negotiation, execution or performance of this Agreement and any transactions related hereto, any litigation with respect thereto, or in connection with other regulatory approvals, and all other matters related to transactions contemplated hereby.

***“Extra Contractual Obligations”*** means all Liabilities arising out of or relating to Covered Policies (other than Liabilities arising under the express terms and conditions of Covered Policies), whether to Covered Enrollees, Governmental Authorities or any other Person (including any liability for fines, overpayments, penalties, forfeitures, punitive, special, exemplary or other form of extra contractual damages, including all legal fees and expenses relating thereto), in each case, to the extent such Liabilities arise from any act, error or omission, (whether or not intentional, negligent, in bad faith or otherwise) relating to: (i) the design, marketing, sale, underwriting, production, issuance, rating, cancellation or administration of Covered Policies; (ii) the investigation, defense, trial, settlement or handling of claims, benefits or payments under Covered Policies; or (iii) the failure to pay, the delay in payment or errors in calculating or administering the payment of benefits or claims under or in connection with Covered Policies.

***“GAAP”*** means United States generally accepted accounting principles in effect as of the date hereof, consistently applied.

***“Governmental Authority”*** means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental



authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

**“Law”** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any Order having the effect of law in any jurisdiction, and applicable common law.

**“Liabilities”** means any debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, monetary or non-monetary, direct or indirect, determined or determinable or any other nature whether due or to become due, and regardless of when asserted or whether it is accrued or required to be accrued or disclosed pursuant to GAAP or statutory accounting principles, as applicable.

**“Management Agreement”** means that certain Management Agreement, dated as of the date hereof, by and among Ceding Company, Salus Administrative Services, Inc., a New York corporation (**“Salus”**), Centene Management Company, LLC, a Wisconsin limited liability company (**“CMC”**), and Centene Company of New York, LLC, a New York limited liability company (**“CCNY”** and, collectively with Salus and CMC, the **“Administrator”**).

**“Non-Renewal Date”** means [December 31, 2018].

**“Net Settlement Amount”** has the meaning set forth in **Section 4.01**.

**“Net Settlement Statement”** has the meaning set forth in **Section 4.01**.

**“Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority (in each such case, whether preliminary or final).

**“Party”** and **“Parties”** have the meanings set forth in the Preamble.

**“Payor”** means, as applicable, the DOH and CMS.

**“Payor Contract”** means Contract No. C029029 by and between the DOH and Ceding Company, dated October 1, 2013.

**“Permits”** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

**“Premium”** means all premiums, contributions and capitations (including all Covered Enrollee premiums and capitations paid by a Payor) relating to the Covered Policies.

***“Premium Adjustments”*** means any portion of the Premium ceded hereunder that is required to be refunded or otherwise paid by Ceding Company to a Covered Enrollee or Payor due to (i) changes in or cancellations of Covered Policies, (ii) contractual requirements under the terms of the Covered Policies or the applicable Payor Contract or (iii) applicable Law, including any such refunds or payments resulting from a finding in a risk adjustment data validation audit or other similar audit or examination conducted by CMS or another Governmental Authority (or its designee), or a self-audit performed by or on behalf of Ceding Company.

***“Provider”*** means any physician, hospital, pharmacy or other health care professional, independent practice association, facility, supplier, vendor or administrator that has contracted to provide or arrange for the provision to Covered Enrollees of health care services and supplies, including in respect of prescription drugs, that are required to be provided by Ceding Company pursuant to a Payor Contract.

***“Provider Contract”*** means any Contract between Ceding Company and any Provider to the extent related to the Business Covered.

***“Provider Payments”*** means all contractual payments made to Providers under the terms and conditions of the applicable Provider Contract for the provision of covered health care services or supplies to a Covered Enrollee under a Covered Policy.

***“QHP Business”*** has the meaning sets forth in the Recitals.

***“Quarterly Accounting Period”*** means each calendar-quarterly period ending after the Effective Time and prior to the termination of this Agreement; *provided* that (i) the initial Quarterly Accounting Period shall commence at the Effective Time and (ii) the final Quarterly Accounting Period shall commence at the start of the first day of the applicable calendar month and end at the end of the Termination Date.

***“Quarterly Report”*** has the meaning set forth in Section 4.01.

***“Recoverables”*** has the meaning set forth in Section 3.02.

***“Reinsured Liabilities”*** means all Liabilities arising under or relating to the Covered Policies, the Payor Contracts or the Provider Contracts, in each case, that are payable by Ceding Company in respect of the Business Covered whether arising before or after the Effective Time (including all such Liabilities relating to claims, including those that are incurred but not reported or in the course of settlement both as of the Effective Time and as of the termination of this Agreement), collectively, “covered losses”, including, but not limited to, (i) all Provider Payments, (ii) to the extent permitted by applicable Law, all Extra Contractual Obligations, (iii) all commissions, fees or other compensation payable to producers, agents or brokers, (vi) all amounts paid to Covered Enrollees to reimburse for out-of-pocket expenses paid to providers that are not under contract with Ceding Company that are the financial responsibility of Ceding Company under a Covered Policy or Payor Contract, (vii) any federal, state or local tax imposed on Premiums or otherwise in respect of the Covered Policies (other than any Health Insurer Fee imposed under Section 9010 of the Patient Protection and Affordable Care Act), (viii) all Premium Adjustments, and (ix) any fees and other related costs incurred under the Management

Agreement (excluding costs that are expressly the responsibility of the Ceding Company thereunder); *provided, however*, “Reinsured Liabilities” shall not include any Retained Liabilities.

“**Reinsurer**” has the meaning set forth in the Preamble.

“**Renewal Rights**” has the meaning set forth in **Section 6.01(a)**.

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, partners, members, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Retained Liabilities**” means (i) any increased liability to Reinsurer to the extent arising from any action by Ceding Company with respect to the Covered Policies or the Reinsured Liabilities, Premiums, Premium Adjustments or Recoverables, in each case, taken on or after the date hereof without the consent of Reinsurer, (ii) any failure of Ceding Company to accept a reasonable recommendation of Reinsurer provided to Ceding Company under this Agreement or the Administrator provided to Ceding Company under the Management Agreement and (iii) without duplication of the foregoing, all Excluded Liabilities.

“**Termination Date**” has the meaning set forth in **Section 9.01**.

## ARTICLE II

### COINSURANCE OF REINSURED LIABILITIES

**Section 2.01 Coinsurance.** Subject to the terms and conditions of this Agreement, as of the Effective Time, Ceding Company hereby cedes on a coinsurance basis to Reinsurer, and Reinsurer hereby accepts and reinsures on a coinsurance basis, one hundred percent (100%) of the Reinsured Liabilities. The reinsurance effected under this Agreement shall be maintained in force, without reduction, unless such reinsurance is terminated as provided herein.

**Section 2.02 Changes to Covered Policies; Reinsured Liabilities.** Ceding Company shall not, on its own initiative, change the terms or conditions of any Covered Policy, Payor Contract or Provider Contract except for any such change (a) directed by Reinsurer or (b) required by applicable Law (each, an “**Authorized Change**”). If Ceding Company’s liability with respect to Reinsured Liability is changed because of an Authorized Change, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from such Authorized Change, in each case, proportionately, and on the coinsurance basis set forth in **Section 2.01**. With respect to any Authorized Change required by applicable Law, Ceding Company shall, to the extent reasonably practicable, prior to the effectiveness of such Authorized Change, (x) promptly notify Reinsurer of such proposed change and (y) afford Reinsurer the opportunity to object to such change under applicable administrative or regulatory procedures. Ceding Company shall, at Reinsurer’s request, reasonably cooperate with Reinsurer in connection with any such objection made pursuant to the preceding sentence of this **Section 2.02**. Reinsurer shall not be liable for any increase in Reinsured Liability resulting from any change in the terms or conditions of a Covered Policy made by Ceding Company other than as arising from an Authorized Change.

**Section 2.03 Underwriting Adjustments to Covered Policies.** If Ceding Company's liability under any Covered Policy is changed because of a correction made by or on behalf of Ceding Company of a prior misstatement of age, sex, amount or nature of coverage or any other material fact or attribute made by any Covered Enrollee or any Person authorized to act on behalf of such Covered Enrollee, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from the correction of such misstatement.

**Section 2.04 Reinstatements of Covered Policies.** Upon the reinstatement of any terminated Covered Policy in accordance with the terms and conditions of such Covered Policy, Reinsurer shall reinsure the Reinsured Liabilities arising out of or relating to such reinstated Covered Policy on the coinsurance basis set forth in **Section 2.01**.

**Section 2.05 Follow the Fortunes.** Subject to the terms and conditions of this Agreement, including the retention by Ceding Company of the Retained Liabilities, Reinsurer's liability under this Agreement shall attach simultaneously with that of Ceding Company under the Covered Policies and the Reinsured Liabilities, and Reinsurer's liability under this Agreement shall be subject in all respects to the same risks, terms, rates, conditions, interpretations, assessments, waivers and proportion of premiums paid to Ceding Company without any deductions for brokerage, and to the same modifications, alterations and cancellations, as the respective Covered Policies and Reinsured Liabilities to which liability under this Agreement attaches, the true intent of this Agreement being that Reinsurer shall, subject to the terms, conditions and limits of this Agreement, follow the fortunes of Ceding Company under the Covered Policies, and Reinsurer shall be bound, by all payments and settlements under the Covered Policies entered into by or on behalf of Ceding Company except as otherwise provided herein.

### **ARTICLE III**

#### **CONSIDERATION; ACCOUNTING**

**Section 3.01 Consideration.** As consideration for the reinsurance provided hereunder and in partial consideration for the payment of the Purchase Price (as defined by in the Asset Purchase Agreement), Ceding Company shall, subject to the terms and conditions of the Asset Purchase Agreement, transfer to Reinsurer the investment assets listed on Schedule 3.01, which represents a portion of the Purchased Assets (as defined in the Asset Purchase Agreement) to be transferred to the Buyer or its Affiliates in accordance with the Asset Purchase Agreement.<sup>1</sup>

**Section 3.02 Ongoing Liabilities of Ceding Company.** As additional consideration for the reinsurance provided hereunder, Ceding Company hereby sells, assigns, transfers and delivers to Reinsurer, and Reinsurer accepts and acquires, free and clear of all Encumbrances, effective as of the Effective Time, all of Ceding Company's right, title and interest under the

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<sup>1</sup> **Note to Draft:** The fair market value of the investment assets to be listed on Schedule 3.01 would equal the reserves associated with the Reinsured Liabilities, as well as capital equal to a 350% ACL RBC.

Covered Policies, the Payor Contracts and the Provider Contracts,<sup>2</sup> respectively, to receive all amounts payable to Ceding Company thereunder or in respect thereof, including the following amounts: (a) Premiums; (b) amounts payable pursuant to coordination of benefits, subrogation and other third party recoveries; (c) amounts due from Providers, including settlements under risk-sharing arrangements, overpayment adjustments and network discounts; and (d) any other recovery of Ceding Company, in each case, to the extent applicable to the Business Covered (collectively, the “*Recoverables*”).

**Section 3.03 Ongoing Liabilities of Reinsurer.** From and after the Effective Time, Reinsurer shall indemnify Ceding Company in accordance with the settlement procedures set forth in **Article IV**, for all Reinsured Liabilities.

## **ARTICLE IV**

### **SETTLEMENT; REPORTS**

**Section 4.01 Reinsurer Quarterly Report.** Within fifteen (15) Business Days after the end of each Quarterly Accounting Period, the Administrator in accordance with the Management Agreement shall deliver to Reinsurer a report (each, a “*Quarterly Report*”) in the form of, and containing for such Quarterly Accounting Period the information reflected in, **Schedule 4.01**, including a statement (the “*Net Settlement Statement*”) which shall set forth calculations of the net amount due to Reinsurer from Ceding Company, or to Ceding Company from Reinsurer, as applicable, under **Section 3.02** and **3.03** of this Agreement for the applicable Quarterly Accounting Period (the “*Net Settlement Amount*”).

**Section 4.02 Settlement.** If the Net Settlement Amount as shown on the Net Settlement Statement is a positive amount, Ceding Company shall pay such amount to Reinsurer, and if the Net Settlement Amount as shown on the Net Settlement Statement is a negative amount, then Reinsurer shall pay cash in an amount equal to the absolute value of such negative amount to Ceding Company. Any payment, withdrawal, transfer or crediting of amounts required under this **Section 4.02** shall be made within three (3) Business Days following the date of the delivery of the applicable Quarterly Report.

**Section 4.03 Offset and Recoupment Rights.** Any debits or credits incurred from or after the Effective Time in favor of or against either Ceding Company or Reinsurer with respect to this Agreement between the Parties shall be deemed mutual debits or credits, as the case may be, and, to the extent permitted under applicable Law (including Section 7427(a) of the New York Insurance Law), shall be set off and recouped, and only the net balance shall be allowed or paid. This **Section 4.03** shall apply, to the fullest extent permitted by applicable Law (including Section 7427(a) of the New York Insurance Law), notwithstanding the initiation or commencement of a liquidation, insolvency, rehabilitation, conservation, supervision or similar proceeding by or against Ceding Company or Reinsurer.

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<sup>2</sup> **Note to Draft:** If the HMO Reinsurance Agreement with Zurich American Insurance Company is not novated to Reinsurer, Ceding Company will similarly assign all reinsurance recoverables to Reinsurer.

## ARTICLE V

### ADMINISTRATION

Section 5.01 **Administration.** The parties acknowledge and agree that from and after the Closing, the Administrator shall, in accordance with the Management Agreement, be responsible for providing all administrative services in respect of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

Section 5.02 **Compensation.** Reinsurer's sole compensation for the reinsurance provided by Reinsurer to Ceding Company hereunder shall be the consideration described in Section 3.01 and Section 3.02 and Ceding Company shall not be liable to Reinsurer for any additional consideration in respect thereof.

Section 5.03 **Claims Litigation.** Reinsurer shall promptly notify Ceding Company in writing of any litigation that has been instituted against the Reinsurer with respect to any matter relating to a Covered Policy, a Payor Contract or a Provider Contract. Such notice shall include a summary of the nature of the pending litigation, the alleged actions or omissions giving rise to such litigation and copies of any files that Ceding Company may reasonably require in order to review such litigation.

Section 5.04 **Inspection.** At reasonable times and upon reasonable prior notice to Ceding Company, Reinsurer, at its sole cost and expense, shall have the right to inspect the books and records of the Ceding Company relating the Covered Policies, Payor Contracts and Provider Contracts, including as pertains to the payment of Reinsured Liabilities and the administration of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

## ARTICLE VI

### RENEWAL RIGHTS

#### Section 6.01 **Renewal Rights.**

(a) Effective as of the Closing, Ceding Company shall sell, transfer, convey and deliver to Reinsurer, and Reinsurer shall purchase from Ceding Company, the Renewal Rights. As used in this Agreement, "**Renewal Rights**" means the rights of Ceding Company to (i) renew or replace all Covered Policies issued, written or renewed by or otherwise in the name of Ceding Company and (ii) enter into, amend, terminate, renew or replace any Payor Contract or Provider Contract in respect of the same, including, (A) the right to solicit such renewals of, or replacement coverages for, the Covered Policies from applicable Enrollees and (B) the right to negotiate and contract with Payors and Providers of the Business Covered, including the development of a transition plan with the DOH.

(b) Subject to the requirements of Applicable Law, Ceding Company shall take all reasonable actions and execute any additional documents, instruments or conveyances of any kind which may be reasonably necessary to carry out any of the provisions of this Section 6.01, so as to effect fully the transfer of the Renewal Rights from Ceding Company to Reinsurer,

including by (upon Reinsurer's reasonable request), subject to Applicable Law, reasonably cooperating with Reinsurer to assist Reinsurer and its Affiliates in (i) soliciting policyholders in respect of the issuance, renewal or replacement of Covered Policies and (ii) negotiating and contracting with Payors and Providers in connection with the entrance into, amendment, termination, renewal or replacement of Payor Contracts and Provider Contracts, respectively, including the development of a transition plan with the DOH. Without limiting the foregoing, Ceding Company shall also, and shall cause its applicable Affiliates to, furnish to Reinsurer any additional information as may be reasonably requested by Reinsurer in furtherance of Reinsurer's exercise of the Renewal Rights.

## ARTICLE VII

### OVERSIGHTS

Section 7.01 **Oversights.** Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either Party from any liability that would have attached had such delay, error or omission not occurred; *provided* that such error or omission is rectified as soon as practicable after discovery; and *provided, further*, that the Party making such error or omission, or responsible for such delay, shall be responsible for any additional liability that attaches as a result. Subject to the foregoing, if the failure of either Party to comply with any provision of this Agreement is unintentional or the result of a misunderstanding or oversight, the parties shall cause such failure to be promptly rectified such that both parties shall be restored as closely as possible to the positions that they would have occupied had such error or oversight not occurred.

## ARTICLE VIII

### INSOLVENCY

#### Section 8.01 **Insolvency of Ceding Company.**

(a) In the event of the insolvency of Ceding Company, all reinsurance made, ceded, renewed or otherwise becoming effective under this Agreement shall be payable by Reinsurer on the basis of the liability of Ceding Company under the Reinsured Liabilities reinsured hereunder without diminution because of the insolvency of Ceding Company. In the event of insolvency and the appointment of a liquidator, receiver or statutory successor of Ceding Company, such payments by Reinsurer shall be made directly to Ceding Company or its liquidator, receiver or statutory successor.

(b) It is agreed and understood, however, that in the event of the insolvency of Ceding Company, the liquidator, receiver or statutory successor of Ceding Company shall give written notice of the pendency of a claim against Ceding Company in connection with a Reinsured Liability within a reasonable period of time after such claim is filed in the insolvency proceedings and that during the pendency of such claim Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to Ceding Company or its liquidator, receiver or statutory successor. It is further understood that the expense thus incurred by Reinsurer shall be

chargeable, subject to court approval, against Ceding Company as part of the expenses of liquidation to the extent of a proportionate share of the benefit which may accrue to Ceding Company solely as a result of the defense undertaken by Reinsurer.

## ARTICLE IX

### DURATION AND TERMINATION

Section 9.01 **Duration.** This Agreement shall commence at the Effective Time and continue in force until the termination date (the "***Termination Date***"), which shall occur at such time as (a) Ceding Company no longer has any liability with respect to the Business Covered and all Covered Policies reinsured hereunder and Ceding Company has received payments which discharge such liability in full in accordance with the provisions of this Agreement or (b) this Agreement is terminated by the mutual written consent of Reinsurer and Ceding Company. The Parties shall provide prior written notice to the New York Department of Financial Services of any termination of this Agreement.

Section 9.02 **Survival.** Notwithstanding the other provisions of this **Article IX**, (a) the terms and conditions of this **Article IX** and of **Article X** (and **Article I** to the extent relating to the foregoing) shall remain in full force and effect after the termination of this Agreement and (b) any Covered Policies issued prior to the termination of this Agreement shall continue to be reinsured hereunder following the termination of this Agreement and all provisions of this Agreement to the extent relating to the reinsurance of such Covered Policies, including all covered losses, shall remain in full force and effect after the termination of this Agreement.

## ARTICLE X

### MISCELLANEOUS

Section 10.01 **Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses.

Section 10.02 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 10.02**):



If to Ceding Company:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail:\_\_\_\_\_

If to Reinsurer:

Hallmark Life Insurance Company  
7700 Forsyth Blvd., Suite 800  
St. Louis, Missouri 63105  
Attention: Keith Williamson

**Section 10.03 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including”, unless otherwise specified, shall be deemed to be followed by the words “without limitation” whether or not such words are actually stated; (b) the word “or” is not disjunctive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, “hereunder” and derivative or similar words refer to this Agreement as a whole, including the Exhibits hereto; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) references to “dollars” or “\$” shall mean United States dollars; (f) references to “written” or “in writing” include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person’s successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to “close of business” on any given day shall be deemed to refer to 5:00 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 10.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 Severability.** If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any

Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

**Section 10.08 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto, which shall be attached as an addendum to this Agreement. Any such addendum shall be subject to the prior review and approval of the New York Department of Financial Services.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER

DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

**Section 10.11 Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

**Section 10.12 Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Ceding Company:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

Reinsurer:

HALLMARK LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**

*(See Attached)*

**SCHEDULE 3.01**  
**TRANSFERRED INVESTMENT ASSETS**

[To come]

**SCHEDULE 4.01**

**NET SETTLEMENT STATEMENT**

*(See Attached)*

# EXHIBIT 21

## Medicare Reinsurance Agreement



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**MEDICARE REINSURANCE AGREEMENT**

by and between

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

and

**HALLMARK LIFE INSURANCE COMPANY**

Dated as of

\_\_\_\_\_, 2018

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**EXHIBITS:**

**EXHIBIT A   BUSINESS ASSOCIATE AGREEMENT**

**EXHIBIT B   FORM OF NOVATION AGREEMENT**

**SCHEDULES:**

**SCHEDULE 3.01   TRANSFERRED INVESTMENT ASSETS**

**SCHEDULE 4.01   NET SETTLEMENT STATEMENT**

## MEDICARE REINSURANCE AGREEMENT

This Medicare Reinsurance Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 2018, is entered into by and between NEW YORK STATE CATHOLIC HEALTH PLAN, INC., D/B/A FIDELIS CARE NEW YORK, a New York not-for-profit corporation (“**Ceding Company**”), [or a wholly owned subsidiary or affiliate of the Ceding Company,] and HALLMARK LIFE INSURANCE COMPANY, an Arizona life insurance company (“**Reinsurer**”). Ceding Company and Reinsurer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Ceding Company and Centene Corporation, a Delaware corporation (“**Buyer**”) are parties to that certain Asset Purchase Agreement, dated as of September 12, 2017 (the “**Asset Purchase Agreement**”).

B. Ceding Company is a party to (i) that certain contract with the Centers for Medicare & Medicaid Services (“**CMS**”), effective January 1, 2017, to provide covered services, including Medicare Part D prescription drug benefits, pursuant to the Medicare Advantage and Medicare Prescription Drug programs (the “**Medicare Advantage Business**”) and pursuant to the Medicare Advantage D-SNP program (the “**D-SNP Business**,” and together with the Medicare Advantage Business, the “**Medicare Business**”), (ii) that certain contract with the New York State Department of Health (the “**DOH**”), effective January 1, 2011, to provide covered services to members who are eligible for services under the Medicaid Advantage program (the “**Medicaid Advantage Business**”), (iii) that certain contract with the DOH, effective January 1, 2017, to provide covered services to members who are eligible for services under the Medicaid Advantage Plus program (the “**Medicaid Advantage Plus Business**”) and (iv) that certain contract with CMS and the New York State Department of Health (collectively, each a “**Payor**” and together the “**Payors**”), effective January 1, 2015, to provide covered services under the Fully Integrated Dual Advantage program (the “**FIDA Business**,” and together with the Medicare Business, the Medicaid Advantage Business and the Medicaid Advantage Plus Business, the “**Business Covered**”).

C. As contemplated by the Asset Purchase Agreement, subject to the terms and conditions set forth in this Agreement, Ceding Company desires to cede to Reinsurer, and Reinsurer desires to accept and reinsure, on a one hundred percent (100%) coinsurance basis, the Reinsured Liabilities (as hereinafter defined).

D. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to obtain the requisite approvals required to effectuate the novation of the CMS Contract so that all Medicare Enrollees at the time of such novation shall be enrolled in a Medicare Advantage plan operated by Reinsurer or its Affiliate pursuant to the CMS Contract.

E. Pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to obtain the requisite approvals required to effectuate the assignment of the Medicaid Advantage Contracts so that all Medicaid Advantage Enrollees at the time of such assignment shall be enrolled in a Medicaid Advantage or Medicaid Advantage Plus plan operated by Reinsurer or its Affiliate pursuant to the Medicaid Advantage Contracts.

F. Concurrently herewith, Buyer, Reinsurer and the Ceding Company have entered into that certain Guarantee Agreement pursuant to which Buyer has guaranteed Reinsurer's payment and performance obligations hereunder.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

The following terms have the definitions set forth below or ascribed thereto in the section of this Agreement identified below:

**"Action"** means any claim, action, suit, corrective action plan, cause of action, lawsuit, arbitration, audit, written notice of violation, administrative proceeding, litigation, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity, before or by any Governmental Authority.

**"Affiliate"** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms **"controlled by"** and **"under common control with"**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** has the meaning set forth in the Preamble.

**"Asset Purchase Agreement"** has the meaning set forth in the Recitals.

**"Assignment"** means an assignment of the Medicaid Advantage Contracts whereby Reinsurer or its Affiliate shall be substituted for Ceding Company as a party to the Medicaid Advantage Contracts.

**"Authorized Change"** has the meaning set forth in Section 2.02.

**"Business Associate Agreement"** means the Business Associate Agreement by and between Ceding Company and Reinsurer, dated as of the date hereof, attached hereto as **Exhibit A**.

**"Business Covered"** has the meaning sets forth in the Recitals.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by Law to be closed for business.

**“Buyer”** has the meaning set forth in the Recitals.

**“Closing”** has the meaning set forth in the Asset Purchase Agreement.

**“CMS”** has the meaning set forth in the Recitals.

**“CMS Contract”** means Contract Number H3328 by and between Ceding Company and CMS for the operation of Medicare Advantage (including the Medicare Advantage D-SNP) coordinated care plan(s) with and without Part D prescription drug coverage, effective January 1, 2017 through December 31, 2017, as such contract may be amended, renewed or replaced from time to time.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Contract”** means any agreement, contract, lease, deed, mortgage, license, instrument, promissory note, evidence of Indebtedness (as defined in the Asset Purchase Agreement), security agreement, commitment, undertaking, indenture or joint venture, whether written or oral.

**“Court”** means any court, arbitrator or tribunal of the United States, any domestic state, or any foreign country, and any political subdivision thereof.

**“Covered Enrollees”** means, as applicable, the FIDA Enrollees, Medicaid Advantage Enrollees and the Medicare Enrollees.

**“Covered Policies”** means all evidences of coverage issued pursuant to the CMS Contract, the FIDA Contract or the Medicaid Advantage Contracts.

**“Effective Time”** means 12:00:01 a.m., Eastern Time, on the first day of the month in which Closing occurs.

**“Encumbrance”** means any encumbrance, charge, claim, pledge, equitable interest, lien (statutory or other), option, security interest, mortgage, hypothecation, easement, encroachment, right of way, right of first refusal, restriction, levy or charge of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Excluded Liabilities”** has the meaning set forth in the Asset Purchase Agreement; it being understood that any additional liabilities or obligations imposed under applicable Law after the date hereof on Persons engaging in Medicare Businesses or Medicaid Advantage Businesses generally shall not constitute “Excluded Liabilities” hereunder.

**“Expenses”** means, with respect to any Person, all reasonable and documented out-of-pocket fees and expenses (including all fees and expenses of counsel, accountants, financial advisors and investment bankers of such Person and its Affiliates), incurred by such Person or on

its behalf in connection with or related to the authorization, preparation, negotiation, execution or performance of this Agreement and any transactions related hereto, any litigation with respect thereto, or in connection with other regulatory approvals, and all other matters related to transactions contemplated hereby.

***“Extra Contractual Obligations”*** means all Liabilities arising out of or relating to Covered Policies (other than Liabilities arising under the express terms and conditions of Covered Policies), whether to Covered Enrollees, Governmental Authorities or any other Person (including any liability for fines, overpayments, penalties, forfeitures, punitive, special, exemplary or other form of extra contractual damages, including all legal fees and expenses relating thereto), in each case, to the extent such Liabilities arise from any act, error or omission, (whether or not intentional, negligent, in bad faith or otherwise) relating to: (i) the design, marketing, sale, underwriting, production, issuance, rating, cancellation or administration of Covered Policies; (ii) the investigation, defense, trial, settlement or handling of claims, benefits or payments under Covered Policies; or (iii) the failure to pay, the delay in payment or errors in calculating or administering the payment of benefits or claims under or in connection with Covered Policies.

***“FIDA Contract”*** means Contract Number H1916 by and among Ceding Company, CMS and DOH for the operation of FIDA coordinated care plan(s), effective January 1, 2015, as such contract may be amended, renewed or replaced from time to time.

***“FIDA Enrollees”*** means Enrollees (as defined in the Asset Purchase Agreement) of any of Ceding Company’s coordinated care plans comprising the FIDA Business.

***“GAAP”*** means United States generally accepted accounting principles in effect as of the date hereof, consistently applied.

***“Governmental Authority”*** means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

***“Law”*** means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any Order having the effect of law in any jurisdiction, and applicable common law.

***“Liabilities”*** means any debts, liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, monetary or non-monetary, direct or indirect, determined or determinable or any other nature whether due or to become due, and regardless of when asserted or whether it is accrued or required to be accrued or disclosed pursuant to GAAP or statutory accounting principles, as applicable.



***“Management Agreement”*** means that certain Management Agreement, dated as of the date hereof, by and among Ceding Company, Salus Administrative Services, Inc., a New York corporation (***“Salus”***), Centene Management Company, LLC, a Wisconsin limited liability company (***“CMC”***), and Centene Company of New York, LLC, a New York limited liability company (***“CCNY”*** and, collectively with Salus and CMC, the ***“Administrator”***).

***“Medicaid Advantage Business”*** has the meaning set forth in the Recitals.

***“Medicaid Advantage Contracts”*** means (i) Contract Number C027206 by and between Ceding Company and DOH for the operation of Medicaid Advantage coordinated care plan(s), effective January 1, 2011, and (ii) Contract Number C031803 by and between Ceding Company and DOH for the operation of Medicaid Advantage Plus coordinated care plan(s), effective January 1, 2017, in each case, as such contracts may be amended, renewed or replaced from time to time.

***“Medicaid Advantage Enrollees”*** means the members enrolled under the Medicaid Advantage Contracts.

***“Medicaid Advantage Plus Business”*** has the meaning set forth in the Recitals.

***“Medicare Business”*** has the meaning set forth in the Recitals.

***“Medicare Enrollees”*** has the meaning set forth in the Asset Purchase Agreement.

***“Medicare Novation Date”*** means the effective date of the Novation, as determined by Reinsurer, subject to receipt of the Novation Authorization.<sup>1</sup>

***“Net Settlement Amount”*** has the meaning set forth in **Section 4.01**.

***“Net Settlement Statement”*** has the meaning set forth in **Section 4.01**.

***“Novation”*** means a novation of the CMS Contract whereby, pursuant to a Novation Agreement, Reinsurer or its Affiliate shall be substituted for Ceding Company as a party to the CMS Contract.

***“Novation Agreement”*** means a novation agreement substantially in the form attached as **Exhibit B**, subject to any modifications mutually agreed upon by Ceding Company and Reinsurer in accordance with applicable CMS requirements.

***“Novation Authorization”*** has the meaning set forth in **Section 6.01**.

***“Order”*** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority (in each such case, whether preliminary or final).

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<sup>1</sup> **Note to Draft:** Buyer expects to target a novation date of January 1, 2020, subject to regulatory approval.

***“Party”*** and ***“Parties”*** have the meanings set forth in the Preamble.

***“Payor”*** has the meaning set forth in the Recitals.

***“Payor Contracts”*** means the CMS Contract, the FIDA Contract and the Medicaid Advantage Contracts.

***“Permits”*** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

***“Person”*** means an individual, corporation, partnership, joint venture, limited liability company, unincorporated organization, trust, association or other entity.

***“Premium”*** means all premiums, contributions and capitations (including all Covered Enrollee premiums and capitations paid by a Payor) relating to the Covered Policies.

***“Premium Adjustments”*** means any portion of the Premium ceded hereunder that is required to be refunded or otherwise paid by Ceding Company to a Covered Enrollee or Payor due to (i) changes in or cancellations of Covered Policies, (ii) contractual requirements under the terms of the Covered Policies or the applicable Payor Contract, (iii) applicable Law, including any such refunds or payments resulting from a finding in a risk adjustment data validation audit or other similar audit or examination conducted by CMS or another Governmental Authority (or its designee), or a self-audit performed by or on behalf of Ceding Company or (iv) the reconciliation of the Part D reinsurance and risk corridor provisions of the CMS Contract.

***“Provider”*** means any physician, hospital, pharmacy or other health care professional, independent practice association, facility, supplier, vendor or administrator that has contracted to provide or arrange for the provision to Covered Enrollees of health care services and supplies, including in respect of prescription drugs, that are required to be provided by Ceding Company pursuant to a Payor Contract.

***“Provider Contract”*** means any Contract between Ceding Company and any Provider to the extent related to the Business Covered.

***“Provider Payments”*** means all contractual payments made to Providers under the terms and conditions of the applicable Provider Contract for the provision of covered health care services or supplies to a Covered Enrollee under a Covered Policy.

***“Quarterly Accounting Period”*** means each calendar-quarterly period ending after the Effective Time and prior to the termination of this Agreement; *provided* that (i) the initial Quarterly Accounting Period shall commence at the Effective Time and (ii) the final Quarterly Accounting Period shall commence at the start of the first day of the applicable calendar month and end at the end of the Termination Date.

***“Quarterly Report”*** has the meaning set forth in **Section 4.01**.

***“Recoverables”*** has the meaning set forth in **Section 3.02**.

***“Reinsured Liabilities”*** means all Liabilities arising under or relating to the Covered Policies, the Payor Contracts or the Provider Contracts, in each case, that are payable by Ceding Company in respect of the Business Covered whether arising before or after the Effective Time (including all such Liabilities relating to claims, including those that are incurred but not reported or in the course of settlement both as of the Effective Time and as of the termination of this Agreement), collectively, “covered losses”, including, but not limited to, (i) all Provider Payments, (ii) to the extent permitted by applicable Law, all Extra Contractual Obligations, (iii) all commissions, fees or other compensation payable to producers, agents or brokers, (vi) all amounts paid to Covered Enrollees to reimburse for out-of-pocket expenses paid to providers that are not under contract with Ceding Company that are the financial responsibility of Ceding Company under a Covered Policy or Payor Contract, (vii) any federal, state or local tax imposed on Premiums or otherwise in respect of the Covered Policies (other than any Health Insurer Fee imposed under Section 9010 of the Patient Protection and Affordable Care Act), (viii) all Premium Adjustments, (ix) all liabilities with respect to any risk adjustment data or other similar data or information submitted to CMS, including as arising from any risk adjustment data validation audit or other similar examination under or with respect to the CMS Contract, and (x) any fees and other related costs incurred under the Management Agreement (excluding costs that are expressly the responsibility of the Ceding Company thereunder); *provided, however*, “Reinsured Liabilities” shall not include any Retained Liabilities.

***“Reinsurer”*** has the meaning set forth in the Preamble.

***“Representative”*** means, with respect to any Person, any and all directors, officers, employees, partners, members, consultants, financial advisors, counsel, accountants and other agents of such Person.

***“Retained Liabilities”*** means (i) any increased liability to Reinsurer to the extent arising from any action by Ceding Company with respect to the Covered Policies or the Reinsured Liabilities, Premiums, Premium Adjustments or Recoverables, in each case, taken on or after the date hereof without the consent of Reinsurer, (ii) any failure of Ceding Company to accept a reasonable recommendation of Reinsurer provided to Ceding Company under this Agreement or the Administrator provided to Ceding Company under the Management Agreement and (iii) without duplication of the foregoing, all Excluded Liabilities.

***“Seller”*** has the meaning set forth in the Asset Purchase Agreement.

***“Termination Date”*** has the meaning set forth in Section 9.01.

## ARTICLE II

### COINSURANCE OF REINSURED LIABILITIES

Section 2.01 **Coinsurance.** Subject to the terms and conditions of this Agreement, as of the Effective Time, Ceding Company hereby cedes on a coinsurance basis to Reinsurer, and Reinsurer hereby accepts and reinsures on a coinsurance basis, one hundred percent (100%) of the Reinsured Liabilities. The reinsurance effected under this Agreement shall be maintained in force, without reduction, unless such reinsurance is terminated as provided herein.

**Section 2.02 Changes to Covered Policies; Reinsured Liabilities.** Ceding Company shall not, on its own initiative, change the terms or conditions of any Covered Policy, Payor Contract or Provider Contract except for any such change (a) directed by Reinsurer or (b) required by applicable Law, including by CMS pursuant to the annual bid process (each, an “*Authorized Change*”). If Ceding Company’s liability with respect to Reinsured Liability is changed because of an Authorized Change, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from such Authorized Change, in each case, proportionately, and on the coinsurance basis set forth in **Section 2.01**. With respect to any Authorized Change required by applicable Law, Ceding Company shall, to the extent reasonably practicable, prior to the effectiveness of such Authorized Change, (x) promptly notify Reinsurer of such proposed change and (y) afford Reinsurer the opportunity to object to such change under applicable administrative or regulatory procedures. Ceding Company shall, at Reinsurer’s request, reasonably cooperate with Reinsurer in connection with any such objection made pursuant to the preceding sentence of this **Section 2.02**. Reinsurer shall not be liable for any increase in Reinsured Liability resulting from any change in the terms or conditions of a Covered Policy made by Ceding Company other than as arising from an Authorized Change.

**Section 2.03 Underwriting Adjustments to Covered Policies.** If Ceding Company’s liability under any Covered Policy is changed because of a correction made by or on behalf of Ceding Company of a prior misstatement of age, sex, amount or nature of coverage or any other material fact or attribute made by any Covered Enrollee or any Person authorized to act on behalf of such Covered Enrollee, Reinsurer shall reinsure any increase, and receive credit for any decrease, in Reinsured Liabilities resulting from the correction of such misstatement.

**Section 2.04 Reinstatements of Covered Policies.** Upon the reinstatement of any terminated Covered Policy in accordance with the terms and conditions of such Covered Policy, Reinsurer shall reinsure the Reinsured Liabilities arising out of or relating to such reinstated Covered Policy on the coinsurance basis set forth in **Section 2.01**.

**Section 2.05 Follow the Fortunes.** Subject to the terms and conditions of this Agreement, including the retention by Ceding Company of the Retained Liabilities, Reinsurer’s liability under this Agreement shall attach simultaneously with that of Ceding Company under the Covered Policies and the Reinsured Liabilities, and Reinsurer’s liability under this Agreement shall be subject in all respects to the same risks, terms, rates, conditions, interpretations, assessments, waivers and proportion of premiums paid to Ceding Company without any deductions for brokerage, and to the same modifications, alterations and cancellations, as the respective Covered Policies and Reinsured Liabilities to which liability under this Agreement attaches, the true intent of this Agreement being that Reinsurer shall, subject to the terms, conditions and limits of this Agreement, follow the fortunes of Ceding Company under the Covered Policies, and Reinsurer shall be bound, by all payments and settlements under the Covered Policies entered into by or on behalf of Ceding Company except as otherwise provided herein.

## ARTICLE III

### CONSIDERATION; ACCOUNTING

Section 3.01 **Consideration.** As consideration for the reinsurance provided hereunder and in partial consideration for the payment of the Purchase Price (as defined by in the Asset Purchase Agreement), Ceding Company shall, subject to the terms and conditions of the Asset Purchase Agreement, transfer to Reinsurer the investment assets listed on Schedule 3.01, which represents a portion of the Purchased Assets (as defined in the Asset Purchase Agreement) to be transferred to the Buyer or its Affiliates in accordance with the Asset Purchase Agreement.<sup>2</sup>

Section 3.02 **Ongoing Liabilities of Ceding Company.** As additional consideration for the reinsurance provided hereunder, Ceding Company hereby sells, assigns, transfers and delivers to Reinsurer, and Reinsurer accepts and acquires, free and clear of all Encumbrances, effective as of the Effective Time, all of Ceding Company's right, title and interest under the Covered Policies, the Payor Contracts and the Provider Contracts,<sup>3</sup> respectively, to receive all amounts payable to Ceding Company thereunder or in respect thereof, including the following amounts: (a) Premiums; (b) amounts payable pursuant to coordination of benefits, subrogation and other third party recoveries; (c) amounts due from Providers, including settlements under risk-sharing arrangements, overpayment adjustments and network discounts; and (d) any other recovery of Ceding Company, in each case, to the extent applicable to the Business Covered (collectively, the "**Recoverables**").

Section 3.03 **Ongoing Liabilities of Reinsurer.** From and after the Effective Time, Reinsurer shall indemnify Ceding Company in accordance with the settlement procedures set forth in **Article IV**, for all Reinsured Liabilities.

## ARTICLE IV

### SETTLEMENT; REPORTS

Section 4.01 **Quarterly Report.** Within fifteen (15) Business Days after the end of each Quarterly Accounting Period, the Administrator in accordance with the Management Agreement shall deliver to Reinsurer a report (each, a "**Quarterly Report**") in the form of, and containing for such Quarterly Accounting Period the information reflected in, **Schedule 4.01**, including a statement (the "**Net Settlement Statement**") which shall set forth calculations of the net amount due to Reinsurer from Ceding Company, or to Ceding Company from Reinsurer, as applicable, under **Section 3.02** and **3.03** of this Agreement for the applicable Quarterly Accounting Period (the "**Net Settlement Amount**").

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<sup>2</sup> **Note to Draft:** The fair market value of the investment assets to be listed on Schedule 3.01 would equal the reserves associated with the Reinsured Liabilities, as well as capital equal to a 350% ACL RBC.

<sup>3</sup> **Note to Draft:** If the HMO Reinsurance Agreement with Zurich American Insurance Company is not novated to Reinsurer, Ceding Company will similarly assign all reinsurance recoverables to Reinsurer.

**Section 4.02 Settlement.** If the Net Settlement Amount as shown on the Net Settlement Statement is a positive amount, Ceding Company shall pay such amount to Reinsurer, and if the Net Settlement Amount as shown on the Net Settlement Statement is a negative amount, then Reinsurer shall pay cash in an amount equal to the absolute value of such negative amount to Ceding Company. Any payment, withdrawal, transfer or crediting of amounts required under this **Section 4.02** shall be made within three (3) Business Days following the date of the delivery of the applicable Quarterly Report.

**Section 4.03 Offset and Recoupment Rights.** Any debits or credits incurred from or after the Effective Time in favor of or against either Ceding Company or Reinsurer with respect to this Agreement between the Parties shall be deemed mutual debits or credits, as the case may be, and, to the extent permitted under applicable Law (including Section 7427(a) of the New York Insurance Law), shall be set off and recouped, and only the net balance shall be allowed or paid. This **Section 4.03** shall apply, to the fullest extent permitted by applicable Law (including Section 7427(a) of the New York Insurance Law), notwithstanding the initiation or commencement of a liquidation, insolvency, rehabilitation, conservation, supervision or similar proceeding by or against Ceding Company or Reinsurer.

## **ARTICLE V**

### **ADMINISTRATION**

**Section 5.01 Administration.** The parties acknowledge and agree that from and after the Closing, the Administrator shall, in accordance with the Management Agreement, be responsible for providing all administrative services in respect of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

**Section 5.02 Compensation.** Reinsurer's sole compensation for the reinsurance provided by Reinsurer to Ceding Company hereunder shall be the consideration described in **Section 3.01** and **Section 3.02** and Ceding Company shall not be liable to Reinsurer for any additional consideration in respect thereof.

**Section 5.03 Claims Litigation.** Reinsurer shall promptly notify Ceding Company in writing of any litigation that has been instituted against the Reinsurer with respect to any matter relating to a Covered Policy, a Payor Contract or a Provider Contract. Such notice shall include a summary of the nature of the pending litigation, the alleged actions or omissions giving rise to such litigation and copies of any files that Ceding Company may reasonably require in order to review such litigation.

**Section 5.04 Inspection.** At reasonable times and upon reasonable prior notice to Ceding Company, Reinsurer, at its sole cost and expense, shall have the right to inspect the books and records of the Ceding Company relating the Covered Policies, Payor Contracts and Provider Contracts, including as pertains to the payment of Reinsured Liabilities and the administration of the Business Covered, the Covered Policies, the Payor Contracts and the Provider Contracts.

## ARTICLE VI

### NOVATION AND ASSIGNMENT

#### Section 6.01 **Novation of the CMS Contract and Assignment of the Medicaid Advantage Agreements.**

(a) Subject to the terms and conditions set forth in this Agreement, each Party shall (i) use its reasonable best efforts to obtain, or cause to be obtained, authorizations from CMS and DOH to consummate the Novation and the Assignment (such approvals, the “**Novation Authorization**”) and (ii) reasonably cooperate with the other Party and its Affiliates in seeking to obtain such Novation Authorization.

(b) The Parties agree that, with respect to the Novation Authorization, Buyer and Seller shall mutually determine (i) the scheduling of, and strategic planning for, any meeting with or filing with CMS or DOH, (ii) subject to applicable Law, the process for receipt of the Novation Authorization and (iii) the resolution of any investigation or other inquiry of CMS or DOH. Without limiting the foregoing, (A) each Party shall disclose to the other Party in advance of any filing, submission or attendance all analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments and proposals made by or on behalf of either Party before CMS or DOH or the staff or regulators of CMS or DOH, in connection with receipt of the Novation Authorization, *provided, however*, that no Party shall be required to disclose to the other Party at any time (I) any interactions between Ceding Company or Reinsurer with Governmental Authorities in the ordinary course of business, (II) any disclosure which is not permitted by Law or (III) any disclosure containing confidential or proprietary information, any attorney-client privileged documents or communications or any appraisals, valuations, market studies, legal or financial opinions, or board presentations prepared, submitted or reviewed in connection with any application for the Novation Authorization, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments and proposals and (B) each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with CMS or DOH or the staff or regulators of CMS or DOH, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact, it being understood that CMS or DOH may require, or insist upon, only communicating with and through Ceding Company or Reinsurer, as applicable.

## ARTICLE VII

### OVERSIGHTS

Section 7.01 **Oversights.** Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder shall not relieve either Party from any liability that would have attached had such delay, error or omission not occurred; *provided* that such error or omission is rectified as soon as practicable after discovery; and *provided, further*, that the Party making such error or omission, or responsible for such delay, shall be responsible for any additional liability that attaches as a result. Subject to the foregoing, if the failure of either Party

to comply with any provision of this Agreement is unintentional or the result of a misunderstanding or oversight, the parties shall cause such failure to be promptly rectified such that both parties shall be restored as closely as possible to the positions that they would have occupied had such error or oversight not occurred.

## ARTICLE VIII

### INSOLVENCY

#### Section 8.01 **Insolvency of Ceding Company.**

(a) In the event of the insolvency of Ceding Company, all reinsurance made, ceded, renewed or otherwise becoming effective under this Agreement shall be payable by Reinsurer on the basis of the liability of Ceding Company under the Reinsured Liabilities reinsured hereunder without diminution because of the insolvency of Ceding Company. In the event of insolvency and the appointment of a liquidator, receiver or statutory successor of Ceding Company, such payments by Reinsurer shall be made directly to Ceding Company or its liquidator, receiver or statutory successor.

(b) It is agreed and understood, however, that in the event of the insolvency of Ceding Company, the liquidator, receiver or statutory successor of Ceding Company shall give written notice of the pendency of a claim against Ceding Company in connection with a Reinsured Liability within a reasonable period of time after such claim is filed in the insolvency proceedings and that during the pendency of such claim Reinsurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to Ceding Company or its liquidator, receiver or statutory successor. It is further understood that the expense thus incurred by Reinsurer shall be chargeable, subject to court approval, against Ceding Company as part of the expenses of liquidation to the extent of a proportionate share of the benefit which may accrue to Ceding Company solely as a result of the defense undertaken by Reinsurer.

## ARTICLE IX

### DURATION AND TERMINATION

Section 9.01 **Duration.** This Agreement shall commence at the Effective Time and continue in force until the termination date (the "***Termination Date***"), which shall occur at such time as (a) Ceding Company no longer has any liability with respect to the Business Covered and all Covered Policies reinsured hereunder and Ceding Company has received payments which discharge such liability in full in accordance with the provisions of this Agreement, (b) this Agreement is terminated by the mutual written consent of Reinsurer and Ceding Company or (c) the Medicare Novation Date occurs. The Parties shall provide prior written notice to the New York Department of Financial Services of any termination of this Agreement.

Section 9.02 **Survival.** Notwithstanding the other provisions of this **Article IX**, (a) the terms and conditions of this **Article IX** and of **Article X** (and **Article I** to the extent relating to the foregoing) shall remain in full force and effect after the termination of this Agreement and (b)



any Covered Policies issued prior to the termination of this Agreement shall continue to be reinsured hereunder following the termination of this Agreement (except to the extent the related rights and liabilities thereunder have transferred to the Reinsurer or its Affiliate as part of the Novation and Assignment) and all provisions of this Agreement to the extent relating to the reinsurance of such Covered Policies, including all covered losses, shall remain in full force and effect after the termination of this Agreement.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01 Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses.

**Section 10.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 10.02**):

If to Ceding Company:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

If to Reinsurer:

Hallmark Life Insurance Company  
7700 Forsyth Blvd., Suite 800  
St. Louis, Missouri 63105  
Attention: Keith Williamson

**Section 10.03 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including”, unless otherwise specified, shall be deemed to be followed by the words “without limitation” whether or not such words are actually stated; (b) the word “or” is not disjunctive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, “hereunder” and derivative or similar words refer to this Agreement as a whole, including the Exhibits hereto; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held

to include the other gender as the context requires; (e) references to “dollars” or “\$” shall mean United States dollars; (f) references to “written” or “in writing” include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person’s successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to “close of business” on any given day shall be deemed to refer to 5:00 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of and Exhibits attached to, this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 10.04 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 Severability.** If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**Section 10.07 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

**Section 10.08 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto, which shall be attached as an addendum to this Agreement. Any such addendum shall be subject to the prior review and approval of the New York Department of Financial Services.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv)

SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 10.10(c)**.

Section 10.11 **Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

Section 10.12 **Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Ceding Company:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

Reinsurer:

HALLMARK LIFE INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**BUSINESS ASSOCIATE AGREEMENT**

*(See Attached)*

**EXHIBIT B**  
**FORM OF NOVATION AGREEMENT**

*(See Attached)*

**SCHEDULE 3.01**  
**TRANSFERRED INVESTMENT ASSETS**  
[To come]



**SCHEDULE 4.01**  
**NET SETTLEMENT STATEMENT**  
*(See Attached)*

# EXHIBIT 22

## Guarantee Agreement

## **GUARANTEE AGREEMENT**

This GUARANTEE AGREEMENT, dated as of [●] [●], [●] (this "Agreement"), has been made and entered into by and among CENTENE CORPORATION, a Delaware corporation ("Guarantor"), HALLMARK LIFE INSURANCE COMPANY, an Arizona domiciled life insurance company (the "Reinsurer"), and NEW YORK STATE CATHOLIC HEALTH PLAN, INC., a New York not-for-profit corporation ("Beneficiary" and, together with the Guarantor and the Reinsurer, the "Parties").

### **WITNESSETH:**

WHEREAS, concurrently herewith, the Reinsurer and Beneficiary have entered into certain reinsurance agreements, whereby the Beneficiary has ceded, and the Reinsurer has reinsured, the Reinsured Liabilities (as defined therein) relating to: (i) Beneficiary's qualified health plan business (such reinsurance agreement, the "QHP Reinsurance Agreement"), and (ii) Beneficiary's Medicare Business (as defined therein), Medicaid Advantage Business (as defined therein), Medicaid Advantage Plus Business and FIDA Business (as defined therein) (such reinsurance agreement, the "Medicare Reinsurance Agreement" and, together with the QHP Reinsurance Agreement, the "Guaranteed Agreements");

WHEREAS, the Reinsurer is an indirect, wholly owned subsidiary of Guarantor and Guarantor expects to derive direct or indirect benefits from the transactions contemplated by the Guaranteed Agreements;

WHEREAS, Beneficiary intends to seek the approval of the New York State Department of Health ("DOH") to permit Beneficiary to utilize the Guaranteed Agreements and this Guarantee Agreement to satisfy its statutory and regulatory reserve obligations under New York law (the "Requested Approval"); and

WHEREAS, Beneficiary has requested that Guarantor guarantee the Reinsurer's performance under the Guaranteed Agreements, subject to the terms and conditions of this Agreement, in order to provide additional financial resources, which will ensure that the Reinsurer will fully and timely perform all of its obligations under the Guaranteed Agreements in support of the Requested Approval and, subject to the receipt of the Requested Approval, fulfill the reserve obligations of the Beneficiary.

NOW THEREFORE, in consideration of the foregoing, the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Guaranteed Agreements.

Section 2. Guarantee. Guarantor hereby absolutely, unconditionally and irrevocably guarantees (the "Guarantee") to the Beneficiary the payment, performance and observation of all present and future obligations of the Reinsurer arising under the Guaranteed Agreements,

whether according to the present terms of the Guaranteed Agreements, or pursuant to any change in the terms, covenants or conditions of any Guaranteed Agreement at any time hereafter made or granted (collectively, the "Obligations").

Section 3. Certain Waivers; Acknowledgments. Guarantor acknowledges and agrees as follows:

(a) Guarantor hereby unconditionally and irrevocably waives any right to revoke the Guarantee and acknowledges that the Guarantee is continuing in nature and applies to all presently existing and future Obligations, until the complete, irrevocable and indefeasible payment and satisfaction in full of the Obligations.

(b) The Guarantee is a guarantee of payment and performance and not of collection. Beneficiary shall not be obligated to enforce or exhaust its remedies against the Reinsurer under any Guaranteed Agreement before proceeding to enforce the Guarantee under this Agreement.

(c) The Guarantee is a direct guaranty and independent of the obligations of the Reinsurer under any Guaranteed Agreement. Beneficiary may resort to Guarantor for payment and performance of the Obligations whether or not Beneficiary has proceeded against the Reinsurer or any other guarantors with respect to the Obligations. Beneficiary may, at its option, proceed against Guarantor and the Reinsurer, jointly and severally, or against Guarantor only without having obtained a judgment against the Reinsurer.

(d) Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of non-performance, default, acceleration, protest or dishonor and any other notice with respect to any of the Obligations and the Guarantee and any requirement.

(e) The Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time all or part of any payment of any Obligation is voided, rescinded or recovered or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of the Reinsurer.

Section 4. Subrogation. Guarantor waives and shall not exercise any rights that it may acquire by way of subrogation, contribution, reimbursement or indemnification for payments made under the Guarantee until all Obligations shall have been indefeasibly paid and discharged in full.

Section 5. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via another method permitted hereby, or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the

following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 5):

If to Guarantor:

Centene Corporation  
7700 Forsyth Blvd.  
St. Louis MO 63105  
Attention: Keith Williamson  
E-Mail: kwilliamson@centene.com

If to Reinsurer:

[Hallmark Life Insurance Company]  
7700 Forsyth Blvd.  
St. Louis MO 63105  
Attention: Keith Williamson  
E-Mail: kwilliamson@centene.com

If to Beneficiary:

New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: Chief Executive Officer and Chief Legal Officer  
E-Mail: \_\_\_\_\_

Section 6. Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including”, unless otherwise specified, shall be deemed to be followed by the words “without limitation” whether or not such words are actually stated; (b) the word “or” is not disjunctive; (c) the words “herein,” “hereof,” “hereby,” “hereto”, “hereunder” and derivative or similar words refer to this Agreement as a whole; (d) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (e) references to “dollars” or “\$” shall mean United States dollars; (f) references to “written” or “in writing” include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) a reference to any Person includes such Person’s successors and permitted assigns; (i) any reference to days means calendar days unless Business Days are expressly specified; (j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (k) all references to “close of business” on any given day shall be deemed to refer to 11:59 p.m. Eastern Time on such date. Unless the context otherwise requires, references herein: (i) to Sections mean the Sections of this Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (iii) to a

statute or regulation or statutory or regulatory provisions means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

Section 7. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8. Severability. If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any Person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 9. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the limited subject matter contained herein, and shall supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

Section 10. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

Section 11. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 12. Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

Section 13. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE BOROUGH OF MANHATTAN, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13(c).

Section 14. Specific Performance. Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage would occur if any provision of this Agreement is not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

Section 15. Counterparts. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this

Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the date first set forth above.

CENTENE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

[HALLMARK LIFE INSURANCE  
COMPANY]

By: \_\_\_\_\_  
Name:  
Title:

NEW YORK STATE CATHOLIC  
HEALTH PLAN, INC.

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Guarantee Agreement]*

## EXHIBIT 23

Management Agreement between Petitioner, Salus, CMC and CCNY

**MANAGEMENT AGREEMENT**

among

**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK,**

**SALUS ADMINISTRATIVE SERVICES, INC.,**

**CENTENE MANAGEMENT COMPANY, LLC**

and

**CENTENE COMPANY OF NEW YORK, LLC**

Dated as of

[•], 2018

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## MANAGEMENT AGREEMENT

This Management Agreement, dated as of [•], 2018 (this “Agreement”), is entered into among **New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York**, a New York not-for-profit corporation with its principal office at 95-25 Queens Boulevard, Rego Park, New York 11374 or a wholly owned subsidiary of New York State Catholic Health Plan, Inc. (“Health Plan”), **Salus Administrative Services, Inc.**, a New York corporation with its principal office at 95-25 Queens Boulevard, Rego Park, New York 11374, **Centene Management Company, LLC**, a Wisconsin limited liability company with its principal office at 7700 Forsyth Boulevard, Suite 800, St. Louis, Missouri 63105 (“CMC”), and **Centene Company of New York, LLC**, a New York limited liability company with its principal office at 7700 Forsyth Boulevard, Suite 800, St. Louis, Missouri 63105 (“CCNY” and, together with CMC and Salus, each a “Provider” and, collectively, the “Providers”). Health Plan, Salus, CMC and CCNY are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

WHEREAS, Health Plan and Centene Corporation, a Delaware Corporation (“Centene”), are parties to that certain Asset Purchase Agreement, dated as of September 12, 2017 (the “Purchase Agreement”), pursuant to which, among other things, Centene has agreed to acquire substantially all of the assets of Health Plan on the terms and subject to the conditions set forth therein (the “Transaction”); and

WHEREAS, in order to facilitate the orderly transition of the Businesses which will temporarily remain with the Health Plan, or a wholly owned subsidiary of the Health Plan, the Health Plan requires administrative, management and other assistance in connection with its operation of a prepaid health services plan as defined in Section 4403-a of the New York Public Health Law;

WHEREAS, Providers are authorized to do business in the State of New York and are willing and able to provide the administrative, management and other services which the Health Plan requires and a description of the services to be provided by each Provider is set forth on Exhibit 3 hereto;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt of which is hereby acknowledged, Health Plan, Salus, CMC and CCNY hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“Agreement” has the meaning set forth in the preamble.

“Automatic Amendment” has the meaning set forth in Section 9.5(c).

“CCNY” has the meaning set forth in the preamble.

“Change in Law” has the meaning set forth in Section 9.5(c).

“CMC” has the meaning set forth in the preamble.

“Commissioner” means the Commissioner of Health for the State of New York.

“Coverage Agreement” means any agreement, program or certificate entered into, issued or agreed to by a third party payor (including a government contract with said third party payor) under which Health Plan provides Covered Services, which shall be limited to: (a) individual market products, including its Qualified Health Plan on the New York State of Health (“Individual Products”) and (b) senior programs (Medicare Advantage, Medicare Advantage D-SNP, Fully Integrated Dual Advantage, Medicaid Advantage and Medicaid Advantage Plus) (“Medicare Products”)

“Covered Services” means all covered health care or other services, products or supplies (including but not limited to hospital services, physician services, diagnostic and therapeutic services, and pharmaceutical services and supplies) that (a) are rendered, or are sold or arranged for, by or on behalf of Health Plan and (b) constitute covered benefits under the terms of or in connection with an applicable Coverage Agreement.

“DOH” means the State of New York Department of Health.

“Enrollees” or “Members” means all individuals entitled to receive Covered Services in connection with a Coverage Agreement.

“Force Majeure Event” means an event that is not reasonably within the control of the affected Party or its Affiliates, including: flood; earthquake; tornado; storm; fire; explosion; public emergency; civil disobedience; labor dispute; labor or material shortage; war or terrorist acts; sabotage; failures in power, utilities or telecommunications; and changes in Law and restraint by court order or public authority (whether valid or invalid).

“Government Contract” shall mean the agreements between the Health Plan and any Governmental Authority to provide Covered Services to covered persons, comprised of the applicable Government Contract, any addenda, appendices, attachments, or amendments thereto.

“Governmental Authority” means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

“Health Plan” has the meaning set forth in the preamble.

“Health Plan Board” means the Board of Directors of Health Plan.

“Health Plan Business” means the ownership, management or operation by Health Plan of any health insurance or health benefit program offering Covered Services under a Coverage Agreement.

“Law” means any federal, state or local law (statutory or otherwise), ordinance, regulation, rule, code, constitution, treaty, convention, ruling, administrative opinion, subregulatory requirement or other requirement enacted, adopted, promulgated or applied by or on behalf any Governmental Authority, any order having the effect of law in any jurisdiction, and applicable common law.

“Management and Administrative Services” means the services to be performed by Salus, CMC or CCNY, as applicable, pursuant to Section 3.

“NCQA” means the National Committee for Quality Assurance, a non-profit organization dedicated to improving healthcare quality that accredits and certifies a wide range of health care organizations.

“Net Revenues” means the total health services fees and premiums payable by third party payors, enrolling units, and/or Enrollees and their agents to Health Plan minus applicable premium taxes, fees and other similar assessments.

“Participating Provider” means a facility, organization or practitioner that provides Covered Services, including but not limited to a hospital, home health agency, hospice provider, skilled nursing facility, federally qualified health center, physician, dentist, allied health professional, supplier of durable medical equipment or other medical supplies, equipment or pharmaceuticals, or other service provider that meets Health Plan’s credentialing or other background requirements, as applicable, as implemented and revised from time to time, and that has entered into a participating provider agreement with Health Plan (directly as an individual or entity, or indirectly as an employee, partner or shareholder) pursuant to which such provider has agreed to provide, or arrange for the provision of, Covered Services.

“Parties” has the meaning set forth in the preamble.

“Plan” has the meaning set forth in Section 3.10(c)(i).

“Plan President” means an individual designated by the Health Plan and acceptable to Providers, who shall have overall day-to-day responsibility for the Management and Administrative Services provided to and on behalf of Health Plan and shall also serve as the President and Chief Executive Officer of Health Plan.

“Planned Fee” has the meaning set forth in Section 5.1.

“Provider” has the meaning set forth in the preamble.

“Purchase Agreement” has the meaning set forth in the recitals

“Salus” has the meaning set forth in the preamble.

“Transaction” has the meaning set forth in the recitals.

## 2. Retention of Authority by Health Plan



2.1. Health Plan Authority. Notwithstanding any other provision in this Agreement, to the extent required by Law, the Health Plan Board shall be responsible for: (i) oversight over the management and overall operations of Health Plan and the Health Plan Business and of all medical, professional and ethical affairs of its managed care programs, (ii) the establishment and oversight of the Health Plan's policies including the general operating policies to be carried out by the Providers as specified under this Agreement, and (iii) the compliance by Health Plan and the Providers with any Coverage Agreement, including, but not limited to, any Government Contract, and with all applicable Law. Furthermore, Health Plan Board shall not delegate the following elements of management authority:

- (a) direct independent authority to hire and terminate the Plan President of the Health Plan;
- (b) adoption of budgets and independent control of the books and records;
- (c) authority over the disposition of assets and the authority to incur on behalf of the Health Plan liabilities not normally associated with the day to day operation of the Health Plan;
- (d) independent adoption and/or enforcement of policies affecting the operation of the Health Plan and the delivery of health care services;
- (e) oversight by Health Plan or any management functions delegated to a management contractor pursuant to the provisions of 10 NYCRR §§ 98-1.11 or 98-1.18;
- (f) pursuant to 10 NYCRR § 98-1.21(b)(1), primary responsibility for the development and implementation of Health Plan's fraud and abuse prevention plan.

Notwithstanding any other provision of this Agreement, Health Plan Board shall retain sufficient authority and control to discharge its responsibility as the governing authority of the Health Plan, including the authority to discharge any Provider.

The responsibilities of the governing authority of Health Plan are in no way lessened by this Agreement, and any powers not specifically delegated to a Provider pursuant to the terms of this Agreement shall remain with the governing authority of Health Plan. Health Plan shall retain ongoing responsibility for statutory and regulatory compliance.

2.2. Health Plan Oversight. Health Plan shall have the right, upon reasonable notice to any Providers, to conduct an on-site review of such Provider's management practices, protocols and procedures, and to receive a certified statement of fiscal solvency from the outside auditors of Centene, each Provider's ultimate parent company, in order to give Health Plan reasonable assurances and the ability to verify that such Provider is maintaining fiscal stability, and is providing the requisite level and quality of services in conformity with the requirements of this Agreement, and state and federal law.

2.3. Health Plan Approval. If Health Plan is required or permitted hereunder to take any action or give any approval, each Provider shall be entitled to rely upon the statements of the

Chairman of the Health Plan Board, acting on behalf of Health Plan, or one or more other representatives designated in writing by the Health Plan Board to act on Health Plan's behalf under this Agreement, to the effect that any such action or approval has been taken or given. If Health Plan does not respond to a written request by any Provider for any approval under this Agreement within ten (10) days after Health Plan's receipt of such request, the request shall be deemed to have been accepted.

### 3. Delegated Services

3.1. Management and Administrative Services. Subject to the limitations set forth in this Agreement, Health Plan hereby delegates to each Provider the responsibility and authority to manage, on behalf of Health Plan, the applicable Management and Administrative Services specified in Section 3 and, in connection therewith, to take such actions on behalf of Health Plan as such Provider deems reasonably necessary or advisable in connection with the provision of such Management and Administrative Services. The Management and Administrative Services will be provided by the Providers in a manner and at a level of service consistent in all material respect with those provided by Health Plan or its affiliates, as applicable, immediately prior to the execution of this Agreement and, in any event, in a commercially reasonable manner and at a commercially reasonable service level. Notwithstanding the foregoing, the Providers shall perform the Management and Administrative Services in compliance with (a) all Health Plan policies and procedures pertaining to the performance of the Management and Administrative Services solely to the extent such policies and procedures are in effect as of the Effective Date and have been previously provided to the Providers in writing, (b) the applicable Coverage Agreement or Government Contract, (c) applicable law, and (d) the requirements of any applicable accreditation organization as in effect as of the Effective Date. All Provider policies and procedures relating to the performance of any Management and Administrative Services must be submitted to Health Plan for review and approval prior to implementation and/or revision. The Providers shall provide all necessary assistance to Health Plan in the implementation of Health Plan's quality assurance activities and functions; provided, that Health Plan shall retain decision-making authority and responsibility for the quality assurance function. To the extent the Health Plan delegates management services with respect to disease management, pharmacy, vision, dental, behavioral health, nurse triage services or other benefits to other vendors or providers as of the date of this agreement, Providers shall provide, or shall cause New York Quality Healthcare Corporation to provide, continued access to such services to the same extent as such services are provided as of the date of this agreement.

3.2. Staffing. Each Provider shall provide, or shall cause to be provided, to the reasonable satisfaction of Health Plan, staffing adequate for the efficient and effective performance of the applicable Management and Administrative Service, which such Provider may adjust from time to time as necessary. In addition, each Provider shall (i) provide the Health Plan with credentials of management staff overseeing departments performing management services, (ii) provide copies of educational materials used for training staff performing management services, and (iii) maintain a staffing level sufficient to meet Health Plan standards for performance of the applicable Management and Administrative Services.

3.3. Participation in Meetings, Task Forces and Committees. The Providers shall participate in any meetings, task forces or committees as reasonably required by Health Plan for purposes of planning, implementation of, or oversight of the Management and Administrative Services, including participating in Health Plan quality assurance committees and compliance seminars or training.

3.4. Enrollee Communication. No Provider shall send any communication to an Enrollee unless the form of such communication has received prior approval by Health Plan.

3.5. Program Planning and Development

(a) Providers shall, as applicable:

- (i) assist Health Plan in maintaining certification under applicable Law necessary for Health Plan to operate the Health Plan Business.
- (ii) assist Health Plan in maintaining and improving its relationships with Enrollees, Participating Providers and other providers of Covered Services.
- (iii) maintain and manage an Enrollee complaint system and opinion mechanism.
- (iv) prepare and provide to the Health Plan Board information concerning the financial viability of Health Plan.

(b) With respect to each applicable Coverage Agreement, Providers shall recommend an insurance program for Health Plan, including professional liability/malpractice, reinsurance, stop-loss protection, and out-of-area and catastrophic loss insurance, and shall assist to the extent reasonably necessary in obtaining insurance requested by the Health Plan Board. The decision to purchase, maintain and terminate any and all insurance coverage shall rest solely with the Health Plan Board. To the extent that Providers can obtain insurance coverage at a reduced cost on behalf of Health Plan, Providers will make such coverage available to Health Plan at such cost.

3.6. Management Information System. Providers shall manage and maintain, for use in Health Plan's operations, a computerized management information system for the purposes of, as applicable, claim adjudication and making payment to all categories of providers, utilization review, quality assessment, determining subscriber eligibility, billing and collection, regulatory reporting, cost-sharing reduction reconciliation services, brokerage services, sales services, and enrollment management. Providers shall use commercially reasonable efforts to effect a correction or other reasonable resolution of any errors or defects detected by Health Plan or Providers in the management information system. Providers warrant that they are the sole owners of the management information system or have a right to utilize the management information system for Health Plan (including through the subcontracted services provided as permitted in accordance with the terms of this Agreement) and have full power and authority for such use and rights as are herein granted without the consent of any other person.

3.7. Financial Systems and Services. Providers shall provide Health Plan with financial systems and services that are reasonably necessary and appropriate in connection with the operation of the Health Plan Business. Such services shall include, but not be limited to, the following:

- (a) Implementing day-to day operations of a financial system;
- (b) Negotiating premium rates which shall be subject to approval by the Board;
- (c) Developing an annual operating budget and adjustments thereto for adoption by the Board consistent with continued operation of the Health Plan; and
- (d) Establishing bank accounts as authorized by the Board, and monitoring such accounts.

3.8. Other Financial Support Services. Providers shall, as applicable:

- (a) On a monthly basis and subject to the receipt of all required information from the Health Plan, provide a cash flow statement, reconciliation of bank accounts, a balance sheet and related statement of income showing the financial condition and the results of operations of the Health Plan, as compared to targeted or budgeted amounts;
- (b) On an annual basis and subject to the receipt of all required information from the Health Plan, provide a balance sheet and related statement of income, statement of changes in reserves and unassigned funds and cash flows and other schedules required in accordance with generally accepted accounting principles or statutory accounting practices, as applicable, showing the financial condition and the results of operations of the Health Plan for the year then ended;
- (c) provide assistance in providing other reports on the financial operations and any other operational data reasonably requested by the Board or as requested or required by the Commissioner of the New York State Department of Health and the Department of Financial Services of the State of New York, in each case, to the extent related to the Coverage Agreements;
- (d) prepare and provide to the Health Plan Board, by December 31 (or such other date as mutually agreed in writing by the Health Plan Board and Providers) of each year, a proposed annual operating budget for the immediately succeeding calendar year subject to the Health Plan Board's review and approval, setting forth an estimate of operating revenues and expenses for such calendar year that shall be in reasonable detail and shall contain an explanation of anticipated changes, if any, in utilization, patient charges, and other factors that may significantly affect the operating budget; and
- (e) administer actuarial services for the purpose of setting premiums for commercial products, including, but not limited to, products offered in the New York State of Health.

3.9. Claims Administration. Providers shall maintain systems and procedures reasonably necessary for the appropriate adjudication of claims submitted to Health Plan with respect to the Health Plan Business. Without limiting the foregoing, Providers shall, as applicable:

(a) maintain claim forms, which shall comply with appropriate provisions of the applicable Coverage Agreement, to be used: (i) by providers of Covered Services and supplies in requesting payment for such Covered Services or (ii) to record the information necessary to produce the management reports specified herein, such forms to be printed at the expense of Health Plan;

(b) provide computer compatible claim drafts to be used to reimburse providers of Covered Services for services provided to Enrollees;

(c) conduct on a continuing basis such educational and training programs as may be desirable to provide for the accurate and efficient submission of claims for Covered Services to Health Plan by Participating Providers, which programs may include, but shall not be limited to, the maintenance of a written instructional manual for Participating Providers;

(d) maintain equipment and other systems and materials reasonably necessary for submission of electronic medical claims and encounters for Covered Service;

(e) evaluate and process claims for prompt payment submitted to Health Plan in connection with the Health Plan Business, which claims adjudication system may include but shall not be limited to: eligibility verification, duplicate services and other appropriate editing; administration of a coordination of benefits and subrogation program; benefits computation; pricing; provider, patient, diagnostic and procedure profiling; managing integrated deductibles and cost-sharing reduction reconciliations; and check writing/electronic funds transfer;

(f) provide to the Health Plan Board, upon request, a written summary of procedures utilized by Providers in the adjudication of claims;

(g) maintain and manage a program to coordinate benefits and third-party liability recovery for Health Plan; and

(h) obtain and maintain all necessary licensures required to perform the above functions.

Providers shall comply with claims payment provisions under applicable law, including, without limitation, Sections 3224-a, 3224-b, and 3224-c of the New York Insurance Law, and with policies and time frames to be mutually agreed upon by Health Plan and Providers. Providers agrees to indemnify Health Plan for all interest and penalties paid by Health Plan solely as a result of Providers' failure to make timely payment to providers in a manner consistent with Section 3224-a of the Insurance Law or for failure to comply with claims practices requirements

prescribed by Article 26 of the Insurance law. Providers will provide Health Plan reasonable documentation evidencing timely payments to all Health Plan providers.

3.10. Provider and Enrollee Services and Records.

(a) Providers shall, as applicable:

- (i) provide and periodically update identification cards for Enrollees, and such other forms, records and documents as may be reasonably necessary or required by Law to assure the availability of appropriate and accurate information for the administration of the Health Plan Business;
- (ii) provide and regularly update Enrollee and Participating Provider files to permit eligibility verification, claims adjudication, and efficient and timely response to inquiries from Enrollees and Participating Providers, which files shall contain complete records of enrollment and termination;
- (iii) provide and periodically update materials for distribution to Enrollees, which instructional brochure shall be distributed at the expense of Health Plan, and shall include procedures for obtaining Covered Services within and outside of Health Plan's service area and for obtaining emergency health services, which materials shall comply with and meet the requirements of all applicable Law and any applicable Government Contract or other Coverage Agreement;
- (iv) provide and periodically update all materials required by Law to be distributed to either Participating Providers or non-Participating Providers, which shall include instructions with regard to billing procedures, payment for services, a schedule of covered plan benefits and applicable risk-sharing arrangements, which materials shall comply with and meet the requirements of all applicable federal, state and other laws, rules and regulations and any applicable Government Contract or other Coverage Agreement; and
- (v) provide and periodically update written grievance procedures for handling Enrollee complaints, which procedures shall meet, on a continuing basis, the minimum requirements of applicable Law and any applicable Government Contract or other Coverage Agreement.

(b) Providers shall provide assistance reasonably necessary to maintain and manage communication programs directed toward Enrollees and Participating Providers,

which programs shall be developed, implemented and maintained at Health Plan. Such Assistance provided by Providers will include, as applicable:

- (i) at the request of the Health Plan Board from time to time, reports regarding the utilization and cost of Covered Services rendered to Enrollees by the providers of those services, including information regarding the types and costs of services rendered, the provider performing the services, and the frequency at which each type of service was performed;
- (ii) at the request of the Health Plan Board from time to time, and on behalf of and subject to the approval of Health Plan any report required under (A) federal or state reporting requirements applicable to the Health Plan Business, including any report required under the Social Security Act, as amended, (B) reporting requirements of accreditation agencies with authority over Health Plan, or (C) reports required under any applicable Government Contract or other Coverage Agreement; and
- (iii) prepare for each regular meeting of the Health Plan Board a report or reports describing such aspects of the operations of Health Plan as the Health Plan Board may reasonably request from time to time, including any report reasonably requested by the Health Plan Board to enable it to assess Health Plan's financial position and needs.

3.11. Utilization Review. Health Plan's utilization program shall comply and be conducted in accordance with Health Plan's policies and procedures and Salus, a Utilization Review Agent duly registered under Article 49 of the New York Public Health Law and the New York Insurance Law, shall make recommendations to the Health Plan Board regarding the form and content of the Health Plan's utilization review program. Salus shall maintain and operate systems and procedures necessary or appropriate to support the Health Plan's utilization review program and shall utilize the Health Plan's clinical review standards. Without limiting the foregoing Salus shall, as applicable:

- (a) screen individual claims against utilization criteria approved by the Health Plan Board and, if any claim fails to meet those criteria, submit claims to the Health Plan Board or its designated review committee for adjudication;
- (b) provide medical management services as mutually agreed upon and in accordance with applicable Law, including, but not limited to, prior authorization, case management and member appeals and grievance processing;
- (c) provide support and oversight in obtaining and maintaining compliance with NCQA standards; and

(d) obtain and maintain all necessary licensures and registrations required to perform the above functions.

3.12. Quality Assurance. Providers shall develop quality assurance standards and policies for adoption by the Health Plan Board, and the interpretation and application of adopted standards and policies. Providers shall maintain and operate systems and procedures reasonably necessary or appropriate to support the Health Plan's quality assurance program and shall utilize the Health Plan's quality assurance and quality improvement standards. Without limiting the foregoing, Providers shall, as applicable:

(a) maintain and periodically review and update, as necessary or desirable, template policies and procedures, consistent with NCQA requirements and applicable state and federal Law, for quality improvement and credentialing and recredentialing processes, with the understanding and requirement that Health Plan shall review and edit such policies to meet applicable Law if more stringent than NCQA;

(b) provide credentialing support and services as mutually agreed, including, but not limited to, provision of a credentialing system, all data gathering and information verification as it relates to initial review of credentialing application, primary source verifications, sanctions review, provider directory updates in compliance with applicable Law, credentialing site visits, ongoing monitoring, recredentialing and practitioner disciplinary action reporting. All necessary licensures required to perform these functions will be obtained and maintained by Providers; and

(c) in accordance with applicable Law and NCQA standards, develop and maintain corporate processes for evaluating new technologies and new applications of existing technologies for inclusion in the benefit plan and for adoption or creation of applicable preventive and clinical practice guidelines.

3.13. Premium Billing and Collections. Providers shall provide Health Plan with premium billing and collection services that are reasonably necessary and appropriate in connection with the operation of the Health Plan Business and in compliance with applicable Law. Without limiting the foregoing, Providers shall, *as applicable*:

(a) facilitate the billing of Enrollees for monthly premiums, both electronically and through a paper format, if applicable;

(b) maintain all systems necessary to accept payments from Enrollees which at a minimum shall include the ability to accept the following payment types: debit card, credit card, electronic funds transfer, echeck and physical check; and

(c) hold all premiums collected in a fiduciary capacity, deposit such funds into fiduciary bank accounts established by Providers and comply with applicable Law in the management of such funds, including the payment of claims and withdrawals from any such fiduciary accounts. Such withdrawals may be made by Providers only for purposes expressly permitted by applicable state law, which may include, but are not limited to, the following: (i) remittance to the Health Plan; (ii) deposit in an account



maintained in the name of the Health Plan; (iii) transfer to and deposit in a claims-paying account; (iv) payment to Providers of its fees or charges; and (v) remittance of return premiums to persons entitled thereto.

3.14. Management Information Services. Providers shall provide management information services, including utilization and financial reporting capabilities. On a monthly basis or as otherwise noted, Providers shall prepare the following information:

- (a) Enrollment including number of enrollees at end of prior month, new enrollees, disenrollments, net enrollees and YTD member months;
- (b) Grievance summary;
- (c) Inpatient utilization report (days and admissions) by hospital and SNF provider;
- (d) Ambulatory care utilization report on a quarterly basis.

3.15. Marketing Plan. Providers shall develop, for adoption by the Health Plan Board, and implementing a marketing plan for enrollee recruitment which shall include the following deliverables:

- (a) marketing management;
- (b) enrollment materials such as application forms and member handbooks;
- (c) program introduction materials;
- (d) telephone support; and
- (e) community outreach.

3.16. Assistance in Handling Regulatory Affairs. Providers shall be responsible for promptly responding to inquiries from government agencies concerning all aspects of the Health Plan. In carrying out this responsibility, Providers will promptly notify the Health Plan concerning such inquiries, and consult with the Health Plan in determining an appropriate response regarding any major issue.

3.17. Fraud & Abuse. Providers shall provide assistance in the development of the Health Plan's fraud and abuse prevention plan and providing all of the functions of the special investigations unit for fraud and abuse, which include investigation of cases of suspected fraudulent and abusive activity and fraud and abuse prevention and reduction activities under the Health Plan's fraud and abuse prevention plan. Providers shall provide a sufficient number of full time investigators and other staffing as required by the DOH and/or the Department of Financial Services. Providers shall also reasonably cooperate with any review and examination of the fraud and abuse prevention plan conducted by the DOH, Department of Financial Services or any other government entity.

3.18. Standards for Management and Administrative Services. Providers shall cause the Management and Administrative Services to be provided in accordance with (a) Providers' current servicing standards as these exist prior to date of this Agreement, subject to any changes to such standards required by applicable Law or effectuated by Providers with respect to the servicing of its other comparable businesses, and (b) the QHP regulatory requirements set forth in Appendix A, the Medicare regulatory requirements set forth in Appendix B and the FIDA regulatory requirements set forth in Appendix C, as applicable.

3.19. Capacity; Disaster Recovery.

(a) Providers shall, at all times during the period that Providers are performing the Management and Administrative Services pursuant to this Agreement, (i) keep, maintain or subcontract for a commercially reasonable number of appropriately trained personnel and (ii) obtain and maintain all material permits under applicable Laws (including, if required, an independent adjuster license or third party administrator license) to perform the Management and Administrative Services.

(b) For all computer programs, data, computer equipment, communications equipment and other similar items used by Providers to provide the Management and Administrative Services, Providers shall provide disaster recovery services and backup and archival services that are substantially similar to the disaster recovery services and backup and archival services, respectively, that Providers use for their own computer programs, data, computer equipment, communications equipment and other similar items.

3.20. Force Majeure. Providers shall not be deemed to be in default in the performance of any obligations under this Agreement when such a failure of performance arises out of a Force Majeure Event; provided, however, that Providers shall not be relieved of its obligations hereunder if its failure of performance is due to removable or remediable causes that Providers fail to remove or remedy using commercially reasonable efforts within a reasonable time period. If Providers are rendered unable to fulfill any of its obligations under this Agreement by reason of a Force Majeure Event for a period of twenty-four (24) hours, Providers (a) shall provide written notice thereof to Health Plan, (b) use commercially reasonable efforts to remove such inability and (c) following the cessation of such Force Majeure Event, provide written notice thereof to Health Plan.

4. Covenants. In furtherance of the provision by the Providers of the Management and Administrative Services, the Parties hereby agree as follows:

4.1. Personnel.

(a) Each Provider, as applicable, shall hire, maintain and supervise all personnel as are necessary to provide the Management and Administrative Services to and on behalf of Health Plan. The timing of hiring decisions regarding staffing levels, assignment and termination of such personnel shall be at the sole discretion of the applicable Provider; provided that Health Plan shall have the right to advise and consult with the Providers concerning any such personnel, the Providers shall reasonably

cooperate with Health Plan in addressing any complaints brought to its attention by Health Plan. Such personnel shall be and remain employees of the applicable Provider, and such Provider shall be solely responsible for the payment of all wages, fringe benefits and other compensation associated therewith.

(b) Providers shall provide for an Executive Director, Director of Finance and a Medical Director, each of whom is subject to approval of the Health Plan. The Executive Director shall implement the goals and objectives of the Health Plan's operating plan as defined by the Board of Directors and will advise the Board of Directors on the implementation status of these goals and objectives on a regular basis. The Director of Finance prepares all financial reports, budgets, and forecasts for presentation to and acceptance by the Finance Committee and the Board of Directors. Presentations to the Finance Committee and the Board of Directors will occur on a regular basis. The Medical Director is a New York State licensed physician whose responsibilities include, but are not limited to, the supervision of the utilization review programs and advising the Health Plan on the enforcement of the Health Plan policies concerning medical services. The Medical Director will meet with the Board of Director's Credentialing and Medical Policy Committees on a regular basis. Please note that none of the elements described in section 98-1.11(i) of the Part 98 regulations are being delegated to the Provider and the Board of Directors are retaining sufficient authority and control to discharge its responsibility as the governing authority of the Health Plan, as required by section 98-1.11(j) of the Part 98 regulations.

(c) In assisting in the performance of the Management and Administrative Services to and on behalf of Health Plan, the Plan President shall comply with such policies and procedures as are established by the Health Plan Board. The Health Plan shall have direct authority to terminate the Plan President with or without cause. Upon termination of the Plan President, the Health Plan Board shall determine an interim Plan President, in consultation with Providers, but in the Health Plan Board's sole discretion, as promptly as practicable. The Health Plan Board shall appoint a permanent Plan President, in consultation with Providers, but in Health Plan Board's sole discretion, within forty-five (45) days after removal of the prior Plan President or as soon as reasonably practicable thereafter.

(d) Each Provider, severally and not jointly, shall be liable to Health Plan for any and all damages or losses solely and directly caused by the dishonesty, willful misconduct or negligence of such Provider's employees in the provision of Management and Administrative Services. No Provider shall have any liability whatsoever for any damages or losses suffered by Health Plan because of the dishonesty or willful misconduct of any employee of Health Plan or any provider of Covered Services, including Participating Providers. Nothing in this provision shall waive, modify, delegate or shift the liability of any Provider or Health Plan.

#### 4.2. Facilities and Support Services.

(a) Office Space. Full-time personnel or agents employed or retained by any Provider in connection with its performance of the Management and Administrative Services shall be located in office space provided or arranged for, and leased by, such Provider.

(b) Equipment and Furniture. The Providers shall be responsible for all costs associated with furnishing office space utilized by Provider personnel and for the purchase, lease or any other expenses associated with business equipment, furniture, and other supplies required in the connection with its performance of the Management and Administrative Services.

(c) Support Services. The Providers shall arrange and pay for reproduction facilities and telephone and other communications services for use by the Providers in their performance of the Management and Administrative Services.

#### 4.3. Insurance.

(a) Health Plan shall provide and maintain at its sole cost and expense:

- (i) professional liability insurance in an amount not less than \$2,000,000 per claim, with an annual aggregate of not less than \$3,000,000; and
- (ii) such other insurance as the Parties may agree to be necessary or desirable for protection against claims, liabilities and losses arising from the operation of the Health Plan Business.

The policy for any such insurance shall name each of the Health Plan, Salus, CMC and CCNY (as their interest may appear) as insureds thereunder in such amounts as are agreed to by the Parties. Providers shall bear the cost of any additional premiums incurred by Health Plan as a result of naming Salus, CMC and CCNY as an additional insured. If Health Plan fails to effect or maintain any such insurance, it shall indemnify Salus, CMC and CCNY, as applicable, against damage, loss or liability to Salus, CMC or CCNY resulting from all risks and liabilities that would have been covered by such insurance. Nothing in this provision shall waive, modify, delegate or shift the liability of Salus, CMC, CCNY or Health Plan.

(b) Providers shall provide and maintain at their sole cost and expense general comprehensive liability insurance covering the provision of the Management and Administrative Services by the Providers. The policy for such insurance shall name Salus, CMC, CCNY and Health Plan (as its interest may appear) as insureds thereunder in such amounts as are mutually agreed to by the Parties and shall be endorsed to require ten (10) days' notice to Health Plan prior to cancellation of such insurance. If Providers fail to effect or maintain such insurance, Providers shall indemnify Health Plan against damage, loss or liability to Health Plan resulting from all risks that would have been

covered by such insurance. Nothing in this provision shall waive, modify, delegate or shift the liability of Salus, CMC, CCNY or Health Plan.

#### 4.4. Fiscal Matters.

(a) Health Plan shall maintain its books of account in accordance with United States generally accepted accounting principles and in accordance with all procedures required by applicable Law, including accounting practices prescribed or permitted by the applicable state.

(b) Health Plan shall annually engage[, at its sole cost and expense,]<sup>1</sup> an independent firm of certified public accountants designated by the Health Plan and acceptable to the Providers) to examine in accordance with all applicable procedures required by the applicable state, the annual financial statements of Health Plan and to render a certification with respect to such financial statements. A copy of those financial statements shall be delivered to the Providers promptly after they are available. Health Plan shall cooperate, at its sole cost and expense, with such firm's examination of Health Plan as part of any audit of the consolidated financial statements of Centene.

(c) Health Plan shall deposit in an appropriate bank or banks designated by the Providers, and in operating accounts established in Health Plan's name, all funds received from the operations of Health Plan. All costs and expenses incurred in the operation of Health Plan shall be paid out of these operating accounts. All persons authorized to make deposits to or draw upon the operating accounts shall be designated or approved in writing by Health Plan and shall be reasonably bonded or otherwise insured. Proof of such bonding or insurance with respect to the Provider's employees assigned to Health Plan shall be provided to Health Plan upon prior written request.

(d) All taxes and other governmental obligations properly imposed upon Health Plan, including any income tax, any premium tax, any surcharge on provider payments, and any guarantee fund or insurance pool assessments, shall be the sole obligation of Health Plan. All taxes and other governmental obligations properly imposed upon any Provider shall be the obligation of such Provider.

#### 4.5. Legal Matters.

(a) Each Provider shall comply on behalf of Health Plan with all applicable Law relating to Health Plan and shall manage the aspects of the business and operations of Health Plan for which it is responsible under this Agreement to ensure that Health Plan maintains all necessary licenses, permits, consents and approvals from all Governmental Authorities that have jurisdiction over the operations of Health Plan. Without limiting the foregoing, upon Health Plan's reasonable request, the Provider shall prepare and file on behalf of Health Plan such periodic and other reports as Health Plan shall advise the Providers are required by applicable Law. In the event any request by any Governmental

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<sup>1</sup> **Note to Draft:** If the Health Plan will be a special purpose entity with no other operations, responsibility for the cost of the audit remains subject to negotiation by the parties.

Authority is made of the Provider with respect to the Providers or Health Plan, the Providers shall notify Health Plan of such request, and shall consult and cooperate with one another, and consider in good faith the views of one another, in preparing any response required of the Providers in respect of such request. Notwithstanding the foregoing, in no event shall any Party be required to disclose to any other Party (i) any interactions between any Party with any Governmental Authorities in the ordinary course of business, (ii) any disclosure which is not permitted by Law, or (c) any disclosure containing confidential or proprietary information, or any attorney-client privileged documents or communications, including, but not limited to, legal or financial opinions, or board presentations prepared, submitted and/or reviewed in connection with any Management and Administrative Services furnished pursuant to this Agreement. No Provider shall be obligated to Health Plan for failure of Health Plan's health care coverage programs to comply with any of such laws, rules and regulations if the failure to comply is due to the financial inability of Health Plan to do so.

(b) To the extent the Health Plan is determined to be noncompliant with any state or federal law directly as a result of actions or omissions by the Providers under this Agreement, the Providers shall jointly and severally hold harmless and indemnify Health Plan for any fines, penalties or other liabilities resulting from such actions or omissions.

(c) The Providers shall, with the prior written approval of Health Plan, have the right to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Health Plan, the validity or application of any Law by any Governmental Authority. Health Plan, after giving its prior written approval, shall cooperate with the Providers with regard to any such contest, and Health Plan shall pay the reasonable costs and expenses, including reasonable attorneys' fees, incurred with regard to any such contest.

4.6. Computer Programs. Any and all computer programs and computer software developed or utilized by any Provider for claims adjudication or to provide the management reports required to fulfill a Provider's responsibilities specified herein shall be at the applicable Provider's sole cost and expense and shall remain the exclusive property of such Provider. Except as otherwise provided in this Agreement, Health Plan shall not use any of such programs or software without the express written consent of the applicable Provider.

4.7. Corporate and Regulatory Status. Each Party shall provide each other Party, upon prior written request, with evidence of its good standing and its maintenance of required certifications and licenses relative to this Agreement, Health Plan and the operations of the Health Plan Business. Each Party shall notify each other Party immediately in the event that it:

(a) loses any certification, licensure, registration or certificate of good standing necessary for the performance of its obligations hereunder (excluding technical lapses);

(b) becomes bankrupt or insolvent; or

(c) obtains a qualified opinion from an outside independent accounting firm as to its financial soundness.

4.8. Governmental Access. To the extent permitted by applicable Law and subject in all respects to any confidentiality or proprietary restrictions, including any attorney-client privileges, each Provider shall retain and permit applicable Governmental Authorities, including without limitation, the New York State Departments of Health and Financial Services, the Comptroller General of the United States, the United States Department of Health and Human Services, and their respective duly authorized representatives access to such books, documents and records of Health Plan and the Providers as are reasonably necessary to verify the nature and extent of the costs of the services supplied under this Agreement.

4.9. Cooperation. Each of the Parties shall use its commercially reasonable efforts to take all actions and to do all things reasonably necessary, proper or advisable to facilitate the provision of the Management and Administrative Services.

4.10. Compliance with Law. All actions taken by any Provider shall comply with applicable Law, including but not limited to all applicable requirements of the Americans with Disabilities Act and applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH”), and all implementing regulations, state and other laws, rules and regulations including but not limited to New York Public Health Law Article 27-F; and Mental Hygiene Law § 33.13 as applicable. The Providers shall also comply with the Government Contracts.

4.11. Business Associate and Medical Records Retention. In the event a Provider is deemed a “business associate” of Health Plan, as defined in the HIPAA Privacy Regulations, the Provider and Health Plan shall execute a Business Associate Addendum in the form attached to this Agreement as Exhibit 1. The Parties agree that medical records shall be retained for a period of 6 years after the date of service, and in the case of a minor, for 3 years after majority or 6 years after the date of service, whichever is later, or for such longer period as specified within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.

## 5. Provider Fees.

5.1. Amount. In consideration for the provision of all Management and Administrative Services to be provided by the Providers hereunder, Health Plan shall pay to CMC, on behalf of the Providers, a fee on a capitation (per Member per month or “PMPM”) basis for each calendar month (or portion thereof) during the term of this Agreement in accordance with the below table:

Line of Business	PMPM
Medicaid Adv Plus	\$719.05
Medicare Advantage	124.89
Medicaid Advantage	156.43
Essential Plan	42.42
Exchange	52.29

The above compensation for the Management and Administrative Services is estimated to reflect the actual and reasonable costs incurred by the Providers in providing such Management and Administrative Services including expenses directly and specifically incurred by the Providers in providing the Management and Administrative Services and other expenses, including the overhead of the Providers that is allocated to the Health Plan.

5.2. Payment. The management fee payable to CMC pursuant to Section 5.1 for any calendar month (or portion thereof) shall be paid by Health Plan on or before the first day of that month (or if such day is not a business day, the immediately succeeding business day) based on the estimated Enrollees for that month. The estimated Enrollees for a month shall be based on the most recent forecast then available for the Health Plan. The amount of the payment for a month shall be increased or decreased by an amount if any by which actual Enrollees for the immediately preceding month were greater than or less than, respectively, the estimated Enrollees used in computing the initial payment of the management fee for such immediately preceding month multiplied by the applicable PMPM.

5.3. Allocation of Management Fees. In consideration for the provisions of the Management and Administrative Services to be provided by CCNY or Salus hereunder, CMC shall pay CCNY and Salus, as applicable, a fee for each calendar month (or portion thereof) during which such entity performs such services. The amount of such fee shall be mutually agreed by CMC and CCNY or Salus, as applicable, from time to time be based upon (a) the management fee received by CMC hereunder, and (b) the proportion of services provided to Health Plan hereunder that are represented by the services provided by CCNY or Salus, as applicable. The fee shall be payable by CMC to CCNY and Salus, as applicable, within five (5) business days of the receipt by CMC of its management fee hereunder, and shall be adjusted within (5) business days of the adjustment of any such management fee hereunder.



6. Expenses of the Providers.

6.1. General. Except as otherwise provided herein, each Provider shall be responsible for all expenses incurred by it or on its behalf in connection with its provision of the Management and Administrative Services.

6.2. Additional Excluded Expenses. In addition to such other expenses of the Providers identified in this Agreement as being the obligation of (or reimbursable by) Health Plan, expenses incurred by Health Plan, or by any Provider on behalf of Health Plan, for the following shall be the responsibility of Health Plan:

(a) payments to providers and suppliers in connection with the delivery of Covered Services to Enrollees, including all compensation and reimbursement paid to medical and paramedical personnel and health care facilities, and the maintenance of space used in the delivery of Covered Services to Enrollees; provided however, it being understood that the administration of such payments shall be undertaken by Providers and the amount of all such payments shall be reimburseable subject to the terms of the reinsurance agreements between the Health Plan and Hallmark Life Insurance Company;

(b) expenses associated with meetings, communications and mailings to the Health Plan Board and committees thereof;

(c) except as otherwise provided in Section 4.3, all insurance costs, including professional liability/malpractice, general liability and all reinsurance, stop-loss, and out-of-area insurance that may be purchased by Health Plan;

(d) fees and expenses associated with the annual audit or certification of Health Plan's financial statements and any other corporate financial audit, including any such audit or certification required by applicable Law;

(e) fees and expenses associated with the preparation of Health Plan's tax returns;

(f) license and filing fees and other fees associated with annual reports or other reports required by applicable Law;

(g) except as otherwise provided in Section 3.7 and Section 3.8, expenses for legal, actuarial and other consulting services of firms retained by or on behalf of Health Plan; and

(h) all licensing and certification fees for Health Plan to operate the Health Plan Business, including all deposits, bonds and insurance required by applicable Law.

Upon submission by a Provider, Health Plan shall promptly pay, or reimburse such Provider for, expenses associated as provided in this Section 6.

7. Term and Termination.

7.1. Term. Subject to the requisite approval by the Commissioner, this Agreement shall be effective as of [•], 2018 (the “Effective Date”) and, unless terminated earlier pursuant to the termination provisions provided herein, shall continue for five (5) years or such earlier time, as any, as the Health Plan ceases to be obligated to provide services to any Enrollees. In no event shall the term of this Agreement extend beyond such five (5) year period.

7.2. Reserved.

7.3. Event of Default by the Providers.

- (a) It shall constitute an event of default hereunder by the Providers:
  - (i) if a Provider shall apply for or consent to the appointment of a receiver, trustee or liquidator of such Provider or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law;
  - (ii) if any order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor, adjudicating a Provider bankrupt or insolvent or approving a petition seeking reorganization of such Provider or all or a substantial part of its assets, and such order, judgment or decree continues without stay and in effect for ninety (90) consecutive days; or
  - (iii) if a Provider fails to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision as provided in this Agreement and any such failure continues until: (A) a period of sixty (60) days after written notice thereof has been received by such Provider from Health Plan; or (B) with respect to any such failure that cannot reasonably be cured within sixty (60) days, a period of 120 days after written notice thereof has been received by such Provider from Health Plan.

(b) If an event of default by a Provider shall occur as contemplated by paragraph (a) of this Section 7.3, Health Plan shall, in addition to any other remedies available to it at law or in equity, be entitled to terminate this Agreement upon ten (10) days written notice and to collect from the Providers, and the Providers shall pay to Health Plan, as the case may be, reasonable attorneys’ fees incurred by Health Plan as a direct result of such event of default and all costs incurred by Health Plan to correct, rectify or otherwise make Health Plan whole by reason of such Provider’s failure to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision as provided in this Agreement.

7.4. Event of Default by Health Plan.

- (a) It shall constitute an event of default hereunder by Health Plan:
  - (i) if Health Plan applies for or consents to the appointment of a receiver, trustee or liquidator of Health Plan or of all or a substantial part of its assets, files a voluntary petition in bankruptcy, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law.
  - (ii) if any order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Health Plan bankrupt or insolvent or approving a petition seeking reorganization of Health Plan or appointing a receiver, trustee or liquidator of Health Plan or of all or a substantial part of its assets, and such order, judgment or decree continues without stay and in effect for ninety (90) consecutive days.
  - (iii) if Health Plan fails to make any payment to any Provider hereunder within twenty (20) days after such payment becomes due in accordance with the terms hereof.
  - (iv) if Health Plan fails to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision of this Agreement to be kept, observed, paid or performed by Health Plan (other than as contemplated by the preceding clause (iii)) until: (A) a period of sixty (60) days after written notice thereof has been received by Health Plan from any Provider; or (B) with respect to any such failure that cannot reasonably be cured within sixty (60) days, a period of 120 days after written notice thereof has been received by Health Plan from such Provider.
  - (v) if Health Plan loses or has suspended its Certificate of Authority, and such loss or suspension is not revoked or cured within forty-five (45) days from the date of such loss or suspension.

(b) If an event of default by Health Plan shall occur as contemplated by paragraph (a) of this Section 7.4, the Providers shall, in addition to any other remedies available to it at law or in equity, be entitled to terminate this Agreement upon ten (10) days written notice and to collect from Health Plan reasonable attorneys' fees incurred by the Providers because of such event of default and all costs incurred by the Providers to correct, rectify or otherwise make the Providers whole by reason of Health Plan's failure to keep, observe, pay or perform any material covenant, obligation, agreement, term or

provision as provided in this Agreement. If an event of default has occurred under clause (a) (iii) of this Section 7.4, the Providers shall be further entitled to interest at the rate of 15% per annum (or, if less, the maximum interest rate payable thereon under applicable law) on any unpaid amount from the date such amount became due and payable. Notwithstanding any language to the contrary contained herein, if Health Plan's event of default resulted directly from a Change in Law (as defined in paragraph (b) of Section 9.4), then Providers' sole remedy under this Agreement for such event of default shall be those remedies specified in this paragraph (b) and Providers shall not be entitled to any incidental or consequential damages.

(c) Health Plan may terminate this Agreement immediately upon written notice to the Providers if any of the Providers' managing employees is convicted of a criminal offense related to that person's involvement in any program under Titles XVIII, XIX, XX, or XXI of the Social Security Act or has been terminated, suspended, barred, or voluntarily withdrawn as part of a settlement agreement, or otherwise excluded from any program under Titles XVIII, XIX, XX or XXI of the Social Security Act.

7.5. Termination by Order of DOH. This Agreement shall terminate and be deemed cancelled without financial penalty to the Health Plan Board or the Health Plan itself, not more than sixty (60) days after notification to the Health Plan Board and the Providers by written notice from DOH of a determination that the Health Plan is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees.

7.6. Commissioner Approval. Notwithstanding the foregoing, any termination or non-renewal of this Agreement shall require the prior written approval of the Commissioner. Health Plan shall provide the Commissioner notice of termination or non-renewal at least ninety (90) days prior to termination or non-renewal whether initiated by Health Plan or any Provider. Termination may be upon less than ninety (90) days' notice provided it is demonstrated to the satisfaction of the Commissioner prior to termination that circumstances exist which justify more immediate termination.

7.7. Certification of Financial Statements. Immediately upon the termination of this Agreement for any reason, Health Plan shall cause its independent accountants to prepare certified financial statements in accordance with all applicable procedures required by the applicable state for the period commencing on January 1 of the year in which such termination occurs and ending on the date of termination of this Agreement.

## 8. Force Majeure and Disaster Recovery

8.1. Force Majeure. No Party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement; any requirement imposed by a final judgment or decree entered by a court of competent jurisdiction, civil or military authority; or act of God, act or omission of transportation companies or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming Party or its subcontractors ("force majeure conditions"). If any force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Parties, stating the nature of the force majeure condition and any action being taken to avoid or minimize its effect.

8.2. Disaster recovery. At the direction of Health Plan, the Providers shall maintain a disaster recovery plan to ensure the continuous and orderly provision of services to Health Plan and minimize any interruptions thereof. The Providers shall take all steps reasonably necessary to enable it to promptly implement the disaster recovery plan upon the occurrence of an event of force majeure as described in Section 8.1. Such disaster recovery plan will detail the actions the Providers will take to prevent any disruption in service to Health Plan and address the replacement of Health Plan's data. The Providers shall provide a copy of the disaster recovery plan for Health Plan's review upon request. The Providers shall make all necessary changes to the disaster recovery plan as Health Plan may reasonably request.

## 9. General.

9.1. Notices. All notices, requests, demands, claims, and other communications under this Agreement shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly delivered four (4) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent for next business day delivery via a reputable nationwide overnight courier service, in each case to the intended recipient as set forth below:

Health Plan:	New York State Catholic Health Plan, Inc. 95-25 Queens Boulevard Rego Park, New York 11374 Attention: Chief Executive Officer and Chief Legal Officer
Salus:	Salus Administrative Services, Inc. 7700 Forsyth Blvd., Suite 800 St. Louis, Missouri 63105 Attention: Keith Williamson
CMC:	Centene Management Company, LLC 7700 Forsyth Blvd., Suite 800 St. Louis, Missouri 63105 Attention: Keith Williamson
CCNY:	Centene Company of New York, LLC 7700 Forsyth Blvd., Suite 800 St. Louis, Missouri 63105 Attention: Keith Williamson

Any Party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the other Party or Parties. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.1.

9.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that no Party may assign its respective obligations hereunder without the prior written consent of the other Parties and the prior approval of the Commissioner. Any assignment in contravention of this provision shall be void. No assignment shall release any Party from any obligation or liability under this Agreement.

9.3. Subcontracting. Nothing in this Agreement shall prohibit any Provider from subcontracting or delegating its duties hereunder, in whole or in part, to any other person, subject to the prior approval of the DOH under 10 NYCRR Part 98, provided that any default in performance of such Provider's obligations under this Agreement by any subcontractor shall be deemed a default in performance by such Provider, provided, further that this Agreement shall be amended to make such subcontractor or delegator a signatory to this Agreement and to expressly provide for the subcontracting or delegation of such Management and Administrative Services. Any such subcontractor or delegator shall be subject to the provisions of 10 NYCRR Part 98, including all termination provisions, provided that the subcontractor may also be terminated by the applicable Provider upon at least ninety (90) days' notice and with the prior written approval of the Commissioner.

9.4. Entire Agreement; Amendments; DOH Approval.

(a) This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between the Parties. Upon the approval of DOH, this Agreement is the sole agreement regarding the provision of management services by the Providers to the Health Plan and the compensation to be paid by Health Plan for such management services.

(b) This Agreement may be amended only with the written consent of all of the Parties. No amendment hereof shall be effective without the prior written consent of the Commissioner. No waiver of any right or remedy under this Agreement shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No right or remedy in this Agreement conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given in this Agreement, or now or hereafter legally existing upon the occurrence of any event of default under this Agreement. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to a Party may be exercised from time to time and as often as may be deemed expedient by such Party. All material amendments to this Agreement are subject to the prior written notification of the applicable state(s).

(c) Notwithstanding the foregoing, this Agreement is subject to the approval of the DOH. The Parties agree that any change to this Agreement required by DOH will be made by the Parties immediately upon receipt of written notice from DOH.

9.5. Severability and Supervening Law.

(a) The "New York State Department of Health Standard Clauses for Management Contract Agreement," attached to this Agreement as Exhibit 2 are expressly incorporated into this Agreement and are binding upon the Parties to this Agreement. In

the event of any inconsistent or contrary language between the Standard Clauses and any other part of this Agreement, including but not limited to appendices, amendments and exhibits, the Parties agree that the provisions of the Standard Clauses shall prevail, except to the extent applicable Law requires otherwise and/or to the extent a provision of this Agreement exceeds the minimum requirements of the Standard Clauses.

(b) Any provision of this Agreement that is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction, except that the Parties recognize that this Agreement at all times is to be subject to applicable Law.

(c) The Parties further recognize that this Agreement shall be subject to amendments to, or repeals of, such laws and regulations, to the enactment or promulgation of new legislation or regulations and to new interpretations thereof by judicial or regulatory bodies (each a "Change in Law"). Subject to Approval by the Department of Health, any provision of this Agreement that is rendered invalid by, or is inconsistent with, a Change in Law, or that would render one or more Parties in violation of the same, shall be deemed superseded by such Change in Law so as to render this Agreement, and the Parties hereto, in compliance therewith ("Automatic Amendment"). Notwithstanding the foregoing, if such Change in Law or Automatic Amendment materially and adversely impacts the reasonable economic expectations of one or more Parties to this Agreement, then upon the request of an adversely impacted Party, the Parties shall negotiate, in good faith, for a period of sixty (60) days in an effort to amend the financial provisions of this Agreement in a manner that preserves, to the greatest extent possible, the reasonable economic expectations of the Parties taking into consideration the Change in Law or the Automatic Amendment. If the Parties are unable to reach agreement regarding such amendment then an adversely impacted Party may terminate this Agreement upon sixty (60) days' prior written notice and with the written consent of the Commissioner.

9.6. Disputes. Any controversy or claim arising out of or relating to this Agreement or a breach hereof shall be settled by arbitration, at the election of any Party, in accordance with the commercial arbitration rules of the American Arbitration Association; provided, however, that (a) the Commissioner shall be given prior notice of all issues to be arbitrated and a copy of all arbitration decisions, and (b) such decision is not binding on the Commissioner. The judgment of the arbitrators shall be final and binding upon the parties and judgment upon such award rendered by the arbitrators may be entered in any court of competent jurisdiction. Pending final determination of any dispute hereunder, the Providers shall proceed diligently with the performance of this Agreement. Such arbitration shall take place in a mutually agreed upon location. Notwithstanding the foregoing, nothing herein shall in any way prohibit any Party from asserting equitable claims in a court of competent jurisdiction or to petition such court for and obtain injunctive relief with respect to any claim or controversy, including one arising out of or relating to this Agreement or a breach hereof.



9.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.

9.8. Construction.

(a) The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

(b) The headings of the Sections and Subsections of this Agreement are included only for convenience and shall not affect the meaning or interpretation of this Agreement.

(c) References herein to Sections and Subsections shall mean such Sections and Subsections of this Agreement, except as otherwise specified. The words “herein” and “hereof” and other words of similar import refer to this Agreement as a whole and, unless otherwise specified, not to any particular part of this Agreement. The word “including” as used in this Agreement shall not be construed so as to exclude any other thing not referred to or described.

(d) In computing any period of time under this Agreement, the day from which the designated period of time begins to run shall not be included; the last day of the period so computed shall be included, unless it is not a business day, in which event the period shall run until the end of the next day that is a business day. For purposes of this Agreement, the term “business day” shall mean a day that is not a Saturday, a Sunday or a statutory or civic holiday in either the state of Missouri or the state in which Health Plan maintains a domestic insurance license.

9.9. Exhibits. All attachments to this Agreement are hereby incorporated by reference and deemed a part of this Agreement.

9.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties to be effective as of the date first above written.

**NEW YORK STATE CATHOLIC HEALTH PLAN,  
INC.**

By: \_\_\_\_\_  
Name:  
Title:

**SALUS ADMINISTRATIVE SERVICES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CENTENE MANAGEMENT COMPANY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**CENTENE COMPANY OF NEW YORK**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Management Agreement]*

## EXHIBIT 1

To

### MANAGEMENT AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** ("**Agreement**") is entered into on this \_\_\_\_ day of , 20 \_\_\_\_ (the "**Effective Date**"), by and between New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York, a New York not-for-profit corporation ("**Covered Entity**") and [•], a [•] ("**Business Associate**") (each, a "Party" and collectively, the "Parties").

**WHEREAS**, Covered Entity creates, receives, transmits, maintains and/or discloses (collectively, "Use") "**Protected Health Information**" or "**PHI**" (as such terms are defined at 45 C.F.R. Section 164.500 et seq.), and Covered Entity desires to obtain services from Business Associate that will result in the Use of such PHI by Business Associate pursuant to a contract (in effect as of, or after, the effective date of this Agreement) between Business Associate on one hand and Covered Entity on the other hand (each contract, a "**Services Agreement**");

**WHEREAS**, Covered Entity and Business Associate desire this Agreement to govern the Use of all PHI by and between the Parties and to supersede all other agreements (including all other business associate agreements) between such entities regarding the Use of PHI; and

**WHEREAS**, pursuant to the authorities set forth above, Business Associate may use PHI only in accordance with this Agreement.

**NOW, THEREFORE**, Covered Entity and Business Associate agree as follows:

#### 1. Definitions.

1.1 The Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), and the implementing regulations thereunder, including but not limited to the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 (the "**Privacy Rule**") and the Security Standards for the Protection of Electronic Health Information at 45 C.F.R. Parts 160 and 164 (the "**Security Rule**"), and the requirements of the final modifications to the HIPAA Privacy Rule, Security, Rule, et al., issued on January 25, 2013 and effective March 26, 2013, as may be amended from time to time, shall collectively be referred to herein as the "**HIPAA Authorities**." All other capitalized terms hereunder shall have the meaning ascribed to them elsewhere in this Agreement, or, if no such definition is specified herein, shall have the meaning set forth in the HIPAA Authorities.

1.2 "Affiliate" (capitalized or not) means any entity that controls, is controlled by or is under common control with a Party as well as any entity that is a subsidiary of an entity that controls a Party.

1.3 “Personally Identifiable Information” or “PII” shall include any data elements that identify an individual or that could be used to identify an individual, including but not limited to an individual’s first name or initial and last name, all geographic subdivisions smaller than a state, all elements of dates (except year) for dates directly related to an individual including birth date, admission date, discharge date, date of death, telephone numbers, fax numbers, electronic mail addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate or drivers license numbers, vehicle identifiers and serial numbers, including license plate numbers, device identifiers and serial numbers, web universal resource locators (URLs), internet protocol (IP) address numbers, biometric identifiers, including finger and voice prints, full face photographic images and any comparable images; and any other unique identifying number, characteristic, code, or combination that allows identification of an individual.

1.4 “Protected Health Information” or “PHI” shall collectively refer to Protected Health Information, Electronic Protected Health Information (“ePHI”), each as defined by the HIPAA Authorities, and “Personal Identifiable Information” as defined above.

## **2. Interpretation of Provisions of this Agreement; Application of Agreement.**

2.1 In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the HIPAA Authorities, the terms of the HIPAA Authorities shall prevail. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Authorities. A reference in this Agreement to a section in the HIPAA Authorities means the section in effect or as amended. Titles or headings are used in this Agreement for reference only and shall not have any effect on the interpretation of this Agreement.

2.2 This Agreement governs the Use of all PHI that exists or arises in connection with a Services Agreement. Each Party hereto represents and warrants that (i) it is validly existing under the laws of the state of its formation; (ii) it has the full right, authority, capacity and ability to enter into this Agreement and to carry out its obligations hereunder; (iii) this Agreement is a legal and valid obligation binding upon it the obligations hereunder of such Party; and (iv) its execution, delivery and performance of this Agreement does not conflict with any agreement, instrument, obligation or understanding to which it is bound.

## **3. Obligations of Business Associate.**

3.1 Limits on Use and Disclosure. Business Associate agrees to not use or further disclose PHI other than as permitted by this Agreement or as Required by Law. Business Associate further agrees that to the extent it is carrying out one or more of the Covered Entity’s obligations under the Privacy Rule, it shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

3.2 Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate agrees to establish, implement and

maintain appropriate safeguards, and comply with the Security Rule with respect to Electronic PHI, as necessary to prevent any use or disclosure of PHI other than as provided for by this Agreement.

3.3 Report of Improper Use or Disclosure. "Incident" means (i) any successful Security Incident, (ii) Breach of Unsecured PHI, or (iii) any loss, destruction, alteration or other event in which PHI cannot be accounted for. Successful Security Incidents shall not include pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate agrees to notify Covered Entity in writing immediately upon discovery, but not later than the same day of discovery of any Incident (by Business Associate or by a Subcontractor) involving the acquisition, access, use or disclosure of the PHI not provided for by this Agreement of which Business Associate becomes aware. As soon as reasonably possible thereafter, in no case more than seven (7) calendar days following discovery of the Incident, Business Associate shall provide Covered Entity with a written report which shall include but not be limited to: i) a description of the circumstances under which the Incident occurred; ii) the date of the Incident and the date that the Incident was discovered; iii) a description of the types of PHI involved in the Incident; iv) the identification of each Individual whose PHI is known or is reasonably believed by the Business Associate to have been affected; and v) any recommendations that the Business Associate may have, if any, regarding the steps that Individuals may take to protect themselves from harm. Business Associate shall make itself and any subcontractors and agents assisting Business Associate in the performance of its obligations available to Covered Entity to testify as witnesses, or otherwise, in the event of an Incident.

3.4 Subcontractors.

(a) Prior to the date on which any Subcontractor (including any affiliate that is a Subcontractor) creates, receives, maintains or transmits PHI on behalf of Business Associate in connection with Business Associate's obligations under the Services Agreement, Business Associate agrees to enter into a written agreement with any Subcontractor ("***Subcontractor Agreement***") to whom Business Associate provides PHI that requires them: (i) to comply with the same HIPAA Authorities that apply to Business Associate under the Agreement; and (ii) to comply with the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such PHI.

3.5 Access to Records. At the request of Covered Entity and within five (5) business days of such request and in a reasonable manner designated by Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in a manner compliance with 45 CFR §164.524 and/or other applicable provisions of the HIPAA Authorities.

3.6 Amendments to PHI. At the request of Covered Entity, or, as directed by Covered Entity, at the request of an Individual, Business Associate shall make, within fifteen (15) business days of such request and in a reasonable manner designated by Covered Entity, any amendment(s) to PHI in a Designated Record Set to which the Covered Entity has agreed

pursuant to 45 CFR §164.526, or shall otherwise assist Covered Entity in complying with Covered Entity's obligations under 45 CFR §164.526.

3.7 Availability of Internal Practices, Books and Records. Business Associate shall make its internal practices, books and records available to Covered Entity or the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Authorities, in a time and manner designated by Covered Entity or the Secretary, as applicable. Covered Entity reserves the right to request, and Business Associate shall provide, additional satisfactory assurances that Business Associate is meeting its applicable obligations under the HIPAA Privacy and Security Rules. Such requests may include, but are not limited to; an onsite audit, conducted by Covered Entity or its designee, access to policies and procedures, risk assessment documentation, incident logs or information related to the Business Associate's Subcontractors compliance with their applicable obligations under the HIPAA Privacy and Security Rules.

3.8 Accounting of Disclosures. Business Associate shall document such disclosures of PHI and information related to such disclosures (i.e., (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably states the basis for the disclosure) as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Such documentation shall be maintained with regard to all disclosures of PHI, except for those disclosures that are expressly exempted from the documentation requirement under the HIPAA Authorities (see, e.g., 45 CFR §§164.502; 164.508; 164.510; 164.512, etc.). Documentation required to be collected by the Business Associate under this Section shall be retained for a minimum of six (6) years, unless otherwise provided under the HIPAA Authorities. Business Associate shall further provide the information collected pursuant to this Section to Covered Entity or an Individual, within fifteen (15) business days of the applicable request and in a reasonable manner designated by Covered Entity, as necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 or other applicable provision of the HIPAA Authorities.

3.9 Disclosure of Minimum PHI. Business Associate agrees that it shall request, use and/or disclose only the amount and content of PHI that is the Minimum Necessary for Business Associate to fulfill its obligations under the terms and conditions of this Agreement. Business Associate acknowledges that such Minimum Necessary standard shall apply with respect to uses and disclosures by and among members of Business Associate's workforce as well as by or to third parties as permitted hereunder.

3.10 Security Rule Requirements. Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement or the HIPAA Authorities of which it becomes aware, including any Incident. Accordingly, Business

Associate agrees to report any Incident of which it becomes aware to Covered Entity immediately, but not later than the same day of discovery of the Incident.

3.11 Compliance with HIPAA Authorities. Requirements of the HIPAA Authorities that are made applicable with respect to business associates, or any other provision required to be included in this Agreement pursuant to the HIPAA Authorities, are incorporated into this Agreement by this reference.

**4. Permitted Uses and Disclosures by Business Associate.**

4.1 Use or Disclosure to Perform Functions, Activities, or Services. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform those functions, activities, or services that Business Associate performs for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Any such use or disclosure shall be limited to those reasons and those Individuals as necessary to meet the Business Associate's obligations under the Services Agreement.

4.2 Appropriate Uses of PHI. Except as may be otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

4.3 Confidentiality Assurances and Notification. Except as may be otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that such PHI will remain confidential and used or further disclosed only as Required by Law or for the purpose for which such PHI was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

4.4 Data Aggregation Services. As applicable, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B), except as may be otherwise provided by this Agreement.

**5. Indemnification.** Each party (the "*Indemnitor*") shall indemnify and hold harmless the other party (the "*Indemnitee*") against, and reimburse such Indemnitee for, any expense, loss, damages, fees, costs, claims or liabilities of any kind arising out of or related to any Actions asserted or threatened by a third party arising out of or related to the Indemnitor's acts and omissions associated with its obligations under this Agreement or its use or disclosure of PHI. Such indemnification shall include, but not be limited to, the payment of all reasonable attorney fees associated with any such Action.

**6. Obligations of Covered Entity.**

6.1 Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices, to the extent that such limitation(s) may affect Business Associate's use or disclosure of PHI.

6.2 Change or Revocation of Permission. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's permitted or required uses and disclosures of PHI. Business Associate shall comply with any such changes or revocations.

6.3 Restrictions on Use or Disclosure. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI. Business Associate shall comply with any such restrictions. Business Associate shall immediately notify Covered Entity of any request for a restriction on the use or disclosure of an Individual's PHI that Business Associate receives from such Individual.

6.4 No Request to Use or Disclose in Impermissible Manner. Except as necessary for the Data Aggregation Services or management and administrative activities of the Business Associate as allowed herein, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

## 7. Term and Termination

7.1 Term. This Agreement shall be effective as of the earlier of the date first documented above or the effective date of the Services Agreement, and shall terminate upon termination of the Services Agreement for any reason or as otherwise provided in this Agreement.

7.2 Termination with Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, or its Subcontractors, Covered Entity shall, at its option: (i) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the cure period identified in the Services Agreement, or if no cure period is identified in the Services Agreement, as specified by Covered Entity; (ii) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered Entity deems cure by Business Associate not to be possible; or (iii) if neither termination nor cure are feasible, report the violation to the Secretary.

### 7.3 Effect of Termination.

(a) Except as provided in Section 7.3(b), upon termination of this Agreement for any reason, Business Associate shall return or destroy, and shall retain no copies of, all PHI in the possession of Business Associate.

(b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written



notification of the conditions that make return or destruction infeasible. Upon Covered Entity's written approval, which shall not be unreasonably withheld, Business Associate may retain the PHI, but shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **8. Miscellaneous.**

8.1 Assignment; Waiver. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other party. Except as provided herein, this Agreement shall create no independent rights in any third party or make any third party a beneficiary hereof. No failure or delay by either party in exercising its rights under this Agreement shall operate as a waiver of such rights, or of any prior, concurrent, or subsequent breach.

8.2 Injunctive Relief. Business Associate agrees that breach of the terms and conditions of this Agreement shall cause irreparable harm for which there exists no adequate remedy at law. Covered Entity retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this Agreement, including but not limited to the unauthorized use or disclosure of PHI by Business Associate or any Subcontractor, contractor or third party that received PHI from Business Associate.

8.3 Survival; Severability. The respective rights and obligations of Business Associate under this Agreement, including but not limited to both parties indemnification obligations, shall survive the termination of this Agreement. The parties agree that if a court determines that any of the provisions of this Agreement are invalid or unenforceable for any reason, such determination shall not affect the enforceability or validity of the remaining provisions of this Agreement.

8.4 Entire Agreement; Amendment. This document, together with any written Schedules, amendments and addenda, constitutes the entire agreement of the parties and supersedes all prior oral and written agreements or understandings between them with respect to the matters provided for herein. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Authorities. Any modifications to this Agreement shall be valid only if such modifications are in accordance with the HIPAA Authorities, are made in writing, and are signed by a duly authorized agent of both parties.

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that the HIPAA Authorities do not preempt the same.

8.6 Notice. Any notice required or permitted to be given by either party under this Agreement shall be sufficient if in writing and hand delivered (including delivery by courier) or sent by postage prepaid certified mail return receipt requested, to the following address:

**If Covered Entity:**

Name:

Title:

Company:

Address:

Phone:

**If Business Associate:**

Name: Keith Williamson

Title: Secretary

Company: [•]

Address: 7700 Forsyth Blvd., Suite 800

St. Louis, MO 63105

Phone: (314) 725-4477

8.7 Independent Contractors. For purposes of this Agreement, Covered Entity and Business Associate, and Covered Entity and any Subcontractor of Business Associate, are and will act at all times as independent contractors. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.

Each party to this Agreement warrants that it has full power and authority to enter into this Agreement, and the person signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

**COVERED ENTITY****BUSINESS ASSOCIATE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 2**  
**NEW YORK STATE DEPARTMENT OF HEALTH**  
**STANDARD CLAUSES**  
**FOR MANAGEMENT SERVICE AGREEMENTS**

Notwithstanding any other provision of this agreement, contract, or amendment (hereinafter “Agreement”) the parties agree to be bound by the following clauses, which are hereby, made a part of the Agreement:

**A. DEFINITIONS FOR PURPOSES OF THIS APPENDIX**

1. **“MCO”** includes;
  - traditional health maintenance organizations certified pursuant to Public Health Law (PHL) Section 4403;
  - special purpose MCOs, also known as prepaid health services plans (PHSPs), certified pursuant to PHL section 4403-a;
  - HIV Special Needs Plans (HIV SNPs) certified pursuant to PHL Section 4403-e; and
  - Managed long term care plans certified or operating pursuant to PHL section 4403-f.
2. **“Management Contractor”** means any person, other than staff employed by the MCO, entering into an agreement with the governing authority of an MCO for the purpose of managing the day-to-day operations of the MCO.
3. **“IPA”** includes, in addition to independent practice associations, a pharmacy or laboratory with the legal authority to contract with other pharmacies or laboratories to arrange for or provide services to enrollees of the New York State MCO.
4. **“Management functions”** are elements of an MCO governing body’s management authority. Some management functions, listed in 10 NYCRR 98-1.11(i), **must not** be delegated by an MCO to another person or entity. Other management functions, listed in 10 NYCRR 98-1.11(j), **may** be delegated to another person or entity, but only pursuant to a management contract approved by DOH.
5. **“Technical and administrative services”** refers to any functions (other than medical services) that an MCO is not prohibited from delegating by 10 NYCRR 98-1.11(i), and that are not functions listed in 10 NYCRR 98-1.11(j) requiring DOH approval of a management contract. Administrative services include administrative expenses provided through the contract that the MCO would otherwise have reported on the MCO’s own cost report. They do not include administrative expenses incurred by an IPA or provider in the course of performing the IPA or provider’s business.

6. **“Claims Payment”** is defined as making an independent determination to pay, deny or pend claims for payment. This is different from the ministerial task of writing a check for payment based upon the decision to act on a claim made by a different entity.

## **B. GENERAL TERMS AND CONDITIONS**

1. This Agreement is subject to approval by the Department of Health and will not become effective until such approval is received from the Department of Health.
2. This Agreement shall be limited to five years and may be renewed only when authorized by the Commissioner.
3. The governing authority of the MCO shall be responsible for establishment and oversight of the MCO's policies, management and overall operation, regardless of the existence of any management contract.
4. The governing authority of the MCO shall retain ongoing responsibility for statutory and regulatory compliance.
5. The governing authority of the MCO are in no way lessened by entering into a management contract, and any powers not specifically delegated to the management contractor through the provisions of the Agreement remain with the governing authority of the MCO.
6. The parties agree to incorporate into this Agreement any and all modifications required by the Department of Health for approval or, alternatively, to terminate this Agreement if so directed by the Department of Health effective upon at least ninety (90) days' notice.
7. The parties agree that any amendments or revisions to this Agreement shall be effective only with the prior written consent of the Department of Health.
8. The management contractor agrees that it shall not subcontract any of its obligations hereunder or the performance of any of the management contractor's services without the prior written consent of the Commissioner. In the event the management contractor proposes to subcontract any management functions, the subcontractor will be a signatory to the management contract, which will expressly provide for the subcontracting of management functions to the subcontractor. The subcontractor will be subject to the provisions of 10 NYCRR 98-1.11 to the same extent as the management contractor, including all termination provisions, provided that the subcontractor may also be terminated by the management contractor upon at least ninety (90) days notice and with the prior written approval of the Commissioner.
9. The parties to this Agreement agree to comply with all applicable requirements of the Federal Americans with Disabilities Act.

10. The parties to this Agreement agree to comply with all applicable requirements of the: Health Insurance Portability and Accessibility Act of 1996, 42 USC 1320 (d); Public Health Law Article 27-F; and Mental Hygiene Law § 33.13.
11. The MCO, IPA or management contractor which is a party to the Agreement agrees that nothing within this Agreement is intended to, or shall be deemed to, transfer liability for the parties own acts or omissions, by indemnification or otherwise, to each other or to a provider.
12. Sole Agreement. The management contract, with its exhibits, schedules and attachments, approved by the Department shall be the sole agreement between the management contractor and the governing authority of the MCO for the purpose of the management services delegated herein on behalf of the MCO and payment to the management contractor for management services.
13. The validity and interpretation of this Agreement and the rights and obligations of the parties under this Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.

#### **C. PAYMENT; RISK ARRANGEMENTS**

1. The management contractor shall compensate Participating Providers in a timely manner consistent with the provisions of Sections 3224-a, 3224-b, and 3224-c of the New York State Insurance Law, as applicable; provided, however, that nothing herein shall limit the liability of the MCO pursuant to such law for any failure to pay providers in accordance with the provisions of such law.
2. The parties agree that the management contractor cannot assume any financial risk under this Agreement.

#### **D. IPA's ROLE AS AGENT**

1. The parties understand and agree that IPA, as a signatory to this Agreement, has authority to act as agent for the Participating IPA Providers with regard to the adjudication of claims by MCO and/or MSO. IPA shall include language in its participating provider agreements and/or provider manual to inform Participating IPA Providers that MSO has initial responsibility for determining payment of claims submitted by Participating IPA Providers for the provision of covered services to members. The Parties understand and agree that IPA, in its capacity as agent for the Participating IPA Providers, has the authority to play an active role in resolving any claims adjudication issues that the provider may have with the MCO and/or MSO.

#### **E. RECORDS; ACCESS**

1. Annual reports on the financial operations will be provided to the MCO, and any other operational data when requested by the governing authority of the MCO, the Commissioner or Superintendent of Insurance, will be provided by the management contractor.
2. The parties agree that medical records shall be retained for a period of six (6) years after the date of service, and in the case of a minor, for three (3) years after majority or six (6) years after the date of service, whichever is later, or for such longer period as specified within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.

#### **F. TERMINATION AND RENEWAL**

1. Any application for renewal shall be submitted at least 90 days prior to the expiration of this Agreement and shall demonstrate that the goals and objectives of the contract have been met within specified time frames; that the quality of care provided by the MCO during the term of the Agreement has been maintained and improved; and that the reporting requirements contained in this Agreement have been met.
2. This Agreement shall terminate and be deemed cancelled, without financial penalty, to the governing authority of the MCO or the MCO itself not more than sixty (60) days after notification to the governing authority of the MCO and the management contractor by the Department of Health of a determination that the MCO is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees.
3. Any termination or non-renewal of this Agreement shall require the prior written approval of the Commissioner following 90 days' prior written notice; provided, however, that termination may occur upon less than 90 days' notice if it is demonstrated to the satisfaction of the Commissioner, prior to termination, that circumstances exist which justify more immediate termination.
4. The MCO shall provide a plan for the management of the MCO subsequent to any discharge of the management contractor, to be submitted with 90 days prior notification to the Department of Health of the MCO's decision to discharge the management contractor.

#### **G. ARBITRATION**

1. To the extent that arbitration or alternative dispute resolution is authorized elsewhere in this Agreement, the parties to this Agreement acknowledge that the Commissioner is not bound by arbitration or mediation decisions. Arbitration or mediation shall occur within New York State, and the Commissioner will be given notice of all issues going to arbitration or mediation, and copies of all decisions.

**EXHIBIT 3**  
**SCOPE OF SERVICES BY PROVIDER**

<b>Provider</b>	<b>Scope of Services</b>
Salus	Utilization Review Services
CCNY	Personnel Services
CMC	Claims Administration Provider and Enrollee Services and Records Quality Assurance Premium Billing and Collections Program Planning and Development Management Information Systems Marketing Plan and Marketing Regulatory Assistance Fraud and Abuse Assistance Financial Systems and Services Financial Planning and Analysis Treasury Other Financial Support Services Actuarial All Other Required Services

## APPENDIX A

### QHP BUSINESS REGULATORY REQUIREMENTS

This Appendix sets forth the requirements established by DOH and/or the State of New York (the “*State*”), in addition to those set forth elsewhere in the Agreement, applicable to the qualified health plan business (“*QHP Business*”). Unless otherwise provided in this Appendix or the Agreement (into which, for the avoidance of doubt, this Appendix shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in Contract No. C029029 by and between the DOH and Health Plan, dated October 1, 2013 (the “*QHP Contract*”). In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

1. Compliance with QHP Contract. Providers agree that the Management and Administrative Services shall be performed in accordance with the terms of the QHP Contract. Providers specifically agree to be bound by the confidentiality provisions set forth in the QHP Contract.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -Lower Tier Covered Transactions.

2.1 Each prospective lower tier participant certifies, by submission of this proposal; that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.

2.2 Where a prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Confidential Information. Each Provider shall treat all information, which is obtained by it through its performance under the QHP Contract, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

4. Ownership of Exchange Data. For purposes of this section, Exchange Data means data and information created by the Exchange and relating to the Exchange, its employees and agents, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs, ideas, concepts, innovations, inventions, designs, business methodologies, improvements, trade secrets, copyrightable subject matter and other proprietary information. Without the State’s approval (in its sole discretion), the Exchange Data will not be (1) used by any Provider other than in connection with carrying out its obligations under the QHP Contract; (2) disclosed, sold, assigned, leased or otherwise provided to third parties by any Provider other than in connection with carrying out its obligations under the QHP Contract; or (3) commercially exploited by or on behalf of any Provider. Providers hereby irrevocably assign, transfer and convey to the State without further consideration all of its right, title and interest in and to the Exchange Data. Upon request by the State, Providers will execute and deliver any documents that may be necessary or desirable under any law to preserve, or enable the State to enforce its rights with respect to the Exchange Data.

5. Maintenance of Providers Records.

5.1 Providers shall preserve and retain all records relating to Providers’ performance under the QHP Contract in readily accessible form during the term of the QHP Contract and for a period of ten



(10) years thereafter except that Providers shall retain QHP Enrollees' Medical Records that are in the custody of Providers for ten (10) years after the date of service rendered to the QHP Enrollee or cessation of Providers' operation, and in the case of a minor, for ten (10) years after majority.

5.2 All provisions of the QHP Contract relating to record maintenance and audit access shall survive the termination of the QHP Contract and shall bind Providers until the expiration of a period of ten (10) years commencing with termination of the QHP Contract or if an audit is commenced, until the completion of the audit, whichever occurs later. If Providers becomes aware of any litigation, claim, financial management review or audit relating to the fulfillment of the terms of the QHP Contract that is started before the expiration of the ten (10) year period, the records shall be retained until all litigation, claims, financial management reviews or audit findings involved in the record have been resolved and final action taken.

6. Access to Contractor Records.

6.1 Providers shall subject themselves to audits/reviews by the State or its designee to determine the correctness of QHP Enrollee premium payments and Advance Premium Tax Credit payments. Providers also agrees to audit by the State on reasonable and customary terms, subject to applicable State and federal law regarding the confidentiality of and release of confidential Protected Health Information of QHP Enrollees.

6.2 Providers acknowledge and agree that the State shall, subject to applicable State and federal law regarding the confidentiality and release of confidential Protected Health Information of QHP Enrollees, have the right to review and to copy any records and supporting documentation pertaining to the performance of the QHP Contract. Providers agree to maintain such records for possible audit for a minimum of ten (10) years, unless a longer period of records retention is agreed to. Providers agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

7. Providers Audits or Reviews. Each Provider shall promptly notify Health Plan in writing of any inquiry, audit, investigation, litigation, claim, examination or other proceeding involving such Provider that is threatened or commenced by any regulatory agency or other party that a reasonable person might believe could materially affect the ability to perform in accordance with the terms set forth in the QHP Contract. Such notice shall be provided by such Provider to Health Plan within ten (10) days of such Provider's receipt of notice regarding such action. Such Provider shall comply with the State's reasonable requests for information relating to the inquiry; provided, however than any such exchange of information shall be subject to compliance with law and shall not occur to the extent prohibited by order of the court, administrative agency, or other tribunal or regulatory authority having jurisdiction over the matter or by the laws and regulations governing the action. This section shall not be required with respect to disputes relating to claims and other matters noticed to the State in the ordinary course of business pursuant to other terms set forth in the QHP Contract or required by law.

## **APPENDIX B**

### **MEDICARE REGULATORY REQUIREMENTS**

This Appendix sets forth the requirements established by CMS, in addition to those set forth elsewhere in this Agreement, applicable to the Medicare business. Unless otherwise provided in this Appendix or in the other provisions of this Agreement (into which, for the avoidance of doubt, this Appendix shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in 42 C.F.R. Parts 422 and 423. In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

#### **I. DEFINITIONS**

1.1 Completion of Audit: Completion of audit by the Department of Health and Human Services, the Government Accountability Office, or their designees of Health Plan, First Tier or Downstream Entity.

1.2 Downstream Entity: Any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the Medicare Advantage or Prescription Drug benefit, below the level of the arrangement between Health Plan and Providers. These written arrangements continue down to the level of the ultimate provider of both health and administrative services. [42 C.F.R. §§ 422.500; 423.501]

1.3 Final Contract Period: The final term of the contract between CMS and Health Plan.

1.4 First Tier Entity: Any party that enters into a written arrangement, acceptable to CMS, with Health Plan to provide administrative services or health care services for a Medicare eligible individual under the Medicare Advantage or Prescription Drug Programs. [42 C.F.R. §§ 422.500; 423.501]

#### **II. REQUIRED PROVISIONS**

Providers, as First Tier Entities, agree to the following:

2.1 Medicare Compliance. Each Provider shall comply with all applicable Medicare laws, regulations and CMS instructions. [42 C.F.R. § 422.504(i)(4)(v)] Each Provider acknowledges that the Management and Administrative Services performed hereunder shall be consistent and comply with Health Plan's contractual obligations under Contract Number H3328 by and between Health Plan and CMS for the operation of Medicare Advantage (including the Medicare Advantage D-SNP) coordinated care plan(s) with and without Part D prescription drug coverage, effective January 1, 2017 through December 31, 2017 (as amended, renewed or replaced from time to time, the "***CMS Contract***"). [42 C.F.R. §§ 422.504(i)(3)(iii); 423.505(i)(3)(iii)]

2.2 Monitoring by Health Plan. Health Plan shall, on an ongoing basis, monitor the performance of Providers. [42 C.F.R. §§ 422.504(i)(4)(iii); 423.505(i)(4)(iii)]

2.3 Confidentiality and Accuracy of Medicare Enrollee Records. Providers shall:

2.3.1 Abide by all Federal and State laws regarding confidentiality and disclosure of medical records, or other health and enrollment information;

2.3.2 Ensure that medical information is released only in accordance with applicable Federal or State law, or pursuant to court orders or subpoenas;

2.3.3 Maintain Medicare Enrollee records and information in an accurate and timely manner; and

2.3.4 Ensure timely access by Medicare Enrollees to the records and information that pertain to them. [42 C.F.R. §§ 422.504(a)(13); 422.118; 423.505(b)(14); 423.136].

2.4 Services Performed Outside the United States. Providers shall not perform or contract with any third parties to perform any of the Management and Administrative Services to be provided under the Agreement outside of the United States without the prior written approval of Health Plan. Providers shall not utilize an offshore subcontractor to receive, process, transfer, handle, store or access beneficiary protected health information in connection with this Agreement. Should Health Plan in its discretion grant such approval, Providers agree to timely supply Health Plan timely information necessary for Health Plan to comply with, and attest to compliance with, all applicable CMS requirements regarding any such approved offshore arrangement within thirty (30) days after its effective date. [HPMS Memos 07/23/2007 and 09/20/2007]

2.5 Hold Harmless. Providers shall accept as payment in full for the Management and Administrative Services provided to Medicare Enrollees the compensation specified in the Agreement. Providers shall not hold any Medicare Enrollee liable for any fees that are the legal obligation of Health Plan under the Agreement. Providers agree that in no event, including nonpayment by Health Plan, Health Plan's insolvency or breach of this Agreement, shall Providers bill, charge, collect a deposit from, or seek compensation, remuneration or reimbursement from, or have any recourse against a Medicare Enrollee or persons other than Health Plan acting on a Health Plan Medicare Enrollee's behalf. [42 C.F.R. §§ 422.504(i)(3)(i); 422.504(g)(1)(i); 423.505(i)(3)(i); 423.505(g)(1)(i)]

2.6 Audits/Record Retention. The parties agree that the Department of Health and Human Services ("HHS"), the Comptroller General and their designees have the right to evaluate, through inspection, audit or other means, any books, contracts, records, computer or other electronic systems, including medical records and documentation of Providers, directly from Providers or a Downstream Entity, that pertain to any aspect of the Management and Administrative Services performed, reconciliation of benefit liabilities, and determination of amounts payable under, or are otherwise related to the CMS Contract, or as the Secretary of the HHS may deem necessary to enforce the CMS Contract. Providers further agree that such right of HHS, the Comptroller General and their designees to inspect, evaluate and audit any pertinent information for any particular contract period will exist through ten (10) years from the Final Contract Period or from the date of Completion of Audit, whichever is later. [42 C.F.R. §§ 422.504(e)(1); 422.504(i)(2); 423.505(e)(1); 423.505(i)(2)]

2.7 Accountability; Delegation. Health Plan will only delegate any of its activities or responsibilities under the CMS Contract to Providers if such delegation is set forth in a written contract that:

2.7.1 Specifies the delegated activities and reporting responsibilities;

2.7.2 Provides for revocation of the delegation activities and reporting requirements, or specifies other remedies in instances where CMS or Health Plan determines that Providers have not performed satisfactorily;

2.7.3 Specifies that the performance of Providers is monitored by Health Plan on an ongoing basis;

2.7.4 To the extent applicable, specifies that either (i) the credentials of medical professionals affiliated with Providers will be reviewed by Health Plan, or (ii) the credentialing process will be reviewed and approved by Health Plan. Health Plan shall audit the credentialing process on an ongoing basis.

2.7.5 To the extent applicable, specifies that in the event Health Plan delegates the selection of providers, written arrangements must state that Health Plan retains the right to approve, suspend, or terminate such arrangement(s);

2.7.6 Specifies that Providers must comply with all applicable Medicare laws, regulations, CMS instructions, and CMS requirements; and

2.7.7 Specifies that any delegated service or activity will be consistent with and comply with the CMS Contract.

[42 C.F.R. §§ 422.504(i)(4)-(5); 423.505(i)(5)]

2.8 Subcontractors. If Providers contract with any Downstream Entity for the provision of the Management and Administrative Services, such contract shall incorporate the requirements of this Appendix, as it may be amended from time to time, into such Downstream Entity contract.

2.9 Medicare Participation; Program Integrity. Providers shall not employ or contract with any individual who is excluded from participation in Medicare under Section 1128 or 1128A of the Social Security Act (or with any entity that employs or contracts with such an individual or entity) for the provision of health care, utilization review, medical social work or administrative services. Providers shall immediately notify Health Plan in the event that Providers or any employed or contracted individual or entity is excluded from participating in Medicare under Section 1128 or 1128A of the Social Security Act. Providers shall further immediately notify Health Plan in the event that Providers or any employed or contracted individual or entity is criminally convicted or has a civil judgment entered against it for fraudulent activities or is sanctioned under any Federal health care program involving the provision of health care or prescription drug services. [42 C.F.R. § 422.752(a)(8); 423.752(a)(6); CMS Contract, Article III.H.1]

2.10 Compliance with Other Federal Laws. Health Plan and Providers agree to comply with Federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, including but not limited to, applicable provisions of Federal criminal law, the False Claims Act (31 U.S.C. § 3729 *et seq.*) and the anti-kickback statute (42 U.S.C. § 1320a-7b(b)); the HIPAA administrative simplification rules at 45 C.F.R. parts 160, 162 and 164; and all laws applicable to recipients of federal funds. [42 C.F.R. § 422.504(h)(1); 423.505(h)(1)]

2.11 Compliance Training, Education and Communications. Each Provider agrees and certifies that it, as well as its employees and Downstream Entities who provide services under the Agreement, shall participate in applicable compliance training, education or communications as reasonably requested by Health Plan or as otherwise required by Law, and must be made a part of the orientation for a new employee or new Downstream Entity. Providers shall annually take the compliance training made available by CMS, and Health Plan shall accept the certificate of completion of the CMS training as satisfaction of the training requirement. [42 C.F.R. §§ 422.503(b)(4)(vi)(C); 423.504(b)(vi)(C)]

2.12 Federal Funds. Each Provider acknowledges that the payments that it receives from Health Plan pursuant to the Agreement are, in whole or part, from Federal funds. Therefore, each Provider and any of its Downstream Entities are subject to certain laws that are applicable to individuals and entities receiving Federal funds, which may include, Title VI of the Civil Rights Act of 1964 as implemented by 45 C.F.R. Part 80, the Age Discrimination Act of 1975 as implemented by 45 C.F.R. Part 91, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 C.F.R. Part 84. [Medicare Managed Care Manual, Chapter 11, Section 120]

2.13 Accountability. Providers hereby acknowledge and agree that Health Plan shall oversee the provision of Management and Administrative Services hereunder and be accountable under the CMS Contract for such services. [42 C.F.R. §§ 422.504(i)(4)(iii); 423.505(i)(1)]

2.14 Corrective Action. In the event that CMS or Health Plan determines that Providers have not performed the Management and Administrative Services satisfactorily, Health Plan may request Providers to prepare for Health Plan's review and approval a written corrective action plan for the remediation of the unsatisfactory performance. Such corrective action plan shall be provided within thirty (30) days of receipt of Health Plan's request. Upon Health Plan's approval of Providers' corrective action plan, Providers shall promptly implement corrective action in accordance with the approved plan.

2.15 Modification of Appendix. The parties agree to include in this Appendix such other terms and conditions as CMS may find necessary and appropriate in order to implement requirements of Medicare Part C and Part D. [42 C.F.R. §§ 422.504(j); 423.505(j)]

## APPENDIX C

### FIDA REGULATORY REQUIREMENTS

This Appendix sets forth the requirements established by CMS, in addition to those set forth elsewhere in the Agreement, applicable to the Fully Integrated Dual Advantage business (“**FIDA Business**”). Unless otherwise provided in this Appendix or the Agreement (into which, for the avoidance of doubt, this Appendix shall be deemed incorporated in its entirety), capitalized terms have the same meaning as set forth in Contract Number H1916 by and among Health Plan, CMS and DOH for the operation of FIDA coordinated care plan(s), effective January 1, 2015 (as amended, renewed or replaced from time to time, the “**FIDA Contract**”). In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

#### I. DEFINITIONS

1.1 First Tier, Downstream and Related Entity: An individual or entity that enters into a written arrangement with Health Plan, acceptable to CMS and DOH, to provide administrative or health care services of Health Plan under the FIDA Contract.

1.2 Medical Record: A complete record of items and services rendered by all contracted providers and non-contracted providers documenting the specific items and services rendered to the FIDA Enrollee, including but not limited to inpatient, outpatient, emergency care, routine, and Long-Term Services and Supports items and services. The record must be kept in accordance with all applicable Federal, State and local laws, rules and regulations. Such record shall be signed by the provider rendering the services.

1.3 Privacy: Requirements established in the Health Insurance Portability and Accountability Act of 1996, and implementing regulations, Medicaid regulations, including 42 C.F.R. §§ 431.300 through 431.307, as well as relevant New York privacy laws for the purpose for protecting personal and individually identifiable health and other information from being shared without the approval or consent of the FIDA Enrollee.

1.4 Provider Preventable Condition: Such policies and procedures shall be consistent with Federal law, including but not limited to 42 C.F.R. § 434.6(a)(12), 42 C.F.R. § 438.6(f)(2), and 42 C.F.R. § 447.26, and guidance and be consistent with Title 10, Sub-part 86-1.42 and the DOH’s policies, procedures and guidance on Provider Preventable Conditions as outlined in the NY Register and on the [www.health.ny.gov](http://www.health.ny.gov) website.

1.5 State: The State of New York.

## II. FIDA CONTRACT REQUIRED PROVISIONS

### 2.1 Access. Providers agree as follows:

2.1.1 HHS, the Comptroller General, DOH, the New York State Office of the Medicaid Inspector General, Office of State Comptroller and Office of Attorney General, and their designees, and other State and Federal agencies with monitoring authority related to Medicare and Medicaid, have the right to audit, evaluate, and inspect any books, contracts, computer or other electronic systems, including Medical Records, documentation, and any pertinent information of the First Tier and Downstream Entities; and

2.1.2 HHS's, the Comptroller General's, DOH, the New York State Office of the Medicaid Inspector General, Office of State Comptroller and Office of Attorney General, or their designees right to inspect, evaluate and audit any pertinent information for any particular contract period for ten years from the final date of the contract period or from the date of completion of any audit, whichever is later.

### 2.2 Health Plan and Providers agree as follows:

2.2.1 Any Management and Administrative Services or other activity performed by Providers must be in accordance with Health Plan's contractual obligations to CMS and DOH.

2.2.2 In the event that CMS, DOH or Health Plan determines that Providers have not performed the Management and Administrative Services satisfactorily, Health Plan may request Providers to prepare for Health Plan's review and approval a written corrective action plan for the remediation of the unsatisfactory performance. Such corrective action plan shall be provided within thirty (30) days of receipt of Health Plan's request. Upon Health Plan's approval of Providers' corrective action plan, Providers shall promptly implement corrective action in accordance with the approved plan.

2.2.3 Health Plan shall monitor Providers' performance on an ongoing basis and must impose corrective action as necessary.

2.2.4 Providers shall safeguard FIDA Enrollee Privacy and the confidentiality of FIDA Enrollee health records.

2.2.5 Providers shall comply with all Federal and State laws, regulations and CMS instructions.

2.3 Payments to Providers. In processing claims for services rendered to FIDA Enrollees, Providers agree that:



and 2.3.1 No payment shall be made to a provider for a Provider Preventable Condition;

2.3.2 As a condition of payment, the provider shall comply with the reporting requirements as set forth in 42 C.F.R. § 447.26(d) and as may be specified by Health Plan.

## APPENDIX E

### STAFF LEASING REQUIREMENTS

This Appendix sets forth the requirements established by DOH and/or the State of New York (the “State”), in addition to those set forth elsewhere in the Agreement, applicable to the leasing of personnel to the managed care organizations. In the event of a conflict between this Appendix and any other provision of this Agreement, this Appendix shall govern.

1. The Health Plan has sole authority and control for leased staff to the extent related to their provision of services to the Health Plan under this Agreement.
2. The Health Plan may terminate leased staff’s services, discipline staff as necessary in context of services performed for the Health Plan and determine means and methods by which staff provides services to the Health Plan without affecting staff’s status as employee of Providers.
3. The Providers shall ensure that there is a clear and obvious delineation of the services provided to the Health Plan relative to other managed care organizations to which services are provided.
4. The title and FTE of leased staff are set forth on Exhibit A to this Appendix E.
5. None of the leased staff will serve as a member of the board of directors of the Health Plan.
6. The Providers are solely responsible for compensation and benefits for the leased staff.
7. The Providers are responsible for maintaining payroll records for leased employees.
8. The Health Plan and each Provider are separate legal entities and, for purposes of this Agreement, the Providers, on the one hand, and the Health Plan, on the other hand, are and will act at all times as independent contractors. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.
9. The board of directors of the Health Plan shall remain ultimately responsible for assuring legal compliance with regard to the Health Plan’s operations and by implication the actions of the leased staff when acting on behalf of the Health Plan.
10. The Health Plan’s obligations under this agreement shall be binding upon its successors and permitted assigns.
11. The Providers shall not retaliate against any leased employees for actions taken by the employee at the direction of, or on behalf of, the Health Plan. This clause 10 shall survive the termination of this Agreement.
12. In addition to the leasing of staff, the other management and administrative services to be provided to the Health Plan under this Agreement are elsewhere described in this Agreement.
13. This Agreement is subject to the prior approval of the DOH.
14. The board of directors of the Health Plan shall oversee the operations of the Providers in compliance with 10 NYCRR 98-1.11.
15. The terms of this Agreement are subject to the requirements of 10 NYCRR 98-1.11.

## EXHIBIT 24

Management Agreement between New York Quality  
Healthcare Corporation and CMC and CCNY

**MANAGEMENT AGREEMENT**

**Among**

**NEW YORK QUALITY HEALTHCARE CORPORATION,**

**CENTENE MANAGEMENT COMPANY, LLC**

**And**

**CENTENE COMPANY OF NEW YORK, LLC**

**Dated as of**

**[•], 2018**

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This Management Agreement dated as of \_\_\_\_\_ (this "Agreement") is entered into among **New York Quality HealthCare Corporation**, a prepaid health service plan with its principal office at 95-25 Queens Boulevard, Rego Park, New York 11374 ("Health Plan"), **Centene Management Company, LLC**, a Wisconsin limited liability company with its principal office at 7700 Forsyth Boulevard, Suite 800, St. Louis, Missouri 63105 ("CMC"), and **Centene Company of New York, LLC**, a New York limited liability company with its principal office at 7700 Forsyth Boulevard, Suite 800, St. Louis, Missouri 63105 ("CCNY").

In consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt of which is hereby acknowledged, Health Plan, CMC and CCNY hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

"Commissioner" means the Commissioner of Health for the State of New York.

"Coverage Agreement" means any agreement, program or certificate entered into, issued or agreed to by a third party payor, under which Health Plan furnishes administrative services or other services in support of a health care program for an individual or group of individuals. A Coverage Agreement may include but is not limited to a Government Contract.

"Covered Services" means covered health care or other services, products or supplies (including but not limited to hospital services, physician services, diagnostic and therapeutic services, and pharmaceutical services and supplies) that (a) are rendered, or are sold or arranged for, by or on behalf of Health Plan and (b) constitute covered benefits under the terms of or in connection with an applicable Coverage Agreement.

"DOH" means the State of New York Department of Health.

"Enrollees" or "Members" means all individuals entitled to receive Covered Services in connection with a Coverage Agreement.

"Government Contract" shall mean the agreements between the Health Plan and the state or federal government to provide Covered Services to covered persons, comprised of the applicable Government Contract, any addenda, appendices, attachments, or amendments thereto.

"Health Plan Board" means the Board of Directors of Health Plan.

"Health Plan Business" means the ownership, management or operation by Health Plan of any health insurance or health benefit program offering Covered Services under a Coverage Agreement.

"Management Services" means the services to be performed by CMC pursuant to Section 3 of this Agreement.

“NCQA” means the National Committee for Quality Assurance, a non-profit organization dedicated to improving healthcare quality that accredits and certifies a wide range of health care organizations.

“Net Revenues” means the total health services fees payable by third party payors, enrolling units, and/or Enrollees and their agents to Health Plan minus applicable premium taxes, fees and other similar assessments.

“Participating Provider” means a facility, organization or practitioner that provides Covered Services, including but not limited to a hospital, home health agency, hospice provider, skilled nursing facility, federally qualified health center, physician, dentist, allied health professional, supplier of durable medical equipment or other medical supplies, equipment or pharmaceuticals, or other service provider that meets Health Plan’s credentialing or other background requirements, as applicable, as implemented and revised from time to time, and that has entered into a participating provider agreement with Health Plan (directly as an individual or entity, or indirectly as an employee, partner or shareholder) pursuant to which such provider has agreed to provide, or arrange for the provision of, Covered Services.

“Parties” means Health Plan, CMC and CCNY.

“Plan President” means an employee of CMC or CCNY who shall have overall day-to-day responsibility for the Management Services provided to and on behalf of Health Plan and shall also serve as the President and Chief Executive Officer of Health Plan.

## 2. Management of and Retention of Authority by Health Plan

2.1. Management Services. Subject to the limitations set forth in this Agreement, Health Plan hereby delegates to CMC the authority to manage, on behalf of Health Plan, certain day-to-day business operations and affairs of Health Plan and, in connection therewith, to take such actions on behalf of Health Plan as CMC deems necessary or advisable in connection with the business operations and affairs of Health Plan. CMC agrees to manage the business operations and affairs of Health Plan in a prudent and commercially reasonable manner and in particular, without limiting the foregoing, to provide the Management Services specified in Section 3. CMC intends to subcontract the performance of certain of such services to CCNY. Notwithstanding the foregoing, the scope of services contemplated in this agreement will not include, and CMC will not provide, administrative services to Health Plan or its Enrollees with respect to disease management, pharmacy, vision, dental, behavioral health, nurse triage services or other benefits that are managed by other vendors or providers. Administrative services pertaining to such benefits will be provided by the provider or vendor responsible for providing and/or managing such benefit; CMC may pay the applicable provider or vendor on behalf of Health Plan and be reimbursed in accordance with Section 5.

2.2. Health Plan Authority. Notwithstanding any other provision in this Agreement, the Health Plan Board shall be responsible for: (a) the management and overall operations of Health Plan and the Health Plan Business and of all medical, professional and ethical affairs of its managed care programs, (b) the establishment and oversight of the Health Plan’s policies



including the general operating policies to be carried out by CMC as specified under this Agreement, and (c) the compliance by Health Plan and CMC with any Coverage Agreement, including, but not limited to, any Government Contract, and with all applicable federal, State and local laws and regulations. Furthermore, Health Plan Board shall not delegate the following elements of management authority:

- (a) direct independent authority to hire and terminate the Plan President of the Health Plan;
- (b) adoption of budgets and independent control of the books and records;
- (c) authority over the disposition of assets and the authority to incur on behalf of the Health Plan liabilities not normally associated with the day to day operation of the Health Plan;
- (d) independent adoption and/or enforcement of policies affecting the operation of the Health Plan and the delivery of health care services;
- (e) oversight by Health Plan or any management functions delegated to a management contractor pursuant to the provisions of 10 NYCRR §§ 98-1.11 or 98-1.18;
- (f) pursuant to 10 NYCRR § 98-1.21(b)(1), primary responsibility for the development and implementation of Health Plan's fraud and abuse prevention plan.

Notwithstanding any other provision of this Agreement, Health Plan Board shall retain sufficient authority and control to discharge its responsibility as the governing authority of the Health Plan, including the authority to discharge CMC.

The responsibilities of the governing authority of Health Plan are in no way lessened by this Agreement, and any powers not specifically delegated to the CMC through the provisions of this Agreement shall remain with the governing authority of Health Plan. Health Plan shall retain ongoing responsibility for statutory and regulatory compliance.

2.3. Health Plan Oversight. Health Plan shall have the right, upon reasonable notice to CMC, to conduct an on-site review of CMC's management practices, protocols and procedures, and to receive a certified statement of fiscal solvency from the outside auditors of Centene Corporation, CMC's parent company in order to give Plan reasonable assurances and the ability to verify that CMC is maintaining fiscal stability, and is providing the requisite level and quality of services in conformity with the requirements of this Agreement, and State and federal law.

2.4. Health Plan Approval. If Health Plan is required or permitted hereunder to take any action or give any approval, CMC shall be entitled to rely upon the statements of the Chairman of the Health Plan Board, acting on behalf of Health Plan, or one or more other representatives designated in writing by the Health Plan Board to act on Health Plan's behalf under this Agreement, to the effect that any such action or approval has been taken or given. If Health Plan does not respond to a written request by CMC for any approval under this

Agreement within 45 days after Health Plan's receipt of the request, the request shall be deemed to have been accepted.

### 3. Specified Management Services

#### 3.1. Program Planning and Development

(a) CMC shall, as applicable:

- (i) assist Health Plan in maintaining certification under applicable federal and state statutes and regulations necessary for Health Plan to operate the Health Plan Business.
- (ii) assist Health Plan in maintaining and improving its relationships with Enrollees, Participating Providers and other providers of Covered Services.
- (iii) maintain and manage an Enrollee complaint system and opinion mechanism.
- (iv) prepare and provide to the Health Plan Board information concerning the financial viability of Health Plan.

(b) With respect to each applicable Coverage Agreement, CMC shall recommend an insurance program for Health Plan, including professional liability/malpractice, reinsurance, stop-loss protection, and out-of-area and catastrophic loss insurance, and shall assist to the extent reasonably necessary in obtaining insurance requested by the Health Plan Board. The decision to purchase, maintain and terminate any and all insurance coverage shall rest solely with the Health Plan Board. To the extent that CMC can obtain insurance coverage at a reduced cost on behalf of Health Plan, CMC will make such coverage available to Health Plan at such cost.

3.2. Management Information System. CMC shall manage and maintain, for use in Health Plan's operations, a computerized management information system for the purposes of, *as applicable*, claim adjudication and making payment to all categories of providers, utilization review, quality assessment, determining subscriber eligibility, billing and collection, regulatory reporting, cost-sharing reduction reconciliation services, brokerage services, sales services, and enrollment management. CMC shall make a good faith effort to effect a correction or other reasonable resolution of any errors or defects detected by Health Plan or CMC in the management information system. CMC warrants that it is the sole owner of the management information system or has a right to utilize the management information system for Health Plan (including through the subcontracted services provided by CCNY hereunder) and has full power and authority for such use and rights as are herein granted without the consent of any other person.

3.3. Financial Systems and Services. CMC shall provide Health Plan with financial systems and services that are reasonably necessary and appropriate in connection with the operation of the Health Plan Business. Without limiting the foregoing, CMC shall, *as applicable*:

(a) prepare and provide to the Health Plan Board, by December 31 (or such other date as mutually agreed upon by the Health Plan Board and CMC) of each year, a proposed annual operating budget for the immediately succeeding calendar year subject to the Health Plan Board's review and approval, setting forth an estimate of operating revenues and expenses for such calendar year that shall be in reasonable detail and shall contain an explanation of anticipated changes, if any, in utilization, patient charges, and other factors that may significantly affect the operating budget.

(b) periodically make recommendations to the Health Plan Board regarding investment of the cash reserves of Health Plan.

(c) reconcile the bank accounts of Health Plan on a monthly basis.

(d) prepare and file any and all financial reports required of Health Plan by federal, state or other statute, ordinance or regulation, including but not limited to annual reports on the financial operations and any other operational data requested by the Health Plan Board, the Commissioner, or the Superintendent of the New York State Department of Financial Services.

(e) administer actuarial services for the purpose of setting premiums for commercial products, including, but not limited to, products offered in the Health Insurance Marketplace.

3.4. Claims Administration. CMC shall maintain systems and procedures reasonably necessary for the appropriate adjudication of claims submitted to Health Plan with respect to the Health Plan Business. Without limiting the foregoing, CMC shall, *as applicable*:

(a) maintain claim forms, which shall comply with appropriate provisions of the applicable Coverage Agreement, to be used: (i) by providers of Covered Services and supplies in requesting payment for such Covered Services or (ii) to record the information necessary to produce the management reports specified herein, such forms to be printed at the expense of Health Plan.

(b) provide computer compatible claim drafts to be used to reimburse providers of Covered Services for services provided to Enrollees.

(c) conduct on a continuing basis such educational and training programs as may be desirable to provide for the accurate and efficient submission of claims for Covered Services to Health Plan by Participating Providers, which programs may include, but shall not be limited to, the maintenance of a written instructional manual for Participating Providers.

(d) maintain equipment and other systems and materials necessary for submission of electronic medical claims and encounters for Covered Services.

(e) evaluate and process claims for prompt payment submitted to Health Plan in connection with the Health Plan Business, which claims adjudication system may include but shall not be limited to: eligibility verification, duplicate services and other appropriate editing; administration of a coordination of benefits and subrogation program; benefits computation; pricing; provider, patient, diagnostic and procedure profiling; managing integrated deductibles and cost-sharing reduction reconciliations; and check writing/electronic funds transfer.

(f) provide to the Health Plan Board, upon request, a written summary of procedures utilized by CMC in the adjudication of claims.

(g) maintain and manage a program to coordinate benefits and third-party liability recovery for Health Plan.

(h) obtain and maintain all necessary licensures required to perform the above functions.

CMC shall comply with prompt payment provisions as of Sections 3224-a, 3224-b, and 3224-c of the New York Insurance Law and with policies and time frames to be mutually agreed upon by Health Plan and CMC. CMC agrees to indemnify Health Plan for all claims and payments made by Health Plan as a result of CMC's failure to make timely payment to providers in a manner consistent with Section 3224-a of the Insurance Law. CMC will provide Health Plan reasonable documentation evidencing timely payments to all Health Plan providers.

### 3.5. Provider and Enrollee Services and Records.

(a) CMC shall, as applicable:

(i) provide and periodically update identification cards for Enrollees, and such other forms, records and documents as may be reasonably necessary or required by law to assure the availability of appropriate and accurate information for the administration of the Health Plan Business.

(ii) provide and regularly update Enrollee and Participating Provider files to permit eligibility verification, claims adjudication, and efficient and timely response to inquiries from Enrollees and Participating Providers, which files shall contain complete records of enrollment and termination.

(iii) provide and periodically update materials for distribution to Enrollees, which instructional brochure shall be distributed at the expense of Health Plan, and shall include procedures for obtaining Covered Services within and outside of Health Plan's service area

and for obtaining emergency health services, which materials shall comply with and meet the requirements of all applicable federal, state and other laws, rules and regulations and any applicable Government Contract or other Coverage Agreement.

- (iv) provide and periodically update materials for distribution to the Participating Providers, which materials shall be distributed at the expense of Health Plan and shall include instructions with regard to billing procedures, payment for services, a schedule of covered plan benefits and applicable risk-sharing arrangements, which materials shall comply with and meet the requirements of all applicable federal, state and other laws, rules and regulations and any applicable Government Contract or other Coverage Agreement.
- (v) provide and periodically update written procedures for handling Enrollee complaints, which procedures shall meet, on a continuing basis, the minimum requirements of state and federal statutes and regulations and any applicable Government Contract or other Coverage Agreement, *provided* that responsibility for the administration of the Enrollee complaint system shall rest with Health Plan.

(b) CMC shall, at the request of the Health Plan Board, provide assistance reasonably necessary to maintain and manage communication programs directed toward Enrollees and Participating Providers, which programs shall be developed, implemented and maintained at Health Plan. Assistance provided will include, as applicable:

- (i) on a monthly basis, financial and statistical reports consisting of a balance sheet, a statement of revenues and expenses in reasonable detail, an estimate of claims incurred but not reported, a comparison of budgeted and actual results, and such other financial and statistical reports as may be reasonably requested by the Health Plan Board.
- (ii) at the request of the Health Plan Board from time to time, reports regarding the utilization and cost of Covered Services rendered to Enrollees by the providers of those services, including information regarding the types and costs of services rendered, the provider performing the services, and the frequency at which each type of service was performed.
- (iii) at the request of the Health Plan Board from time to time, and on behalf of and subject to the approval of Health Plan any report required under (A) federal or state reporting requirements applicable to the Health Plan Business, including any report

required under the Social Security Act, as amended, (B) reporting requirements of accreditation agencies with authority over Health Plan, or (C) reports required under any applicable Government Contract or other Coverage Agreement.

- (iv) prepare for each regular meeting of the Health Plan Board a report or reports describing such aspects of the operations of Health Plan as the Health Plan Board may reasonably request from time to time, including any report reasonably requested by the Health Plan Board to enable it to assess Health Plan's financial position and needs.

(c) CMC agrees to use reasonable efforts to arrange for Health Plan to receive the network access and related services set forth below in this subsection and, in exchange for those network access and related services, Health Plan agrees to provide the network access and related services described below to the other "Plans" (as defined below):

- (i) Pursuant to this Agreement and in accordance with such other agreements designated by CMC between CMC and other affiliates and entities (each such affiliate or entity, as well as Health Plan, is sometimes referred to herein as a "Plan" and collectively as the "Plans") for whom CMC performs management and/or administrative services in connection with the coverage agreements issued or administered by such Plans or for which such Plans furnish administrative services in support of a health care program, CMC will use reasonable efforts to arrange for Health Plan to have the contractual right to access the contracted providers and vendors designated by CMC from time to time of such other Plans, for one or more health care programs designated by CMC from time to time, and to access the contracted rates of such contracted providers and vendors, for Covered Services and other services provided with respect to Enrollees in such health care programs by such contracted providers and vendors for dates of service during the period which such designation is in effect. As a result of the access provided hereunder, the Covered Services rendered by such contracted providers and vendors of the other Plans will qualify for "in-network" benefits under the Coverage Agreements of Health Plan, subject to satisfying the other requirements of such Coverage Agreements, and the applicable Enrollees will constitute "covered persons" under such other Plan's agreements with the applicable contracted providers and vendors and, as such, the applicable contracted providers and vendors will be contractually required to accept the applicable contracted rates as payment in full for such Covered Services and other services provided with respect to the applicable Enrollees.

- (ii) In connection with the access by Health Plan to the applicable contracted providers of the other Plans, such other Plans will perform administrative and other support services as designated by CMC from time to time with respect to the Coverage Agreements of Health Plan, which services may include, but are not limited to, network access and utilization of the other Plans' contact information (e.g., mailing addresses, phone numbers, websites, accounts, etc.) and policies and procedures. In addition, such other Plans will grant to Health Plan a non-exclusive, royalty-free license to use the other Plans' network and product names (including any derivatives thereof) designated by CMC from time to time in connection with such network access, administrative or support services.
- (iii) In exchange for access to the applicable contracted providers and vendors of such other Plans, Health Plan authorizes CMC to use reasonable efforts to arrange for such other Plans to have the contractual right to access the Participating Providers and vendors designated by CMC from time to time, for one or more health care programs designated by CMC from time to time, and to access the contracted rates of such Participating Providers and vendors for covered services and other services provided by such Participating Providers and vendors with respect to covered individuals of such other Plans in such health care programs for dates of service during the period which such designation is in effect. As a result of the access provided hereunder, the covered services rendered by such Participating Providers and vendors will qualify for "in-network" benefits under the coverage agreements of such other Plans, subject to satisfying the other requirements of such coverage agreements, and the applicable covered individuals of the other Plans will constitute "Covered Persons" under Health Plan's agreements with the applicable Participating Providers and vendors and, as such, the applicable Participating Providers and vendors will be contractually required to accept the applicable contracted rates as payment in full for such covered services and other services provided with respect to the applicable covered individuals.
- (iv) In connection with the access by other Plans, Health Plan will perform administrative and other support services as designated by CMC from time to time with respect to the coverage agreements of such other Plans, which services may include, but are not limited to, network access and utilization of Health Plan's contact information (e.g., mailing addresses, phone numbers, websites, accounts, etc.) and policies and procedures. In addition, Health Plan hereby grants to such other Plans a non-exclusive, royalty-

free license to use Health Plan's network and product names (including any derivatives thereof) designated by CMC from time to time in connection with such network access and/or administrative or support services.

- (v) When and as required by applicable law or a Plan's agreements with its contracted providers (including Participating Providers) or vendors, or otherwise determined appropriate by CMC, each Plan (including Health Plan) and/or CMC will notify, or otherwise inform, the applicable contracted providers and vendors of such Plan of their obligation to provide covered services and other services with respect to the applicable covered individuals of the other Plans and to accept their contracted rates as payment in full for the performance of such services.
- (vi) Each Plan (including Health Plan) and CMC may identify all or certain of the other Plans' contracted providers and vendors as "in-network" providers of such Plan in its provider directories, communications to the applicable covered individuals (including Enrollees), provider remittances, explanation of benefits, and as otherwise determined appropriate by such Plan or CMC.
- (vii) Each Plan (including Health Plan) and CMC will cooperate with one another and will provide such information and assistance to one another as necessary to implement, and give full effect to the purpose of, this subsection. Such information includes, but is not limited to, provider agreements (including compensation schedules and payment policies), provider directories, credentialing standards and files, and policies and procedures. CMC may access and use such information as necessary to implement, and give full effect to the purpose of, this subsection. Each Plan (including Health Plan) and CMC shall undertake such arrangements as are reasonably requested by another Plan from time to time to ensure that all information, claims and notices received by a Plan that belong to another Plan are promptly delivered to, or maintained for, such other Plan.
- (viii) Each Plan (including Health Plan) will cooperate with and assist the other Plans and CMC with respect to inquiries and complaints of covered individuals (including Enrollees), and requests and investigations by regulatory authorities and payors.
- (ix) CMC will perform, and arrange for the performance of, utilization management, claims adjudication, complaints, grievances and appeals processing, and other administrative services under this Agreement in accordance with the foregoing. CMC will use



reasonable efforts to contractually require the other Plans to comply with the obligations imposed on such other Plans under this subsection, and to agree to and grant the rights and licenses contemplated herein.

3.6. Utilization Review. CMC shall make available to the Health Plan personnel and systems necessary or appropriate to support the Health Plan's utilization review program.

3.7. Quality Assurance. Health Plan's quality assurance program shall be conducted in accordance with Plan's policies and procedures and CMC shall make recommendations to Health Plan regarding the form and content of a quality assurance program. CMC shall maintain and operate systems and procedures necessary or appropriate to support the Health Plan's quality assurance program and shall utilize the Health Plan's quality assurance and quality improvement standards. Without limiting the foregoing, CMC shall, as applicable:

(a) maintain and periodically review and update, as necessary or desirable, template policies and procedures, consistent with NCQA requirements, for quality improvement and credentialing and recredentialing processes, with the understanding and requirement that Health Plan shall review and edit such policies to meet state and federal requirements if more stringent than NCQA.

(b) provide credentialing support and services as mutually agreed, including, but not limited to, provision of a credentialing system, all data gathering and information verification as it relates to initial review of credentialing application, primary source verifications, sanctions review, credentialing site visits, ongoing monitoring, recredentialing and practitioner disciplinary action reporting. All necessary licensures required to perform these functions will be obtained and maintained by CMC.

(c) in accordance with applicable law and NCQA standards, develop and maintain corporate processes for evaluating new technologies and new applications of existing technologies for inclusion in the benefit plan and for adoption or creation of applicable preventive and clinical practice guidelines.

3.8. Premium Billing and Collections. CMC shall provide Health Plan with premium billing and collection services that are reasonably necessary and appropriate in connection with the operation of the Health Plan Business. Without limiting the foregoing, CMC shall, *as applicable*:

(a) facilitate the billing of Enrollees for monthly premiums, both electronically and through a paper format, if applicable.

(b) maintain all systems necessary to accept payments from Enrollees which at a minimum shall include the ability to accept the following payment types: debit card, credit card, electronic funds transfer, echeck and physical check.

(c) hold all premiums collected in a fiduciary capacity, deposit such funds into fiduciary bank accounts established by CMC and comply with applicable state law in

the management of such funds, including the payment of claims and withdrawals from any such fiduciary accounts. Such withdrawals may be made by CMC only for purposes expressly permitted by applicable state law, which may include, but are not limited to, the following: (i) remittance to the Health Plan; (ii) deposit in an account maintained in the name of the Health Plan; (iii) transfer to and deposit in a claims-paying account; (iv) payment to CMC of its fees or charges; and (v) remittance of return premiums to persons entitled thereto.

3.9. Fraud & Abuse. Providers shall provide assistance in the development of the Health Plan's fraud and abuse prevention plan and providing all of the functions of the special investigations unit for fraud and abuse, which include investigation of cases of suspected fraudulent and abusive activity and fraud and abuse prevention and reduction activities under the Health Plan's fraud and abuse prevention plan. Providers shall provide a sufficient number of full time investigators and other staffing as required by the DOH and/or the Department of Financial Services. Providers shall also reasonably cooperate with any review and examination of the fraud and abuse prevention plan conducted by the DOH, Department of Financial Services or any other government entity.

4. Covenants. In furtherance of the provision by CMC of the Management Services, the Parties hereby agree as follows:

4.1. Personnel.

(a) CMC or CCNY, as CMC's subcontractor, shall hire, maintain and supervise all personnel, including the Plan President, as are necessary to provide the Management Services to and on behalf of Health Plan. The timing of hiring decisions regarding staffing levels, assignment and termination of such personnel shall be at the sole discretion of CMC or CCNY, as applicable; *provided* that Health Plan shall have the right to advise and consult with CMC or CCNY, as applicable, concerning any such personnel and CMC and CCNY, as applicable, shall cooperate with Health Plan in addressing any complaints brought to its attention by Health Plan. Such personnel shall be and remain employees of CMC or CCNY, as applicable, and CMC or CCNY, as applicable, shall be solely responsible for the payment of all wages, fringe benefits and other compensation associated therewith.

(b) In assisting in the performance of the Management Services to and on behalf of Health Plan, the Plan President shall comply with such policies and procedures as are established by the Health Plan Board. The Health Plan shall have direct authority to terminate the Plan President with or without cause. Upon termination of the Plan President, the Health Plan Board shall determine an interim Plan President, in consultation with CMC, but in the Health Plan Board's sole discretion, as promptly as practicable. The Health Plan Board shall appoint a permanent Plan President, in consultation with CMC, but in Health Plan Board's sole discretion, within 45 days after removal of the prior Plan President or as soon as reasonably practicable thereafter.

(c) CMC shall be liable to Health Plan for any and all damages or losses proximately caused by the dishonesty, willful misconduct or negligence of CMC's or CCNY's employees in the provision of Management Services. CMC and CCNY shall have no liability whatsoever for damage or loss suffered by Health Plan because of the dishonesty or willful misconduct of any employee of Health Plan or any provider of Covered Services, including Participating Providers. Nothing in this provision shall waive, modify, delegate or shift the liability of CMC, CCNY or Health Plan.

#### 4.2. Facilities and Support Services.

(a) Office Space. Full-time personnel or agents employed or retained by CMC or CCNY, as CMC's subcontractor, as in connection with its performance of the Management Services shall be located in office space provided or arranged for, and leased by, CMC, but approved by the Health Plan Board. CMC acknowledges that Health Plan may enter into a lease agreement (the "Lease") for office space. CMC agrees to be responsible for the payment of all amounts owed by Health Plan under the Lease.

(b) Equipment and Furniture. CMC shall be responsible for all costs associated with furnishing office space utilized by CMC or CCNY personnel and for the purchase, lease or any other expenses associated with business equipment, furniture, and other supplies required in the connection with its performance of the Management Services.

(c) Support Services. CMC shall arrange and pay for reproduction facilities and telephone and other communications services for use by CMC or CCNY, as CMC's subcontractor, as may be necessary in its performance of the Management Services.

#### 4.3. Insurance.

(a) To the extent reasonably practicable, Health Plan shall provide and maintain:

- (i) professional liability insurance in an amount not less than \$2,000,000 per claim, with an annual aggregate of not less than \$3,000,000; and
- (ii) such other insurance as the Parties may agree to be necessary or desirable for protection against claims, liabilities and losses arising from the operation of the Health Plan Business.

The policy for any such insurance shall name each of the Health Plan, CMC and CCNY (as their interest may appear) as insureds thereunder in such amounts as are agreed to by the Parties. CMC shall bear the cost of any additional premiums incurred by Health Plan as a result of naming CMC and CCNY as an additional insured. If Health Plan fails to effect or maintain any such insurance, it shall indemnify CMC and CCNY, as applicable, against damage, loss or liability to CMC or CCNY resulting from all risks

that would have been covered by such insurance. Nothing in this provision shall waive, modify, delegate or shift the liability of CMC, CCNY or Health Plan.

(b) To the extent reasonably practicable, CMC shall provide and maintain general comprehensive liability insurance covering its provision of the Management Services. The policy for such insurance shall name CMC, CCNY and Health Plan (as its interest may appear) as insureds thereunder in such amounts as are mutually agreed to by the Parties and shall be endorsed to require ten days' notice to Health Plan prior to cancellation of such insurance. If CMC fails to effect or maintain such insurance, CMC shall indemnify Health Plan and CCNY, as applicable, against damage, loss or liability to Health Plan or CCNY resulting from all risks that would have been covered by such insurance. Nothing in this provision shall waive, modify, delegate or shift the liability of CMC, CCNY or Health Plan.

#### 4.4. Fiscal Matters.

(a) Health Plan shall maintain its books of account in accordance with United States generally accepted accounting principles and in accordance with all procedures required by applicable laws and regulations, including accounting practices prescribed or permitted by the applicable state.

(b) Health Plan shall annually engage, at its expense, KPMG LLP (or another independent firm of certified public accountants designated by CMC and acceptable to the Health Plan Board) to examine in accordance with all applicable procedures required by the applicable state, the annual financial statements of Health Plan and to render a certification with respect to such financial statements. A copy of those financial statements shall be delivered to CMC promptly after they are available. Health Plan shall cooperate, at its expense, with such firm's examination of Health Plan as part of any audit of the consolidated financial statements of Centene Corporation.

(c) Health Plan shall deposit in an appropriate bank or banks designated by CMC, and in operating accounts established in Health Plan's name, all funds received from the operations of Health Plan. All costs and expenses incurred in the operation of Health Plan shall be paid out of these operating accounts. All persons authorized to make deposits to or draw upon the operating accounts shall be designated or approved in writing by Health Plan and shall be reasonably bonded or otherwise insured. Proof of such bonding or insurance with respect to CMC's or CCNY's employees assigned to Health Plan shall be provided to Health Plan upon request.

(d) All taxes and other governmental obligations properly imposed upon Health Plan, including any income tax, any premium tax, any surcharge on provider payments, and any guarantee fund or insurance pool assessments, shall be the obligation solely of Health Plan. All taxes and other governmental obligations properly imposed upon CMC or CCNY, as applicable, shall be the obligation solely of CMC or CCNY, as applicable.

#### 4.5. Legal Matters.

(a) CMC and CCNY, as CMC's subcontractor, shall comply on behalf of Health Plan with all applicable federal, state and local laws, rules and regulations and court decisions relating to Health Plan and shall manage the aspects of the business and operations of Health Plan for which it is responsible under this Agreement to ensure that Health Plan maintains all necessary licenses, permits, consents and approvals from all government agencies that have jurisdiction over the operation of Health Plan. Without limiting the foregoing, upon Health Plan's request, CMC shall prepare and file on behalf of Health Plan such periodic and other reports as Health Plan shall advise CMC are, required by applicable federal, state and other laws, rules and regulations. If any government agency inquiries about CMC, CCNY or Health Plan, CMC shall notify Health Plan of such request, shall prepare and provide to Health Plan for its approval any response required of CMC or CCNY and shall submit the approved response to the governmental agency. CMC and CCNY shall not be obligated to Health Plan for failure of Health Plan's health care coverage programs to comply with any of such laws, rules and regulations if the failure to comply is due to the financial inability of Health Plan to do so.

(b) CMC shall, with the prior written approval of Health Plan, have the right to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Health Plan, the validity or application of any law, ordinance, rule, ruling, regulation, order or requirement of any governmental agency having jurisdiction over the operation of the Health Plan Business. Health Plan, after giving its written approval, shall cooperate with CMC with regard to a contest, and Health Plan shall pay the reasonable attorneys' fees incurred with regard to the contest. Counsel shall be selected by Health Plan.

4.6. Computer Programs. Any and all computer programs and computer software developed or utilized by CMC or CCNY, as CMC's subcontractor, for claims adjudication or to provide the management reports required to fulfill CMC's responsibilities specified herein shall be at CMC's or CCNY's, as applicable, sole cost and expense and shall remain the exclusive property of CMC or CCNY's, as applicable. Health Plan shall not use any of these programs and software without the express written consent of CMC or CCNY's, as applicable, except as otherwise provided in this Agreement.

4.7. Corporate and Regulatory Status. Each Party shall provide the other Party, upon request, with evidence of its good standing and its maintenance of required certifications and licenses relative to this Agreement and the operations and Health Plan Business of Health Plan. Each Party shall notify the other Party immediately in the event that it:

(a) loses any certification, licensure, registration or certificate of good standing necessary for the performance of its obligations hereunder (excluding technical lapses);

(b) becomes bankrupt or insolvent; or

(c) obtains a qualified opinion from an outside independent accounting firm as to its financial soundness.

4.8. Governmental Access. To the extent required by applicable law and applicable Coverage Agreement, CMC and CCNY shall retain and permit applicable federal, state and local government agencies, including without limitation, the New York State Departments of Health and Financial Services, the Comptroller General of the United States, the United States Department of Health and Human Services, and their respective duly authorized representatives access to such books, documents and records of Health Plan, CCNY and CMC as are reasonably necessary to verify the nature and extent of the costs of the services supplied under this Agreement.

4.9. Cooperation. Each of the Parties shall use its best efforts, to the extent commercially reasonable, to take all actions and to do all things necessary, proper or advisable to facilitate the provision of the Management Services.

4.10. Compliance with Law. All actions taken by CMC or CCNY, as CMC's subcontractor, in performing the Management Services shall comply with any and all applicable federal, including but not limited to all applicable requirements of the Americans with Disabilities Act and applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH"), and all implementing regulations, state and other laws, rules and regulations including but not limited to New York Public Health Law Article 27-F; and Mental Hygiene Law § 33.13 as applicable.

4.11. Business Associate and Medical Records Retention. In the event CMC or CCNY, as CMC's subcontractor, is deemed a "business associate" of Health Plan, as defined in the HIPAA Privacy Regulations, CMC and Health Plan shall execute a Business Associate Addendum in the form attached to this Agreement as Exhibit 1. The Parties agree that medical records shall be retained for a period of 6 years after the date of service, and in the case of a minor, for 3 years after majority or 6 years after the date of service, whichever is later, or for such longer period as specified within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.

## 5. Fees of CMC.

5.1. Amount. In consideration for the provision of all Management Services to be provided by CMC hereunder, Health Plan shall pay CMC a fee on a capitation (per Member per month or "PMPM") basis for each calendar month (or portion thereof) during the term of this Agreement in accordance with the below table:

Line of Business	PMPM
Medicaid	\$40.59
CHP	18.39
HARP	240.56
Medicaid Adv Plus*	719.05
Medicare Advantage*	124.89
Medicaid Advantage*	156.43
MLTC Partial	226.89
Essential Plan	42.42
Exchange**	52.29

\* Effective January 1, 2020

\*\* Effective January 1, 2019

The above compensation for the Management Services is estimated to reflect the actual and reasonable costs incurred by CMC in providing such Management Services including expenses directly and specifically incurred by CMC in providing the Management Services and other expenses, including the overhead of CMC that is allocated to the Health Plan.

5.2. Payment. The management fee payable to CMC pursuant to Subsection 5.1 for any calendar month (or portion thereof) shall be paid by Health Plan on or before the first day of that month (or if such day is not a business day, the immediately succeeding business day) based on the estimated Enrollees for that month. The estimated Enrollees for a month shall be based on the most recent forecast then available for the Health Plan. The amount of the payment for a month shall be increased or decreased by an amount if any by which actual Enrollees for the immediately preceding month were greater than or less than, respectively, the estimated Enrollees used in computing the initial payment of the management fee for such immediately preceding month multiplied by the applicable PMPM.

6. Expenses of CMC.

6.1. General. Except as otherwise provided herein, CMC shall be responsible for all expenses incurred by it or on its behalf in connection with its provision of the Management Services.

6.2. Additional Excluded Expenses. In addition to such other expenses of CMC as are identified in this Agreement as being the obligation of (or reimbursable by) Health Plan, expenses incurred by Health Plan, or by CMC on behalf of Health Plan, for the following shall be the responsibility of Health Plan:

(a) travel and related expenses incurred by or on behalf of CMC or its personnel on previously authorized Health Plan business not directly related to the Management Services;

(b) payments to providers and suppliers in connection with the delivery of Covered Services to Enrollees, including all compensation and reimbursement paid to medical and paramedical personnel and health care facilities, and the maintenance of space used in the delivery of Covered Services to Enrollees;

(c) expenses associated with meetings, communications and mailings to the Health Plan Board and committees thereof;

(d) except as otherwise provided in Subsection 4.3, all insurance costs, including professional liability/malpractice, general liability and all reinsurance, stop-loss, and out-of-area insurance that may be purchased by Health Plan;

(e) fees and expenses associated with the annual audit or certification of Health Plan's financial statements and any other corporate financial audit, including any such audit or certification required by federal or state law;

(f) fees and expenses associated with the preparation of Health Plan's tax returns;

(g) license and filing fees and other fees associated with annual reports or other reports required by federal and state law applicable to Health Plan;

(h) except as otherwise provided in Subsection 4.2, purchase prices of capital equipment;

(i) except as otherwise provided in Subsection 3.3, expenses for legal, actuarial and other consulting services of firms retained by or on behalf of Health Plan;

(j) except with respect to commercial insurance products offered in connection with a Coverage Agreement, including but not limited to products offered in the Health Insurance Marketplace, advertising and related expenses, including the costs



of preparation and distribution of promotional and marketing materials and associated expenses incurred by or on behalf of Health Plan;

(k) all licensing and certification fees for Health Plan to operate the Health Plan Business, including all deposits, bonds and insurance required by federal and state law;

(l) fees charged and expenses incurred in connection with external audits conducted by accreditation agencies or applicable federal or state regulatory authorities; and

(m) fees charged relative to, and the direct and indirect expenses (as summarized in the accreditation budget approved by the Health Plan Board and as modified by the Health Plan Board from time to time) associated with, obtaining and maintaining voluntary accreditation by accreditation agencies approved by the Health Plan Board as well as those mandated by regulation or any Health Plan contract, *provided* that the staffing, overhead and other internal costs of CMC or CCNY, as CMC's subcontractor, relative to compliance with accreditation standards that are mandated by regulation or any Health Plan contract (including policy development or revision or development of contract amendments) shall be at the sole cost of CMC or CCNY, as CMC's subcontractor.

Upon submission by CMC, Health Plan shall promptly pay, or reimburse CMC for, expenses associated as provided in this subsection.

## 7. Term and Termination.

7.1. Term. Subject to the requisite approval by the Commissioner, this Agreement shall be effective as of [●], 2018 (the "Effective Date") and, unless terminated earlier pursuant to the termination provisions provided herein, shall continue for five (5) years. In no event shall the term of this Agreement extend beyond such five (5) year period.

### 7.2. Reserved.

### 7.3. Event of Default by CMC.

(a) It shall constitute an event of default hereunder by CMC:

- (i) if CMC shall apply for or consent to the appointment of a receiver, trustee or liquidator of CMC or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law;
- (ii) if any order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor, adjudicating

CMC bankrupt or insolvent or approving a petition seeking reorganization of CMC or of all or a substantial part of its assets, and such order, judgment or decree continues without stay and in effect for 90 consecutive days; or

- (iii) if CMC fails to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision as provided in this Agreement and any such failure continues until: (A) a period of 60 days after written notice thereof has been received by CMC from Health Plan; or (B) with respect to any such failure that cannot reasonably be cured within 60 days, a period of 120 days after written notice thereof has been received by CMC from Health Plan.

(b) If an event of default by CMC shall occur as contemplated by paragraph (a) of this Subsection 7.3, Health Plan shall, in addition to any other remedies available to it at law or in equity, be entitled to terminate this Agreement upon 10 days written notice and to collect from CMC, and CMC shall pay to Health Plan, as the case may be, reasonable attorneys' fees incurred by Health Plan because of such event of default and all costs incurred by Health Plan to correct, rectify or otherwise make Health Plan whole by reason of CMC's failure to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision as provided in this Agreement.

#### 7.4. Event of Default by Health Plan.

- (a) It shall constitute an event of default hereunder by Health Plan:
  - (i) if Health Plan applies for or consents to the appointment of a receiver, trustee or liquidator of Health Plan or of all or a substantial part of its assets, files a voluntary petition in bankruptcy, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law.
  - (ii) if any order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Health Plan bankrupt or insolvent or approving a petition seeking reorganization of Health Plan or appointing a receiver, trustee or liquidator of Health Plan or of all or a substantial part of its assets, and such order, judgment or decree continues without stay and in effect for 90 consecutive days.
  - (iii) if Health Plan fails to make any payment to CMC hereunder within 10 days after such payment becomes due in accordance with the terms hereof.

- (iv) if Health Plan fails to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision of this Agreement to be kept, observed, paid or performed by Health Plan (other than as contemplated by the preceding clause (iii)) until: (A) a period of 60 days after written notice thereof has been received by Health Plan from CMC; or (B) with respect to any such failure that cannot reasonably be cured within 60 days, a period of 120 days after written notice thereof has been received by Health Plan from CMC.
- (v) if Health Plan loses or has suspended its Certificate of Authority, and such loss or suspension is not revoked or cured within 45 days from the date of such loss or suspension.

(b) If an event of default by Health Plan shall occur as contemplated by paragraph (a) of this Subsection 7.4, CMC shall, in addition to any other remedies available to it at law or in equity, be entitled to terminate this Agreement upon 10 days written notice and to collect from Health Plan. Health Plan shall pay to CMC reasonable attorneys' fees incurred by CMC because of such event of default and all costs incurred by CMC to correct, rectify or otherwise make CMC whole by reason of Health Plan's failure to keep, observe, pay or perform any material covenant, obligation, agreement, term or provision as provided in this Agreement. If an event of default has occurred under clause (a) (iii) of this Subsection 7.4, CMC shall be further entitled to interest at the rate of 15% per annum (or, if less, the maximum interest rate payable thereon under applicable law) on any unpaid amount from the date such amount became due and payable. Notwithstanding any language to the contrary contained herein, if Health Plan's event of default resulted directly from a Change in Law (as defined in paragraph (b) of Subsection 9.4), then CMC's sole remedy under this Agreement for such event of default shall be those remedies specified in this paragraph (b) and CMC shall not be entitled to any incidental or consequential damages.

(c) Health Plan may terminate this Agreement immediately upon written notice if CMC, CCNY or any of their respective managing employees is convicted of a criminal offense related to that person's involvement in any program under Titles XVIII, XIX, XX, or XXI of the Social Security Act or has been terminated, suspended, barred, or voluntarily withdrawn as part of a settlement agreement, or otherwise excluded from any program under Titles XVIII, XIX, XX or XXI of the Social Security Act.

7.5. Termination by Order of DOH. This Agreement shall terminate and be deemed cancelled without financial penalty to the Health Plan Board or the Health Plan itself, not more than 60 days after notification to the Health Plan Board and CMC by written notice from DOH of a determination that the Health Plan is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees.

7.6. Commissioner Approval. Notwithstanding the foregoing, any termination or non-renewal of this Agreement shall require the prior written approval of the Commissioner. Health Plan shall provide the Commissioner notice of termination or non-renewal at least 90 days prior to termination or non-renewal whether initiated by Health Plan or CMC. Termination may be upon less than 90 days' notice provided it is demonstrated to the satisfaction of the Commissioner prior to termination that circumstances exist which justify more immediate termination.

7.7. Certification of Financial Statements. Immediately upon the termination of this Agreement for any reason, Health Plan shall cause its independent accountants to prepare certified financial statements in accordance with all applicable procedures required by the applicable state for the period commencing on January 1 of the year in which such termination occurs and ending on the date of termination of this Agreement.

## 8. Force Majeure and Disaster Recovery

a. Force Majeure. No Party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement; any requirement imposed by a final judgment or decree entered by a court of competent jurisdiction, civil or military authority; or act of God, act or omission of transportation companies or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming Party or its subcontractors ("force majeure conditions"). If any force majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Parties, stating the nature of the force majeure condition and any action being taken to avoid or minimize its effect.

b. Disaster recovery. At the direction of Health Plan, CMC or CCNY, as CMC's subcontractor, shall maintain a disaster recovery plan to ensure the continuous and orderly provision of services to Health Plan and minimize any interruptions thereof. CMC or CCNY, as CMC's subcontractor, shall take all steps necessary to enable it to promptly implement the disaster recovery plan upon the occurrence of an event of force majeure as described in Section 8a. Such disaster recovery plan will detail the actions CMC or CCNY, as CMC's subcontractor, will take to prevent any disruption in service to Health Plan and address the replacement of Health Plan's data. CMC shall provide a copy of the disaster recovery plan for Health Plan's review upon request. CMC shall make all necessary changes to the disaster recovery plan as Health Plan may reasonably request.

9. General.

9.1. Notices. All notices, requests, demands, claims, and other communications under this Agreement shall be in writing. Any notice, request, demand, claim or other communication hereunder shall be deemed duly delivered four business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent for next business day delivery via a reputable nationwide overnight courier service, in each case to the intended recipient as set forth below:

Health Plan: New York Quality HealthCare Corporation  
95-25 Queens Boulevard  
Rego Park, New York 11374  
Attention: President

CMC: Centene Company of New York, LLC  
7700 Forsyth Blvd., Suite 800  
St. Louis, Missouri 63105  
Attention: Keith Williamson

CCNY: Centene Company of New York, LLC  
7700 Forsyth Blvd., Suite 800  
St. Louis, Missouri 63105  
Attention: Keith Williamson

Any Party may give any notice, request, demand, claim or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the other Party or Parties. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Subsection 9.1.

9.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, except that no Party may assign its respective obligations hereunder without the prior written consent of the other Parties and the prior approval of the Commissioner. Any assignment in contravention of this provision shall be void. No assignment shall release any Party from any obligation or liability under this Agreement.

9.3. Subcontracting.

(a) Subcontracting to CCNY.

- (i) CMC and CCNY hereby agree that CCNY shall provide to CMC certain personnel services, including management services in respect of the Health Plan, as may be reasonably agreed by CMC

and CCNY from time to time that will be utilized by CMC in connection with its performance of its obligations under this Agreement (the "Subcontracted Services"). The Subcontracted Services to be provided by CCNY shall be limited to personnel services.

- (ii) All Subcontracted Services shall be provided by CCNY to CMC in a manner consistent with the terms and conditions of this Agreement. CCNY, as CMC's subcontractor under this Agreement, acknowledges and agrees that it shall be subject to the provisions of 10 NYCRR Part 98, including all termination provisions. In addition, the subcontracting contemplated by this Section 9.3(b) may be terminated by CMC upon at least 90 days' notice and with the prior written approval of the Commissioner.
- (iii) In consideration for the provisions of the Subcontracted Services, CMC shall pay CCNY a fee for each calendar month (or portion thereof) during which CCNY performs such services. The amount of such fee shall be mutually agreed by CMC and CCNY from time to time be based upon (a) the management fee received by CMC hereunder, and (b) the proportion of services provided to Health Plan hereunder that are represented by the Subcontracted Services. The fee shall be payable by CMC to CCNY within five (5) business days of the receipt by CMC of its management fee hereunder, and shall be adjusted within (5) business days of the adjustment of any such management fee hereunder.

(b) Other Subcontracting. In addition to the subcontracting contemplated by Section 9.3(a), nothing in this Agreement shall prohibit CMC from subcontracting or delegating its duties hereunder, in whole or in part, to any other person, subject to the prior approval of the DOH under 10 NYCRR Part 98, *provided* that any default in performance of CMC's obligations under this Agreement by any subcontractor (including CCNY) shall be deemed a default in performance by CMC, *further provided* that this Agreement shall be amended to make such subcontractor or delegator a signatory to this Agreement and to expressly provide for the subcontracting or delegation of such Management Services. Any such subcontractor or delegator shall be subject to the provisions of 10 NYCRR Part 98, including all termination provisions, provided that the subcontractor may also be terminated by CMC upon at least 90 days' notice and with the prior written approval of the Commissioner.

#### 9.4. Entire Agreement; Amendments; DOH Approval.

(a) This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings between the Parties. Upon the approval of DOH, this Agreement is the sole agreement

regarding the provision of management services by CMC to the Health Plan by and between CMC and the Health Plan Board and the compensation to be paid by Health Plan for such management services.

(b) This Agreement may be amended only with the written consent of all of the Parties. No amendment hereof shall be effective without the prior written consent of the Commissioner. No waiver of any right or remedy under this Agreement shall be valid unless the same shall be in writing and signed by the Party giving such waiver. No right or remedy in this Agreement conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given in this Agreement, or now or hereafter legally existing upon the occurrence of any event of default under this Agreement. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to a Party may be exercised from time to time and as often as may be deemed expedient by such Party. All material amendments to this Agreement are subject to the prior written notification of the applicable state(s).

(c) Notwithstanding the foregoing, this Agreement is subject to the approval of the DOH. The parties agree that any change to this Agreement required by DOH will be made by the Parties immediately upon receipt of written notice from DOH.

#### 9.5. Severability and Supervening Law.

(a) The "New York State Department of Health Standard Clauses for Management Contract Agreement," attached to this Agreement as Exhibit 2 are expressly incorporated into this Agreement and are binding upon the Parties to this Agreement, including CCNY to the extent applicable. In the event of any inconsistent or contrary language between the Standard Clauses and any other part of this Agreement, including but not limited to appendices, amendments and exhibits, the Parties agree that the provisions of the Standard Clauses shall prevail, except to the extent applicable law requires otherwise and/or to the extent a provision of this Agreement exceeds the minimum requirements of the Standard Clauses.

(b) Any provision of this Agreement that is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction, except that the Parties recognize that this Agreement at all times is to be subject to applicable state, local and federal law.

(c) The Parties further recognize that this Agreement shall be subject to amendments to, or repeals of, such laws and regulations, to the enactment or

promulgation of new legislation or regulations and to new interpretations thereof by judicial or regulatory bodies (each a "Change in Law"). Any provision of this Agreement that is rendered invalid by, or is inconsistent with, a Change in Law, or that would render one or more Parties in violation of the same, shall be deemed superseded by such Change in Law so as to render this Agreement, and the Parties hereto, in compliance therewith ("Automatic Amendment"). Notwithstanding the foregoing, if such Change in Law or Automatic Amendment materially and adversely impacts the reasonable economic expectations of one or more Parties to this Agreement, then upon the request of an adversely impacted Party, the Parties shall negotiate, in good faith, for a period of 60 days in an effort to amend the financial provisions of this Agreement in a manner that preserves, to the greatest extent possible, the reasonable economic expectations of the Parties taking into consideration the Change in Law or the Automatic Amendment. If the Parties are unable to reach agreement regarding such amendment then an adversely impacted Party may terminate this Agreement upon 60 days' prior written notice and with the written consent of the Commissioner.

9.6. Disputes. Any controversy or claim arising out of or relating to this Agreement or a breach hereof shall be settled by arbitration, at the election of any Party, in accordance with the commercial arbitration rules of the American Arbitration Association; *provided, however*, that a) the Commissioner shall be given prior notice of all issues to be arbitrated and a copy of all arbitration decisions, and b) such decision is not binding on the Commissioner. The judgment of the arbitrators shall be final and binding upon the parties and judgment upon such award rendered by the arbitrators may be entered in any court of competent jurisdiction. Pending final determination of any dispute hereunder, CMC shall proceed diligently with the performance of this Agreement. Such arbitration shall take place in a mutually agreed upon location. Notwithstanding the foregoing, nothing herein shall in any way prohibit any Party from asserting equitable claims in a court of competent jurisdiction or to petition such court for and obtain injunctive relief with respect to any claim or controversy, including one arising out of or relating to this Agreement or a breach hereof.

9.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.

9.8. Construction.

(a) The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

(b) The headings of the Sections and Subsections of this Agreement are included only for convenience and shall not affect the meaning or interpretation of this Agreement.

(c) References herein to Sections and Subsections shall mean such Sections and Subsections of this Agreement, except as otherwise specified. The words "herein"



and “hereof” and other words of similar import refer to this Agreement as a whole and, unless otherwise specified, not to any particular part of this Agreement. The word “including” as used in this Agreement shall not be construed so as to exclude any other thing not referred to or described.

(d) In computing any period of time under this Agreement, the day from which the designated period of time begins to run shall not be included; the last day of the period so computed shall be included, unless it is not a business day, in which event the period shall run until the end of the next day that is a business day. For purposes of this Agreement, the term “business day” shall mean a day that is not a Saturday, a Sunday or a statutory or civic holiday in either the state of Missouri or the state in which Health Plan maintains a domestic insurance license.

9.9. Exhibits. All attachments to this Agreement are hereby incorporated by reference and deemed a part of this Agreement.

9.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties to be effective as of the date first above written.

NEW YORK QUALITY HEALTHCARE  
CORPORATION

By: \_\_\_\_\_

President

Date: \_\_\_\_\_

CENTENE MANAGEMENT COMPANY, LLC

By: \_\_\_\_\_

Secretary

Date: \_\_\_\_\_

CENTENE COMPANY OF NEW YORK, LLC

By: \_\_\_\_\_

Secretary

Date: \_\_\_\_\_

## EXHIBIT 1

To

### MANAGEMENT AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** ("**Agreement**") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ (the "**Effective Date**"), by and between New York Quality HealthCare Corporation ("**Covered Entity**") and [Centene Management Company, LLC/Centene Company of New York, LLC] ("**Business Associate**") (each, a "Party" and collectively, the "Parties").

**WHEREAS**, Covered Entity creates, receives, transmits, maintains and/or discloses (collectively, "Use") "**Protected Health Information**" or "**PHI**" (as such terms are defined at 45 C.F.R. Section 164.500 et seq.), and Covered Entity desires to obtain services from Business Associate that will result in the Use of such PHI by Business Associate pursuant to a contract (in effect as of, or after, the effective date of this Agreement) between Business Associate on one hand and Covered Entity on the other hand (each contract, a "**Services Agreement**");

**WHEREAS**, Covered Entity and Business Associate desire this Agreement to govern the Use of all PHI by and between the Parties and to supersede all other agreements (including all other business associate agreements) between such entities regarding the Use of PHI; and

**WHEREAS**, pursuant to the authorities set forth above, Business Associate may use PHI only in accordance with this Agreement.

**NOW, THEREFORE**, Covered Entity and Business Associate agree as follows:

#### 1. Definitions.

1.1 The Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"), and the implementing regulations thereunder, including but not limited to the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164 (the "**Privacy Rule**") and the Security Standards for the Protection of Electronic Health Information at 45 C.F.R. Parts 160 and 164 (the "**Security Rule**"), and the requirements of the final modifications to the HIPAA Privacy Rule, Security, Rule, et al., issued on January 25, 2013 and effective March 26, 2013, as may be amended from time to time, shall collectively be referred to herein as the "**HIPAA Authorities**." All other capitalized terms hereunder shall have the meaning ascribed to them elsewhere in this Agreement, or, if no such definition is specified herein, shall have the meaning set forth in the HIPAA Authorities.

1.2 "Affiliate" (capitalized or not) means any entity that controls, is controlled by or is under common control with a Party as well as any entity that is a subsidiary of an entity that controls a Party.

1.3 "Personally Identifiable Information" or "PII" shall include any data elements that identify an individual or that could be used to identify an individual, including but not limited to an individual's first name or initial and last name, all geographic subdivisions smaller than a state, all

elements of dates (except year) for dates directly related to an individual including birth date, admission date, discharge date, date of death, telephone numbers, fax numbers, electronic mail addresses, social security numbers, medical record numbers, health plan beneficiary numbers, account numbers, certificate or drivers license numbers, vehicle identifiers and serial numbers, including license plate numbers, device identifiers and serial numbers, web universal resource locators (URLs), internet protocol (IP) address numbers, biometric identifiers, including finger and voice prints, full face photographic images and any comparable images; and any other unique identifying number, characteristic, code, or combination that allows identification of an individual.

1.4 “Protected Health Information” or “PHI” shall collectively refer to Protected Health Information, Electronic Protected Health Information (“ePHI”), each as defined by the HIPAA Authorities, and “Personal Identifiable Information” as defined above.

## **2. Interpretation of Provisions of this Agreement; Application of Agreement.**

2.1 In the event of an inconsistency between the provisions of this Agreement and the mandatory terms of the HIPAA Authorities, the terms of the HIPAA Authorities shall prevail. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Authorities. A reference in this Agreement to a section in the HIPAA Authorities means the section in effect or as amended. Titles or headings are used in this Agreement for reference only and shall not have any effect on the interpretation of this Agreement.

2.2 This Agreement governs the Use of all PHI that exists or arises in connection with a Services Agreement. Each Party hereto represents and warrants that (i) it is validly existing under the laws of the state of its formation; (ii) it has the full right, authority, capacity and ability to enter into this Agreement and to carry out its obligations hereunder; (iii) this Agreement is a legal and valid obligation binding upon it the obligations hereunder of such Party; and (iv) its execution, delivery and performance of this Agreement does not conflict with any agreement, instrument, obligation or understanding to which it is bound.

## **3. Obligations of Business Associate.**

3.1 Limits on Use and Disclosure. Business Associate agrees to not use or further disclose PHI other than as permitted by this Agreement or as Required by Law. Business Associate further agrees that to the extent it is carrying out one or more of the Covered Entity’s obligations under the Privacy Rule, it shall comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.

3.2 Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate agrees to establish, implement and maintain appropriate safeguards, and comply with the Security Rule with respect to Electronic PHI, as necessary to prevent any use or disclosure of PHI other than as provided for by this Agreement.

3.3 Report of Improper Use or Disclosure. “Incident” means (i) any successful Security Incident, (ii) Breach of Unsecured PHI, or (iii) any loss, destruction, alteration or other event in which PHI cannot be accounted for. Successful Security Incidents shall not include pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate agrees to notify Covered Entity in writing immediately upon

discovery, but not later than the same day of discovery of any Incident (by Business Associate or by a Subcontractor) involving the acquisition, access, use or disclosure of the PHI not provided for by this Agreement of which Business Associate becomes aware. As soon as reasonably possible thereafter, in no case more than seven (7) calendar days following discovery of the Incident, Business Associate shall provide Covered Entity with a written report which shall include but not be limited to: i) a description of the circumstances under which the Incident occurred; ii) the date of the Incident and the date that the Incident was discovered; iii) a description of the types of PHI involved in the Incident; iv) the identification of each Individual whose PHI is known or is reasonably believed by the Business Associate to have been affected; and v) any recommendations that the Business Associate may have, if any, regarding the steps that Individuals may take to protect themselves from harm. Business Associate shall make itself and any subcontractors and agents assisting Business Associate in the performance of its obligations available to Covered Entity to testify as witnesses, or otherwise, in the event of an Incident.

#### 3.4 Subcontractors.

(a) Prior to the date on which any Subcontractor (including any affiliate that is a Subcontractor) creates, receives, maintains or transmits PHI on behalf of Business Associate in connection with Business Associate's obligations under the Services Agreement, Business Associate agrees to enter into a written agreement with any Subcontractor ("***Subcontractor Agreement***") to whom Business Associate provides PHI that requires them: (i) to comply with the same HIPAA Authorities that apply to Business Associate under the Agreement; and (ii) to comply with the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such PHI.

3.5 Access to Records. At the request of Covered Entity and within five (5) business days of such request and in a reasonable manner designated by Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in a manner compliance with 45 CFR §164.524 and/or other applicable provisions of the HIPAA Authorities.

3.6 Amendments to PHI. At the request of Covered Entity, or, as directed by Covered Entity, at the request of an Individual, Business Associate shall make, within fifteen (15) business days of such request and in a reasonable manner designated by Covered Entity, any amendment(s) to PHI in a Designated Record Set to which the Covered Entity has agreed pursuant to 45 CFR §164.526, or shall otherwise assist Covered Entity in complying with Covered Entity's obligations under 45 CFR §164.526.

3.7 Availability of Internal Practices, Books and Records. Business Associate shall make its internal practices, books and records available to Covered Entity or the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Authorities, in a time and manner designated by Covered Entity or the Secretary, as applicable. Covered Entity reserves the right to request, and Business Associate shall provide, additional satisfactory assurances that Business Associate is meeting its applicable obligations under the HIPAA Privacy and Security Rules. Such requests may include, but are not limited to; an onsite audit, conducted by Covered Entity or its designee, access to policies and procedures, risk assessment documentation, incident logs or information related to the Business Associate's Subcontractors compliance with their applicable obligations under the HIPAA Privacy and Security Rules.

3.8 Accounting of Disclosures. Business Associate shall document such disclosures of PHI and information related to such disclosures (i.e., (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably states the

basis for the disclosure) as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Such documentation shall be maintained with regard to all disclosures of PHI, except for those disclosures that are expressly exempted from the documentation requirement under the HIPAA Authorities (see, e.g., 45 CFR §§164.502; 164.508; 164.510; 164.512, etc.). Documentation required to be collected by the Business Associate under this Section shall be retained for a minimum of six (6) years, unless otherwise provided under the HIPAA Authorities. Business Associate shall further provide the information collected pursuant to this Section to Covered Entity or an Individual, within fifteen (15) business days of the applicable request and in a reasonable manner designated by Covered Entity, as necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 or other applicable provision of the HIPAA Authorities.

3.9 Disclosure of Minimum PHI. Business Associate agrees that it shall request, use and/or disclose only the amount and content of PHI that is the Minimum Necessary for Business Associate to fulfill its obligations under the terms and conditions of this Agreement. Business Associate acknowledges that such Minimum Necessary standard shall apply with respect to uses and disclosures by and among members of Business Associate's workforce as well as by or to third parties as permitted hereunder.

3.10 Security Rule Requirements. Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement or the HIPAA Authorities of which it becomes aware, including any Incident. Accordingly, Business Associate agrees to report any Incident of which it becomes aware to Covered Entity immediately, but not later than the same day of discovery of the Incident. All reports required of the Business Associate pursuant to this Section shall be provided as specified in Section 3.3 of this Agreement, including the actions and the mitigation steps, if any, taken by Business Associate in response to the Incident(s).

3.11 Compliance with HIPAA Authorities. Requirements of the HIPAA Authorities that are made applicable with respect to business associates, or any other provision required to be included in this Agreement pursuant to the HIPAA Authorities, are incorporated into this Agreement by this reference.

#### **4. Permitted Uses and Disclosures by Business Associate.**

4.1 Use or Disclosure to Perform Functions, Activities, or Services. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform those functions, activities, or services that Business Associate performs for, or on behalf of, Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Any such use or disclosure shall be limited to those reasons and those Individuals as necessary to meet the Business Associate's obligations under the Services Agreement.

4.2 Appropriate Uses of PHI. Except as may be otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

4.3 Confidentiality Assurances and Notification. Except as may be otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that such PHI will remain

confidential and used or further disclosed only as Required by Law or for the purpose for which such PHI was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

4.4 Data Aggregation Services. As applicable, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B), except as may be otherwise provided by this Agreement.

5. Indemnification. Each party (the “*Indemnitor*”) shall indemnify and hold harmless the other party (the “*Indemnitee*”) against, and reimburse such Indemnitee for, any expense, loss, damages, fees, costs, claims or liabilities of any kind arising out of or related to any Actions asserted or threatened by a third party arising out of or related to the Indemnitor’s acts and omissions associated with its obligations under this Agreement or its use or disclosure of PHI. Such indemnification shall include, but not be limited to, the payment of all reasonable attorney fees associated with any such Action.

6. Obligations of Covered Entity.

6.1 Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity’s notice of privacy practices, to the extent that such limitation(s) may affect Business Associate’s use or disclosure of PHI.

6.2 Change or Revocation of Permission. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s permitted or required uses and disclosures of PHI. Business Associate shall comply with any such changes or revocations.

6.3 Restrictions on Use or Disclosure. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent such restriction may affect Business Associate’s use or disclosure of PHI. Business Associate shall comply with any such restrictions. Business Associate shall immediately notify Covered Entity of any request for a restriction on the use or disclosure of an Individual’s PHI that Business Associate receives from such Individual.

6.4 No Request to Use or Disclose in Impermissible Manner. Except as necessary for the Data Aggregation Services or management and administrative activities of the Business Associate as allowed herein, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7. Term and Termination

7.1 Term. This Agreement shall be effective as of the earlier of the date first documented above or the effective date of the Services Agreement, and shall terminate upon termination of the Services Agreement for any reason or as otherwise provided in this Agreement.

7.2 Termination with Cause. Upon Covered Entity’s knowledge of a material breach by Business Associate, or its Subcontractors, Covered Entity shall, at its option: (i) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the cure period identified in the Services Agreement, or if no cure period is identified in the Services Agreement, as specified by Covered Entity; (ii) immediately terminate this Agreement if Business Associate has breached a material term of this

Agreement and Covered Entity deems cure by Business Associate not to be possible; or (iii) if neither termination nor cure are feasible, report the violation to the Secretary.

### **7.3 Effect of Termination.**

(a) Except as provided in Section 7.3(b), upon termination of this Agreement for any reason, Business Associate shall return or destroy, and shall retain no copies of, all PHI in the possession of Business Associate.

(b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon Covered Entity's written approval, which shall not be unreasonably withheld, Business Associate may retain the PHI, but shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## **8. Miscellaneous.**

8.1 Assignment; Waiver. This Agreement shall be binding upon and inure to the benefit of the respective legal successors of the parties. Neither this Agreement nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other party. Except as provided herein, this Agreement shall create no independent rights in any third party or make any third party a beneficiary hereof. No failure or delay by either party in exercising its rights under this Agreement shall operate as a waiver of such rights, or of any prior, concurrent, or subsequent breach.

8.2 Injunctive Relief. Business Associate agrees that breach of the terms and conditions of this Agreement shall cause irreparable harm for which there exists no adequate remedy at law. Covered Entity retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this Agreement, including but not limited to the unauthorized use or disclosure of PHI by Business Associate or any Subcontractor, contractor or third party that received PHI from Business Associate.

8.3 Survival; Severability. The respective rights and obligations of Business Associate under this Agreement, including but not limited to both parties indemnification obligations, shall survive the termination of this Agreement. The parties agree that if a court determines that any of the provisions of this Agreement are invalid or unenforceable for any reason, such determination shall not affect the enforceability or validity of the remaining provisions of this Agreement.

8.4 Entire Agreement; Amendment. This document, together with any written Schedules, amendments and addenda, constitutes the entire agreement of the parties and supersedes all prior oral and written agreements or understandings between them with respect to the matters provided for herein. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Authorities. Any modifications to this Agreement shall be valid only if such modifications are in accordance with the HIPAA Authorities, are made in writing, and are signed by a duly authorized agent of both parties.

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that the HIPAA Authorities do not preempt the same.



8.6 Notice. Any notice required or permitted to be given by either party under this Agreement shall be sufficient if in writing and hand delivered (including delivery by courier) or sent by postage prepaid certified mail return receipt requested, to the following address:

**If Covered Entity:**

Name:

Title:

Company:

Address:

Phone:

**If Business Associate:**

Name: Keith Williamson

Title: Secretary

Company: Centene Company of New York, LLC

Address: 7700 Forsyth Blvd., Suite 800

St. Louis, MO 63105

Phone: (314) 725-4477

8.7 Independent Contractors. For purposes of this Agreement, Covered Entity and Business Associate, and Covered Entity and any Subcontractor of Business Associate, are and will act at all times as independent contractors. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.

Each party to this Agreement warrants that it has full power and authority to enter into this Agreement, and the person signing this Agreement on behalf of either party warrants that he/she has been duly authorized and empowered to enter into this Agreement.

**COVERED ENTITY**

**BUSINESS ASSOCIATE**

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT 2**  
**NEW YORK STATE DEPARTMENT OF HEALTH**  
**STANDARD CLAUSES**  
**FOR MANAGEMENT SERVICE AGREEMENTS**

Notwithstanding any other provision of this agreement, contract, or amendment (hereinafter “Agreement”) the parties agree to be bound by the following clauses, which are hereby, made a part of the Agreement:

**A. DEFINITIONS FOR PURPOSES OF THIS APPENDIX**

1. **“MCO”** includes;
  - traditional health maintenance organizations certified pursuant to Public Health Law (PHL) Section 4403;
  - special purpose MCOs, also known as prepaid health services plans (PHSPs), certified pursuant to PHL section 4403-a;
  - HIV Special Needs Plans (HIV SNPs) certified pursuant to PHL Section 4403-e; and
  - Managed long term care plans certified or operating pursuant to PHL section 4403-f.
2. **“Management Contractor”** means any person, other than staff employed by the MCO, entering into an agreement with the governing authority of an MCO for the purpose of managing the day-to-day operations of the MCO.
3. **“IPA”** includes, in addition to independent practice associations, a pharmacy or laboratory with the legal authority to contract with other pharmacies or laboratories to arrange for or provide services to enrollees of the New York State MCO.
4. **“Management functions”** are elements of an MCO governing body’s management authority. Some management functions, listed in 10 NYCRR 98-1.11(i), **must not** be delegated by an MCO to another person or entity. Other management functions, listed in 10 NYCRR 98-1.11(j), **may** be delegated to another person or entity, but only pursuant to a management contract approved by DOH.
5. **“Technical and administrative services”** refers to any functions (other than medical services) that an MCO is not prohibited from delegating by 10 NYCRR 98-1.11(i), and that are not functions listed in 10 NYCRR 98-1.11(j) requiring DOH approval of a management contract. Administrative services include administrative expenses provided through the contract that the MCO would otherwise have reported on the MCO’s own

cost report. They do not include administrative expenses incurred by an IPA or provider in the course of performing the IPA or provider's business.

6. **"Claims Payment"** is defined as making an independent determination to pay, deny or pend claims for payment. This is different from the ministerial task of writing a check for payment based upon the decision to act on a claim made by a different entity.

## **B. GENERAL TERMS AND CONDITIONS**

1. This Agreement is subject to approval by the Department of Health and will not become effective until such approval is received from the Department of Health.
2. This Agreement shall be limited to five years and may be renewed only when authorized by the Commissioner.
3. The governing authority of the MCO shall be responsible for establishment and oversight of the MCO's policies, management and overall operation, regardless of the existence of any management contract.
4. The governing authority of the MCO shall retain ongoing responsibility for statutory and regulatory compliance.
5. The governing authority of the MCO are in no way lessened by entering into a management contract, and any powers not specifically delegated to the management contractor through the provisions of the Agreement remain with the governing authority of the MCO.
6. The parties agree to incorporate into this Agreement any and all modifications required by the Department of Health for approval or, alternatively, to terminate this Agreement if so directed by the Department of Health effective upon at least ninety (90) days' notice.
7. The parties agree that any amendments or revisions to this Agreement shall be effective only with the prior written consent of the Department of Health.
8. The management contractor agrees that it shall not subcontract any of its obligations hereunder or the performance of any of the management contractor's services without the prior written consent of the Commissioner. In the event the management contractor proposes to subcontract any management functions, the subcontractor will be a signatory to the management contract, which will expressly provide for the subcontracting of management functions to the subcontractor. The subcontractor will be subject to the provisions of 10 NYCRR 98-1.11 to the same extent as the management contractor, including all termination provisions, provided that the subcontractor may also be terminated by the management contractor upon at least ninety (90) days notice and with the prior written approval of the Commissioner.
9. The parties to this Agreement agree to comply with all applicable requirements of the Federal Americans with Disabilities Act.

10. The parties to this Agreement agree to comply with all applicable requirements of the: Health Insurance Portability and Accessibility Act of 1996, 42 USC 1320 (d); Public Health Law Article 27-F; and Mental Hygiene Law § 33.13.
11. The MCO, IPA or management contractor which is a party to the Agreement agrees that nothing within this Agreement is intended to, or shall be deemed to, transfer liability for the parties own acts or omissions, by indemnification or otherwise, to each other or to a provider.
12. Sole Agreement. The management contract, with its exhibits, schedules and attachments, approved by the Department shall be the sole agreement between the management contractor and the governing authority of the MCO for the purpose of the management services delegated herein on behalf of the MCO and payment to the management contractor for management services.
13. The validity and interpretation of this Agreement and the rights and obligations of the parties under this Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.

#### **C. PAYMENT; RISK ARRANGEMENTS**

1. The management contractor shall compensate Participating Providers in a timely manner consistent with the provisions of Sections 3224-a, 3224-b, and 3224-c of the New York State Insurance Law, as applicable; provided, however, that nothing herein shall limit the liability of the MCO pursuant to such law for any failure to pay providers in accordance with the provisions of such law.
2. The parties agree that the management contractor cannot assume any financial risk under this Agreement.

#### **D. IPA's ROLE AS AGENT**

1. The parties understand and agree that IPA, as a signatory to this Agreement, has authority to act as agent for the Participating IPA Providers with regard to the adjudication of claims by MCO and/or MSO. IPA shall include language in its participating provider agreements and/or provider manual to inform Participating IPA Providers that MSO has initial responsibility for determining payment of claims submitted by Participating IPA Providers for the provision of covered services to members. The Parties understand and agree that IPA, in its capacity as agent for the Participating IPA Providers, has the authority to play an active role in resolving any claims adjudication issues that the provider may have with the MCO and/or MSO.

#### **E. RECORDS; ACCESS**

1. Annual reports on the financial operations will be provided to the MCO, and any other operational data when requested by the governing authority of the MCO, the Commissioner or Superintendent of Insurance, will be provided by the management contractor.
2. The parties agree that medical records shall be retained for a period of six (6) years after the date of service, and in the case of a minor, for three (3) years after majority or six (6) years after the date of service, whichever is later, or for such longer period as specified within this Agreement. This provision shall survive the termination of this Agreement regardless of the reason.

#### **F. TERMINATION AND RENEWAL**

1. Any application for renewal shall be submitted at least 90 days prior to the expiration of this Agreement and shall demonstrate that the goals and objectives of the contract have been met within specified time frames; that the quality of care provided by the MCO during the term of the Agreement has been maintained and improved; and that the reporting requirements contained in this Agreement have been met.
2. This Agreement shall terminate and be deemed cancelled, without financial penalty, to the governing authority of the MCO or the MCO itself not more than sixty (60) days after notification to the governing authority of the MCO and the management contractor by the Department of Health of a determination that the MCO is not providing adequate care or otherwise assuring the health, safety and welfare of the enrollees.
3. Any termination or non-renewal of this Agreement shall require the prior written approval of the Commissioner following 90 days' prior written notice; provided, however, that termination may occur upon less than 90 days' notice if it is demonstrated to the satisfaction of the Commissioner, prior to termination, that circumstances exist which justify more immediate termination.
4. The MCO shall provide a plan for the management of the MCO subsequent to any discharge of the management contractor, to be submitted with 90 days prior notification to the Department of Health of the MCO's decision to discharge the management contractor.

#### **G. ARBITRATION**

1. To the extent that arbitration or alternative dispute resolution is authorized elsewhere in this Agreement, the parties to this Agreement acknowledge that the Commissioner is not bound by arbitration or mediation decisions. Arbitration or mediation shall occur within New York State, and the Commissioner will be given notice of all issues going to arbitration or mediation, and copies of all decisions.

### **EXHIBIT 3**

### **STAFF LEASING REQUIREMENTS**

This Exhibit sets forth the requirements established by DOH and/or the State of New York (the “*State*”), in addition to those set forth elsewhere in the Agreement, applicable to the leasing of staff to managed care organizations. In the event of a conflict between this Appendix and any other provision of this Agreement, this Exhibit shall govern.

1. The Health Plan has sole authority and control for leased staff to the extent related to their provision of services to the Health Plan under this Agreement.
2. The Health Plan may terminate leased staff’s services, discipline staff as necessary in context of services performed for the Health Plan and determine means and methods by which staff provides services to the Health Plan without affecting staff’s status as employee of CMC or CCNY, as subcontractor of CMC (collectively, the “Providers”).
3. The Providers shall ensure that there is a clear and obvious delineation of the services provided to the Health Plan relative to other managed care organizations to which services are provided.
4. The title and FTE of leased staff are set forth on Attachment A to this Exhibit 3.
5. Cynthia Brinkley, Christopher D. Bowers, Patrick J. Frawley, Thomas J. Halloran, Michael F. Neidorff, Jeffrey A. Schwaneke and David P. Thomas will serve as directors of the Health Plan as of the effective date of this Agreement.
6. The Providers are solely responsible for compensation and benefits for the leased staff.
7. The Providers are responsible for maintaining payroll records for leased employees.
8. The Health Plan and each Provider are separate legal entities and, for purposes of this Agreement, the Providers, on the one hand, and the Health Plan, on the other hand, are and will act at all times as independent contractors. None of the provisions of this Agreement shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the parties.
9. The board of directors of the Health Plan shall remain ultimately responsible for assuring legal compliance with regard to the Health Plan’s operations and by implication the actions of the leased staff when acting on behalf of the Health Plan.
10. The Health Plan’s obligations under this agreement shall be binding upon its successors and permitted assigns.
11. The Providers shall not retaliate against any leased employees for actions taken by the employee at the direction of, or on behalf of, the Health Plan. This clause 10 shall survive the termination of this Agreement.
12. In addition to the leasing of staff, the other management and administrative services to be provided to the Health Plan under this Agreement are elsewhere described in this Agreement.
13. This Agreement is subject to the prior approval of the DOH.
14. The board of directors of the Health Plan shall oversee the operations of the Providers in compliance with 10 NYCRR 98-1.11.
15. The terms of this Agreement are subject to the requirements of 10 NYCRR 98-1.11.

# EXHIBIT 25

## Undertaking

**Undertaking by Centene Corporation  
to the Attorney General of the State of New York**

These undertakings, dated as of [●] [●], 2018 (these “Undertakings”), are hereby made and entered into by Centene Corporation, a Delaware corporation (“Centene”) and New York Quality Healthcare Corporation, a New York corporation (“New Fidelis” and, collectively with Centene, the “Centene Companies”), to and for the benefit of the New York State Attorney General (the “Attorney General”).

W I T N E S S E T H:

WHEREAS, Centene is a party to that certain Asset Purchase Agreement, dated as of September 12, 2017 (the “Purchase Agreement”), by and between Centene and New York State Catholic Health Plan, Inc. d/b/a Fidelis Care, a New York not-for-profit corporation (“Fidelis Care”), pursuant to which Fidelis Care has agreed to sell and assign, and Centene has agreed to purchase and assume, substantially all of the assets and liabilities of Fidelis Care subject to the terms and conditions set forth therein (the “Transaction”);

WHEREAS, Fidelis Care is a not-for-profit corporation that offers a variety of New York State-sponsored insurance products through its prepaid health services plan and provides a broad range of charitable grants to fund services for the provision of comprehensive health services across New York State;

WHEREAS, following the completion of the Transaction, Centene, through its newly formed subsidiary, New Fidelis, will continue to operate the healthcare business acquired from Fidelis Care and intends to leverage Centene’s nationwide scale, world-class technology and data analytics to improve the health outcomes of New Yorkers;

WHEREAS, the sale of all or substantially all of the assets of a New York not-for-profit corporation of the type contemplated by the Transaction is subject to approval of the Attorney General under Section 511-a of the New York Not-For-Profit Corporation Law; and

WHEREAS, to further evidence the benefits of the Transaction to the State of New York, Centene has agreed to provide the undertakings set forth herein (the “Undertakings”).

NOW THEREFORE, in consideration of the foregoing, the Centene Companies hereby undertake and agree as follows:

1. Centene hereby acknowledges and agrees that the historic and current statements regarding Centene and its affiliates contained in the petition of Fidelis Care that was submitted to the Attorney General on [●] [●], 2018 seeking the approval of the Attorney General for the Transaction (the “Petition”) are true and correct as of such date.



2. Centene confirms that, subject to satisfaction of Centene's employment policies regarding employee documentation, drug testing, background screening and similar matters, it will make, or cause an affiliate to make, offers of employment, effective as of the Closing, to all active employees of Fidelis Care as of the day immediately prior to the closing of the Transaction. Centene further confirms and agrees that, for a period of one year following the closing of the Transaction, it will not terminate any employee that was so hired from Fidelis Care other than for cause or due to the occurrence of a material adverse change to the business.
3. Centene confirms that Exhibit A hereto contains a full and complete list of:
  - a. all material litigation and regulatory matters against Centene or its affiliates that are currently known by Centene and pending as of the date hereof, or during the three years prior to the date hereof.
  - b. all litigation and regulatory matters against Centene or its affiliates that are currently known by Centene and pending as of the date hereof and (i) related to fraud or false claims whistleblower retaliation, (ii) investigations relating to out-of-network claims, and (iii) class actions.
4. The Centene Companies agree to cause New Fidelis, upon the closing of the Transaction, to:
  - a. formulate written policies and procedures describing compliance expectations and incorporate these policies into a code of conduct or code of ethics for employees and others;
  - b. designate an employee responsible for New Fidelis's compliance program and the designee will report to New Fidelis's chief executive or a senior administrator designated by Centene's leadership and, periodically, to the Board of Directors of New Fidelis;
  - c. provide training and education to all New Fidelis employees, including executives and members of the Board of Directors of New Fidelis, on compliance issues, expectations, and the compliance program operation; such training shall occur periodically and shall be made a part of the orientation for a new employee or Board member;
  - d. ensure that communication lines to the employee responsible for New Fidelis's compliance program shall be accessible to all employees and that such communication lines shall include a method for anonymous and confidential good-faith reporting of potential compliance issues;
  - e. establish and enforce disciplinary policies to encourage good-faith participation in the compliance program by all affected individuals, including policies that articulate expectations for reporting compliance issues and assist in their resolution and outline sanctions for:

- i. failing to report suspected problems;
    - ii. participating in non-compliant behavior; or
    - iii. encouraging, directing, facilitating, or permitting non-compliant behavior;
  - f. implement a system for routine identification of compliance risk areas, including both internal audits and appropriate external audits, and for evaluation of potential or actual non-compliance identified by such audits;
  - g. implement a system for responding to compliance issues as they are raised; for investigating potential compliance problems; responding to compliance problems as identified in the course of self-evaluations and audits; correcting such problems promptly and thoroughly and implementing procedures, policies, and systems as necessary to reduce the potential for recurrence; identifying and reporting compliance issues as required to relevant federal and State regulators; and refunding overpayments; and
  - h. ensure that New Fidelis will have a policy of non-intimidation and non-retaliation for good-faith reporting of compliance violations.
5. The Centene Companies agree that each entity shall not, and shall cause its affiliates not to, limit the whistleblower rights of any of its New York-based employees, vendors or consultants before any state or federal law enforcement or regulatory body in any agreements regarding employment or separation from employment entered into by either of the Centene Companies or its affiliates or implement any policies or procedures that would limit such rights. Centene's offers of annual compensation for Fidelis Care's officers is commensurate with such Fidelis Care officer's annual compensation for the current fiscal year.
  6. The Centene Companies agree to cause New Fidelis to offer, directly or indirectly, through the end of calendar year 2021 a substantially identical selection of Medicaid, Medicare and New York State of Health Exchange health plans in the same geographical areas as were offered by Fidelis Care immediately prior to the closing of the Transaction.
  7. Centene confirms that, prior to the closing of the Transaction, all existing hospital, medical and pharmacy providers to Fidelis Care will be offered the opportunity to transfer to New Fidelis upon the closing of the Transaction, and for the remainder of the 2018 plan year, on the exact same terms and conditions (including reimbursement rates) as such providers had with Fidelis Care prior to the closing of the Transaction. Centene further confirms it will cause New Fidelis to offer all existing hospital, medical and pharmacy providers the opportunity to participate in the New Fidelis provider network during plan years 2019 through 2021 under terms and conditions substantially similar to those in effect as of the

closing date of the Transaction, subject to compliance with New York State Department of Health regulations and guidance in place at the time of contracting.

8. Centene confirms and agrees that it shall cause New Fidelis to maintain NCQA accreditation for New Fidelis for a period of not less than three years following the closing of the Transaction.
9. Centene confirms that it is aware that Attorney General approval will be expressly conditioned upon the provision by New Fidelis of all family planning services and medically necessary abortions, as required by applicable law, for all plans on and after January 1, 2019, and the adoption by New Fidelis, as soon as practicable following the closing of the Transaction, of updated internal manuals, customer service scripts, website materials and other relevant information that proactively provides adequate information on the availability of such services as of the closing through current mechanisms and on the planned transition of services.
10. Centene confirms its intent for New Fidelis to be headquartered at 95-25 Queens Blvd, Rego Park, New York for a period of not less than three years following the closing of the Transaction pursuant to the assumption by New Fidelis of the existing lease held by Fidelis Care as part of the Transaction. Centene further agrees that it shall not seek the modification or early termination of such lease obligation without the consent of the Attorney General and furthermore shall notify the Attorney General prior to any change to the location of New Fidelis' headquarters.
11. Organizational Documents.
  - a. Centene confirms that true and correct copies of the Articles of Incorporation and Bylaws of New Fidelis are attached hereto as Exhibits B and C, respectively. A list of the proposed directors of New Fidelis as of the closing of the Transaction is set forth on Exhibit D.
  - b. True and correct copies of the Articles of Incorporation and Bylaws of Centene Company of New York, LLC, a New York limited liability company and wholly-owned subsidiary of Centene that will serve as the employer for the employees hired from Fidelis Care ("CCNY"), are attached hereto as Exhibits E and F, respectively. A list of the proposed directors of CCNY as of the closing of the Transaction is set forth on Exhibit G.
  - c. Centene agrees to notify the Attorney General within 90 days following any changes to the Articles of Incorporation, Bylaws or Directors of New Fidelis or CCNY set forth above.
12. Independent Evaluation of Transaction and Preparation of Report.
  - a. Centene acknowledges that the Attorney General desires to retain an independent expert to produce a report of recommendations to the Board

of Directors of New Fidelis for its consideration, which recommendations are intended to address the potential impact, if any, of the Transaction on the Medicaid membership of Fidelis Care.

- b. In furtherance of the foregoing, Centene confirms that the Attorney General will select the individual(s) that will be responsible for producing such a report (the “Independent Expert”), which Independent Expert shall be reasonably acceptable to both Centene and the Attorney General. Further, Centene agrees to bear up to \$300,000 of the costs and expenses of the Independent Expert for preparing such a report.
- c. Centene agrees to reasonably cooperate with and assist the Attorney General and the Independent Expert in the preparation of such report. Centene acknowledges that such report shall be produced for three years after the Closing of the Transaction no later than December 1 of each year.
- d. The selection of the Independent Expert to complete the report created under Paragraph 12 shall occur within three months following the closing of the Transaction.
- e. Centene and the Attorney General mutually intend that the due diligence and report of the Independent Expert shall be informed and guided by representations and undertakings of the Centene Companies herein, by any materials and information provided by the Centene Companies to the Attorney General, by the approvals of the New York State Department of Health and Department of Financial Services annexed to the Petition (inclusive of any conditions thereof and undertakings of the Centene Companies), and the letter of September 1, 2017 sent by Centene CEO Michael F. Neidorff to Cardinal Timothy Dolan and Reverend Donald Harrington, and attached hereto as Exhibit H.

13. Selection of Board Member to Advocate for Enrollees and the Findings of Report.

- a. Centene agrees to cause New Fidelis to establish a seven member Board of Directors in compliance with all laws and regulations of the State of New York.
- b. For a period of three years following the Closing of the Transaction, Centene confirms and agrees that it shall appoint one qualified individual to the Board of Directors of New Fidelis, such appointee to advocate for the interests of the Medicaid enrollees of New Fidelis and the implementation of the recommendations contained in the report created under Paragraph 12, above. Centene shall provide notice of the selection thereof to the Attorney General.
- c. In the event the board member selected under this Paragraph resigns or is unable to serve, Centene shall provide notice of such event to the Director

of the Charities Bureau of the New York Attorney General within 15 business days.

14. Centene shall make a report to the Director of the Charities Bureau of the New York Attorney General no later than the 31st day of December following the closing of the Transaction and annually thereafter for the succeeding three years, such report to accurately summarize Centene's compliance with these Undertakings and progress on the recommendations of the report prepared in accordance with Paragraph 12.
15. Subject to applicable law, Centene agrees to provide reasonable access to the Attorney General to the books and records (excluding any books and records that are subject to attorney-client or other privileges) and employees of New Fidelis for purposes of monitoring and inspecting Centene's compliance with these Undertakings.
16. Except to the extent a longer period is expressly stated with respect to any of the Undertakings set forth herein, these Undertakings shall expire upon the third anniversary of the closing of the Transaction and shall thereafter be of no further force or effect.
17. These Undertakings are for the sole benefit of the Attorney General and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Undertakings.
18. These Undertakings shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York.

[Signature page follows]

IN WITNESS WHEREOF, Centene Corporation and New York Quality Healthcare Corporation, d/b/a Fidelis Care hereby execute these Undertakings as of the date first set forth above.

CENTENE CORPORATION

By: \_\_\_\_\_  
Name: Michael F. Neidorff  
Title: Chairman & CEO

NEW YORK QUALITY HEALTHCARE  
CORPORATION, d/b/a FIDELIS CARE

By: \_\_\_\_\_  
Name: Patrick J. Frawley  
Title: President

## **EXHIBIT A**

## ***Kentucky***

**Contract Termination Litigation:** On July 5, 2013, the Company's subsidiary, Kentucky Spirit, terminated its contract with the Commonwealth of Kentucky (the Commonwealth). Kentucky Spirit believed it had a contractual right to terminate the contract and filed a lawsuit in Franklin Circuit Court seeking a declaration of this right. In response, the Commonwealth alleged that Kentucky Spirit's exit constituted a material breach of contract. The Commonwealth sought to recover substantial damages and to enforce its rights under Kentucky Spirit's \$25 million performance bond. The Commonwealth asserted that the Commonwealth's expenditures due to Kentucky Spirit's departure range from \$28 million to \$40 million plus interest, and that the associated CMS expenditures range from \$92 million to \$134 million. Kentucky Spirit disputed the Commonwealth's alleged damages on several grounds. Prior to terminating the contract, Kentucky Spirit filed a legal complaint in April 2013, amended in October 2014, in Franklin Circuit Court seeking damages against the Commonwealth for losses sustained due to the Commonwealth's alleged breaches.

On May 26, 2015, the Commonwealth issued a demand for indemnification to its actuarial firm, for "all defense costs, and any resultant monetary awards in favor of Kentucky Spirit, arising from or related to Kentucky Spirit's claims which are predicated upon the alleged omissions and errors in the Data Book and the certified actuarially sound rates." The actuarial firm moved to intervene in the litigation and the Franklin Circuit Court granted that motion on September 8, 2015. Also, on August 19, 2015, the actuarial firm filed a petition seeking a declaratory judgment that it is not liable to the Commonwealth for indemnification related to the claims asserted by Kentucky Spirit against the Commonwealth. On October 5, 2015, the Commonwealth filed an answer to the actuarial firm's petition and asserted counterclaims/cross-claims against the firm.

On November 3, 2016, all parties entered into a settlement agreement with respect to all lawsuits and complaints associated with the aforementioned contract termination. Under the terms of the settlement agreement, Kentucky Spirit received an immaterial cash payment from the Commonwealth's actuarial firm and each party dismissed all claims related to the litigation with prejudice. In addition, the Commonwealth and Kentucky Spirit have agreed that neither party acted in bad faith; that the parties took reasonable positions in light of the applicable contractual language; and that the parties acted in good faith in attempting to address a difficult situation.

## ***California***

**Gross Premium Tax Litigation:** The Company's California subsidiary, Health Net of California, Inc. (Health Net California), has been named as a defendant in a California taxpayer action filed in Los Angeles County Superior Court, captioned as Michael D. Myers v. State Board of Equalization, et al., Los Angeles Superior Court Case No. BS158655. This action is brought under a California statute that permits an individual taxpayer to sue a governmental agency when the taxpayer believes the agency has failed to enforce governing law. Plaintiff contends that Health Net California, a California licensed Health Care Service Plan (HCSP), is an "insurer" for purposes of taxation despite acknowledging it is not an "insurer" under



regulatory law. Under California law, “insurers” must pay a gross premiums tax (GPT), calculated as 2.35% on gross premiums. As a licensed HCSP, Health Net California has paid the California Corporate Franchise Tax (CFT), the tax generally paid by California businesses. Plaintiff contends that Health Net California must pay the GPT rather than the CFT. Plaintiff seeks a writ of mandate directing the California taxing agencies to collect the GPT, and seeks an order requiring Health Net California to pay GPT, interest and penalties for a period dating to eight years prior to the October 2015 filing of the complaint. This lawsuit is being coordinated with similar lawsuits filed against other entities. In September 2017, the Company filed a demurrer seeking to dismiss the complaint, and a motion to strike the allegations seeking retroactive relief. In January 2018, the Court held a hearing on the Company’s demurrer. No decision has been issued yet. The Company intends to vigorously defend itself against these claims; however, this matter is subject to many uncertainties, and an adverse outcome in this matter could potentially have a materially adverse impact on our financial position, results of operations and cash flows.

**Out of Network Sober Homes Litigation:** In 2015, Health Net experienced a massive and rapid increase in claims from out-of-network sober living facilities in California and Arizona. It became apparent that many facilities were engaged in questionable or unlawful practices including: recruiting people from out of state and submitting false applications for insurance to Health Net; billing for services not provided; paying brokers or “cappers” to recruit patients; dramatically inflating charges for services, and falsifying medical records. Health Net suspended payments to these providers until it could determine whether the claims were legitimate. Health Net has resolved the billing matters with most of these providers. A small number of providers have sued Health Net, and Health Net has filed counterclaims for fraud against several of those providers. Two executives from one former provider have been indicted for defrauding Health Net and other insurers. One of those defendants has been convicted and another is awaiting trial. Several other providers are under fraud investigations by federal and state authorities. Health Net has worked diligently to settle the payment issues with providers who can show that their claims were legitimate. Health Net will vigorously defend itself, and will pursue counterclaims, in any lawsuit where there is evidence of inappropriate billing, fraud or other misconduct by the provider.

### ***Federal Securities Class Action***

In November 2016, a putative federal securities class action was filed against the Company and certain of its executives in the U.S. District Court for the Central District of California. In March 2017, the court entered an order transferring the matter to the U.S. District Court for the Eastern District of Missouri. The plaintiffs in the lawsuit allege that the Company’s accounting and related disclosures for certain liabilities acquired in the acquisition of Health Net violated federal securities laws. In July 2017, the lead plaintiff filed a Consolidated Class Action Complaint. The Company filed a motion to dismiss this complaint in September 2017. The Company denies any wrongdoing and is vigorously defending itself against these claims. Nevertheless, this matter is subject to many uncertainties and the Company cannot predict how long this litigation will last or what the ultimate outcome will be, and an adverse outcome in this matter could potentially have a materially adverse impact on our financial position and results of operations.

Additionally, in January 2018, a separate derivative action was filed on behalf of Centene Corporation against the Company and certain of its officers and directors in the United States District Court for the Eastern District of Missouri. Plaintiff purports to bring suit derivatively on behalf of the Company against certain officers and directors for violation of securities laws, breach of fiduciary duty, waste of corporate assets and unjust enrichment. The derivative complaint repeats many of the allegations in the federal securities class action described above and asserts that defendants made inaccurate or misleading statements, and/or failed to correct the alleged misstatements.

A second shareholder derivative action was filed in March 2018 against the Company and certain of its officers and directors in the United States District Court for the Eastern District of Missouri. This second derivative complaint repeats many of the allegations in the securities class action and the first derivative suit. The Company expects that the derivative suits will be consolidated and a lead plaintiff appointed for the litigation.

#### ***Medicare Parts C and D Matter***

In December 2016, a Civil Investigative Demand (CID) was issued to Health Net by the United States Department of Justice regarding Health Net's submission of risk adjustment claims to CMS under Parts C and D of Medicare. The CID may be related to a federal qui tam lawsuit filed under seal in 2011 naming more than a dozen health insurers including Health Net. The lawsuit was unsealed in February 2017 when the Department of Justice intervened in the case with respect to one of the insurers (not Health Net). In subsequent pleadings, both the Department of Justice and the Relator excluded Health Net from the lawsuit. The Company is complying with the CID and will vigorously defend any lawsuits. At this point, it is not possible to determine what level of liability, if any, the Company may face as a result of this matter.

#### ***Veterans Administration Matter***

In October 2017, a CID was issued to Health Net Federal Services, LLC (HNFS) by the United States Department of Justice. The CID seeks documents and interrogatory responses concerning whether HNFS submitted, or caused to be submitted, excessive, duplicative or otherwise improper claims to the U.S. Department of Veterans Affairs under a contract to arrange healthcare services for veterans. The contract began in late 2014. In 2016, modifications to the contract were made to allow for possible duplicate billings with a reconciliation period at the end of the contract term. The Company is complying with the CID and believes it has been meeting its contractual obligations. At this point, it is not possible to determine what level of liability, if any, the Company may face as a result of this matter.

#### ***Guaranty Fund Assessment***

Under state guaranty association laws, certain insurance companies can be assessed for certain obligations to the policyholders and claimants of impaired or insolvent insurance companies that write the same line or similar lines of business. In 2009, the Pennsylvania Insurance

Commissioner placed long-term care insurer Penn Treaty Network America Insurance Company and its subsidiary (Penn Treaty), neither of which is affiliated with the Company, in rehabilitation and petitioned a state court for approval to liquidate Penn Treaty. In March 2017, the court issued the final liquidation order, and as a result, during the twelve months ended December 31, 2017, the Company recognized \$56 million representing its undiscounted estimated share of the guaranty association assessment as selling, general and administrative expenses.

### ***Ambetter Class Action***

In January 2018, a putative class action lawsuit was filed against the Company and certain subsidiaries in the U.S. District Court for the Eastern District of Washington. The complaint alleges that the Company failed to meet federal and state requirements for provider networks and directories with regard to its Ambetter policies, denied coverage and/or refused to pay for covered benefits, and failed to address grievances adequately, causing some members to incur unexpected costs. The Company intends to vigorously defend itself against these claims. Nevertheless, this matter is subject to many uncertainties and the Company cannot predict how long this litigation will last or what the ultimate outcome will be, and an adverse outcome in this matter could potentially have a materially adverse impact on our financial position and results of operations.

### ***United States ex rel. Porter v. Centene Corp. and Magnolia Health Plan, Inc., Civil Action No. 1:16-cv-00075 (S.D. MS).***

In this qui tam action, plaintiff alleges Centene Corporation and its wholly-owned subsidiary, Magnolia Health Plan, falsely represented in contracts with the Mississippi Division of Medicaid that they would staff case manager positions with registered nurses when they really intended to use licensed practical nurses. Plaintiff contends Defendants' use of licensed practical nurses resulted in their receiving inflated capitated rate payments, a portion of which consisted of federal funds. The Court dismissed Centene in October 2017. Plaintiff also confessed dismissal of all common law claims against Magnolia, leaving only her claims arising under the statutory False Claims Act. Magnolia's motion to dismiss with respect to those claims is pending for decision. If the lawsuit proceeds, Magnolia intends to vigorously defend on the merits. Magnolia has strong arguments and evidence, including the following: (1) its alleged use of licensed practical nurses rather than registered nurses was immaterial to its receipt of federal funds, as evidenced by the Mississippi Division of Medicaid's continued payments and renewals of the contract after knowing of Plaintiff's allegations; (2) its purported commitment to use registered nurses did not cause the government to pay moneys to Magnolia; and (3) Magnolia made no false representations to the government because the contract with the Mississippi Division of Medicaid did not require Magnolia to staff case manager jobs with registered nurses.

### ***Washington Office of Insurance Commission / Coordinated Care Corporation Consent Order No. 17-0477***

On December 12, 2017, the Washington Office of the Insurance Commissioner (the “OIC”) issued a Notice of Suspension ordering Coordinated Care Corporation (“CCC”) to cease offering its Ambetter [ACA/Exchange] product on the Washington Health Benefits Exchange. The Notice stemmed from issues with CCC’s anesthesiologist network in certain counties. As a result of those issues, some Ambetter members were balance-billed by the anesthesiologist providers for services received. Those providers suggested that the affected members direct complaints to the OIC and included form complaint letters with the balance bills. That resulted in complaints to the OIC, which led the OIC to request additional information about Coordinated Care’s network. In the Notice of Suspension, the OIC alleged various deficiencies in Coordinated Care’s network. While Coordinated Care did not admit any liability, on December 15, 2017, Coordinated Care entered into a Consent Order with the OIC. Pursuant to that Consent Decree, Coordinated Care agreed to pay a \$500,000 fine (with an additional \$1,000,000 suspended) and to undergo a Corrective Action Plan (“CAP”) with the assistance of outside auditors. The purpose of the CAP is to ensure that CCC has an adequate network to serve its Washington members and proper policies and procedures in place to address any deficiencies that arise in its network. The auditors are working actively with CCC and progress is being made. The OIC recently levied \$100,000 of the suspended portion of the fine because certain deliverables under the CAP had not been received timely. Coordinated Care is working diligently with the auditors to remedy the timeliness issues and is confident that it will meet the requirements of the CAP by the deadline in the Consent Order.

***Linda Gilmer v. Centene Corporation, Centene Management Company, LLC and Coordinated Care Corporation, Case No. 17-2-07240-6***

Plaintiff Gilmer brought a claim in the Superior Court of Washington for Pierce County for a single cause of action of wrongful discharge in violation of public policy. The action is based in state common law. Ms. Gilmer claims that she engaged in protected activity by raising objections with her employer regarding allegedly improper business practices that she claims violated Washington and federal law. Specifically, Ms. Gilmer claims that she raised concerns about alleged improper denial of claims from a single provider as well as alleged improper reassigning of members from one provider to other providers in the network. Ms. Gilmer alleges that, in response to her raising these concerns, her employment was terminated in June 2015. The Centene entities deny Ms. Gilmer’s allegations and are defending the action vigorously. Ms. Gilmer did not raise any concerns qualifying for protection under Washington law, and her employment was terminated for unrelated reasons due to her violation of company policies and practices.

***Dorian Linnear et al v IlliniCare Health Plan, Inc. and Centene Management Company (Case No. 1:17-cv-07132), US District Court, ND IL***

Former contingent worker in Program Specialist role alleges misclassification of Program Specialist and Care Manager positions resulting in a failure to pay overtime and provide required breaks under FLSA and IL law. Case is plead as a collective FLSA action and class IL action.

***Joy Gudger et al v Centene Management Company and Sunshine Health (Case No. 2:17-cv-14281-JEM) US District Court, SD FL.***

Former employee claiming misclassification of Medical Necessity Specialist and Long Term Care Case Manager positions.

***Andrea Spears v Health Net of CA, Inc. and Thomas Arana v Health Net of CA, Inc. (Case No34-2017-00210560) Superior Court, Sacramento County, CA***

Plaintiffs alleges misclassification of Business Analysts position. Additional allegations include failure to properly calculate and pay overtime, failure to provide appropriate breaks, and other violations of CA wage and hour law.

***Tracie Holmes v. Kelly Services, Inc., Kelly Services, USA, Inc. & Health Net Federal Services, Inc. (Case No. 16-cv-13164 (U.S. District Court, ED MI)***

A temporary employee assigned to call center filed a putative collective action complaint under the Fair Labor Standards Act alleging she was not paid for pre- and post- shift work activities.

***Chapa v Centene of Texas and Superior Health Plan (Case # 7:16-cv-00608) US District Court, S.D. TX.***

Program Coordinator filed a collective action under the FLSA claiming that, as a non-exempt employee, she was expected to and did work before and after clocking in and out and was therefore not paid for all hours worked. Settlement agreement executed 5.1.18

***Hampton et al v Centene Management Company (Case # 16-cv-4693) US District Court, ND IL***

Class action under the FLSA and Illinois law brought by former customer service representative and a former temporary customer service representative claiming that, as non-exempt employees, they were not paid for all hours worked. Settlement reached and approved by the Court.

***Sampson v Health Net of CA, Inc., (Case No 34-2015-00183785), Superior Court, Sacramento County, CA***

Class action under CA wage and hour law alleging misclassification of employees in Business Analyst positions. Court approved settlement 2.7.18. Funds to be paid out by 5.10.18

***Rebecca Lehman & Heather Womick v. Health Net of California, Inc. and Health Net Life Insurance Company (Case No. BC567361), Superior Court, Los Angeles County, CA***

Class action suit alleging wrongful denial of certain pharmaceutical product.

***Denise Pellegrino v. Health Net of California, Inc., Health Net Life Insurance Company (Case No. BC6455837), Superior Court, Los Angeles County, CA***

Class action complaint alleging Health Net misrepresented scope of its physician network, maintained inadequate directories, and misstated scope of coverage.

## EXHIBIT B

FILING RECEIPT

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ENTITY NAME: NEW YORK QUALITY HEALTHCARE CORPORATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC BUSINESS) COUNTY: QUEE  
COUNTY PURPOSES PROCESS NAME PROVISIONS RESTATED

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FILED:04/11/2018 DURATION:\*\*\*\*\* CASH#:180411000304 FILM #:180411000289

FILER:

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GREENBERG, TRAURIG  
54 STATE STREET, 6TH FLOOR

ALBANY, NY 12207

ADDRESS FOR PROCESS:

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NEW YORK QUALITY HEALTHCARE CORPORATION  
95-25 QUEENS BOULEVARD  
REGO PARK, NY 11374

REGISTERED AGENT:



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SERVICE COMPANY: COLBY ATTORNEYS SERVICE COMPANY - 08

SERVICE CODE: 08

FEES	370.00
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TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	300.00

PAYMENTS	370.00
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CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	370.00
OPAL	0.00
REFUND	0.00

=====

DOS-1025 (04/2007)



FILING RECEIPT

=====

ENTITY NAME: NEW YORK QUALITY HEALTHCARE CORPORATION

DOCUMENT TYPE: AMENDMENT (DOMESTIC BUSINESS)

COUNTY: QUEE

COUNTY PURPOSES PROCESS NAME PROVISIONS RESTATED

=====

FILED:04/11/2018 DURATION:\*\*\*\*\* CASH#:180411000304 FILM #:180411000289

FILER:

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GREENBERG, TRAUIG  
54 STATE STREET, 6TH FLOOR

ALBANY, NY 12207

ADDRESS FOR PROCESS:

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NEW YORK QUALITY HEALTHCARE CORPORATION  
95-25 QUEENS BOULEVARD  
REGO PARK, NY 11374

REGISTERED AGENT:

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=====

SERVICE COMPANY: COLBY ATTORNEYS SERVICE COMPANY - 08

SERVICE CODE: 08

FEEs	370.00
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TAX	0.00
CERT	0.00
COPIES	10.00
HANDLING	300.00

PAYMENTS	370.00
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CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	370.00
OPAL	0.00
REFUND	0.00

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DOS-1025 (04/2007)

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
April 11, 2018.

A handwritten signature in dark ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**CENTENE ACQUISITION CORPORATION**

Pursuant to Section 807 of the New York Business Corporation Law

**First:** The name of the Corporation is Centene Acquisition Corporation.

**Second:** The Certificate of Incorporation of the Corporation was filed by the New York Department of State on November 10, 2017.

**Third:** The Certificate of Incorporation of the Corporation shall be amended and restated as follows:

- a) To change the name of the Corporation from "Centene Acquisition Corporation" to "New York Quality Healthcare Corporation."
- b) To specify that the purposes for which the Corporation is formed includes (i) to maintain a special purpose certificate of authority pursuant to Section 4403-a of the Public Health Law to offer a comprehensive health services plan on a prepaid contractual basis, (ii) to carry on any or all of the activities of a prepaid health services plan including but not limited to, those activities set forth in Section 4405 of the Public Health Law, (iii) to carry out any or all of the activities of a prepaid health services plan, including, but not limited to, those activities set forth in Part 98 of Title 10 of the New York Codes, Rules and Regulations, (iv) to exercise all of the powers necessary to carry out the purposes set forth in the Certificate of Incorporation, including entering into contracts in furtherance of such purposes and all powers granted under New York Public Health Law and Regulations and (v) to engage in any lawful act or activity for which a corporation organized under the New York Business Corporation Law may engage, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.
- c) To specify that the office of the Corporation is to be located in Queens County of New York, State of New York instead of County of New York, State of New York.
- d) To specify that the holders of Common Stock of the Corporation shall be entitled to (a) votes upon such matter in such manner as may be provided by law on all matters submitted to a vote at any meeting of shareholders and (b) receive the net assets of the Corporation upon dissolution.

- e) To remove the provisions of Article 4 of the Certificate of Incorporation relating to preemptive rights of holders of the Common Stock.
- f) To remove the provisions included for the management of the business and conduct of affairs of the Corporation and for definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders.
- g) To specify that the Corporation shall, subject to authorization from the Board of Directors, indemnify to the fullest extent permitted under New York law, all directors and officers of the Corporation from and against any expenses, liabilities or other matters as to action in his or her official capacity (such indemnification to continue as to a person who has ceased to be a director or officer and will inure to the benefit of the heirs, executors and administrators of such a person).
- h) To specify that the Corporation reserves the right to amend, or change or repeal any provisions contained in the Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders in the Certificate of Incorporation are subject to this reservation. Additionally, provisions in the Certificate of Incorporation may be amended, , changed or repealed by a resolution adopted by the Board of Directors and, if shareholder approval is required by the New York Business Corporation Law, the approval at a meeting of the shareholders of the Corporation by the affirmative vote of a majority of the votes entitled to be cast by each voting group entitled to vote on the matter, unless a greater vote is required.
- i) The address to which the Secretary of State shall mail process accepted upon of the corporation is amended.
- j) To amend Article Ninth of the Certificate of Incorporation to specify that the personal liability of shareholders is eliminated and to specify the conditions under which such personal liability shall not be eliminated.

**Fourth:** Each of the foregoing amendments were authorized by the unanimous written consent of the Board of Directors of the Corporation dated April 10, 2018 and approved at a meeting of the Shareholders of the Corporation by the required vote of the holders of shares entitled to vote thereon on April 10, 2018.

**Fifth:** In order to effect the changes set forth above, the text of the Certificate of Incorporation of the said Corporation is hereby amended and restated to read in its entirety as follows:

**"First:** The name of the Corporation is New York Quality Healthcare Corporation (hereinafter referred to as the "Corporation").

**Second:** The purposes for which the Corporation is formed are as follows:

- (a) To maintain a special purpose certificate of authority pursuant to Section 4403-a of the Public Health Law to offer a comprehensive health services plan on

a prepaid contractual basis either directly, or through an arrangement, agreement or plan or combination thereof to an enrolled population, which is substantially composed of persons eligible to receive benefits under title XIX of the federal social security act or other public programs; and

(b) To carry on any or all of the activities of a prepaid health services plan ("PHSP"), including but not limited to, those activities set forth in Section 4405 of the Public Health Law, as follows: (i) establishing, maintaining and operating facilities required for the Corporation's principal office or for such other purposes necessary in the transaction of business of the Corporation; (ii) providing comprehensive health care services on a prepaid basis through hospitals and other health care providers, which are under contract with, otherwise associated with, or employed by the Corporation; (iii) accepting from government agencies, private agencies, corporations, associations, groups, individuals or other persons, payments covering all or part of the costs of health care services provided to enrollees, in accordance with the provisions of the health services plan; (iv) marketing, enrolling and administering a comprehensive health services plan; (v) contracting with insurers licensed in the State of New York; (vi) offering, in addition to health care services, benefits covering out-of-area or emergency services; (vii) providing health services not included in the health care plan on a fee-for-services basis; (viii) indemnifying enrollees for the services of health care providers, other than primary care practitioners responsible for supervising and coordinating the care of enrollees, not participating in a plan to the extent authorized in Section 4406 of the Public Health Law; (ix) advertising the comprehensive health services and the plan relating to the rendition of such services in a factual and non-misleading manner; and (x) entering into contracts in furtherance of the purposes of Article 44 of the Public Health Law and

(c) To carry out any or all of the activities of a PHSP, including, but not limited to, those activities set forth in Part 98 of Title 10 of the New York Codes, Rules and Regulations, as follows: (i) to perform studies, feasibility surveys and planning with respect to the development and formation of a PHSP; and in conjunction, to accumulate, compile and analyze statistics and such other data that will promote the health, safety and welfare of the general public; and (ii) upon obtaining a certificate of authority from the New York State Department of Health, to own, operate and manage a PHSP, including providing or arranging for the provisions of comprehensive health services to an enrolled population and to have and exercise all powers necessary and convenient to effect any or all of the foregoing purposes for which the entity is formed, together with all the powers now or hereafter granted to it by the State of New York.

(d) To exercise all of the powers necessary to carry out the purposes set forth herein, including but not limited to, entering into contracts in furtherance of such purposes and all powers granted under New York Public Health Law and Regulations, as the same may be amended from time to time, and to do every other act or thing not inconsistent with said laws and regulations that may be appropriate to promote and attain the purposes set forth herein.

(e) To engage in any lawful act or activity for which a corporation organized under the New York Business Corporation Law may engage, provided that it is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

**Third:** The total number of shares of capital stock which the Corporation shall have the authority to issue is 100. Such shares shall have a par value of \$ 0.01. All such shares are of one class and are shares of common stock ("Common Stock"). The holders of Common Stock shall be entitled to (a) votes upon such matter in such manner as may be provided by law on all matters submitted to a vote at any meeting of shareholders and (b) receive the net assets of the Corporation upon dissolution.

**Fourth:** The Secretary of State is designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process accepted on behalf of the Corporation is:

New York Quality Healthcare Corporation  
95-25 Queens Boulevard  
Rego Park, New York 11374

**Fifth:** The name and address of the registered agent, which is to be the agent of the Corporation upon whom process against the Corporation may be served, is as follows:

CT Corporation System  
111 Eighth Avenue - 13th Floor  
New York, NY 10011

**Sixth:** The office of the Corporation is to be located in the County of Queens, State of New York.

**Seventh:** The name and address of the sole incorporator is as follows:

Michael J. Homison  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522

**Eighth:** The liability of the directors to the Corporation or any stockholder of this Corporation for monetary damages shall be eliminated to the fullest extent permissible under New York Law. No such limitation of liability shall eliminate or limit the liability of any director if a judgment or other final adjudication adverse to the director establishes that the director's acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the director personally gained in fact a financial profit or other advantage to which the director was not legally entitled or that the director's acts violated Section 719 of the New York Business Corporation Law, as amended.

**Ninth:** The Corporation shall indemnify to the fullest extent permitted from time to time under New York law, including, without limitation, the New York Business Corporation Law, as the same may be amended or supplemented, all directors and officers of the Corporation from and against any expenses, liabilities or other matters as to action in his or her official capacity while holding such office; and such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person; provided, however, that the Corporation shall indemnify any such indemnitee in connection with a proceeding initiated by such indemnitee only if such proceeding was authorized by the Board of Directors of the Corporation. The modification or repeal of this paragraph shall not affect the indemnification of or advance of expenses to a director or officer for any liability stemming from any acts or omissions occurring prior to such modification or repeal.

The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, and shall not be deemed to limit the ability of the Corporation to indemnify or advance expenses to any person pursuant to contract, any Bylaw, or a general or specific action of the Board of Directors consistent with applicable law.

**Tenth:** The Corporation reserves the right to amend, change or repeal any provisions contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation. Provisions in this Certificate of Incorporation may be amended, changed or repealed by a resolution adopted by the Board of Directors and, if shareholder approval is required by the New York Business Corporation Law, the approval at a meeting of the shareholders of the Corporation by the affirmative vote of a majority of the votes entitled to be cast by each voting group entitled to vote on the matter, unless a greater vote is required."

IN WITNESS WHEREOF, Centene Acquisition Corporation has caused this Restated Certificate of Incorporation to be executed by Keith H. Williamson, its Secretary, this 10<sup>th</sup> day of April, 2018.

CENTENE ACQUISITION  
CORPORATION

By Keith H. Williamson

Name: Keith H. Williamson

Title: Secretary



CERTIFICATE OF RESERVATION

ENTITY NAME: NEW YORK QUALITY HEALTHCARE CORPORATION

DOCUMENT TYPE: RESERVATION (DOM. BUSINESS)

FILED:03/06/2018 DURATION:05/07/2018 CASH#:180306000806 FILM #:180306000758

FILER:

NEW YORK QUALITY HEALTHCARE CORP.  
C/O TRACY BAKER; SKADDEN ET AL LLP  
ONE RODNEY SQUARE, 4TH FLOOR  
WILMINGTON, DE 19801

ADDRESS FOR PROCESS:

REGISTERED AGENT:



\*\* SUBMIT RECEIPT WHEN FILING CERTIFICATE \*\*  
APPLICANT NAME : TRACY BAKER

SERVICE COMPANY: C T CORPORATION SYSTEM - 07

SERVICE CODE: 07

FEEs	45.00
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FILING	20.00
TAX	0.00
CERT	0.00
COPIES	0.00
HANDLING	25.00

PAYMENTS	45.00
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CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	45.00
OPAL	0.00
REFUND	0.00

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DOS-1025 (04/2007)



## Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

CONSENT

TO FILING

RESTATED

### CERTIFICATE OF INCORPORATION

BY THE

COMMISSIONER

I, Jonathan P. Bick, Director, Division of Health Plan Contracting & Oversight,  
as the Commissioner's designee with authority to approve certificates of  
incorporation of health maintenance organizations, do this 10<sup>th</sup> day of April,  
2018, consent to the filing with the Secretary of State of the Restated Certificate of  
Incorporation of Centene Acquisition Corporation, as executed on the 10th day of  
April, 2018, pursuant to Section 807 of the New York Business Corporation Law and  
Section 4402(2)(a) of the Public Health Law and Section 98-1.5 of Title 10 of the  
Official Compilation Codes, Rules and Regulations of the State of New York.

Jonathan P. Bick, Director,  
Division of Health Plan Contracting &  
Oversight

259

FILED

2018 APR 11 AM 11:12

RESTATED  
CERTIFICATE OF INCORPORATION  
OF

CENTENE ACQUISITION CORPORATION

RECEIVED

2018 APR 11 AM 11:01

*Under Section 807 of the Business Corporation Law*

1 CC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 11 2018

TAX S.

BY:

KVA

GT

Filed By:

Greenberg, Traurig  
14 State Street, 6th Floor  
Albany

NY 12207

DRAWDOWN

D.C. -08

☐ ROUTINE

☐ 24 HOUR

☐ SAME DAY

☒ 2 HOUR

304

## EXHIBIT C

**AMENDED AND RESTATED BYLAWS  
OF  
NEW YORK QUALITY HEALTHCARE CORPORATION  
(as amended on April 4, 2018)**

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**AMENDED AND RESTATED BYLAWS**  
**OF**  
**NEW YORK QUALITY HEALTHCARE CORPORATION**  
**ARTICLE 1**  
**OFFICES AND RECORDS**

1.1 **Registered Office and Resident Agent.** The location of the registered office and the name of the resident agent of New York Quality Healthcare Corporation, a New York prepaid health services plan (the "Corporation"), in the State of New York will be as stated in the Certificate of Incorporation of the Corporation, as amended from time to time (the "Certificate"), or as may be determined from time to time by resolution of the Board of Directors of the Corporation (the "Board") and on file in the appropriate public offices of the State of New York as provided by law.

1.2 **Other Corporate Offices.** The Corporation may conduct its business, carry on its operations, have other offices and exercise its powers within or outside of the State of New York as the Board may designate or the business of the Corporation may require.

1.3 **Books, Accounts and Records, and Inspection Rights.** The books, accounts and records of the Corporation, except as may be otherwise required by the laws of the State of New York, may be kept outside of the State of New York, at such place(s) as the Board may from time to time determine. Except as otherwise provided by law, the Board will determine whether, to what extent, and the conditions upon which the books, accounts and records of the Corporation will be open to the inspection of the stockholders of the Corporation.

**ARTICLE 2**  
**MEETINGS OF STOCKHOLDERS**

2.1 **Place of Meetings.** All meetings of the stockholders will be held at the offices of the Corporation in Queens County, State of New York, or at such other place either within or without the State of New York as may be designated from time to time by the Board and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

2.2 **Annual Meetings.** Unless directors are elected by written consent in lieu of an annual meeting as provided in these Bylaws, an annual meeting of the stockholders will be held within the second quarter of each fiscal year at a time and place specified by the Board. At the annual meeting, the stockholders entitled to vote will elect directors and may also transact such other business as may be desired, whether or not the same was specified in the notice of the meeting, unless the consideration of such other business without its having been specified in the notice of the meeting as one of the purposes thereof is prohibited by law.

2.3 **Special Meetings.**



(a) Purpose. Special meetings of the stockholders may be held for any purpose(s) stated in the notice of the meeting, unless otherwise prohibited by law or by the Certificate. The business transacted at the special meeting will be confined to the purpose(s) stated in the notice, unless the transaction of other business is consented to by the holders of all of the outstanding shares of stock of the Corporation entitled to vote at the special meeting. The "call" and the "notice" of any such meeting will be deemed to be synonymous.

(b) Who May Call. A special meeting of the stockholders may be called by the Board, by the Chairman of the Board, by the President, by the Secretary, by such other persons as may be authorized in the Certificate, or by the holders of, or by any officer or stockholder upon the written request of the holders of, not less than ten percent (10%) of the outstanding shares of stock of the Corporation entitled to vote at such meeting.

#### 2.4 Action Without a Meeting.

(a) Unanimous Consent. Unless otherwise provided in the Certificate or these Bylaws, any action required to be taken or any action that may be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by all the holders of outstanding shares of stock entitled to vote, and such consent or consents are delivered, by return receipt or by hand, to the Corporation, its registered agent, or to an officer or agent of the Corporation and filed with the minutes of proceedings of the stockholders.

(b) Election of Directors May Be Non-Unanimous. Notwithstanding Section 2.4(a), unless the Certificate otherwise provides, Stockholders may act by written consent to elect directors; except that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

(c) Dates of Signatures. Every written consent will bear the date of signature of each stockholder who signs such consent or consents. No written consent will be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in compliance with Section 2.4(a), written consent(s) signed by a sufficient number of stockholders to take such action are delivered to the Corporation, its registered agent, or to an officer or agent of the Corporation.

(d) Electronic Transmissions. A telegram, cablegram, or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, proxy holder, or by a person or persons authorized to act for the stockholder or proxy holder, will be deemed to be written, signed and dated for purposes of this Section 2.4 provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder. The date on which the electronic transmission is transmitted will be deemed to be the date on which such consent or consents were signed, provided, however, that no electronic transmission will be deemed delivered until such transmission is reproduced in paper form and delivered in the manner provided in Section 2.4(a).

2.5 Notice. Written notice of each meeting of the stockholders, whether annual or special, which will state the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose(s) thereof, will be given to each stockholder entitled to vote at such meeting, either personally or by mail, not less than ten (10) days nor more than sixty (60) days before the date of the meeting. If mailed, such notice will be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at the stockholder's address as it appears on the records of the Corporation, unless he/she shall have previously filed with the Secretary of the Corporation a written request that notices intended for him/her be mailed to some other address, in which case, it shall be mailed to the address designated in such request. Notice of any meeting need not be given to any person who may become a stockholder of record after the mailing of such notice and prior to the meeting, or to any shareholder who attends such meeting, in person or by proxy, or to any shareholder who, in person or by proxy, submits a signed waiver of notice either before or after such meeting. Notice of any adjourned meeting of stockholders need not be given, unless otherwise required by law.

2.6 Waiver of Notice. Whenever any notice is required to be given to any stockholder under any law, the Certificate or these Bylaws, a written waiver, signed by the person entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, will be deemed equivalent to the giving of such notice. Attendance by a stockholder at a meeting will constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate or these Bylaws.

### ARTICLE 3

#### QUORUM AND VOTING OF STOCK

3.1 Quorum. The holders of a majority of the shares of stock of the Corporation entitled to vote, present in person or represented by proxy, will constitute a quorum (a "Quorum") at all meetings of the stockholders for the transaction of any business, except as otherwise provided by law, the Certificate or these Bylaws.

If a Quorum is not present at a meeting of the stockholders, the holders of a majority of the stock present in person or represented by proxy at such meeting will have the power successively to adjourn the meeting from time to time to a specified time and place, without notice to anyone other than an announcement at the meeting at which such adjournment is taken, until a Quorum is present. At such adjourned meeting at which a Quorum is present, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after adjournment a new record date is fixed for the subsequent session of the adjourned meeting, a notice of the subsequent session of the adjourned meeting will be given to each stockholder entitled to vote at the meeting.

3.2 Proxies. Each stockholder entitled to a vote at a meeting of stockholders, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for such stockholder by written proxy signed by such stockholder, but no such proxy will be voted or acted upon after three (3) years from its date, unless such proxy provides for a longer period.

3.3 Voting.

(a) One Vote Per Share. Unless otherwise provided in the Certificate, each stockholder entitled to vote will be entitled to one (1) vote for each share of stock held and registered in such stockholder's name on the books of the Corporation. If the Certificate provide for more or less than one (1) vote for any share on any matter, then every reference in these Bylaws to a vote by a majority or other proportion of stock will refer to such majority or other proportion of the votes of such stock on such matters as provided in the Certificate.

(b) Shares Held by the Corporation. No person may vote any shares of Corporation stock that at that time belong to the Corporation, or that at that time belong to an entity controlled by the Corporation.

(c) Voting Otherwise Than by Written Ballot. At all meetings of stockholders, the voting may be otherwise than by written ballot, except (i) that any stockholder entitled to vote may request a vote by written ballot on any matter, and (ii) if the Certificate does not permit the election of directors other than by written ballot, then in either such case the applicable vote will be by written ballot. If authorized by the Board, such requirement of a written ballot will be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

(d) Stockholder Action. In all matters other than the election of directors, the affirmative vote of the holders of a majority of the shares of stock of the Corporation who are present in person or represented by proxy at a meeting at which a Quorum is present and who are entitled to vote on the subject matter will be the valid corporate act of the stockholders, except in those specific instances in which a larger vote is required by law, the Certificate or these Bylaws.

(e) Voting for Directors. Directors will be elected by a plurality of the shares present in person or by proxy at a meeting at which a Quorum is present and entitled to vote on the election of directors. Cumulative voting will be permitted in the election of directors.

3.4 Stock Ledger; Voting Rights of Fiduciaries, Pledgors and Joint Owners of Stock.

(a) Stock Ledger. The stock ledger will be prima facie evidence as to who are the stockholders entitled to examine the list required by Section 3.5 below, or to vote in person or by proxy at any meeting of the stockholders. Only stockholders whose names are registered in the stock ledger will be entitled to be treated by the Corporation as the holders and owners in fact of the shares standing in their respective names, and the Corporation will not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other

person, whether or not the Corporation has express or other notice thereof, except as expressly provided by the laws of the State of New York.

(b) Voting Rights of Fiduciaries and Pledgors. Persons holding stock in a fiduciary capacity will be entitled to vote the shares so held. Persons whose stock is pledged will be entitled to vote, unless in the transfer by the pledgor on the books of the Corporation the pledgor has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or the pledgee's proxy, may represent such stock and vote thereon.

(c) Voting Rights of Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, or as otherwise provided by the laws of the State of New York, their acts with respect to voting will have the following effect: (i) if only one votes, the act binds all; (ii) if more than one vote, the act of the majority so voting binds all; (iii) if more than one vote, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally. If the instrument so filed shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of this subsection will be a majority or even-split in interest rather than in number.

3.5 Stockholders' Lists. The Secretary or an Assistant Secretary, who has charge of the stock ledger of the Corporation, will prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list will be open to the examination of any stockholder entitled to vote at such meeting, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided in the notice of the meeting, or (b) during ordinary business hours at the Corporation's principal place of business. Such list will also be produced and kept at the place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by remote communication, such list will be open to the examination of any stockholder during the whole time of the meeting by reasonably accessible electronic network. Failure to comply with this Section 3.5 will not affect the validity of any action taken at such meeting.

3.6 Fixing of Date for Determination of Stockholders of Record. The Board may, by resolution, fix in advance a date as the record date for the purpose of determining stockholders entitled to notice of, or to vote at, any meeting of stockholders or any adjournment/postponement thereof, or stockholders entitled to receive payment of any dividend or the allotment of any rights, or in order to make a determination of stockholders for any other purposes (other than determining stockholders entitled to consent to action by stockholders proposed to be taken without a meeting of stockholders). Such date, in any case, will not be more than sixty (60) days and not less than ten (10) days prior to the date on which the particular action requiring such determination of stockholders is to be taken. If no record date is fixed for the determination of

stockholders entitled to notice of or to vote at a meeting of stockholders, or stockholders entitled to receive payment of a dividend, such date will be at the close of business on the day on which notice of the meeting is mailed or the date on which the resolution of the Board declaring such dividend is adopted, as the case may be, and will be the record date for such determination of stockholders. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this Section 3.6, such determination will apply to any adjournment/postponement thereof except where the determination has been made through the closing of the stock transfer records and the stated period of closing has expired.

## ARTICLE 4

### BOARD OF DIRECTORS

4.1 Number, Qualification; Term. Unless and until changed by the Board as hereinafter provided, the number of directors to constitute the Board will be not less than three (3) and not more than nine (9) members. One-third of the directors shall be residents of the State of New York. Twenty percent (20%) of the Directors shall be enrollees of the health plan, or, as an alternative, the Corporation will establish an enrollee advisory council which is representative of the interests of the enrollees and which has direct input to the Board. The precise number of directors shall be fixed by resolution of the stockholders from time to time. The directors shall be elected at the annual meeting of the stockholders by a plurality of the votes cast by the shares represented in person or by proxy. Directors need not be stockholders.

4.2 Powers of the Board. The business and affairs of the Corporation will be managed by and under the direction of the Board. In addition to the powers and authorities by these Bylaws and the Certificate expressly conferred upon it, the Board may exercise all such powers of the Corporation, and do all such lawful acts and things, as are not by statute or by the Certificate or by these Bylaws directed or required to be exercised or done by the stockholders.

4.3 Acceptance of Director. Each director, upon election, will qualify by accepting the office of director, and such director's attendance at, or written approval of the minutes of, any meeting of the Board subsequent to the director's election will constitute acceptance of such office by such director; or the director may accept the office of director by executing a separate written acceptance, which will be placed in the minute book.

4.4 Meetings; Notice. Except as otherwise provided below, the Board may hold its meetings within or outside the State of New York.

(a) Annual Meeting. The first meeting of each newly elected Board will be held (i) immediately following and at the same place as the annual meeting of the stockholders at which such Board was elected, and no notice of such meeting will be necessary, provided a quorum is present, (ii) at such time and place as consented to in writing by all of the newly elected directors, or (iii) upon notice of such meeting as provided for in Section 4.4(c) hereof, except that such notice need not state the purpose(s) of the meeting.

(b) Regular Meetings. Regular meetings of the Board may be held without notice at such times and places as adopted by written consent of all directors, and shall be held

no less than four times annually, once each quarter. Any business may be transacted at any regular meeting.

(c) Special Meetings. Special meetings of the Board may be called by the Chairman of the Board, the President, or the Secretary. Special meetings will be held at the place, day and hour specified in the written notice of the meeting which notice will also state the purpose(s) thereof. Such notice will be mailed to each director at the director's residence or usual place of business at least three (3) days before the day on which the meeting is to be held, or sent to the director by confirmed facsimile transmission, confirmed electronic mail or delivered personally to the director, at least two (2) days before the day on which the meeting is to be held. If mailed, such notice will be deemed to be delivered when it is deposited in the United States mail with postage thereon addressed to the director at his residence or usual place of business. If given by facsimile transmission or electronic mail, such notice will be deemed delivered when received. The notice may be given by any person having authority to call the meeting. "Notice" and "call" with respect to such meetings will be deemed to be synonymous.

(d) Waiver of Notice. Whenever any notice is required to be given to any director under any law, the Certificate or these Bylaws, a written waiver thereof, signed by the director entitled to such notice, whether before or after the time stated therein, will be deemed equivalent to notice. Attendance by a director at a meeting will constitute a waiver of notice of such meeting, except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice unless so required by the Certificate or these Bylaws.

(e) Meetings by Conference Telephone or Similar Communications Equipment. Unless otherwise restricted by the Certificate or these Bylaws, the directors may participate in a meeting of the Board by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other, and participation in a meeting in such manner will constitute presence in person at such meeting.

(f) Action Without a Meeting. Unless otherwise restricted by the Certificate or these Bylaws, any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the subject matter thereof. Any such consent will be filed with the minutes of proceedings of the Board.

4.5 Quorum; Voting Requirements. Unless a greater number is required by the Certificate or these Bylaws, a majority of the total number of directors will constitute a quorum for the transaction of business and the vote of the majority of the directors present at a meeting at which a quorum is present will be the valid corporate act of the Board.

4.6 Vacancies and Newly Created Directorships. Unless otherwise provided in the Certificate or these Bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors to constitute the Board may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and

the directors so chosen will hold office until the next annual election of directors by the stockholders at which such director's successor is duly elected and qualified, or until such director's earlier resignation or removal. If, at any time, by reason of death, resignation or other cause, the Corporation should have no directors in office, then any receiver, officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate or these Bylaws, or as otherwise provided by law for such election.

#### 4.7 Committees.

(a) Designation. The Board may designate one (1) or more committees of the Board. Each committee will consist of one (1) or more designated directors.

(b) Absence; Disqualification. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the members present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(c) Powers; Limitation. Any such committee, to the extent provided in the resolution of the Board or in these Bylaws, will have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation; but no such committee will have the power or authority of the Board with respect to (i) approving or adopting, or recommending to the stockholders of the Corporation, any action or matter expressly required by the laws of the State of New York to be submitted to stockholders for approval; or (ii) adopting, amending or repealing these Bylaws.

(d) Recordkeeping. All committees so appointed will, unless otherwise provided by the Board, keep regular minutes of the transactions at their meetings and will cause them to be recorded in books kept for that purpose in the office of the Corporation and will report the same to the Board at its next meeting. The Secretary or an Assistant Secretary of the Corporation may act as Secretary of the committee if the committee or the Board so requests.

(e) Meetings By Conference Telephone or Similar Communications Equipment. Unless otherwise restricted by the Certificate or these Bylaws, members of any committee designated by the Board may participate in a meeting of such committee by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other; and participation in a meeting in such manner will constitute presence in person at such meeting.

(f) Committee Action Without a Meeting. Unless otherwise restricted by the Certificate or these Bylaws, any action required or permitted to be taken at any meeting of a committee may be taken without a meeting if all members of such committee consent thereto in writing or by electronic transmission. Any such writing or electronic transmission will be filed with the minutes of proceedings of such committee.

4.8 Compensation. Unless otherwise restricted by the Certificate or these Bylaws, the Board will have the authority to fix the compensation, if any, of the directors for serving as directors of the Corporation and may, by resolution, fix a sum that will be allowed and paid for attendance at each meeting of the Board and may provide for reimbursement of expenses incurred by directors in attending each meeting; provided that nothing herein contained will be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees may be allowed similar compensation for attending committee meetings.

4.9 Resignations. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Such resignation will take effect at the time specified therein or will take effect upon receipt thereof by the Corporation if no time is specified therein, and, unless otherwise specified therein, the acceptance of such resignation will not be necessary to make it effective.

4.10 Reliance on Records. A director, or a member of any committee designated by the Board, will be fully protected in the performance of such director's or committee member's duties in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

4.11 Removal of Directors by Stockholders. The stockholders may, by a vote of the holders of a majority of the outstanding shares then entitled to vote, to remove any director or directors from office with or without cause.

## **ARTICLE 5**

### **OFFICERS**

#### **5.1 Designations.**

(a) Authorized Officers. The Corporation will have a President, a Secretary and a Treasurer and may also have the following officers: a Chairman of the Board, one or more Vice Presidents, a Treasurer, one or more Assistant Secretaries and one or more Assistant Treasurers, each with such duties as are stated in this Article 5 or by resolution of the Board which is not inconsistent with these Bylaws. The Board will elect a President and a Secretary at its annual meeting. The Board then, or from time to time, may elect one or more of the other officers as it may deem advisable, and may further identify or describe the duties of any one or more of the officers of the Corporation.

(b) Qualification of Officers. Officers of the Corporation need not be members of the Board. Any number of offices may be held by the same person.

(c) Acceptance of Office. An officer will be deemed qualified when the officer enters upon the duties of the office to which the officer has been elected or appointed and



furnishes any bond required by the Board; but the Board may also require a written acceptance and promise to faithfully discharge the duties of such office.

(d) Failure to Elect Officers. A failure to elect the Corporation's officers in accordance with these Bylaws will not dissolve or otherwise affect the Corporation.

5.2 Term of Office. Each officer will hold office at the pleasure of the Board or for such other period as the Board may specify at the time of such officer's election or appointment, or until the death, resignation or removal of such officer, whichever first occurs. In any event, each officer of the Corporation who is not reelected or reappointed at the annual election of officers by the Board next succeeding his or her election or appointment will be deemed to have been removed by the Board, unless the Board provides otherwise at the time of such officer's election or appointment.

5.3 Other Agents. The Board from time to time may also appoint such other agents for the Corporation as the Board may deem necessary or advisable. Each such agent will serve at the pleasure of the Board or for such period as the Board may specify, and will exercise such powers, have such titles and perform such duties as may be determined from time to time by the Board or by an officer empowered by these Bylaws or the Board to make such determinations.

5.4 Removal. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in the Board's judgment the best interests of the Corporation would be served thereby, but such removal will be without prejudice to the contract rights, if any, of the person so removed.

5.5 Delegation of Authority to Hire, Discharge and Designate Duties. The Board from time to time may delegate to the Chairman of the Board, the President or other officer or executive employee of the Corporation, authority to hire and discharge and to fix and modify the duties and salary or other compensation of employees of the Corporation under the jurisdiction of such person, and the Board may delegate to such officer or executive employee similar authority with respect to obtaining and retaining for the Corporation the services of attorneys, accountants and other professionals and experts.

5.6 Chairman of the Board. If a Chairman of the Board is elected, the Chairman of the Board will preside at all meetings of the stockholders and directors at which he or she may be present and will have such other duties, powers and authority as may be prescribed elsewhere in these Bylaws. The Board may delegate such other authority and assign such additional duties to the Chairman of the Board, other than those conferred by law exclusively upon the President or another officer, as the Board may from time to time determine, and, to the extent permissible by law, the Board may designate the Chairman of the Board as the chief executive officer of the Corporation with all of the powers otherwise conferred upon the President of the Corporation under Section 5.7 below, or it may, from time to time, divide the responsibilities, duties and authority for the general control and management of the Corporation's business and affairs between the Chairman of the Board and the President.

5.7 President.

(a) Duties. Unless the Board otherwise provides, the President will be the chief executive officer of the Corporation with such general executive powers and duties of supervision and management as are usually vested in the office of the chief executive officer of a corporation, and the President will carry into effect all directions and resolutions of the Board. The President, in the absence of the Chairman of the Board or if there is no Chairman of the Board, will preside at all meetings of the stockholders and directors.

(b) Execute Documents. The President may execute all bonds, notes, debentures, mortgages and other instruments for and in the name of the Corporation, and may execute all other instruments and documents for and in the name of the Corporation.

(c) Vote Securities. Unless the Board otherwise provides, the President, or any person designated in writing by the President, will have full power and authority on behalf of the Corporation to (i) attend and to vote or take action at any meeting of the holders of securities of corporations or other entities in which the Corporation may hold securities, and at such meetings will possess and may exercise any and all rights and powers incident to being a holder of such securities, and (ii) execute and deliver waivers of notice and proxies for and in the name of the Corporation with respect to any securities held by the Corporation.

(d) Member of Committees. The President will, unless the Board otherwise provides, be ex officio a member of all standing committees.

(e) Other Duties. The President will have such other or further duties and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board.

(f) Absence of Chairman. If a Chairman of the Board is elected or appointed and designated as the chief executive officer of the Corporation, as provided above, the President will perform such duties as may be specifically delegated to the President by the Board or are conferred by law exclusively upon the President, and in the absence or disability of the Chairman of the Board or in the event of the Chairman's inability or refusal to act, the President will perform the duties and exercise the powers of the Chairman of the Board.

5.8 Vice Presidents. In the absence or disability of the President or in the event of the President's inability or refusal to act, any Vice President may perform the duties and exercise the powers of the President until the Board otherwise provides. Vice Presidents will perform such other duties and have such other authority as the Board may from time to time prescribe.

#### 5.9 Secretary and Assistant Secretaries.

(a) Keep Minutes. The Secretary will attend meetings of the Board and the stockholders and will record the minutes of such meetings in a book to be kept for that purpose. The Secretary will perform similar duties for each standing or temporary committee when requested by the Board or such committee.

(b) Duties. The Secretary will have the general duties, powers and responsibilities of a secretary of a corporation and will perform such other duties and have such other responsibility and authority as may be prescribed elsewhere in these Bylaws or from time

to time by the Board or the chief executive officer of the Corporation, under whose direct supervision the Secretary will be.

(c) Absence of Secretary. In the absence or disability of the Secretary or in the event of the inability or refusal of the Secretary to act, any Assistant Secretary or other elected officer may perform the duties and exercise the powers of the Secretary until the Board otherwise provides. Assistant Secretaries will perform such other duties and have such other authority as the Board may from time to time prescribe.

#### 5.10 Treasurer and Assistant Treasurers.

(a) Safekeeping of Funds. The Treasurer will have responsibility for the safekeeping of the funds and securities of the Corporation, will keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the Corporation and will keep or cause to be kept all other books of account and accounting records of the Corporation. The Treasurer will deposit or cause to be deposited all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board or by any officer of the Corporation to whom such authority has been granted by the Board.

(b) Disbursal of Funds. The Treasurer will disburse, or permit to be disbursed, the funds of the Corporation as may be ordered, or authorized generally, by the Board, and will render to the chief executive officer of the Corporation and the directors, whenever they may require, an account of all such transactions as Treasurer, and of those under the Treasurer's jurisdiction, and of the financial condition of the Corporation.

(c) Chief Financial Officer: Other Duties. The Treasurer will have the general duties, powers, responsibilities and authorities of a treasurer of a corporation and will, unless otherwise provided by the Board, be the chief financial and accounting officer of the Corporation. The Treasurer will perform such other duties and will have such other responsibility and authority as may be prescribed elsewhere in these Bylaws or from time to time by the Board.

(d) Bond. If required by the Board, the Treasurer will give the Corporation a bond in a sum and with one or more sureties satisfactory to the Board for the faithful performance of the duties of the Treasurer and for the restoration to the Corporation, in the case of such Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the such Treasurer's possession or under his control that belongs to the Corporation.

(e) Absence of Treasurer. In the absence or disability of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer or other elected officer may perform the duties and exercise the powers of the Treasurer until the Board otherwise provides. Assistant Treasurers will perform such other duties and have such other authority as the Board may from time to time prescribe.

5.11 Duties of Officers May Be Delegated. If any officer of the Corporation is absent or unable to act, or for any other reason that the Board may deem sufficient, the Board may delegate, for the time being, some or all of the functions, duties, powers and responsibilities of

any officer to any other officer, or to any other agent or employee of the Corporation or other responsible person.

## ARTICLE 6

### STOCK

6.1 Certificates Representing Shares. Each stockholder will be entitled to receive a certificate, signed by the Chairman of the Board or the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares owned by such stockholder and registered in the stockholder's name. Such certificates will be issued in numerical order. To the extent permitted by law, any or all of the signatures on the certificate may be a facsimile. In the event that any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate ceases to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar who signed such certificate, or whose facsimile signature was placed thereon, were such officer, transfer agent or registrar of the Corporation at the date of issue. The Corporation will not have the power to issue a certificate in bearer form.

6.2 Transfers of Stock. Transfers of stock will be made only upon the stock transfer books of the Corporation, and before a new certificate is issued the old certificate will be surrendered for cancellation, subject to the provisions of Section 6.5 below. Until and unless the Board appoints some other person, firm or corporation as its transfer agent (and upon the revocation of any such appointment, thereafter until a new appointment is similarly made), the Secretary of the Corporation will be the transfer agent of the Corporation without the necessity of any formal action of the Board, and the Secretary, or any person designated by the Secretary, will perform all of the duties of such transfer agent.

### 6.3 Record Date.

(a) Stockholders' Meetings. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board may fix a record date, which record date will not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date may not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders will be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders entitled to notice of or to vote at a meeting of stockholders will apply to any adjournment of the meeting except that the Board may fix a new record date for the adjourned meeting.

(b) Stockholders' Action Without a Meeting. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date which record date may not precede the date upon which the resolution fixing the record date is adopted by the Board, which date may not be more than

ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board, and which date will be effective for no more than sixty (60) days after such record date. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by any statute, the Certificate or these Bylaws, will be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of New York, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded, and which date will be effective for sixty (60) days after such record date. Delivery made to the Corporation's registered office may be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by any statute, the Certificate or these Bylaws, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting will be at the close of business on the day on which the Board adopts the resolution taking such prior action, and such date will be effective for sixty (60) days after such record date.

(c) Dividends and Other Distributions. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date may not precede the date upon which the resolution fixing the record date is adopted, and which record date may not be more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose will be at the close of business on the day on which the Board adopts the resolution relating thereto.

6.4 Regulations. The Board will have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, conversion and registration of certificates for shares of stock of the Corporation, not inconsistent with the laws of the State of New York, the Certificate or these Bylaws.

6.5 Lost Certificates. The Board may direct that a new certificate or certificates of stock or uncertificated shares be issued in place of any certificate or certificates theretofore issued by the Corporation, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate or certificates to be lost, stolen or destroyed. When authorizing the issue of such replacement certificate or certificates of stock or uncertificated shares, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such allegedly lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to give the Corporation a bond as the Board may direct sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of the certificate or certificates or the issuance of such new certificate or certificates or uncertificated shares.

## ARTICLE 7

### CORPORATE FINANCE

7.1 Dividends; Redemption. Subject to the Certificate and limitations imposed by the laws of the State of New York, the Board may declare and pay dividends upon the outstanding shares of stock of the Corporation at any meeting, which dividends may be paid in cash, in property or in shares of the Corporation's capital stock, and may cause the Corporation to purchase or redeem any of its outstanding shares of stock. A director or a member of any committee designated by the Board will be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board, or by any other person as to matters the director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation, as to the value and amount of the assets, liabilities or net profits, of the Corporation, or both, or any other facts pertinent to the existence and amount of net profits, surplus or other funds from which dividends may properly be declared and paid, or with which the Corporation's stock may properly be purchased or redeemed.

7.2 Depositories; Checks. The moneys of the Corporation will be deposited in the name of the Corporation in such bank or banks or other depositories as the Board may designate, and all checks or instruments for the payment of money will be signed by persons designated by resolution adopted by the Board. Notwithstanding the foregoing, the Board by resolution may authorize an officer or officers of the Corporation to designate any bank or banks or other depositories in which moneys of the Corporation may be deposited, and to designate the persons who may sign checks or drafts on any particular account or accounts of the Corporation, whether created by direct designation of the Board or by an authorized officer or officers as aforesaid.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Fiscal Year. The fiscal year of the Corporation shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December in each year.

8.2 Corporate Seal. The seal of the Corporation shall be circular in form and bear the name of the Corporation, the year of its organization and the words, "Corporate Seal, New York." The seal on any corporate obligation for the payment of money, or on any other instrument, may be a facsimile, engraved, printed or otherwise reproduced.

8.3 Contracts. The Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute and deliver any instrument or document for, and in the name of, the Corporation, and such authority may be general or confined to specific instances.


8.4 Amendments. These Bylaws may be altered, amended or repealed, or new Bylaws may be adopted, at any regular meeting of the stockholders or of the Board or at any

special meeting called for that purpose, by affirmative vote of a majority of the stock issued and outstanding and entitled to vote or of a majority of the whole Board, as the case may be.

**CERTIFICATE**

The undersigned Secretary of New York Quality Healthcare Corporation, a New York prepaid health services plan, hereby certifies that the foregoing Amended and Restated Bylaws were adopted by the directors of the Corporation on April 4, 2018 and supersede and replace the original Bylaws in their entirety.

Dated: April 4, 2018

  
\_\_\_\_\_  
Name: Keith H. Williamson  
Title: Secretary



## EXHIBIT D

**EXHIBIT D**

**LIST OF PROPOSED DIRECTORS,  
EXECUTIVE OFFICERS AND MEDICAL DIRECTOR OF  
NEW YORK QUALITY HEALTHCARE CORPORATION**

(Effective Following the Close of the Transaction)

<u>Name</u>	<u>Positions Held</u>	<u>Business Address</u>
Michael F. Neidorff	Director	Centene Corporation 7700 Forsyth Blvd. St. Louis, Missouri 63105
Cynthia Brinkley	Director	Centene Corporation 7700 Forsyth Blvd. St. Louis, Missouri 63105
Christopher D. Bowers	Director	Centene Corporation 7700 Forsyth Blvd. St. Louis, Missouri 63105
Thomas S. Brown	Chief Administrative Officer	New York Quality Healthcare Corporation 95-25 Queens Boulevard Rego Park, New York 11374
Tricia L. Dinkelman	Vice President, Tax	Centene Corporation 7700 Forsyth Blvd. St. Louis, Missouri 63105
Patrick J. Frawley	Chief Executive Officer and Director	New York Quality Healthcare Corporation 95-25 Queens Boulevard Rego Park, New York 11374
Thomas J. Halloran	Chief Financial Officer and Director	New York Quality Healthcare Corporation 95-25 Queens Boulevard Rego Park, New York 11374
Pamela E. Hassen	Chief Marketing Officer	New York Quality Healthcare Corporation 95-25 Queens Boulevard Rego Park, New York 11374
Martin A. Krebs	Chief Information Officer	New York Quality Healthcare Corporation 95-25 Queens Boulevard

		Rego Park, New York 11374
Vincent Marchello	Chief Medical Officer	New York Quality Healthcare Corporation 95-25 Queens Boulevard Rego Park, New York 11374
Santo F. Russo	Chief Legal Officer and Secretary	New York Quality Healthcare Corporation 95-25 Queens Boulevard Rego Park, New York 11374
Jeffrey A. Schwaneke	Treasurer and Director	Centene Corporation 7700 Forsyth Blvd. St. Louis, Missouri 63105
David P. Thomas	President, Chief Operating Officer and Director	New York Quality Healthcare Corporation 95-25 Queens Boulevard Rego Park, New York 11374
Keith H. Williamson	Assistant Secretary	Centene Corporation 7700 Forsyth Blvd. St. Louis, Missouri 63105

## **EXHIBIT E**

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

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ENTITY NAME: CENTENE COMPANY OF NEW YORK, LLC

DOCUMENT TYPE: ARTICLES OF ORGANIZATION (DOM.LLC)

COUNTY: NEWY

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FILED:11/13/2017 DURATION:\*\*\*\*\* CASH#:171113000955 FILM #:171113000935  
DOS ID:5233773

FILER:

EXIST DATE

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SKADDEN,ARPS,SLATE,MEAGHER & FLOM  
ONE RODNEY SQUARE, 920 N. KING ST.

-----  
11/13/2017

WILMINGTON, DE 19801

ADDRESS FOR PROCESS:

-----  
THE LLC  
ATTN: C T CORPORATION SYSTEM  
NEW YORK, NY 10011

111 EIGHTH AVENUE

REGISTERED AGENT:

-----  
C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NY 10011

The limited liability company is required to file a Biennial Statement with the Department of State every two years pursuant to Limited Liability Company Law Section 301. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

=====

SERVICE COMPANY: C T CORPORATION SYSTEM - 07

SERVICE CODE: 07 \*

FEES            510.00  
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FILING           200.00  
TAX              0.00  
CERT             0.00  
COPIES           10.00  
HANDLING        300.00

PAYMENTS       510.00  
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CASH             0.00  
CHECK            0.00  
CHARGE           0.00  
DRAWDOWN        510.00  
OPAL             0.00  
REFUND           0.00

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10713476SD

DOS-1025 (04/2007)

# **STATE OF NEW YORK**

## **DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
November 13, 2017.

A handwritten signature in dark ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State

CT-07

171113000935

ARTICLES OF ORGANIZATION  
OF  
CENTENE COMPANY OF NEW YORK, LLC

Under Section 203 of the  
Limited Liability Company Law

FIRST: The name of the limited liability company is Centene Company of New York, LLC.

SECOND: The county within this state in which the office of the limited liability company is to be located is New York.


THIRD: The secretary of state is designated as agent of the limited liability company upon whom process against it may be served. The address within or without this state to which the secretary of state shall mail a copy of any process against the limited liability company served upon him or her is 111 Eighth Avenue, New York, NY 10011; Attention: C T Corporation System.

FOURTH: The limited liability company designated C T Corporation System, 111 Eighth Avenue, New York, NY 10011, as its registered agent upon whom process against it may be served within the State of New York.

FIFTH: The Articles of Organization shall be effective upon filing.

IN WITNESS WHEREOF, this certificate has been subscribed this  
13<sup>th</sup> day of November, 2017.

By:

  
Name: Deborah M. Rausch  
Title: Organizer



N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

CERTIFICATE OF RESERVATION

ENTITY NAME: CENTENE COMPANY OF NEW YORK, LLC

DOCUMENT TYPE: RESERVATION (DOM LLC)

FILED: 11/03/2017 DURATION: 01/03/2018 CASH#: 171103000500 FILM #: 171103000454

FILER:

TRACY BAKER C/O SKADDEN  
ARPS, SLATE MEAGHER & FLOM LLP  
ONE RODNEY SQUARE  
WILMINGTON, DE 19801

ADDRESS FOR PROCESS:

REGISTERED AGENT:



\*\* SUBMIT RECEIPT WHEN FILING CERTIFICATE \*\*

APPLICANT NAME: TRACY BAKER

SERVICE COMPANY: C T CORPORATION SYSTEM - 07

SERVICE CODE: 07

FEES	95.00
FILING	20.00
TAX	0.00
CERT	0.00
COPIES	0.00
HANDLING	75.00

PAYMENTS	95.00
CASH	0.00
CHECK	0.00
CHARGE	0.00
DRAWDOWN	95.00
OPAL	0.00
REFUND	0.00

10699021CS

DOS-1025 (04/2007)

CT-07

935

ARTICLES OF ORGANIZATION  
OF  
CENTENE COMPANY OF NEW YORK, LLC

Under Section 203 of the Limited Liability Company Law

Filed by:

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FILED

2017 NOV 13 AM 10:36

RECEIVED

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## **EXHIBIT F**

CONFIDENTIAL

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
CENTENE COMPANY OF NEW YORK, LLC  
A New York Limited Liability Company**

**Dated as of November 13, 2017**

This **LIMITED LIABILITY COMPANY AGREEMENT** (this “Agreement”) of Centene Company of New York, LLC, a New York limited liability company (the “Company”), is entered into as of November 13, 2017 (the “Effective Date”), and shall be effective as of the Effective Date by each signatory hereto on the Effective Date, and such other Persons as may become parties to this Agreement and be admitted as Members in accordance with the provisions hereof from time to time (each, a “Member” and, collectively, the “Members”).

## **RECITALS**

WHEREAS, the Articles of Organization of the Company (the “Articles of Organization”) were filed with the Secretary of State of New York on November 13, 2017;

WHEREAS, the Company was formed pursuant to and in accordance with the New York Limited Liability Company Law, as amended from time to time (the “Act”); and

WHEREAS, the parties hereto desire to enter into this Agreement for the purpose of adopting the terms of this Agreement as the complete expression of the covenants, agreements and undertakings of the parties hereto with respect to the affairs of the Company, the conduct of its business and the rights and obligations of the Members.

NOW, THEREFORE, in consideration of the mutual representations, covenants and conditions contained herein, the parties hereto hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings set forth below:

“Act” has the meaning set forth in the Recitals.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “*controlled by*” and “*under common control with*”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the Preamble.

“Articles of Organization” has the meaning set forth in the Recitals.

“Board” has the meaning set forth in Section 4.1(a).

“Capital Contribution” has the meaning set forth in Section 5.2(a).

“Claims” has the meaning set forth in Section 9.2.

“Code” has the meaning set forth in Section 6.4.

“Committee” has the meaning set forth in Section 4.3.

“Company” has the meaning set forth in the Preamble.

“Covered Person” has the meaning set forth in Section 9.1.

“DRE” has the meaning set forth in Section 2.11(a).

“Effective Date” has the meaning set forth in the Preamble.

“Event of Termination” has the meaning set forth in Section 10.1.

“Fiscal Year” has the meaning set forth in Section 2.10.

“Majority Interest” of the Members, as to any agreement, election, vote or other action of the Members, shall mean those Members whose combined Membership Interest Percentage exceeds fifty percent (50%).

“Manager” has the meaning set forth in Section 4.1(a).

“Member” has the meaning set forth in the Preamble.

“Membership Interest Percentage” has the meaning set forth in Section 3.1.

“Membership Interests” has the meaning set forth in Section 5.1.

“Officer” has the meaning set forth in the Section 4.2.

“Person” means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

“Transfer” has the meaning set forth in Section 8.2.

## ARTICLE II

### GENERAL PROVISIONS

Section 2.1 Formation. The Members have formed the Company as a limited liability company pursuant to the Act. The Articles of Organization were filed with the Secretary of State of the State of New York in conformity with the Act. The Company and, if required, each of the Members shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of New York.

Section 2.2 Company Name. The name of the Company is “Centene Company of New York, LLC” or such other name or names as may be selected by the Board from time to time, and its business shall be carried on in such name with such variations and changes as the Board deems necessary to comply with requirements of the jurisdictions in which the Company’s operations are conducted.

Section 2.3 Registered Office; Registered Agent. The Company shall maintain a registered office in the State of New York at, and the name and address of the Company’s registered agent in the State of New York is, CT Corporation System, 111 Eighth Avenue, New York, NY 10011. The Board may, from time to time, change the Company’s registered office and/or registered agent and shall forthwith amend the Articles of Organization to reflect such change(s).

Section 2.4 Place of Business. The business address of the Company shall be determined by the Board. The Company may from time to time have such other place or places of business within or without the State of New York as the Board may deem advisable.

Section 2.5 Purpose; Nature of Business Permitted; Powers. The Company is formed for the purpose of engaging in any business or activity for which limited liability companies may be formed under the Act. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, insofar as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company.

Section 2.6 Business Transactions of a Member with the Company. A Member may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more obligations of, provide collateral for, and transact other business with, the Company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a Person who is not a Member.

Section 2.7 Company Property. No real or other property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title shall be vested solely in the Company. The Membership Interests held by each of the Members shall constitute personal property of such Members.

Section 2.8 Term. The existence of the Company shall commence on the date of the filing of the Articles of Organization in the office of the Secretary of State of New York in accordance with the Act, and, subject to the provisions of Article X hereof, the Company shall have perpetual life.

Section 2.9 No State Law Partnership. The Members intend that the Company not be a partnership (including a limited partnership) or joint venture and that no Member be a partner or joint venturer of any other Member for any purposes other than applicable tax laws. This Agreement may not be construed to suggest otherwise.

Section 2.10 Fiscal Year. The fiscal year of the Company (the “Fiscal Year”) for financial statement purposes, and, for periods during which the Company is not a DRE, for United States federal income tax purposes, shall be determined by the Board.

## Section 2.11 Tax Treatment.

(a) At all times that the Company is treated, for United States federal income tax purposes, as having only one owner, the Company shall be disregarded as an entity separate from that owner for United States federal and, where applicable, state, local and foreign tax purposes (a "DRE"). If at any time the Company is treated, for United States federal income tax purposes, as having more than one owner, it is the intention of the Member or Members that the Company shall be treated as a partnership for United States federal and, where applicable, state, local and foreign tax purposes.

(b) Any provisions of this Agreement that are inconsistent with the status of the Company as a DRE shall have no effect, to the extent of any such inconsistency, with respect to any periods during which the Company was or is a DRE.

## ARTICLE III

### MEMBERS

Section 3.1 Members. The name, address and ownership percentage in the Company ("Membership Interest Percentage") of each of the Members are set forth on Schedule A hereto, which shall be amended from time to time to reflect the admission of new Members, additional capital contributions of Members or the Transfer (as hereinafter defined) of Membership Interests by any Member, each, to the extent permitted by the terms of this Agreement.

Section 3.2 Admission of New Members. A Person shall be admitted as a Member of the Company only upon (i) the prior written approval of the Members in accordance with Section 3.4 and (iii) receipt by the Company of a counterpart to this Agreement, executed by such Person, agreeing to be bound by the terms of this Agreement.

Section 3.3 No Liability of Members. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

Section 3.4 Meetings of the Members. Meetings of the Members may be called by the Board upon the written request of any Member. The call shall state the location of the meeting and the nature of the business to be transacted. Notice of any such meeting shall be given to all Members not less than seven (7) business days nor more than thirty (30) days prior to the date of such meeting. Members may vote in person or by proxy at such meeting. Whenever a vote, consent or approval of Members is permitted or required under this Agreement, Members shall have the right to vote, consent or approve in proportion to their respective Membership Interest Percentage, and such vote, consent or approval may be given at a meeting of Members as set forth herein or may be given by written consent of the Members. Notwithstanding any other provision contained in this Agreement, each Member shall only have the right to vote on, consent to, or approve such matters set forth in this Agreement as specifically require the vote, consent or approval of all Members. Notwithstanding any other provision contained in this



Agreement, (i) the Company's merger with or consolidation into another limited liability company or other business entity, (ii) the transfer or sale of all or substantially all of the assets of the Company, (iii) the Company's conversion into any other business entity, (iv) the dissolution of the Company, (v) the amendment of the Articles of Organization and (vi) the admission of a new Member shall require the unanimous written approval of the Members, and no such action shall be taken by the Company, the Board, or any officer on behalf of the Company, unless, until, and to the extent that, the unanimous written approval of all of the Members is obtained.

### Section 3.5 Meeting Procedures.

(a) For the purpose of determining the Members entitled to vote on, or to vote at, any meeting of the Members or any adjournment thereof, the Board may fix, in advance, a date as the record date for any such determination. Such date shall not be more than thirty (30) days nor less than ten (10) business days before any such meeting.

(b) Each Member may authorize any Person to act for it by proxy on all matters in which such Members is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Member exercising it.

(c) Each meeting of Members shall be conducted by the Board or by such other Person that the Board may designate.

## ARTICLE IV

### MANAGEMENT

#### Section 4.1 Management of the Board.

(a) The Company shall be managed by a Board of Managers (the "Board"). The Board shall consist of one or more managers (each, a "Manager" and, collectively, the "Managers") who will be appointed by a Majority Interest of the Members, and who will constitute "Managers" within the meaning of the Act. As of the Effective Time, the Manager making up the initial Board shall be Michael F. Neidorff. Except as otherwise provided in this Agreement, including Section 3.4, all management powers over the business and affairs of the Company shall be exclusively vested in the Board, and the Members shall have no right of control over the business and affairs of the Company. In addition to the powers now or hereafter granted to managers under the Act or which are granted to the Board under any other provision of this Agreement, the Board shall have full power and authority to do all things deemed necessary or desirable by the Board to conduct the business of the Company in the name of the Company.

(b) Each Manager shall serve until he or she resigns or is removed by a Majority Interest of the Members, with or without cause.

(c) The Board may hold such meetings at such place and at such time as the Board may determine. Notice of a meeting shall be served not less than 24 hours before the date and time fixed for such meeting by confirmed facsimile or other written communication or not less than three days prior to such meeting if notice is provided by overnight delivery service. Notice of a meeting need not be given to any Manager who signs a waiver of notice or provides a waiver by electronic transmission or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, either prior thereto or at its commencement, the lack of notice to such Manager. A special meeting of the Board may be called by any member of the Board. Any member of the Board may participate in a meeting by conference telephone or similar communications equipment. At any meeting of the Board, the presence in person or by telephone or similar electronic communication of Managers representing at least a majority of the Board shall constitute a quorum.

(d) Each Manager serving on the Board shall have one vote on any Company matter. Except as otherwise provided in this Agreement, the business of the Company presented at any meeting of the Board shall be decided by a vote of Managers representing a majority of the entire Board.

(e) In accomplishing all of the foregoing and in fulfilling the Board's obligations pursuant to this Agreement, the Board may, in the Board's sole discretion, retain or use any Company Affiliates' personnel, properties and equipment or the Board may hire or rent those of third parties and may employ on a temporary or continuing basis outside accountants, attorneys, consultants and others on such terms as the Board deems advisable. No Person, firm or corporation dealing with the Company shall be required to inquire into the authority of the Board to take any action or make any decision.

Section 4.2 Officers. The Board may appoint a president, chief financial officer, treasurer, secretary or such other officers ("Officers") of the Company as it deems necessary or appropriate, and may assign or delegate to such Officers the titles, duties, responsibilities, and authorities the Board deems appropriate. An Officer will serve until he or she resigns or is removed by the Board, with or without cause, subject to contractual rights, if any, of such officer. At all times, the actions of the Officers will be subject to the review, delegation, redetermination, direction, and control of the Board. As of the Effective Time, the initial Officers of the Company shall be those Persons set forth on Schedule B hereto.

Section 4.3 Committees. The Board may designate one or more committees (a "Committee") consisting of one or more Managers. A Committee will have and exercise powers to the extent provided in the applicable Board resolutions. Except as may be otherwise determined by the Board, a majority of the members of a Committee will constitute a quorum and the majority vote of the Committee members at a meeting at which a quorum is present will be the act of the Committee.

Section 4.4 Action by the Members, the Board, or Committee. Any action required or permitted to be taken by the Members, the Board, or a Committee may be taken without a meeting if such action is evidenced in writing and signed, as applicable, by all the Members, the Board, or the Committee.

## ARTICLE V

### CAPITAL STRUCTURE AND CONTRIBUTIONS

Section 5.1 Capital Structure. The capital structure of the Company shall consist of one class of membership interests ("Membership Interests"). Except as otherwise set forth herein, each of the Membership Interests shall be identical.

Section 5.2 Capital Contributions.

(a) As of the Effective Date, each Member has contributed, as capital contributions ("Capital Contribution") to the Company, all of its right, title and interest in and to the amount of cash and/or other property listed and described on Schedule A hereto.

(b) In consideration of each Member's Capital Contribution, the Company has issued to each such Member the Membership Interests in the Company in proportion to the Membership Interest Percentage set forth opposite the name of such Member on Schedule A hereto.

Section 5.3 Additional Contributions. Except with the consent of the Board, no Member shall be obligated or permitted to make any additional contribution to the Company's capital.

Section 5.4 Maintenance of Capital Accounts. The Company shall establish and maintain capital accounts for each Member on the books and records of the Company. The balance in a Member's capital account shall be increased by (x) the amount of each contribution made by such Member and (y) the distributive share of net profits of such Member and shall be decreased by (x) the amount of each distribution made to such Member and (y) the distributive share of net losses of such Member.

## ARTICLE VI

### ALLOCATIONS AND DISTRIBUTIONS

Section 6.1 Allocations of Net Profits and Net Losses from Operations. Net profits and net losses shall be allocated among the Members ratably in proportion to their respective Membership Interest Percentages for both financial accounting and income tax purposes, unless the Members unanimously agree otherwise.

Section 6.2 No Right to Distributions. No Member shall have the right to demand or receive distributions of any amount, except as expressly provided in this Article VI.

Section 6.3 Distributions. The Board shall determine, in its sole and absolute discretion, the amount of profits available for distribution to Members in compliance with the Act and the amount, if any, to be distributed to Members, and shall authorize and distribute to the Members pro rata in proportion to their respective Membership Interest Percentages, the determined amount when, as and if declared by the Board.

Section 6.4 Withholding. The Company is authorized to withhold from distributions to a Member, or with respect to allocations to a Member, and to pay over to a federal, foreign, state or local government, any amounts required to be withheld pursuant to the Internal Revenue Code of 1986, as amended (the “Code”), or any provisions of any other federal, foreign, state or local law. Any amounts so withheld shall be treated as having been distributed to such Member pursuant to this Article VI for all purposes of this Agreement, and shall be offset against the current or next amounts otherwise distributable to such Member.

## **ARTICLE VII**

### **BOOKS AND REPORTS**

Section 7.1 Books and Records. The Company shall keep or cause to be kept at the office of the Company (or at such other place as the Managing Member in its discretion shall determine) full and accurate books and records regarding the status of the business and financial condition of the Company and shall make the same available to the Members upon request, subject to the provisions of the Act.

Section 7.2 Tax Forms. After the end of each Fiscal Year, the Managing Member shall cause to be prepared and transmitted, as promptly as possible, and in any event within 90 days of the close of the Fiscal Year, a federal income tax Form K-1 (in the event the Company is treated as a partnership for U.S. federal income tax purposes) and any required similar state income tax form, or any such other tax statements as may be required for each Member.

## **ARTICLE VIII**

### **WITHDRAWAL; TRANSFERS OF MEMBERSHIP INTERESTS**

Section 8.1 Right to Withdraw. Each Member shall have the right to withdraw from the Company upon prior written notice to the Members; provided, however, that upon such withdrawal, the withdrawing Member shall not be entitled to a return of its capital contributions, nor to receive any other payment, unless and until the Company shall be dissolved, in which event the withdrawing Member shall be entitled to receive payment, from the remaining net assets of the Company, if any, after payment of, or making reasonable provision for, all liabilities and obligations of the Company in accordance with the Act, in an amount equal to the balance of such Member’s capital account as of the date of such Member’s withdrawal, without interest; provided, however, that in the event that such remaining net assets of the Company shall be insufficient to pay all Members and withdrawn Members an amount equal to the balance of their respective capital accounts, then each of the Members, and each Member that shall have withdrawn prior to dissolution, shall be entitled to share pro rata in such remaining net assets, in accordance with the ratio of their respective capital account balances to the aggregate capital accounts of all Members and withdrawn Members. Subject to the foregoing, from and after the effective date of such withdrawal, the withdrawing Member shall cease to have any further rights as a member of the Company, including without limitation, the right to vote on any matter or to participate in any allocations or distributions of profits of the Company.

Section 8.2 Restriction on Transfers. No Member shall have the right to sell, convey, assign, transfer, pledge, grant a security interest in or otherwise dispose of (each a "Transfer") all or any part of its Membership Interests, other than (i) to an Affiliate of such Member that agrees to be bound by all of the provisions hereof and (ii) upon the prior written consent of the Board; provided, however, such Person to whom such Membership Interests are Transferred shall be an assignee and shall have no right to participate in the Company's business and affairs unless and until such Person shall be admitted as a member of the Company upon (i) the prior written approval by Members and (ii) receipt by the Company of a written agreement executed by the Person to whom such Membership Interests are Transferred agreeing to be bound by the terms of this Agreement, in each case pursuant to Section 3.2. All Transfers in violation of this Article VIII are null and void ab initio and of no force or effect.

## ARTICLE IX

### EXCULPATION AND INDEMNIFICATION

Section 9.1 Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or any obligation or duty at law or in equity, none of the Members, nor any officers, directors, stockholders, partners, members, managers, employees, affiliates, representatives or agents of any Member, nor any officer, employee, representative or agent of the Company (individually, a "Covered Person" and, collectively, the "Covered Persons") shall be liable to the Company or any other Person for any act or omission (in relation to the Company, its property or the conduct of its business or affairs, this Agreement, any related document or any transaction or investment contemplated hereby or thereby) taken or omitted by a Covered Person in the reasonable belief that such act or omission is in or is not contrary to the best interests of the Company and is within the scope of authority granted to such Covered Person by the Agreement, provided such act or omission does not constitute fraud, willful misconduct, bad faith, or gross negligence.

Section 9.2 Indemnification. To the fullest extent permitted by the Act, the Company shall indemnify and hold harmless each Covered Person from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative ("Claims"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, by reason of the fact that he, she or it is a Covered Person or which relates to or arises out of the Company or its property, business or affairs. A Covered Person shall not be entitled to indemnification under this Section 9.2 with respect to (i) any Claim with respect to which such Covered Person has engaged in fraud, willful misconduct, bad faith or gross negligence or (ii) any Claim initiated by such Covered Person unless such Claim (A) was brought to enforce such Covered Person's rights to indemnification hereunder or (B) was authorized or consented to by the Members. Expenses incurred in defending any Claim by (y) a Member, officer, director, stockholder, partner, member, manager, or affiliate of any Member shall be paid by the Company and (z) any other Covered Person may be paid by the Company, but only upon the prior written approval of the Members in their sole and absolute discretion, upon such terms and conditions, if any, as the Members deem appropriate, in each case, in advance of the final disposition of such Claim upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it

shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company as authorized by this Section 9.2.

Section 9.3 Amendments. Any repeal or modification of this Article IX by the Members shall not adversely affect any rights of such Covered Person pursuant to this Article IX, including the right to indemnification and to the advancement of expenses of a Covered Person, existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

## ARTICLE X

### DISSOLUTION OF THE COMPANY

Section 10.1 Dissolution. The Company shall be dissolved upon the occurrence of either of the following events (an "Event of Termination"):

- (a) a determination by all Members to dissolve the Company; or
- (b) the entry of a decree of judicial dissolution under Section 702 of the Act.

No other event, including the retirement, insolvency, liquidation, dissolution, insanity, expulsion, bankruptcy, death, incapacity or adjudication of incompetency of a Member, shall cause the Company to be dissolved; provided, however, that in the event of any occurrence resulting in the termination of the continued membership of the last remaining member of the Company, the Company shall be dissolved unless, within 90 days following such event, the personal representative of the last remaining member agrees in writing to continue the Company and to the admission of such personal representative (or any other Person designed by such personal representative) as a member of the Company, effective upon the event resulting in the termination of the continued membership of the last remaining member of the Company.

### Section 10.2 Winding Up.

(a) In the event that an Event of Termination shall occur, then the Company shall be liquidated and its affairs shall be wound up by the Members in accordance with Section 18-803 of the Act. All proceeds from such liquidation shall be distributed in accordance with the provisions of Section 703 of the Act, and all Membership Interests in the Company shall be cancelled.

(b) Upon the completion of the distribution of the winding up of the Company's affairs and Company's assets, the Company shall be terminated and the Members shall cause the Company to execute and file Articles of Dissolution in accordance with Section 705 of the Act.

## ARTICLE XI

### MISCELLANEOUS

Section 11.1 Amendment to the Agreement. This Agreement may be amended by, and only by, a written instrument executed by all Members.

Section 11.2 Successors; Counterparts. Subject to Article VIII, this Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors, or nominees or representatives, of the Members and (b) may be executed in several counterparts each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 11.3 Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law. In particular, this Agreement shall be construed to the maximum extent possible to comply with all the terms and conditions of the Act. If it shall be determined by a court of competent jurisdiction that any provisions or wording of this Agreement shall be invalid or unenforceable under the Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire Agreement. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, in the event such term or provisions cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable terms or provisions. If it shall be determined by a court of competent jurisdiction that any provision relating to the distributions and allocations of the Company or to any expenses payable by the Company is invalid or unenforceable, this Agreement shall be construed or interpreted so as (a) to make it enforceable or valid and (b) to make the distributions and allocations as closely equivalent to those set forth in this Agreement as is permissible under applicable law.

Section 11.4 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope or intent of this Agreement or any provision hereof.

Section 11.5 Additional Documents. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

Section 11.6 Notices. All notices, requests and other communications to any Member shall be in writing (including electronic mail, facsimile or similar writing) and shall be given to such Member (and any other Person designated by such Member) at its address or electronic mail, facsimile number set forth in Schedule A hereto or such other address or electronic mail, facsimile number as such Member may hereafter specify for the purpose by notice. Each such notice, request or other communication shall be effective (a) if given by telecopier, when transmitted to the number specified pursuant to this Section 11.6 and the appropriate confirmation is received, (b) if given by mail, 72 hours after such communication is received by the other party, or (c) if given by electronic or any other means, when delivered to the address specified pursuant to this Section 11.6.

Section 11.7 Waiver of Partition. Each of the Members hereby irrevocably waives any and all rights that such Member may have to maintain any action for partition of any of the Company's property.

Section 11.8 Interpretation. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine, or the neuter gender shall include the masculine, feminine and neuter.

**[SIGNATURE PAGE FOLLOWS]**



IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first above written.

**CENTENE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE A

**CENTENE COMPANY OF NEW YORK, LLC**

Name of Member	Address	Capital Contribution	Membership Interest Percentage
<b>Centene Corporation</b>	7700 Forsyth Blvd. St. Louis MO 63105	\$ 1,000	100%

**SCHEDULE B**

**OFFICERS**

Name	Title
Michael F. Neidorff	President
Tricia L. Dinkelman	Vice President, Tax
Jeffrey A. Schwaneke	Vice President and Treasurer
Keith H. Williamson	Secretary

## EXHIBIT G

**EXHIBIT G****LIST OF DIRECTORS AND EXECUTIVE OFFICERS OF CENTENE COMPANY  
OF NEW YORK, LLC**

<u>Name</u>	<u>Positions Held</u>	<u>Business Address</u>
Michael F. Neidorff	Director and President	Centene Corporation 7700 Forsyth Blvd. St. Louis, Missouri 63105
Tricia L. Dinkelman	Vice President, Tax	See above
Jeffrey A. Schwaneke	Vice President and Treasurer	See above
Keith H. Williamson	Secretary	See above

## EXHIBIT H



**Michael R. Neidorff**  
*Chairman and Chief Executive Officer*

**CONFIDENTIAL**

September 1, 2017

His Eminence Timothy Michael Cardinal Dolan  
President of the Members of New York State Catholic Health Plan, Inc.  
d/b/a Fidelis Care New York  
95-25 Queens Boulevard  
Rego Park, NY 11374

- and -

Rev. Donald Harrington  
Chairman of the Board of Directors  
New York State Catholic Health Plan, Inc.  
d/b/a Fidelis Care New York  
95-25 Queens Boulevard  
Rego Park, NY 11374

Your Eminence and Father Harrington:

As you consider your decision on this transaction, I want to take the time to address Centene's strong interest in consummating this transaction and to communicate as clearly as possible regarding our intentions and how we believe they meet the transaction objectives that you have communicated to us.

**Preservation of the Mission and Vision of Fidelis Care**

We believe that Centene's core mission of delivering healthcare services to under-insured and uninsured individuals is strongly aligned with the mission and vision of Fidelis. Since its inception as a non-profit health plan in 1984, and enhanced under current leadership in 1994, Centene has established itself as a national leader in providing quality, accessible care and services to all persons, particularly those in underserved market segments. Although we are not a faith-affiliated organization, we believe our approach to providing healthcare services enables us to provide accessible, quality, culturally-sensitive healthcare coverage to our communities. Our health management, educational and other initiatives are designed to help our members best utilize the healthcare system to ensure they receive quality care resulting in better health outcomes. At Centene, we take to heart our mission of "transforming the health of the community, one person at a time." We are eager to extend our approach to delivering healthcare services to both current and future Fidelis Care enrollees throughout New York State and in doing so continue to honor the mission and vision of Fidelis.

Centene Corporation  
Centene Plaza  
7700 Forsyth Blvd.  
St. Louis, MO 63105  
Phone: 314-725-4477

His Eminence Timothy Michael Cardinal Dolan  
& Rev. Donald Harrington  
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September 1, 2017

**Maintenance of Fidelis Care's Workforce and Presence as a Vital NY Employer**

Centene recognizes Fidelis' valued role as a leading statewide employer with a large, highly skilled and engaged workforce. We view this transaction as a strong opportunity to work with Fidelis to leverage our national infrastructure of support functions, including finance, information systems and claims processing, to create scale and increase efficiencies and improve health outcomes in connection with the integration of the assets acquired in the transaction. Centene takes a decentralized, local approach for care, and intends to preserve Fidelis corporate presence in New York as the anchor of Centene's multi-line healthcare business in New York (our New York State health plan). The terms of our transaction provides continuity of employment to the entire Fidelis Care workforce which we view as key to the historical and future success of the business.

**Enable Growth, Expansion of Resources and Enhanced Capabilities**

Centene views growth as an integral part of its strategy, and has traditionally deployed its capital to fuel such growth. In addition to traditional organic business growth, the acquisition of health plans participating in government sponsored healthcare programs is an integral part of Centene's growth strategy. Centene's acquisition of the Fidelis assets will serve to diversify Centene's product portfolio as well as increase its geographic footprint in New York, our 29<sup>th</sup> state. We intend to deploy Centene's capabilities to the Fidelis business and continue to invest in growth throughout the State of New York.

I hope this letter together with the compelling terms of our proposed transaction and the strong commitments contained within the transaction agreements serves to demonstrate our enthusiasm for successfully completing this transaction and serving the over 1.6 million enrollees of Fidelis Care.

Sincerely,



Michael F. Neidorff  
Chairman, President and CEO  
Centene Corporation



## EXHIBIT 26

Department of Health Approval Letter dated April 20, 2018  
and Agreement by Petitioner dated April 19, 2018



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

April 20, 2018

Reverend Patrick Frawley  
Chief Executive Officer  
New York State Catholic Health Plan, Inc.  
95-25 Queens Boulevard  
New York, NY 11374

**RE: New York State Catholic Health Plan, Inc. d/b/a NYSCHP Care New York Change of Control**

Dear Reverend Frawley,

The Department of Health (Department) has completed its review of the request for approval of a change of control under 10 NYCRR 98.10. New York State Catholic Health Plan, Inc. (NYSCHP) is a New York not-for-profit corporation authorized to operate a prepaid health services plan under Section 4403-a of the New York Public Health Law. The proposed change of control will occur as a result of Centene Corporation purchasing, through an Asset Purchase Agreement, substantially all of the assets of NYSCHP (the "Transaction"). Centene Corporation proposes to form a new subsidiary, New York Quality Healthcare Corporation (NYQHC), which is a New York corporation seeking certification under Article 44.

As part of the change of control, NYSCHP has requested approval of a waiver of any and all reserve, contingency reserve, escrow account and other financial requirements pursuant to Public Health law section 4403-a(3). This request is based on the following factors: 1) the 100% reinsurance arrangement whereby all NYSCHP liabilities relating to the contracts and coverage of those policies remaining with NYSCHP will be assumed by a licensed reinsurer; 2) coupled with a corresponding guaranty by Centene Corp of all of the liabilities of the reinsurer; and 3) the limited number of policies and the limited duration of NYSCHP as a managed care organization; and is conditioned upon the aforementioned reinsurance arrangement and guaranty remaining in place until all members have been migrated out of NYSCHP.

NYSCHP has also requested approval of one or more transfers of funds, pursuant to 10 NYCRR Part 98-1.11(b), following the closing of the Transaction, to a not-for-profit charitable foundation, with the same present corporate members as NYSCHP, being established by NYSCHP (the "Foundation"). The contemplated name of the Foundation is the New York State Catholic Health Foundation, Inc. but it is understood that the name may change. The amount of the distribution shall consist of all proceeds from the Transaction and all assets to be owned by NYSCHP from and after the closing of the Transaction, including any cash and investments on NYSCHP's balance sheet upon closing. The primary transfer will occur immediately after the closing of the Transaction, but there may be subsequent transfers as well. At the time of each transfer, NYSCHP will disclose to the Department the total dollar-value amount of each transfer.

NYSCHP has informed the Department of its reorganization into two separate 501(c)(3) organizations, with separate Boards, but with common and identical corporate members. One of the organizations will be the current NYSCHP which would continue to provide governance over its managed care operations and the other 501(c)(3) will be the Foundation.

Finally, NYSCHP has informed the Department that it will be filing a new assumed name which shall be "Fidelis Legacy Plan."

We are pleased to inform you of the following:

- NYSCHP's request for approval of the change of control is conditionally approved, effective upon the agreement to and execution of the attached Statement of Agreement (SOA);
- NYSCHP's request for a waiver of any and all reserve, contingency reserve, escrow account and other financial requirements pursuant to Public Health Law section 4403-a(3) is granted. The Department recognizes the uniqueness of this transaction, the necessity of phasing the migration of members through several steps and over a period of time, and the need to provide continuous and uninterrupted coverage for the covered members pursuant to their existing policies. This will serve to promote the efficient provision of comprehensive health services and will provide an appropriate and cost-effective alternative for the delivery of such services in a manner which will meet the needs of the members served;
- NYSCHP's request for approval of the transfer of the Transaction proceeds and all assets of NYSCHP to be owned by NYSCHP from and after the closing of the Transaction, pursuant to Public Health Law section 4403-a(3) and 10 NYCRR Part 98-1.11(b), to the Foundation, coinciding with the closing of the Transaction and thereafter, is approved as described above;
- The Department has no objection to the reorganization of NYSCHP into two entities, as described above; and
- NYSCHP's request for a change of d/b/a to Fidelis Legacy Plan is approved.

Failure of NYSCHP to satisfy the conditions stated herein will result in the Department pursuing any and all measures available under applicable law and regulation.

Please sign, date, and return the enclosed statement reflecting agreement to comply and satisfy the aforementioned conditions. If you have any questions or concerns regarding this matter, please feel free to contact Ms. Maureen Schips at (518) 474-5515 or [maureen.schips@health.ny.gov](mailto:maureen.schips@health.ny.gov).

Sincerely,



Jonathan Bick  
Director  
Division of Health Plan Contracting & Oversight  
Bureau of Managed Care Certification and Surveillance

---

cc: Donna Frescatore  
Anesa Brkanovic  
Susan Bentley  
Whitney Reed  
Gary Rinaldi  
Patricia Sheppard  
Andrew Segal  
James Sheehan (Attorney General's Office)  
Richard Zahnleuter (DLA)  
Gary Welskopf (OMH)  
Patricia Lincourt (OASAS)  
Anne Schettine (OQPS)  
Troy Oechsner (DFS)  
Robert Fazzolari (NYSCHP)  
Christopher Koster (Centene)  
Michael Hornison (Skadden)  
Sanjiv Tata (Skadden)  
Sean Doolan (Hinman Straub)  
Harold Iselin (Greenberg Traurig)  
Tricia Asaro (Greenberg Traurig)

NEW YORK STATE DEPARTMENT OF HEALTH  
AND  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
STATEMENT OF AGREEMENT  
RE: CONDITIONAL APPROVAL OF CHANGE OF CONTROL

I, Patrick Frawley, Chief Executive Officer of New York State Catholic Health Plan, Inc., Inc. located at 95-25 Queens Boulevard, New York, NY 11374, agree to the conditions specified below as conditions to approval by the Department of Health (Department).

Pre-Closing:

- 1) The Management Services Agreement between New York State Catholic Health Plan, Inc., Inc. & Centene Management Company LLC & Centene Company of New York, LLC & Salus Administrative Services, Inc. will receive all necessary approvals by the Department;
- 2) Any required changes to the Asset Purchase Agreement will be made and all necessary approvals by the Department and the Department of Financial Services (DFS) will be received for the Asset Purchase Agreement;
- 3) All necessary approvals by the Department and DFS will be received for the Reinsurance agreements and licensure of the reinsurance company;
- 4) Pre- & Post Closing Balance Sheet New York State Catholic Health Plan, Inc.;
- 5) Member notification will occur no later than thirty (30) days prior to the targeted migration date for all product lines that are migrating;
- 6) New York State Catholic Health Plan, Inc. will obtain approval from the Attorney General and the Supreme Court (if applicable) prior to the migration of members; and
- 7) Any Character and Competence review needed as a result of the reorganization of New York State Catholic Health Plan, Inc., will be submitted to the Department.

Post-Closing:

- 1) New York State Catholic Health Plan, Inc. agrees to migrate Medicaid, Health and Recovery Plan, Child Health Plus, Managed Long-Term Care, and the Essential Plan members no later than the date of closing;
- 2) New York State Catholic Health Plan, Inc. agrees to migrate Qualified Health Plans members no later than 1/1/2019;
- 3) New York State Catholic Health Plan, Inc. agrees to migrate Medicare members including Medicaid Advantage and Medicaid Advantage Plus members no later than 1/1/2020; and
- 4) Submission to the Department of the filing receipt from the Department of State for the new d/b/a.

NEW YORK STATE DEPARTMENT OF HEALTH  
AND  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
STATEMENT OF AGREEMENT  
RE: CONDITIONAL APPROVAL OF CHANGE OF CONTROL

Signed:

Patrick J. Frawley  
Reverend Patrick Frawley  
Chief Executive Officer  
New York State Catholic Health Plan, Inc.

Date:

April 19, 2018

Kathy H. Kapintschew

Notary Seal and Signature

KATHY H. KAPINTSCHEW  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KA6219064  
Qualified in Queens County  
My Commission Expires March 15, ~~2018~~  
2022

# EXHIBIT 27

Department of Financial Services' Recommendation Letter  
in support of the Transaction



NEW YORK STATE  
DEPARTMENT of  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

April 18, 2018

The Honorable Howard Zucker  
Commissioner of Health  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

**Re: Proposed Conversion of Fidelis Care of New York Insurance to a For-Profit Insurer**

Dear Commissioner Zucker:

I write regarding the proposed transfer (the "Transaction") by New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York ("Fidelis Care") of substantially all of its assets and liabilities to Centene Corporation, or its designated subsidiary ("Centene"), pursuant to the Asset Purchase Agreement between Fidelis Care and Centene, dated September 12, 2017. The Transfer is subject to, among other statutes and regulations, the Department of Health's ("DOH") regulations found at 10 NYCRR Section 98-1.9. That regulation provides, among other things, that "[n]o person shall acquire control of any New York State-certified MCO, whether by purchase of its securities or otherwise, unless it receives the commissioner's prior approval, which shall not be issued until the commissioner has consulted with the superintendent [of financial services], as appropriate."

The Department of Financial Services ("DFS") has evaluated the Transaction in order to provide the type of meaningful consultation required by the DOH's regulation. DFS received a substantial number of documents from Centene and/or Fidelis Care, including financial projections, and spent many hours meeting with Centene and Fidelis Care. DFS evaluated the information and statements provided but did not independently verify information provided.

A key element of the Transaction is the reinsurance of a substantial portion of Fidelis Care's current insurance business. The reinsurance is to be provided by Hallmark Life Insurance Company ("Hallmark"), an Arizona domiciled insurance subsidiary of Centene. In order for Hallmark to provide the reinsurance, it has submitted to DFS an application for a license to transact insurance in the State of New York. DFS has advised Centene and Hallmark that a license will be granted provided that Centene and/or Hallmark, as the case may be, abide by those conditions set forth in my April 18, 2018 letter to them.

On the basis of the information provided and statements made to DFS, and our independent review, I recommend that the Transaction be approved, if and only if, Centene



agrees to adhere to those conditions I have required in my letter, dated April 18, 2018, to Centene and Hallmark.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maria T. Vullo". The signature is fluid and cursive, with the first name "Maria" and last name "Vullo" clearly distinguishable.

Maria T. Vullo  
Superintendent of Financial Services

## EXHIBIT 28

Department of Health Approval Letter dated April 20, 2018,  
Certificate of Authority and Agreement by Centene dated April 18, 2018



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

April 20, 2018

Michael F. Neidorff  
Chairman & Chief Executive Officer  
Centene Corporation  
On behalf of New York Quality Healthcare Corporation  
7700 Forsyth Boulevard  
St. Louis, Missouri 63105

**RE: Certificate of Authority – New York Quality Healthcare Corporation**

Dear Mr. Neidorff,

We are pleased to inform you that the Department of Health is approving New York Quality Healthcare Corporation's application to operate Medicaid, Child Health Plus (CHP), Health and Recovery Plan (HARP), and Managed Long-Term Care (MLTC) (excluding Medicare lines of business) programs in all 62 New York State counties. The Certificate of Authority also includes the Essential Plan (EP) in Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Queens, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming and Yates counties. The Qualified Health Plan (QHP) line of business has been added to the Certificate of Authority in anticipation of member migration on January 1, 2019.

A Certificate of Authority reflecting approval is enclosed.

The Department expects that New York Quality Healthcare Corporation (NYQHC) will satisfy the outstanding conditions specified in the April 18, 2018 letter for which a statement of agreement was signed.

If you have any questions, please contact Ms. Maureen Schips at (518) 474-5515 or by email at [Maureen.Schips@health.ny.gov](mailto:Maureen.Schips@health.ny.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Bick".

Jonathan Bick  
Director  
Division of Health Plan Contracting and Oversight  
Bureau of Managed Care Certification and  
Surveillance

Enclosure

cc: Donna Frescatore  
Anesa Brkanovic  
Susan Bentley  
Whitney Reed  
Gary Rinaldi  
Patricia Sheppard  
Andrew Segal  
James Sheehan (Attorney General's Office)  
Richard Zahnleuter (DLA)  
Gary Welskopf (OMH)  
Patricia Lincourt (OASAS)  
Anne Schettine (OQPS)  
Troy Oeschner (DFS)  
Robert Fazzolari (Fidelis)  
Christopher Koster (Centene)  
Michael Homison (Skadden)  
Sanjiv Tata (Skadden)  
Sean Doolan (Hinman Straub)  
Harold Iselin (Greenberg Traurig)  
Tricia Asaro (Greenberg Traurig)

# New York State Department of Health

## Division of Health Plan Contracting and Oversight

### Health Maintenance Organization Certificate of Authority



**New York Quality Healthcare Corporation**  
**110 E. 55 Street**  
**Suite 200**  
**New York, New York 10022**

Issued:  
April 20, 2018

### LIMITATIONS

- New York Quality Healthcare Corporation is approved to serve the **Medicaid and Child Health Plus** populations in all 62 counties of New York State. *The provision of health care services in these counties remains contingent upon the execution of Medicaid and Child Health Plus contracts.*
- New York Quality Healthcare Corporation is approved to operate a partial capitation **Managed Long-Term Care** plan servicing the Medicaid population consistent with section 4403-f of New York State Public Health Law in all 62 counties of New York State. *The provision of health care services in these counties remains contingent upon the execution of the Managed Long Term Care Partial Capitation Contract.*
- New York Quality Healthcare Corporation is approved as a **Health and Recovery Plan (HARP)** serving the HARP eligible Medicaid population in all 62 counties of New York State. *The provision of HARP services in these counties is contingent upon execution of the Medicaid contract with New York State.*
- New York Quality Healthcare Corporation is approved to serve enrollees of the **Essential Plan (EP)** in Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Queens, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming and Yates counties. *The provision of health care services in these counties will be contingent upon execution of a Contract Assignment of State of New York Department of Health NYS Contract #C030707.*
- New York Quality Healthcare Corporation is approved to serve enrollees of **Qualified Health Plan (QHP)** in Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Putnam, Queens, Rensselaer, Richmond, Rockland, St. Lawrence, Saratoga, Schenectady, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Ulster, Warren, Washington, Wayne, Westchester, Wyoming and Yates counties. *The provision of health care services in these counties will be effective 1/1/2019 and will be contingent upon execution of a Qualified Health Plan contract with the State of New York Department of Health.*



Jonathan Bick, Director  
Division of Health Plan  
Contracting and Oversight

**NEW YORK STATE DEPARTMENT OF HEALTH  
AND  
NEW YORK QUALITY HEALTHCARE CORPORATION  
STATEMENT OF AGREEMENT  
RE: CONDITIONAL APPROVAL OF CERTIFICATE OF AUTHORITY**

I, Cynthia Brinkley, President & Chief Operating Officer of Centene Corporation, on behalf of New York Quality Healthcare Corporation, located at 7700 Forsyth Boulevard St. Louis, Missouri 63105, agree to the conditions specified below as conditions to approval by the Department of Health (Department).

**Pre-Closing:**

- 1) The Management Services Agreement between New York Quality Healthcare Corporation & Centene Management Company LLC & Centene Company of New York, LLC will receive all necessary approvals by the Department;
- 2) Any required changes to the Asset Purchase Agreement will be made and all necessary approvals by the Department and the Department of Financial Services (DFS) will be received for the Asset Purchase Agreement;
- 3) All necessary approvals by the Department and DFS will be received for the Reinsurance agreements and licensure of the reinsurance company;
- 4) All necessary approvals by the various agencies of the contracts between New York State and New York Quality Healthcare Corporation for the provision of healthcare services will be received;
- 5) Pre- & Post Closing Balance Sheet of New York Quality Healthcare Corporation indicating it meets the Escrow and Contingent Reserve Requirements;
- 6) Member notification will occur no later than thirty (30) days prior to the targeted migration date for all product lines that are migrating;
- 7) Approval by the Department and DFS of the transition plan and timeline for the provision of family planning services and medically necessary abortions will be received;

**Post-Closing:**

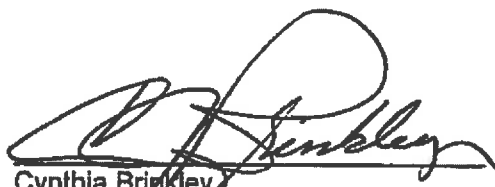
- 1) New York Quality Healthcare Corporation will submit its complete provider network no later than 7/23/2018;
- 2) New York Quality Healthcare Corporation agrees to migrate Medicaid, Health and Recovery Plan, Child Health Plus, Managed Long-Term Care, and the Essential Plan members no later than the date of closing;
- 3) New York Quality Healthcare Corporation agrees to migrate Qualified Health Plan members no later than 1/1/2019;
- 4) New York Quality Healthcare Corporation agrees to migrate Medicare members including Medicaid Advantage and Medicaid Advantage Plus members no later than 1/1/2020;
- 5) New York Quality Healthcare Corporation agrees to comply with requests, as directed, by the Department to update any operational policies, procedures,

NEW YORK STATE DEPARTMENT OF HEALTH  
AND  
NEW YORK QUALITY HEALTHCARE CORPORATION  
STATEMENT OF AGREEMENT  
RE: CONDITIONAL APPROVAL OF CERTIFICATE OF AUTHORITY

applicable member and provider notices, member and provider handbooks, in addition to other applicable documentation or information to assure compliance with Public Health Law Articles 44, 49, 10 NYCRR Part 98, and the applicable New York State Model and Subscriber Contracts;

- 6) Satisfactory completion of the character and competence of Centene Corporation, New York Quality Healthcare Corporation, and their officers and/or directors;
- 7) New York Quality Healthcare Corporation will complete a successful operational survey, that includes a Readiness Review, conducted by the Department, the date of which will be determined in accordance with the current New York State Catholic Health Plan survey schedule;
- 8) Satisfactory completion of all conditions listed in the 4/18/2018 Licensure Undertakings and Licensure Legal Requirements letters issued by DFS; and
- 9) Submission to the Department of the filing receipt from the Department of State for d/b/a Fidelis Care

Signed:



Cynthia Brinkley  
President & Chief Operating Officer  
Centene Corporation  
On behalf of New York Quality Healthcare Corporation

Date:

April 18, 2018



Notary Seal and Signature



## EXHIBIT 29

Department of Financial Services Approval Letter dated April 18, 2018  
and copy of the License, effective April 20, 2018





NEW YORK STATE  
DEPARTMENT of  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

April 18, 2018

Christopher Koster  
Centene Corporation  
Centene Plaza  
7700 Forsyth Blvd  
St. Louis, MO 63105

Christopher Koster  
Hallmark Life Insurance Company  
Centene Plaza  
7700 Forsyth Blvd  
St. Louis, MO 63105

**Re: Hallmark Life Insurance Company  
Application for Licensing**

Dear Mr. Koster:

I write regarding the application by Hallmark Life Insurance Company ("Hallmark"), an Arizona domestic insurer authorized to transact life and disability insurance in the State of Arizona, and a wholly-owned subsidiary of Centene Corporation ("Centene"). Hallmark has applied for a license to transact accident and health insurance in the State of New York, as specified in paragraph 3 of Section 1113(a) of the New York Insurance Law ("NYIL"), and subject to those additional requirements applicable to foreign or alien insurers pursuant to Section 1106 of the NYIL.

The New York State Department of Financial Services ("DFS") has evaluated the licensing application and will issue the initial license upon receipt from individuals authorized to bind each of Hallmark and Centene, respectively, a countersigned copy of this letter by which each of Hallmark and Centene acknowledges and agrees to be bound to the conditions set forth in this letter.

In order to ensure that licensing Hallmark in the State of New York, which will have the effect of permitting Centene to also do business in the State of New York, will promote the best interests of the people of this state<sup>1</sup>, both Centene and Hallmark must each, to the extent applicable to it, abide by the following conditions:

<sup>1</sup> NYIL Section 1102(d) ("The superintendent may refuse to issue or renew any such license if in [her] judgment such refusal will best promote the interests of the people of this state.")

1. **Rates.** Centene<sup>2</sup> will not seek any increase in premium rates in the New York commercial insurance market that reflect recapture of the costs associated directly or indirectly with Centene's purchase of Fidelis Care New York. The costs associated include, without limitation, the purchase price or any related costs incurred in the Transaction, including any payment to the State of New York, attorney fees and other professional fees paid.
2. **Service Area.** Centene will, for a period of at least 3 years from the date on which the Transaction is closed, maintain at least the same service area for all products in the New York commercial insurance market as Fidelis Care New York had as of January 2018, except with the express written consent from DFS.
3. **Products.** Subject to condition number 5 below, Centene will, for a period of at least 3 years from the date on which the Transaction is closed, offer at least the same products and in all service areas in the New York commercial insurance market as had Fidelis Care New York as of January 2018, except with express written consent from DFS.
4. **Networks.** Centene will, for a period of at least 3 years from the date on which the Transaction is closed, maintain the same or substantially similar provider networks for products and for all service areas in the New York commercial insurance market as Fidelis Care New York had as of January 2018, except with express written consent from DFS.
5. **Dividends.** Hallmark shall not and Centene shall commit to cause Hallmark not to declare or pay a dividend (ordinary and extraordinary) or make a distribution of excess surplus or a return of capital for a period of 3 years from the date on which the Transaction is closed without the prior review and approval of DFS, provided that if all conditions in this commitment have been met and continue to be met, DFS intends to permit a requested dividend or distribution of excess surplus or a return of capital to the extent that, following the payment of such dividend, Hallmark would continue to hold sufficient assets to meet its reserving obligations under statutory accounting principles and applicable law with respect to liabilities that are insured and reinsured by it as of such date of determination (including reserves in respect of incurred but not reported claims) and maintain an authorized control level risk based capital ratio of at least 350%.
6. **Change of Plan of Operations.** Hallmark will not change its Plan of Operations as last presented to DFS prior to the date of this letter. In the event that at any time after closing Centene proposes to materially increase the proportion of the commercial insurance business written by Centene in the State of New York as compared to the proportion of all of the commercial business conducted by Fidelis Care New York as of the closing, it will not do so without the prior written approval of the Department of Financial Services.

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<sup>2</sup> Hereafter, Centene includes any subsidiary or affiliate providing commercial insurance in the State of New York as a result of or in connection with the closing of the proposed transaction ("Transaction") between Centene and New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York ("Fidelis Care New York"), pursuant to an Asset Purchase Agreement dated September 12, 2017.

7. **Holding Company Transactions.** Hallmark will be subject to the provisions of Section 1505 of the NYIL with regard to transactions with members of its holding company system (as that term is defined in Article 15 of the NYIL).
8. **Trustworthiness Commitment.** Hallmark and Centene acknowledge that the officers and directors of both Hallmark and Centene are subject to investigation by DFS to determine whether such persons satisfy the requirements of Section 1506 of the NYIL as to their trustworthiness, and such investigation is customarily completed as a prerequisite to approving the license application. As an inducement for granting the license prior to completion of the requisite investigation, Hallmark and Centene agree to promptly replace any present and/or future principal officer or director of Hallmark and/or Centene whom DFS has either (a) deemed to be untrustworthy upon conclusion of its investigation or (b) not received satisfactory proof of electronic fingerprinting within 120 calendar days from the day of approval of the proposed licensure.
9. **Solvency.** For a period of at least 3 years from the date on which the Transaction is closed, Hallmark and Centene will take any necessary actions to cause Hallmark to maintain an authorized control level RBC ratio of not less than 350%.
10. **Guarantee.** Centene or Hallmark will deliver to DFS a fully executed copy, in the form satisfactory to the Superintendent of Financial Services, of the Guarantee Agreement among Centene, Hallmark and New York State Catholic Health Plan, Inc., a draft of which had been provided to DFS prior to the date of this letter.

Sincerely,



Maria T. Vullo  
Superintendent of Financial Services

Acknowledged and agreed  
as of the date first written above:

Hallmark Life Insurance Company

By:   
Name: Michael F. Neldorff  
Title: Director

Centene Corporation

By:   
Name: Michael F. Neldorff  
Title: Chairman & CEO



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

April 20, 2018

Sanjiv J. Tata, Esq.  
Skadden, Arps, Slate, Meagher  
& Flom LLP  
Four Times Square  
New York, NY 10036-6522

Re: Hallmark Life Insurance Company  
Application for Licensing

Dear Mr. Tata:

Enclosed is the initial license for Hallmark Life Insurance Company, effective April 20, 2018.

Please note that the license authorizes the company to transact accident and health insurance in the State of New York, as specified in paragraph 3 of Section 1113(a) of the New York Insurance Law.

Very truly yours,

Brenda M. Gibbs  
Associate Attorney  
Office of General Counsel  
(518) 408-3451

**State of New York**  
**DEPARTMENT OF FINANCIAL SERVICES**

**WHEREAS IT APPEARS THAT**

**Hallmark Life Insurance Company**

**Home Office Address**                      Phoenix, Arizona

**Organized under the Laws of**        Arizona

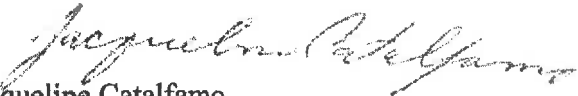
**has complied with the necessary requirements of or pursuant to law, it is hereby  
licensed to do within this State the business of**

accident and health insurance, as specified in paragraph(s) 3 of Section 1113(a) of the  
New York Insurance Law, to the extent permitted by certified copy of its charter document on  
file in this Department until July 1, 2018.



In Witness Whereof, I have hereunto set  
my hand and affixed the official seal of this  
Department at the City of Albany,  
New York, this 20th day of April, 2018.

Maria T. Vullo  
Superintendent

By   
Jacqueline Catalfamo  
Special Deputy Superintendent

Original on Watermarked Paper

## EXHIBIT 30

Letter Regarding Early Termination of the  
Waiting Period under the HSR Act



Bureau of Competition  
Premerger Notification Office

UNITED STATES OF AMERICA  
**FEDERAL TRADE COMMISSION**  
Washington, D.C. 20580

September 29, 2017

Steven Albertson  
Attorney  
Skadden Arps Slate Meagher & Flom, LLP  
1440 New York Avenue, N.W.  
Washington, DC 20005 USA

Re: **EARLY TERMINATION GRANTED**  
Transaction Identification Number 20171989  
Centene Corporation / New York State Catholic Health Plan, Inc.

Dear Mr. Albertson :

The request for early termination of the waiting period is granted effective September 29, 2017 03:15 PM with respect to the proposed acquisition by Centene Corporation of certain assets of New York State Catholic Health Plan, Inc. Early termination of the waiting period is provided by Section 7A(b)(2) of the Clayton Act and Sections 803.10(b) and 803.11(c) of the Premerger Notification Rules.

Notice of this termination will be published in the Federal Register in accordance with Section 7a(b)(2) of the Clayton Act and Section 803.11(c) of the Premerger Notification Rules and on the Federal Trade Commission's internet site [<http://www.ftc.gov/bc/earlyterm/index.html>].

If you have any questions concerning this matter, please contact me at 202-326-3623.

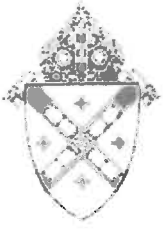
Sincerely,

Lanea Haynes  
Program Support Specialist  
Premerger Notification Office  
Bureau of Competition

## EXHIBIT 31

Letter dated March 30, 2018 from Petitioner to  
New York State Division of the Budget





# ARCHDIOCESE *of* NEW YORK

March 30, 2018

Robert F. Mujica  
Director  
New York State Division of the Budget  
New York State Capitol  
Albany, New York 12237

Dear Director Mujica:

On behalf of the New York State Catholic Health Plan, Inc. d/b/a Fidelis Care, a New York not-for-profit corporation ("Fidelis Care"), this letter reflects a summary of the terms of a financial settlement relating to New York State's (the "State") claims to a portion of the proceeds from the sale of substantially all of the assets of Fidelis Care to Centene Corporation, a Delaware corporation ("Centene"), and the cash and cash-equivalent assets that will be retained by Fidelis Care following the Closing of the sale transaction.

As you are aware, Centene and Fidelis Care have entered into an Asset Purchase Agreement, dated as of September 12, 2017, pursuant to which Fidelis Care has agreed to sell and assign, and Centene has agreed to purchase and assume, substantially all of the assets and liabilities of Fidelis Care subject to the terms and conditions set forth therein (the "Transaction"). In response to the Transaction, the State has asserted its intent to enact legislation aimed at regulating transactions such as the one contemplated by Fidelis Care, which would entitle it to receive proceeds from Centene following the closing of the Transaction, as well as from Fidelis Care's current assets that it will be retaining following the closing of the Transaction (such sale proceeds, together with such retained assets, hereinafter referred to collectively as "Fidelis Assets"). Fidelis Care disputes the State's position and contends that the State has no right or interest in or to any portion of the Fidelis Assets under existing law, and further disputes legislation that would deprive Fidelis Care of any portion of the Fidelis Assets.

In recognition of the value of the Transaction and the anticipated benefits to be realized by the population served by Fidelis Care and the citizens of New York, the parties desire to enter into

an agreement to settle and resolve the disputes between the State and Fidelis Care with respect to the State's asserted rights to receive or be paid, directly or indirectly, or to restrict Fidelis Care's right to retain and use, any portion of the Fidelis Assets.

By the performance of Fidelis Care's obligations as reflected in this letter, the parties intend that Fidelis Care will be deemed to have satisfied in full, and the State shall release Fidelis Care from any and all obligations relating to the State's asserted rights to receive or be paid, directly or indirectly, or to restrict Fidelis Care's rights to retain and use, any portion of the Fidelis Assets, whether under existing law or any future legislation that may be enacted.

In consideration of the State agreeing to settle this dispute, upon the closing of the Transaction, Fidelis Care shall pay the following amounts to the State:

(i) the sum of one billion dollars (\$1,000,000,000.00), which shall be paid within thirty (30) days after Closing (the "Initial Fidelis Payment"); and

(ii) the sum of four hundred million dollars (\$400,000,000.00) between twelve (12) months and eighteen (18) months following the Initial Fidelis Payment (the "Second Fidelis Payment");

(iii) the sum of fifty million dollars (\$50,000,000.00), which shall be paid within twelve (12) months following the Second Fidelis Payment in the form of either (x) a grant for a mutually agreed upon purpose consistent with Fidelis Care's purposes as reflected in its Certificate of Incorporation as in effect immediately following the closing of the Transaction or (y) a cash payment for unrestricted purposes in the event that the parties cannot agree upon a mutually acceptable purpose (the "Third Fidelis Payment"); and

(iv) the sum of fifty million dollars (\$50,000,000.00), which shall be paid within twelve (12) months following the Third Fidelis Payment in the form of either (x) a grant for a mutually agreed upon purpose consistent with Fidelis Care's purposes as reflected in its Certificate of Incorporation as in effect immediately following the closing of the Transaction or (y) in the form a cash payment for unrestricted purposes in the event that the parties cannot agree upon a mutually acceptable purpose (the "Fourth Fidelis Payment").

The payment of the aforementioned funds shall be conditioned upon the following:

(i) The approval of the Transaction by the New York State Department of Health, the New York State Department of Financial Services, the New York Attorney General (or if, applicable, the New York State Supreme Court), the Center for Medicaid and Medicare Services ("CMS"), and any other State or Federal agency or instrumentality or a court of competent jurisdiction which has approval authority over the Transaction;

(ii) The Closing of the Transaction between Fidelis Care and Centene;

(iii) The State releasing Fidelis Care from any and all obligations relating to the State's asserted rights to receive or be paid, directly or indirectly, or restricting Fidelis Care's rights to retain and use, any portion of the Fidelis Assets; and

(iv) On or after April 1, 2018, Legislation not being introduced and enacted into law, which restricts Fidelis Care's right to receive, retain and use, or reduces any portion of the Fidelis Assets or directs the payment of any portion of the Fidelis Assets to the State or any other person.

While Fidelis Care shall be bound by and will abide by the aforementioned terms, the terms and obligations reflected herein shall be reflected in a written agreement between the parties. In the event that any of the aforementioned conditions, including, but not limited to, the Transaction not being approved or the closing of the Transaction not occurring, this letter or any subsequent agreement shall have no force and effect.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gregory Mustaciuolo", written in a cursive style.

Rev. Msgr. Gregory Mustaciuolo  
Vicar General/Chancellor &  
Authorized Representative of Fidelis Care

## EXHIBIT 32

Centene's Memorandum of Understanding dated March 30, 2018



**Michael F. Neidorff**  
*Chairman and Chief Executive Officer*

March 30, 2018

Robert Mujica  
Director  
New York State Division of the Budget State Capitol, Room 113  
Albany, NY 12224

Paul Francis  
Deputy Secretary for Health and Human Services  
NYS Executive Chamber State Capitol, 2nd Floor  
Albany, NY 12224

Axel Bernabe, Esq.  
Assistant Counsel  
NYS Executive Chamber State Capitol, 2nd Floor  
Albany, NY 12224

Dear Gentlemen,

Thank you again for all of your hard work on this project.

This letter serves as a Memorandum of Understanding between Centene Corporation and the State of New York ("the Parties") regarding the pending application of Centene Corporation to purchase substantially all of the assets of the New York State Catholic Health Plan, d/b/a Fidelis Care ("Fidelis Transaction"), and to thereafter be approved as a Prepaid Health Services licensee to operate said health plan in the State of New York.

Centene Corporation agrees, as an undertaking predicated on the State of New York's approval of the Fidelis Transaction, to make a contribution to the State of New York in the amount of \$340 million, directed to such governmental or not-for-profit entity or entities as the state may designate.

Furthermore, it is the intent of Centene and the State of New York that the contribution will be contributed in five equal installments over a period of five years.

Finally, Centene's contribution is predicated on the New York State Catholic Health Plan agreeing to the \$1.5 billion payment from the proceeds of the sale of Fidelis Care, to which the NYSCHP previously agreed.

Centene Corporation commits to work cooperatively with your representatives to formally reduce this undertaking into an appropriate legal form.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael F. Neidorff", written over a horizontal line.

Michael F. Neidorff

Centene Corporation  
Centene Plaza  
7700 Forsyth Blvd.  
St. Louis, MO 63105  
Phone: 314-725-4477

## EXHIBIT 33

Statement of Sources and Uses of Transaction Proceeds and  
Assets of Petitioner to be Transferred to the Foundation

## FIDELIS/CENTENE TRANSACTION

### Sources and Uses Statement

This following Sources and Uses Statement contains an estimated breakdown of the sources and uses of the sale proceeds and assets to be received by New York State Catholic Health Plan, Inc. d/b/a Fidelis Care from the Fidelis/Centene transaction. Certain of the amounts included herein are estimates whose exact amounts will not be determined until at or after the Closing.

#### Sources

Transaction Sale Proceeds Transferred to Foundation <sup>1</sup>	\$3,750,000,000
Fidelis Assets Transferred to Foundation	
Cash & Investments	\$792,000,000 <sup>2</sup>
Property	\$138,196,000
Other	\$337,000 <sup>3</sup>
<b>Total Sources:</b>	<b>\$4,680,553,000</b>

#### Uses

Payment to the State of New York <sup>4</sup>	\$1,400,000,000
Indemnification Escrow Account Fees	\$10,000
Transaction Related Expenses	
Financial Advisor Fees	\$22,100,000
Professional Advisors	\$3,900,000
Costs of Liquidating Share Consideration	\$20,000
Employee Retention Program <sup>5</sup>	\$8,500,000
PTO (Paid Time Off) Obligation <sup>6</sup>	\$1,000,000
Net to be transferred to Foundation	\$3,245,023,000 <sup>7</sup>
<b>Total Uses:</b>	<b>\$4,680,553,000</b>

<sup>1</sup> Subject to +/- adjustment based on closing enrollment volume as of the Closing Date and working capital calculations as of the first anniversary of the Closing Date.

<sup>2</sup> Includes less than \$500,000 in donor-restricted funds

<sup>3</sup> Includes receivables and pre-paid expenses related to Rego Park Office Tower, LLC

<sup>4</sup> Initial payment of \$1 billion to be made within 30 days of Closing. Such payment will be made either by Petitioner or the Foundation, as determined by agreement to be entered into with New York State. Further payment of \$400 million to be made by the Foundation.

<sup>5</sup> Retention payments for employees, other than executives.

<sup>6</sup> Under Section 6.05(d) of the Asset Purchase Agreement, Petitioner is obligated to pay accrued paid time for Hired Employees (as defined in the Asset Purchase Agreement) in excess of one hundred and fifty (150) hours.

<sup>7</sup> Net amount assumes full return of the \$375 million indemnification escrow. The net amount will be applied to the Foundation's grantmaking program, which will include \$100 million in grants expected to be made in 2021 and 2022 pursuant to agreement with New York State to organizations that are mutually satisfactory to the Foundation and New York State.

# EXHIBIT 34

## Payment and Joinder Agreement



## PAYMENT AND LIMITED JOINDER AGREEMENT

This PAYMENT AND LIMITED JOINDER AGREEMENT, dated as of [●] [●], 2018 (this "Agreement"), has been made and entered into by and among MOTHER CABRINI HEALTH FOUNDATION, INC., a New York not-for-profit corporation (the "Foundation"), NEW YORK STATE CATHOLIC HEALTH PLAN, INC., a New York not-for-profit corporation ("Seller"), and CENTENE CORPORATION, a Delaware corporation ("Buyer" and, together with the Foundation and Seller, the "Parties").

### WITNESSETH:

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement, dated as of September 12, 2017, as amended by that certain Amendment No. 1 to the Asset Purchase Agreement, dated as of May [●], 2018 (as so amended, the "Asset Purchase Agreement") whereby Seller has agreed to sell substantially all of its assets to Buyer (the "Transaction");

WHEREAS, the Foundation will receive from Seller the proceeds from the Transaction and certain other assets to be owned by Seller from and after the closing of the Transaction, including any cash and investments on Seller's balance sheet upon closing of the Transaction (collectively, the "Transfer");

WHEREAS, capitalized terms used but not otherwise defined in this Agreement shall have the meanings assigned to such terms in the Asset Purchase Agreement; and

WHEREAS, in consideration of the benefits that the Foundation expects to receive from the Transaction proceeds, the Foundation agrees to pay certain obligations of Seller pursuant to the terms of the Asset Purchase Agreement, in each case, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

#### Section 1. Payment Obligations.

(a) Foundation shall pay to Buyer, on Seller's behalf, all present and future amounts that may be due and owing, from time to time, by Seller under Sections 2.07(d) and (e), Sections 2.08(d),(e) &(f), Section 2.10, Section 6.08(d), Section 6.18, Section 6.19, Section 6.21, Section 6.25, Section 6.26(b) and Section 8.02 of the Asset Purchase Agreement (the "Obligations"). The Foundation's obligations hereunder are limited exclusively to the payment of amounts determined to be owed by Seller pursuant to the terms and conditions of the Asset Purchase Agreement; except for such payment obligations and the specific Sections of the Asset Purchase Agreement set forth in Section 2 of this Agreement, the Foundation shall not be required to perform any of the obligations of Seller under the Asset Purchase Agreement. All of the Obligations shall be limited to and determined in accordance with the terms and conditions of the Asset Purchase Agreement. Nothing in this Section or otherwise in this Agreement is

intended to limit, restrict or waive, nor shall it limit, restrict or waive, any right of Seller or Buyer under the Asset Purchase Agreement or applicable Law or any right of Foundation under this Agreement or applicable Law. By agreeing to pay the Obligations in accordance with this Section 1, the Foundation shall have all rights and be entitled to all the protections and benefits of Seller with respect to such Obligations under the Asset Purchase Agreement, with the same force and effect as if originally named as a party thereto, including, without limitation, (i) in the case of Sections 2.07(d) and (e) of the Asset Purchase Agreement, the rights of Seller under Section 2.07 of the Asset Purchase Agreement, (ii) in the case of Sections 2.08(d),(e) &(f) of the Asset Purchase Agreement, the rights of Seller under Section 2.08 of the Asset Purchase Agreement and (iii) in the case of Section 8.02 of the Asset Purchase Agreement, the rights of Seller under the applicable provisions of Article VIII of the Asset Purchase Agreement, including Sections 8.04 through 8.06 and Sections 8.08 and 8.09 thereof (including the same rights that Seller has with respect to receiving notice, objecting to and defending claims). For the avoidance of doubt, the Parties expressly acknowledge and agree that the Foundation shall have no liability, responsibility or other obligation whatsoever under this Agreement or the Asset Purchase Agreement for liabilities or obligations arising under or related to the Medicare Reinsurance Agreement or the QHP Reinsurance Agreement or the operation of any managed care product, plan or business or the provision of any insurance product by Seller, in each case, following the Closing. In no event shall the Foundation be required to pay an amount for any liability under this Agreement that exceeds the amount that Seller would be required to pay for such liability pursuant to the terms and conditions of the Asset Purchase Agreement.

(b) Until such time as the Medicare Business is transferred to Buyer pursuant to the Asset Purchase Agreement, Seller shall, and the Foundation shall take such actions within its control as may be reasonably necessary (i) to enable Seller to maintain Seller's corporate existence and not adopt any plan of dissolution or institute any proceedings seeking the dissolution of the Seller, (ii) to prevent Seller from commencing a voluntary case concerning itself under any insolvency Laws or otherwise commence any other proceeding under any bankruptcy, rehabilitation, liquidation, conservation or similar Law (each, an "Insolvency Proceeding") or (iii) to cause any involuntary Insolvency Proceeding to be promptly contested and dismissed.

(c) The Foundation shall pay, or shall make funds available to Seller to pay, all Excluded Liabilities or other uncontested liabilities of Seller owed to Persons other than Buyer or its Affiliates and that have not been assumed by Buyer under the terms and conditions of the Asset Purchase Agreement as and when such liabilities become due and payable.

Section 2. Limited Joinder. The Foundation hereby agrees to comply with the following provisions of the Asset Purchase Agreement, with the same force and effect as if originally named therein as a party: Section 6.06 (*Confidentiality*), Section 6.07 (*Non-competition; Non-solicitation*), Section 6.13 (*Reconciliation*) and Section 6.19 (*Non-disparagement*). For the avoidance of doubt, except as provided in Section 1 or this Section 2, the Foundation shall have no obligation with respect to any other provision of the Asset

Purchase Agreement, and except as provided in Section 1(a) above, no other provision of the Asset Purchase Agreement shall apply to the Foundation.

**Section 3.     Representations and Warranties.**

(a)     Seller hereby represents and warrants to Buyer that: (a) Seller has (i) attached the form of this Agreement as an exhibit to the petition to be submitted by Seller to the New York State Attorney General requesting approval of the Transaction pursuant to the New York State Not-for-Profit Corporation Law (the "Petition"), and (ii) described the material terms of this Agreement in the narrative section of the Petition; (b) the New York State Attorney General has (i) not objected to the filing of the certificate of incorporation of the Foundation with the New York Department of State, a copy of which has been provided to Buyer and (ii) authorized the Transfer and the use of the Foundation's assets for the purposes contemplated by this Agreement (a copy of such authorization has previously been provided to Buyer); and (c) assuming due authorization, execution and delivery by Buyer, this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

(b)     The Foundation hereby represents and warrants to Buyer that: (a) it is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation; (b) the New York State Attorney General has (i) not objected to the filing of the certificate of incorporation of the Foundation with the New York Department of State, a copy of which has been provided to Buyer, and (ii) authorized the Transfer and the use of the Foundation's assets for the purposes contemplated by this Agreement (a copy of such authorization has previously been provided to Buyer); and (c) assuming due authorization, execution and delivery by Buyer, this Agreement constitutes a legal, valid and binding obligation of the Foundation, enforceable against the Foundation in accordance with its terms.

(c)     Buyer hereby represents and warrants to Seller and the Foundation that, assuming due authorization, execution and delivery by Seller and the Foundation, this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

**Section 4.     Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipients; *provided* that such communication is also sent via the methods set forth in (a) or (b) above. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 4):

If to Foundation:

Mother Cabrini Health Foundation, Inc.  
1011 First Avenue  
New York, NY 10022  
Attention: Chief Executive Officer  
E-Mail: [To be specified]

If to Seller:

New York State Catholic Health Plan, Inc.  
1011 First Avenue  
New York, NY 10022  
Attention: Chief Executive Officer  
E-Mail: [To be specified]

If to Buyer:

Centene Corporation  
7700 Forsyth Blvd.  
St. Louis MO 63105  
Attention:  
E-Mail:

Section 5. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the limited subject matter contained herein, and shall supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. Each of the Parties hereby agrees that each and every provision of this Agreement is and shall be enforceable by and between them in accordance with its terms, and each Party hereby agrees that it shall not contest the validity or enforceability of this Agreement.

Section 6. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

Section 7. Amendment; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege

arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8. Counterparts. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

*[Remainder of Page Intentionally Blank]*

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement with effect as of the date first written above.

NEW YORK STATE CATHOLIC HEALTH PLAN,  
INC.

By: \_\_\_\_\_  
Name:  
Title:

MOTHER CABRINI HEALTH FOUNDATION,  
INC.

By: \_\_\_\_\_  
Name:  
Title:

CENTENE CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

# EXHIBIT 35

Foundation's Certificate of Incorporation

FILING RECEIPT

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ENTITY NAME: MOTHER CABRINI HEALTH FOUNDATION, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: C COUNTY: NEWY

=====

FILED:05/02/2018 DURATION:PERPETUAL CASH#:180502000802 FILM #:180502000743

FILER:

EXIST DATE

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LOEB & LOEB LLP  
ATTN: JASON R. LILLEN  
345 PARK AVENUE  
NEW YORK, NY 10065

05/02/2018

ADDRESS FOR PROCESS:

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CHAIR OF THE BOARD  
MOTHER CABRINI HEALTH ETAL  
NEW YORK, NY 10022

1011 FIRST AVENUE

REGISTERED AGENT:

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=====

SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00

FEES	90.00
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FILING	75.00
TAX	0.00
CERT	0.00
COPIES	15.00
HANDLING	0.00

PAYMENTS	90.00
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CASH	0.00
CHECK	0.00
CHARGE	90.00
DRAWDOWN	0.00
OPAL	0.00
REFUND	0.00

=====

DOS-1025 (04/2007)



***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the  
Department of State, at the City of Albany, on  
May 2, 2018.



A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald  
Executive Deputy Secretary of State

180302000743

**CERTIFICATE OF INCORPORATION**

**OF**

**MOTHER CABRINI HEALTH FOUNDATION, INC.**

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law ("NPCL"), does hereby further certify:

1. The name of the Corporation is "Mother Cabrini Health Foundation, Inc." (hereinafter referred to as the "Corporation").
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and is a charitable corporation under Section 201 of the NPCL.
3. The purposes for which the Corporation is formed are exclusively charitable and religious within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended (the "Code"), and specifically:
  - (a) To improve the health and wellness of the poor, disabled, disadvantaged, elderly and underserved people of New York State and their families by engaging in, promoting, sponsoring and supporting activities, programs and initiatives that:
    - (i) enhance access to affordable quality healthcare and healthcare related services, including activities, programs and initiatives that address the population's needs relating to social determinants of health such as nutrition, substance abuse, childhood cognition and social skills, early intervention, behavioral health, home and community-based services, preventative health, education and literacy, elder care, safe and affordable quality housing, employment, and other circumstances and/or conditions that influence health outcomes ("Social Determinants of Health"); and
    - (ii) address unmet healthcare and healthcare related needs (including Social Determinants of Health),
  - in the case of each of clauses (i) and (ii), consistent with the ethical principles, tenets and teachings of the Roman Catholic faith;
  - (b) To make grants and contributions to, and otherwise support, sponsor and benefit, such other not-for-profit organizations as the Corporation shall determine in furtherance of the Corporation's purposes described in this Paragraph 3; and
  - (c) Subject to the limitations set forth in this Certificate of Incorporation, engage in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL

that are incidental to, and/or in furtherance of, accomplishing the foregoing purposes.

4. The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsections (a) through (v) of Section 404 of the NPCL without first having the approvals or consents required by such subsections.

5. The Corporation shall be a membership corporation. Members shall have such authority, rights and powers as afforded to them under the NPCL and the By-Laws of the Corporation (the "By-Laws"), which shall include, but not be limited to, the authority to determine the approval or disapproval of any of the following:

- (a) The amendment of the Corporation's Certificate of Incorporation and By-Laws;

- (b) The election and removal of Directors of the Corporation;

- (c) The Corporation's adherence at all times to the tenets and teachings of the Roman Catholic Faith as reflected in the doctrines and directives published by the National Conference of Catholic Bishops;

- (d) The purchase, sale, mortgage, pledge or lease of real property of the Corporation, or the sale, lease, exchange or other disposition of all, or substantially all, of the Corporation's assets; and

- (e) The dissolution, merger, or consolidation of the Corporation.

6. The number of Directors of the Corporation shall be determined in accordance with the By-Laws, but shall not be fewer than three (3) persons.

7. The names and addresses of the initial members of the Board of Directors of the Corporation, who shall serve until their successors are duly elected and qualified in accordance with the By-Laws of the Corporation or until their earlier resignation, removal or death, are:

Alfred F. Kelly, Jr.

1011 First Avenue  
New York, NY 10022

Samuel A. DiPiazza, Jr.

1011 First Avenue  
New York, NY 10022

Catherine R. Kinney

1011 First Avenue  
New York, NY 10022

8. No part of the net earnings of the Corporation may inure to the benefit of or be distributed to any director, officers, or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Paragraph 3 above. No substantial part of the activities of the Corporation may be devoted to the carrying on of propaganda or otherwise attempting to influence legislation in a manner or to an extent that would disqualify the Corporation for tax exemption under

section 501(c)(3) of the Code. The Corporation shall not "participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office" within the meaning of section 501(c)(3) of the Code. Notwithstanding the provisions of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Code, or (b) by a corporation, contributions to which are deductible under section 107(c)(2) of the Code.

9. The office of the Corporation shall be located in the County of New York, State of New York.
10. The Secretary of State is hereby designated to be the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her as agent of the Corporation is:

Chair of the Board  
Mother Cabrini Health Foundation, Inc.  
1011 First Avenue  
New York, NY 10022

11. In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is classified as a private foundation as defined in Section 509(a) of the Code, then in such year:

- (a) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;
- (b) The Corporation shall distribute such amounts at such time and in such manner so as not to subject the Corporation to the tax on undistributed income imposed by Section 4942 of the Code;
- (c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;
- (d) The Corporation shall not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code; and
- (e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945(d) of the Code.

12. In the event of the liquidation, dissolution, or winding up of this Corporation, whether voluntary, involuntary, or by operation of law, all of the remaining assets of the Corporation shall, after paying or making provision for the payment of all the liabilities of the Corporation and for the necessary expenses thereof, be distributed, in accordance with Article 10 of the N-PCL or any successor provision, to one or more charitable organizations within the meaning of Section 201 of the NPCL as are then in existence

and qualifying under Section 501(c)(3) of the Code, to such entities and in such proportions as the Members of the Corporation shall determine, for use by such entities in furtherance of purposes substantially similar to those of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation on this 2<sup>nd</sup> day of May, 2018.

By: 

Rev. Msgr. Gregory Mustaciuolo  
Sole Incorporator  
1011 First Avenue  
New York, NY 10022

743

**CERTIFICATE OF INCORPORATION**  
**OF**  
**MOTHER CABRINI HEALTH FOUNDATION, INC.**

**Under Section 402 of the**  
**New York State Not-For-Profit Corporation Law**

**Filed By:**

Loeb & Loeb LLP  
345 Park Avenue  
New York, NY 10065  
Attn: Jason R. Lilien

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DEPARTMENT OF STATE

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**CERTIFICATE OF INCORPORATION**

**OF**

**MOTHER CABRINI HEALTH FOUNDATION, INC.**

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law ("NPCL"), does hereby further certify:

1. The name of the Corporation is "Mother Cabrini Health Foundation, Inc." (hereinafter referred to as the "Corporation").
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL and is a charitable corporation under Section 201 of the NPCL.
3. The purposes for which the Corporation is formed are exclusively charitable and religious within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended (the "Code"), and specifically:

(a) To improve the health and wellness of the poor, disabled, disadvantaged, elderly and underserved people of New York State and their families by engaging in, promoting, sponsoring and supporting activities, programs and initiatives that:

(i) enhance access to affordable quality healthcare and healthcare related services, including activities, programs and initiatives that address the population's needs relating to social determinants of health such as nutrition, substance abuse, childhood cognition and social skills, early intervention, behavioral health, home and community-based services, preventative health, education and literacy, elder care, safe and affordable quality housing, employment, and other circumstances and/or conditions that influence health outcomes ("Social Determinants of Health"); and

(ii) address unmet healthcare and healthcare related needs (including Social Determinants of Health),

in the case of each of clauses (i) and (ii), consistent with the ethical principles, tenets and teachings of the Roman Catholic faith;

- (b) To make grants and contributions to, and otherwise support, sponsor and benefit, such other not-for-profit organizations as the Corporation shall determine in furtherance of the Corporation's purposes described in this Paragraph 3; and
- (c) Subject to the limitations set forth in this Certificate of Incorporation, engage in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL

that are incidental to, and/or in furtherance of, accomplishing the foregoing purposes.

4. The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsections (a) through (v) of Section 404 of the NPCL without first having the approvals or consents required by such subsections.

5. The Corporation shall be a membership corporation. Members shall have such authority, rights and powers as afforded to them under the NPCL and the By-Laws of the Corporation (the "By-Laws"), which shall include, but not be limited to, the authority to determine the approval or disapproval of any of the following:

(a) The amendment of the Corporation's Certificate of Incorporation and By-Laws;

(b) The election and removal of Directors of the Corporation;

(c) The Corporation's adherence at all times to the tenets and teachings of the Roman Catholic Faith as reflected in the doctrines and directives published by the National Conference of Catholic Bishops;

(d) The purchase, sale, mortgage, pledge or lease of real property of the Corporation, or the sale, lease, exchange or other disposition of all, or substantially all, of the Corporation's assets; and

(e) The dissolution, merger, or consolidation of the Corporation.

6. The number of Directors of the Corporation shall be determined in accordance with the By-Laws, but shall not be fewer than three (3) persons.

7. The names and addresses of the initial members of the Board of Directors of the Corporation, who shall serve until their successors are duly elected and qualified in accordance with the By-Laws of the Corporation or until their earlier resignation, removal or death, are:

Alfred F. Kelly, Jr.

1011 First Avenue  
New York, NY 10022

Samuel A. DiPiazza, Jr.

1011 First Avenue  
New York, NY 10022

Catherine R. Kinney

1011 First Avenue  
New York, NY 10022

8. No part of the net earnings of the Corporation may inure to the benefit of or be distributed to any director, officers, or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Paragraph 3 above. No substantial part of the activities of the Corporation may be devoted to the carrying on of propaganda or otherwise attempting to influence legislation in a manner or to an extent that would disqualify the Corporation for tax exemption under



section 501(c)(3) of the Code. The Corporation shall not "participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office" within the meaning of section 501(c)(3) of the Code. Notwithstanding the provisions of this Certificate of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Code, or (b) by a corporation, contributions to which are deductible under section 107(c)(2) of the Code.

9. The office of the Corporation shall be located in the County of New York, State of New York.
10. The Secretary of State is hereby designated to be the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her as agent of the Corporation is:

Chair of the Board  
Mother Cabrini Health Foundation, Inc.  
1011 First Avenue  
New York, NY 10022

11. In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is classified as a private foundation as defined in Section 509(a) of the Code, then in such year:

- (a) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;
- (b) The Corporation shall distribute such amounts at such time and in such manner so as not to subject the Corporation to the tax on undistributed income imposed by Section 4942 of the Code;
- (c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;
- (d) The Corporation shall not make any investments in such a manner as to subject the Corporation to tax under Section 4944 of the Code; and
- (e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945(d) of the Code.

12. In the event of the liquidation, dissolution, or winding up of this Corporation, whether voluntary, involuntary, or by operation of law, all of the remaining assets of the Corporation shall, after paying or making provision for the payment of all the liabilities of the Corporation and for the necessary expenses thereof, be distributed, in accordance with Article 10 of the N-PCL or any successor provision, to one or more charitable organizations within the meaning of Section 201 of the NPCL as are then in existence

and qualifying under Section 501(c)(3) of the Code, to such entities and in such proportions as the Members of the Corporation shall determine, for use by such entities in furtherance of purposes substantially similar to those of the Corporation.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation on this 2<sup>nd</sup> day of May, 2018.

By: 

Rev. Msgr. Gregory Mustaciuolo  
Sole Incorporator  
1011 First Avenue  
New York, NY 10022

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**CERTIFICATE OF INCORPORATION**  
**OF**  
**MOTHER CABRINI HEALTH FOUNDATION, INC.**

**Under Section 402 of the**  
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Filed By:

Loeb & Loeb LLP  
345 Park Avenue  
New York, NY 10065  
Attn: Jason R. Lilien

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STATE OF NEW YORK  
DEPARTMENT OF STATE

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# EXHIBIT 36

Foundation's By-Laws

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# By-Laws

of

MOTHER CABRINI HEALTH FOUNDATION, INC.

*A Charitable Corporation Under Section 201  
of the Not-for-Profit Corporation Law*

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*Adopted*

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**By-Laws**  
of  
**MOTHER CABRINI HEALTH FOUNDATION, INC.**

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**By-Laws**  
of  
**MOTHER CABRINI HEALTH FOUNDATION, INC.**

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**ARTICLE 1 — NAME AND ORGANIZATION**

*Section 1.01 — Name of the Corporation*

The name of this Corporation shall be MOTHER CABRINI HEALTH FOUNDATION, INC. (hereinafter sometimes referred to as the “Corporation”).

*Section 1.02 — Adherence to Catholic Doctrine and Mission Statement*

*Section 1.02.01*

Providing aid to the poor, indigent and infirm is an essential component of the mission of the Catholic Church and essential to the identity of Catholic health care.

*Section 1.02.02*

The Corporation shall adhere at all times to the tenets and teachings of the Roman Catholic Faith as reflected in the doctrines and directives published by the National Conference of Catholic Bishops.

*Section 1.02.03*

The mission of the Corporation is to improve the health and wellness of the poor, disabled, disadvantaged, elderly and underserved people of New York State and their families by engaging in, promoting, sponsoring and supporting activities, programs and initiatives that enhance access to affordable quality healthcare and healthcare-related services and address the unmet healthcare and healthcare related needs of communities across New York State, including, in each case, the Social Determinants of Health, consistent with the ethical principles, tenets and teachings of the Roman Catholic Faith.

**ARTICLE 2 — MEMBERSHIP OF THE CORPORATION**

*Section 2.01 — Membership*

The Members of the Corporation shall be the Diocesan Bishops of the State and Ecclesiastical Province of New York (referred to herein individually as a “Member” or collectively as the “Members” or the “Membership”).

*Section 2.02 — Voting*

All Members of the Corporation shall be voting members. The Members of the Corporation shall vote at Annual, Regular, or Special Meetings of the Members, with each Member having one vote. Any action required or permitted to be taken by the Members may be taken without a meeting if all the Members consent in writing or electronically to the adoption of a resolution authorizing the action.



*Section 2.03 — Liability of Members*

The Members and their respective Dioceses shall not be liable, in any way, for the debts, liabilities, or obligations of the Corporation.

**ARTICLE 3 — POWERS AND DUTIES OF MEMBERS**

*Section 3.01 — Election of Directors and Officers*

The Members of the Corporation, at their Annual Meeting, shall elect qualified persons to the Board of Directors in accordance with the provisions of Sections 6.01 and 6.02 of these By-Laws. Additionally, the Members of the Corporation, at their Annual Meeting, shall elect qualified persons to serve as Officers of the Corporation in accordance with the provisions of Section 5.02 of these By-Laws.

*Section 3.02 — Reserved Powers*

The following powers are reserved exclusively for the Members, and no attempted exercise of any such powers by anyone other than the Members shall be valid or have any force or effect whatsoever.

*Section 3.02.01*

With the approval of the Bishop of the Diocese in which the question on interpretation arises, to interpret, finally and definitively, the *Ethical and Religious Directives for Catholic Health Care Services* and other doctrines and directives published by the National Conference of Catholic Bishops as those doctrines and directives apply to the activities of the Corporation.

*Section 3.02.02*

To adopt the Corporation's philosophy and mission statement in accordance with Catholic Doctrine.

*Section 3.02.03*

To require the Corporation to operate in conformity with its philosophy and mission statement and the ethical principles, tenets and teachings of the Roman Catholic Faith.

*Section 3.02.04*

To amend the Certificate of Incorporation of the Corporation and to amend, adopt, or repeal By-Laws for the Corporation.

*Section 3.02.05*

To determine the grantmaking and philanthropic goals of the Corporation, including approving grantmaking policies and procedures for the Corporation.

*Section 3.02.06*

To approve, prior to the commencement of each fiscal year, the annual grantmaking plan of the Corporation setting forth the programmatic priorities and planned spending with respect to the grantmaking program for the upcoming fiscal year (the "Annual Grantmaking Plan").

*Section 3.02.07*

With the approval of the Bishop of the Diocese within which the property is located, to approve the sale, mortgage, lease, loan, or pledge of any of the Corporation's real property.

*Section 3.02.08*

To approve the actions of the Corporation whenever the Corporation acts as a member or shareholder of another corporation or other entity, provided that Member approval is not required where the Corporation (i) exercises rights as a shareholder of a publicly traded corporation in its investment portfolio or (ii) exercises rights as a member of a trade group, trade association or similar entity and such action does not otherwise constitute a matter identified in Section 3.02 of these By-Laws or (iii) such action, if taken directly by the Corporation, would not constitute action subject to the Members' reserved powers under Section 3.02 of these By-Laws.

*Section 3.02.09*

To approve the acceptance of subventions and the issuance of certificates of subvention.

*Section 3.02.10*

To approve any merger, dissolution, or consolidation of the Corporation, or any sale, lease, or other disposition of all or substantially all of the assets of the Corporation.

*Section 3.02.11*

To elect and reelect Directors or Officers of the Corporation; and, to remove Directors or Officers of the Corporation, with or without cause, in accordance with Section 5.10 and Section 6.06 of these By-laws, and to fill vacancies resulting from such removal.

*Section 3.02.12*

To review the annual financial report comprised of the Form 990 and annual audited financial statements of the Corporation's finances submitted by the Directors.

*Section 3.02.13*

To have access to all of the financial books, statements and records of the Corporation.

*Section 3.02.14*

To approve all Board-approved long-range strategic plans of this Corporation.

*Section 3.02.15*

To exercise or cause to be exercised every power reserved to this Corporation as a member of any other Corporation except for such powers as may otherwise be delegated by the Members to the Board of Directors.

*Section 3.03 — Interpretation*

The provisions of these By-Laws contained in this Article 3 shall control and govern the activities of this Corporation and any provision of the By-Laws contained in any other Article which is in conflict herewith shall be null and void.

**ARTICLE 4 — MEETINGS OF THE MEMBERSHIP OF THE CORPORATION**

*Section 4.01 — Annual Meetings*

The Annual Meeting of the Membership of the Corporation shall be held within ninety (90) days after the fiscal year-end of the Corporation, at the principal offices of the Corporation or at such other time and place as may be designated by the Members.

*Section 4.02 — Special Meetings*

Special Meetings of the Membership of the Corporation shall be held at the discretion and call of the Archbishop of New York or at the request of any three (3) Members.

*Section 4.03 — Regular Meetings*

Regular Meetings of the Membership of the Corporation shall be held with such frequency as shall be determined by the Members.

*Section 4.04 — Chair of Meetings*

The Archbishop of New York, as President of the Membership pursuant to Section 5.03, shall preside over and chair all Annual, Special, and Regular Meetings of the Membership of the Corporation.

*Section 4.05 — Notice of Meetings*

Notice of a meeting of the Membership of the Corporation, either Annual, Regular or Special, shall be mailed first class or by overnight express courier, or, emailed, faxed, or hand delivered to the Members of the Corporation not less than ten (10) days nor more than fifty (50) days before the date of the scheduled meeting. The notice of a Special Meeting shall state the purpose of the meeting. Only business stated in the notice may be transacted at such a meeting. Notice of any meeting need not be given to any Member who attends the meeting in person without objection or who waives notice thereof in writing or by email.

*Section 4.06 — Quorum*

The presence of five (5) Members shall be a quorum for any meeting of the Membership of the Corporation.

*Section 4.07 — Meeting by Telephone Conference Call*

Except for the Annual Meeting, any Regular or Special Meeting of the Membership of the Corporation may be held by telephone conference call under such circumstances that all Members participating may hear and be heard by all other Members participating.

## ARTICLE 5 — OFFICERS

### Section 5.01 — Officers

The Officers of the Corporation shall be a President of the Members, a Chairperson, a Vice-Chairperson, a Secretary, and a Treasurer. The Executive Officers of the Corporation, shall be a Chief Executive Officer, a Chief Investment Officer and such other Executive Officer positions as the Board of Directors may determine, subject to Member approval. Any two or more offices may be held by the same person except the offices of Chairperson and Secretary. Executive Officers shall not be members of the Board of Directors.

### Section 5.02 — Election

Except as otherwise provided in this Article 5 and except for the Archbishop of New York who shall all times serve as the President of the Membership pursuant to Section 5.03 hereof, Officers of the Corporation shall be elected by the Members of the Corporation at their Annual Meeting. In the event of a vacancy in an Officer position, such Officer may be elected by the Members at a Regular or Special Meeting of the Membership. All Officers of the Corporation, other than the President of the Membership, shall serve for a term of one (1) year until their successors are elected, such term commencing at the close of the meeting at which they are elected, or until his or her death, resignation, or removal. Officers may be elected for successive terms. Executive Officers shall be approved and retained by the Board of Directors subject to the approval of, and election by, the Members.

### Section 5.03 — President of the Membership

The Archbishop of New York shall be, *ex officio*, the President of the Membership. The President of the Membership shall preside over and chair all Annual, Special, and Regular Meetings of the Membership of the Corporation.

### Section 5.04 — Chairperson of the Board

At all times, the Chairperson shall be a person who is a member of the Board of Directors of the Corporation, but may not be a person who is an employee of the Corporation. He or she shall be elected by the Members of the Corporation at their Annual Meeting. The Chairperson of the Board of Directors shall preside over and chair all meetings of the Board of Directors. He or she shall be, *ex officio*, a member of all Committees of the Board of Directors, including the Executive Committee. The Chairperson shall perform such other duties as may be provided for by law, by these By-Laws, or by resolution of the Board of Directors.

### Section 5.05 — Vice-Chairperson of the Board

The Vice-Chairperson of the Board of Directors shall be elected from among the Directors by the Members of the Corporation at their Annual Meeting. In the absence of the Chairperson, the Vice-Chairperson shall preside over and chair meetings of the Board of Directors. When so acting as Chairperson, the Vice-Chairperson shall have all the powers and authority of the Chairperson. The Vice-Chairperson shall be, *ex officio*, a member of the Executive Committee of the Board of Directors. The Vice-Chairperson shall perform such other duties as may be provided for by the Board of Directors.

#### *Section 5.06 — Secretary*

The Secretary shall be elected from among the Directors by the Members of the Corporation at their Annual Meeting. The Secretary shall prepare an agenda and issue notices of all meetings of the Membership and the Board of Directors at the request of the President of the Membership and of the Chairperson of the Board of Directors. The Secretary shall record all meetings of the Membership and the Board of Directors, and affix the seal of the Corporation to written instruments when so directed by the Board of Directors and attest to such execution by his or her signature. The Secretary shall perform such other duties as are incidental to the office of Secretary of a not-for-profit corporation. The Board of Directors of the Corporation may appoint an Assistant Secretary to assist in the performance of the Secretary's duties. The Assistant Secretary need not be appointed from among the members of the Board of Directors of the Corporation.

#### *Section 5.07 —Treasurer*

The Treasurer shall be elected from among the Directors by the Members of the Corporation at their Annual Meeting. The Treasurer shall serve, *ex officio*, as a member of the Finance Committee of the Board of Directors. The Treasurer shall perform other duties as are incidental to the office of Treasurer of a not-for-profit corporation.

#### *Section 5.08 —Chief Executive Officer*

The Chief Executive Officer shall be the chief executive officer of the Corporation and shall report to the Board of Directors. The authority, powers, duties and responsibilities of the Chief Executive Officer shall be as follows:

- a) to be responsible for the implementation of all policies established by the Board of Directors;
- b) to be responsible for the preparation of an annual budget showing the anticipated receipts and expenditures of the Corporation;
- c) to be responsible for the selection, employment, control and discharge of all employees and the development and maintenance of personnel policies and practices for the Corporation that are not otherwise specified in these By-Laws;
- d) to be responsible for the supervising of the business affairs of the Corporation;
- e) to serve as staff to every committee of the Board of Directors and, if he or she is a director, to be eligible for election to all committees of the Board of Directors, except the Executive Committee and the Audit Committee;
- f) to take all reasonable steps to conform to all applicable federal, state and local laws and regulations; and
- g) to be responsible for the performance of such duties as may be in the best interests of the Corporation and such other duties as may be directed by the Board of Directors.

*Section 5.09 — Chief Investment Officer*

Subject to these By-Laws and to any resolutions of the Board of Directors and the Investment Committee, the Chief Investment Officer shall be responsible for investment of the Corporation's assets. Among his or her responsibilities, the Chief Investment Officer shall develop and recommend to the Investment Committee objectives and guidelines for the investment, allocation and spending of assets of the Corporation, and, in accordance with such objectives and guidelines as approved by the Investment Committee, shall have the authority and responsibility to operate the investment programs of the Corporation.

*Section 5.10 — Removal of Officers*

An Officer of the Corporation or an Executive Officer may be removed at any time with or without cause by a vote of a majority of the Membership. The removal of an Officer of the Corporation shall result in the simultaneous termination of his or her position on the Board of Directors without the need for the individual to voluntarily resign from the Board of Directors in accordance with the provisions of Section 6.05 of these By-Laws.

*Section 5.11 — Vacancies*

A vacancy occurring in any office during the year shall be filled by the Members of the Corporation in accordance with the provisions of Sections 5.02 of these By-Laws.

**ARTICLE 6 — BOARD OF DIRECTORS**

*Section 6.01 — Elected and Appointed Directors*

The Board of Directors shall have twenty (20) members as follows:

*Section 6.01.01*

Eight (8) Directors who shall be appointed by the Members of the Corporation, with each Member appointing one (1) such Director; *and*

*Section 6.01.02*

Twelve (12) Directors who shall be elected by the Members of the Corporation by majority vote.

*Section 6.02 — Qualifications*

*Section 6.02.01*

Only persons nineteen (19) years of age or older who have a demonstrated interest in the philanthropic purposes of the Corporation and have accepted the principle that the Corporation shall operate in conformity with tenets and teachings of the Roman Catholic Faith as reflected in the doctrines and directives published by the National Conference of Catholic Bishops as provided in Section 1.02 of these By-Laws, shall be eligible for election.

*Section 6.02.02*

In the election or appointment of Directors, the Board of Directors and the Members shall ensure that the composition of the Board of Directors encompasses

a diversity of backgrounds and business expertise, including, for example, individuals from the finance, insurance and/or managed care, law, health, medical, and philanthropic industries and participants from Catholic Charities and other Catholic Health and Human Services ministries.

### *Section 6.03 — Terms of Office*

#### *Section 6.03.01*

Directors shall be divided into three (3) classes as nearly equal in number as may from time to time be practicable. The term of office of each such class shall be three (3) years and shall expire in successive years.

#### *Section 6.03.02*

Directors may be appointed or elected to successive terms, provided, however, that commencing as of their Tenure Start Date, as defined below, Directors shall be permitted to serve a maximum of three (3) consecutive three (3) year terms. Thereafter, Directors who have served the maximum number of terms shall be eligible to be appointed or elected to new terms on the Board of Directors only after a period of not less than one (1) year has elapsed following the completion of their prior service.

#### *Section 6.03.03*

The initial terms of the three classes of Directors following [\_\_\_\_], 2018 shall be one (1), two (2), and three (3) years, respectively. After completion of their one- and two-year initial terms, the Directors in those classes thereafter be eligible to serve three-year terms. For purposes of calculating the term limit set forth in Section 6.03.02 of these By-Laws, the “Tenure Start Date” for Directors shall be as follows:

- a) For Directors who have served initial terms of one or two years, the Tenure Start Date shall be the date on which such Directors begin service of their first three-year term thereafter.
- b) For Directors who have served initial terms of three years, the Tenure Start Date shall be the date on which such Directors begin service of their initial three-year term following [\_\_\_\_], 2018.

#### *Section 6.03.03*

For any Director who commences his or her service to complete the unexpired portion of the term of a prior Director, the Tenure Start Date shall be the date on which such Director begins service of his or her first three year term after completing the unexpired term of the prior Director.

### *Section 6.04 — Vacancies*

Vacancies occurring on the Board of Directors for any reason may be filled by the Members in accordance with the provisions of Sections 6.01 and 6.02 of these By-Laws, provided, however, that for the eight (8) Directors appointed pursuant to Section 6.01.01, the Member that appointed the predecessor Director has the sole authority to fill the

respective vacancy. Any director elected or appointed to fill a vacancy shall hold office until the next Annual Meeting at which the election of directors is in the regular order of business, and until his or her successor is elected or appointed and qualified.

*Section 6.05 — Voluntary Termination of Board Position*

Any Director may withdraw from and terminate his or her position on the Board of Directors by delivering a written resignation to the Secretary.

*Section 6.06 — Removal of Directors*

*Section 6.06.01*

For the eight (8) Directors appointed pursuant to Section 6.01.01, each such Director may be removed (i) for cause by a 2/3-vote of the Membership, or (ii) with or without cause, at the sole discretion of the Member that appointed the Director pursuant to Section 6.01.01.

*Section 6.06.02*

For the twelve (12) Directors elected pursuant to Section 6.01.02, such Directors may be removed at any time with or without cause by a vote of a majority of the Membership.

**ARTICLE 7 — POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

*Section 7.01 — Powers of the Board of Directors*

The Board of Directors shall have responsibility for the management of the property and affairs of the Corporation. Subject to the provisions of Section 3.02.07 and 7.03 relating to real property and Section 3.02.09 relating to subventions, the Board of Directors shall have the power specifically to buy, sell, mortgage, lend, pledge and lease property; to invest and reinvest corporate funds; to borrow, make loans and issue guarantees.

*Section 7.02 — Property and Funds*

All property and funds of the Corporation shall be administered by the Board of Directors, subject to these By-Laws and applicable law. The Board of Directors shall use all financial resources to the best advantage of the Corporation.

*Section 7.03 — Sale, Mortgage or Lease*

No sale, mortgage or lease of real property of the Corporation shall be made without the approval of the Members of the Corporation.

*Section 7.04 — Duties of the Board of Directors*

*Section 7.04.01*

Directors shall discharge their duties in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.



*Section 7.04.02*

The Board of Directors shall ensure, through the Chief Executive Officer, compliance with all applicable federal, state and local statutes, laws, and regulations.

*Section 7.04.03*

The Board of Directors shall ensure, through the Chief Executive Officer, that all personnel policies and practices are established and maintained for the Corporation.

*Section 7.04.04*

The Board of Directors shall develop a program for the orientation of newly elected members of the Board of Directors and for the continuing education of all Board members. All programs of orientation and continuing education shall include thorough explanation of the Catholic identity, the mission of the Corporation, and the tenets and teachings of the Roman Catholic Faith as reflected in the doctrines and directives published by the National Conference of Catholic Bishops.

*Section 7.04.05*

The Board of Directors shall cause written minutes to be maintained of meetings of the Board and its committees including a record of attendance, which minutes shall be retained as a permanent record in the offices of the Corporation.

*Section 7.04.06*

The Board of Directors shall present at the Annual Meeting of the Membership an annual financial report, verified by the Chief Executive Officer and the Treasurer, or by a majority of the Directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail assets, liabilities, revenues and expenses of the Corporation. The annual financial report shall include the certified annual audit and the Corporation's financial statements, the Form 990 for the Corporation and the proposed annual budget of the Corporation. The Board of Directors shall provide the Members copies of all such documents at least ten (10) days prior to the Members' annual meeting at which the annual financial report will be presented.

*Section 7.05 — Compensation*

The Board of Directors shall have the authority to hire and fix the reasonable compensation of any and all employees which in the Board of Directors' discretion may determine to be necessary in the conduct of the business of the Corporation.

**ARTICLE 8 — MEETINGS OF THE BOARD OF DIRECTORS**

*Section 8.01 — Annual Meetings*

The Annual Meeting of the Board of Directors shall be held within ten (10) days after the Annual Meeting of the Membership of the Corporation.

*Section 8.02 — Regular Meetings*

Regular meetings of the Board of Directors shall be held at such times and with such frequency as may be determined by the Board.

*Section 8.03 — Special Meetings*

Special meetings of the Board of Directors shall be held at the discretion and call of the Chairperson of the Board or of any three (3) Directors.

*Section 8.04 — Notice of Special Meeting*

Notice of Special Meetings of the Board of Directors shall state the purpose of the meeting and shall be mailed, emailed, faxed, or delivered to all members of the Board of Directors not less than ten (10) business days before the date of the scheduled meeting. Only business stated in the notice may be transacted at the meeting. Notice of any meeting need not be given to any Director who attends the meeting without objection or who waives notice thereof in writing or by email.

*Section 8.05 — Quorum*

One-third ( $\frac{1}{3}$ ) plus two (2) of the members of the Board of Directors shall constitute a quorum for the conduct of business.

*Section 8.06 — Meeting by Telephone or Video Conference*

Except for the Annual Meeting, any Regular or Special Meeting of the Board of Directors or committee thereof may be held by means of a conference telephone or similar communications equipment or by electronic video screen communication, provided that all Directors participating may hear and be heard by all other Directors participating and each director can participate in all matters before the Board of Directors or the committee, including the ability to propose, object to, and vote upon specific actions.

*Section 8.07 — Voting*

Each member of the Board of Directors shall be entitled to cast one (1) vote on each matter presented to the Board for its approval at an Annual, Regular or Special Meeting of the Board. Except as otherwise provided in the Certificate of Incorporation or these By-Laws or required by law, the vote of a majority of the Directors present at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

*Section 8.08 — Action Without a Meeting*

Any action required or permitted to be taken by the Board of Directors, or by any committee thereof, may be taken without a meeting if all members of the Board of Directors or of any such committee consent in writing or electronically to the adoption of a resolution authorizing the action. If written, the consent must be executed by the director by signing such consent or causing his or her signature to be affixed to such consent by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by email and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the director. The resolution and the consents thereto by the members of the Board of Directors or any such committee shall be filed with the minutes of the proceedings of the Board of Directors or of any such committee.

*Section 8.09 — Compensation*

No compensation of any kind shall be paid to any Director for the performance of his or her duties as Director. The provisions of this section shall not in any way limit reimbursement for out-of-pocket expenses of a director incurred in connection with his or her duties as a Director.

*Section 8.10 — Order of Business*

The suggested order of business for Regular Meetings of the Board of Directors shall be as follows:

- (a) Opening of meeting and prayer
- (b) Roll call
- (c) Previous minutes
- (d) Report of the Chairperson of the Board of Directors
- (e) Report of the Treasurer
- (f) Report of the Chief Executive Officer
- (g) Reports of Committees
- (h) Unfinished business
- (i) New business
- (j) Adjournment.

*Section 8.11 — Parliamentary Procedure*

Parliamentary procedure shall be followed when not in conflict with any of these By-Laws. The rules of parliamentary procedure shall be *Robert's Rules of Order*.

**ARTICLE 9 — COMMITTEES**

*Section 9.01 — Committees of the Board*

Members of the Committees of the Board of Directors shall be appointed by the Board of Directors from among the Directors, subject to the approval of the Membership, except that in the case of the Executive Committee, the members thereof shall be appointed by a majority of the entire Board, subject to the approval of the Membership. Committee members shall serve at the pleasure of the Board and may be removed, with or without cause, at any time by the vote of a majority of the entire Board, subject to the approval of the Membership. The following shall be the Committees of the Board of Directors:

*Section 9.01.01 — Executive Committee*

The Executive Committee shall consist of five (5) Directors, the Chairperson, the Vice-Chairperson and three (3) additional Directors. The Executive

Committee shall have, and may exercise, all the authority of the Board of Directors during intervals between meetings of the Board, except as limited by Section 9.01.07 or by the New York Not-for-Profit Corporation Law. Any action taken by the Executive Committee between meetings of the Board of Directors shall be reported to the Board of Directors at its next meeting.

*Section 9.01.02 — Finance Committee*

The Finance Committee shall consist of the Treasurer of the Corporation plus at least three (3) other Directors. The Finance Committee shall (i) review and recommend for Board approval policies related to the Corporation's financial condition, budget, investments, and reserves; (ii) review regular financial reports to assess the financial status of the Corporation; (iii) review the annual operating and capital budgets to help ensure compliance with organizational policies and strategic focus, and recommend a budget to the Board for approval; (iv) be responsible for the administration of the Corporation's real property; and (v) perform such other duties as may be delegated to it by the Board.

*Section 9.01.03 — Audit Committee*

The Audit Committee shall consist of at least three (3) Directors, all of whom must be "independent directors" as defined by Section 102 of the Not-for-Profit Corporation Law of the State of New York. The Audit Committee shall be responsible for overseeing the accounting and financial reporting processes of the Corporation and the audit of the Corporation's financial statements. Among its responsibilities, the Audit Committee shall: (i) annually retain, or renew the retention of, an independent auditor to conduct an audit of the Corporation's financial statements; (ii) review with the independent auditor the scope and planning of the audit prior to its commencement; (iii) review with the independent auditor the results of the audit (including the management letter) and review and discuss with the independent auditor any material risks and weaknesses in internal controls identified by the auditor, any restrictions on the scope of the auditor's activities or access to requested information, any significant disagreements between the auditor and management and the adequacy of the Corporation's accounting and financial reporting processes; (iv) annually consider the performance and independence of the auditor; (v) oversee any other aspect of risk assessment and management; and (vi) report its activities to the Board. The Audit Committee shall also oversee compliance with the Corporation's Conflict of Interest Policy and Whistleblower Policy.

*Section 9.01.04 — Investment Committee*

The Investment Committee shall consist of at least three (3) Directors. The Investment Committee shall have responsibility for (i) overseeing the Chief Investment Officer's management of the Corporation's investments, (ii) recommending to the Board the selection of investment managers as well as investment objectives and guidelines for the Corporation, subject to the Members' approval, (iii) monitoring the performance of the investment portfolio and the performance of any outside investment advisers or managers, and (iv), and reporting on such performance to the Board.

*Section 9.01.05 — Statewide Grants Committee*

The Statewide Grants Committee shall consist of at least three (3) Directors. The Statewide Grants Committee shall be responsible for (i) reviewing, or causing to be reviewed, grant applications or proposals received from applicants throughout New York State in accordance with the Corporation's Annual Grantmaking Plan approved by the Members pursuant to Section 3.02.05 hereof; (ii) making recommendations on grantmaking guidelines and policies for approval by the Board of Directors with respect to such grants; and (iii) recommending to the Board whether to grant or deny such grant applications or proposals presented to the Corporation with respect to such grants. The recommendations of the Grants Committee shall not be binding on the Board of Directors, who shall have final authority with respect to the awarding of grants in accordance with the Annual Grantmaking Plan.

*Section 9.01.06 — Regional Grants Committee*

The Regional Grants Committee shall consist of the eight (8) Directors appointed pursuant to Section 6.01.01 of these By-Laws. The Regional Grants Committee shall be responsible for reviewing and approving grant applications or proposals made to the Corporation from applicants in eight (8) designated regions across the State to ensure that each region receives proportionate funding in accordance with the Annual Grantmaking Plan.

*Section 9.01.07— Restrictions on Authority*

No Committee of the Board of any kind shall have authority as to the following matters:

- (a) The submission to Members of any action requiring Members' approval.
- (b) The filling of vacancies in the Board of Directors or in any Committee.
- (c) The fixing of compensation of the Directors for serving on the Board or any Committee.
- (d) The amendment or repeal of these By-Laws or the adoption of new by-laws.
- (e) The amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable.
- (f) The election or removal of Officers or Directors.
- (g) The approval of a merger or plan of dissolution.
- (h) The adoption of a resolution recommending to the Members action on the sale, lease, exchange or other disposition of all or substantially all the assets of the Corporation.

- (i) The approval of amendments to the Certificate of Incorporation.

*Section 9.02 — Committees of the Corporation*

The Board of Directors may create one or more committees, other than Committees of the Board, to carry out such functions as the Board may specify and as permitted by law, which will be “committees of the Corporation.” A committee of the Corporation shall not have the authority to bind the Board or the Corporation. The members of committees of the Corporation need not be Directors of the Corporation.

*Section 9.03 — Operations of Committees*

At each meeting of a committee, the presence of a majority of the members of the committee will be necessary to constitute a quorum. The vote of a majority of the members of a committee present at any meeting at which there is a quorum shall be required to constitute the act of the committee.

*Section 9.04 — Meetings, Notices, and Records*

Each committee may provide for the holding of regular meetings, with or without notice, and may fix the time and place at which such meetings shall be held. Special meetings of each committee shall be held at the direction of its Chair, or if there is no Chair, by or at the direction of any of its members, at the time and place specified in the respective notices or waivers of notice thereof. Notice of each special meeting of a committee shall be given by mail, email, fax, or hand delivery to each member of such committee, at least twenty-four (24) hours before the meeting. Notice of any meeting of a committee need not be given to any member thereof who attends the meeting without objection or who waives notice thereof in writing or by email

## **ARTICLE 10 — INDEMNIFICATION AND INSURANCE**

*Section 10.01 — Indemnification*

To the fullest extent permitted by law:

- (a) The Corporation shall indemnify any person (and that person’s heirs, executors, guardians, administrators, assigns and any other legal representative of that person) who was or is a party or is threatened to be made a party to or is involved in (including as a witness) any threatened, pending, or completed action, suit, proceeding or inquiry (brought in the right of the Corporation or otherwise), whether civil, criminal, administrative, or investigative, and whether formal or informal, including appeals, by reason of the fact that the person is or was a Member, Director or Officer of the Corporation, or, while a Member, Director or Officer of the Corporation, is or was serving at the request of the Corporation as a member, director, officer, trustee, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, for and against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by that person or that person’s heirs, executors, guardians, administrators, assigns or legal representatives in connection with that action, suit, proceeding or inquiry, including appeals.

Notwithstanding the foregoing, the Corporation shall indemnify any person seeking indemnification in connection with an action, suit, proceeding or inquiry (or part thereof) initiated by that person only if that action, suit, proceeding or inquiry (or part thereof) was authorized by the Board.

(b) No indemnification shall be made to or on behalf of a Director or Officer if a judgment or other final adjudication adverse to the Director or Officer establishes that his or her acts were committed in bad faith or were the result of active or deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

(c) Any indemnification made pursuant to this Article will be authorized according to the procedures set forth in Section 723 of the New York Not-for-Profit Corporation Law.

(d) The Corporation shall pay expenses as incurred by any person described in subsection (a) of this Article in connection with any action, suit, proceeding or inquiry described in subsection (a) of this Article; provided, that, if these expenses are to be paid in advance of the final disposition (including appeals) of an action, suit, proceeding or inquiry, then the payment of expenses shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of the person, to repay all amounts so advanced if it is ultimately determined that the person is not entitled to be indemnified under this Article or otherwise.

(e) The provisions of this Article shall be applicable to all actions, suits, proceedings or inquiries made or commenced after the adoption of this Article, whether arising from acts or omissions occurring before or after its adoption. The provisions of this Article shall be deemed to be a contract between the Corporation and each Director or Officer who serves in such capacity at any time while this Article and the relevant provisions of the laws of the State of New York and other applicable law, if any, are in effect, and any repeal or modification of this Article will not adversely affect any right or protection of any person described in subsection (a) in respect of any act or omission occurring prior to the time of the repeal or modification.

(f) If any provision of this Article is found to be invalid or limited in application by reason of any law or regulation, that finding shall not affect the validity of the remaining provisions of this Article. The rights of indemnification provided in this Article are neither exclusive of, nor shall be deemed in limitation of, any rights to which any person described in subsection (a) of this Article may otherwise be entitled or permitted by contract, the Certificate of Incorporation of the Corporation, vote of the Board, or otherwise, or as a matter of law, both as to actions in the person's official capacity and actions in any other capacity while holding such office, it being the policy of the Corporation that indemnification of any person described in subsection (a) of this Article shall be made to the fullest extent permitted by law.

(g) For purposes of this Article, reference to “other enterprises” include employee benefit plans; reference to “fines” include any excise taxes assessed on a person with respect to an employee benefit plan; and reference to “serving at the request of the Corporation” include any service as a Director or Officer of the Corporation which imposes duties on, or involves services by, that Director or Officer with respect to an employee benefit plan, its participants, or beneficiaries.

(h) The Corporation may, by vote of the Board, provide indemnification and advancement of expenses to current or former employees and agents of the Corporation

*Section 10.02 — Insurance*

The Corporation may, to the extent permitted by law, purchase and maintain insurance on behalf of any person described in Section 10.01(a) against any liability asserted against that person, whether or not the Corporation would have the power to indemnify the person against that liability under the provisions of this Article or otherwise. To the extent permitted by law, such insurance may insure the Corporation for any obligation it incurs as a result of this Article or operation of law.

**ARTICLE 11 — AMENDMENTS<sup>p</sup>**

*Section 11.01 — Amendments*

These By-Laws may be amended or repealed by the Members at any Annual, Regular or Special Meeting of the Membership, as provided by Section 3.02.04 of these By-Laws.

**ARTICLE 12 — GENERAL PROVISIONS**

*Section 12.01 — Required Policies*

The Board of Directors shall adopt a Conflict of Interest Policy, a Whistleblower Policy and an Investment Policy, each of which shall comply with the applicable provisions of the New York Not-for-Profit Corporation Law.

*Section 12.02 — Books and Records*

The Corporation shall keep at the principal office of the Corporation within the State of New York correct and complete books and records of account and shall keep minutes of the proceedings of the Board of Directors and/or any committee which the Board may appoint, and a list or record containing the names and addresses of all Directors and Members. Any of the foregoing books, minutes, lists or records may be in written form or in any other form capable of being converted into written form within a reasonable time. Each and all of the Corporation’s books, minutes, lists and records shall be made available to review by the Members by written request.

*Section 12.03 — Corporate Seal*

The corporate seal, if any, shall be in such form as the Board of Directors shall prescribe.



*Section 12.04 — Fiscal Year*

The fiscal year of the Corporation shall be fixed and shall be subject to change by resolution of the Board of Directors.

*Section 12.05 — Deposits, Checks, and Notes*

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors, with approval of the Membership, may select. All deposits shall be made in the name of the Corporation. Checks, notes, drafts, bills of exchange, acceptances, undertakings, or other instruments or orders for the payment of money shall be signed by such Officers or agents as the Board may from time to time designate or shall bear the facsimile signature of such Officers or agents as the Board may from time to time designate.

*Section 12.06 — Investments*

The funds of the Corporation may be retained, in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board of Directors may deem desirable, with approval of the Membership and with regard to the limitations, if any, now imposed or which may hereafter be imposed by law regarding such investments.

# EXHIBIT 37

## Foundation's Mission Statement

DRAFT

**MOTHER CABRINI HEALTH FOUNDATION, INC.**

**MISSION STATEMENT**

The mission of the Mother Cabrini Health Foundation is to improve the health and wellness of the poor, disabled, disadvantaged, elderly and underserved people of New York State and their families by engaging in, promoting, sponsoring and supporting activities, programs and initiatives that enhance access to affordable quality healthcare and healthcare-related services and address the unmet healthcare and healthcare related needs of communities across New York State, including, in each case, the Social Determinants of Health, consistent with the ethical principles, tenets and teachings of the Roman Catholic Faith.

# EXHIBIT 38

## Foundation's Non-discrimination Policy

DRAFT

**MOTHER CABRINI HEALTH FOUNDATION, INC.**

**NON-DISCRIMINATION POLICY**

The Mother Cabrini Health Foundation, Inc. (the “Corporation”) honors a non-discrimination policy. No person shall, regardless of race, color, religion, national origin, sex, age, or disability be excluded from participation in, be denied benefits of, or be subjected to unlawful discrimination under any program or activity receiving, benefiting from or administered by the Corporation.

# EXHIBIT 39

## Proposed List of Initial Board Members

MOTHER CABRINI HEALTH FOUNDATION, INC.

INITIAL BOARD MEMBERS

Alfred F. Kelly, Jr., Chair	Alfred F. Kelly Jr. has served as Chief Executive Officer of Visa, Inc. since December 1, 2016 and has been a member of Visa's Board of Directors since 2014. Mr. Kelly previously held senior executive positions at various firms, including President of American Express Company and President and Chief Executive Officer of Intersection, a digital and technology media company. Mr. Kelly currently serves as a Director of MetLife Inc. (until June 2018), a Trustee of the New York Presbyterian Hospital, and a Trustee of Boston College.
Robert M. Bennett	Robert M. Bennett served as the Chancellor of the New York State Board of Regents from March 2002 through April 2009 and a member of the Board of Regents from 1995 through 2015. Mr. Bennett served as President and Chief Executive Officer of the United Way of Buffalo and Erie County from 1985 through 2000. Mr. Bennett is currently a Trustee of the Statler Foundation and previously served as Chairman, Vice Chairman and Trustee of the Health Foundation for Western and Central New York. Mr. Bennett also previously served as a Director of the John R. Oishei Foundation.
Kathryn Connerton	Kathryn Connerton has served as the President and Chief Executive Officer of Lourdes Hospital in Binghamton, New York since December 2014. Ms. Connerton also serves as the Chairperson of Care Compass Network, a not-for-profit community network comprising 180 partner organizations whose mission is to improve the health and life of Medicaid members in the Southern Tier of New York. Ms. Connerton previously served as Vice President of Bon Secours Health System Inc., Chief Operating Officer of Bon Secours Venice Healthcare Corporation and Vice President and General Counsel of Lourdes Hospital in Binghamton, New York.
Samuel A. DiPiazza, Jr.	Samuel A. DiPiazza Jr. is the Chairman of the Board of Trustees of The Mayo Clinic, one of the nation's preeminent healthcare organizations. Until 2010, Mr. DiPiazza served as the Chief Executive Officer of PricewaterhouseCoopers International Limited. After

	<p>stepping down from PricewaterhouseCoopers, Mr. DiPiazza served as the Vice Chairman of Global Corporate and Investment Bank at Citigroup, Inc. from 2011 to 2014. Mr. DiPiazza currently serves as a Trustee for the Inner-City Scholarship Fund and a Trustee and Executive Committee Member of the National September 11<sup>th</sup> Memorial &amp; Museum. Mr. DiPiazza is the former Chairman of The Conference Board and The World Business Council on Sustainable Development. He is also the former President of Big Brothers/Big Sisters of New York City and the former Global Chairman of Junior Achievement Worldwide.</p>
Laura L. Forese, MD	<p>Laura L. Forese, MD is the Executive Vice President and Chief Operating Officer of NewYork-Presbyterian, a leading provider of high-quality, innovative health care throughout the New York City region, in collaboration with the medical schools of Columbia and Weill Cornell. NewYork-Presbyterian is recognized among the best hospitals in the country by USNews and as a best place to work by Forbes and Fortune. Dr. Forese has ultimate operational responsibility for the NewYork-Presbyterian enterprise - 10 campuses and more than 30,000 employees, 3500 beds, and \$7.8B in revenue. Additionally, Dr. Forese chairs the board of the NIH Clinical Center; she is also a Trustee of Princeton University and a Director of Candel Medical. Dr. Forese has been named among the 50 most powerful women in New York by Crain's Business, the top 25 COOs in Healthcare by Modern Healthcare Magazine and has been honored as Mother of the Year by the American Cancer Society.</p>
Stanley E. Grayson	<p>Stanley E. Grayson served as the President and Chief Operating Officer at M.R. Beal &amp; Co. Prior to joining M.R. Beal &amp; Co., Mr. Grayson served as the Managing Director and Manager of Prudential Securities Public Finance Department and Vice Present at Goldman, Sachs &amp; Co. in the municipal bond's department infrastructure and general banking group. Previously, Mr. Grayson served in several senior positions within New York City government, including Deputy Mayor of Finance and Economic Development, Finance Commissioner and Chief Executive Officer of the New York City Industrial Development Agency. Mr. Grayson currently serves on the Board of the YMCA of Greater New York and as a Trustee of Holy Cross</p>



	<p>College. Mr. Grayson previously served as a Director of the Catholic Charities of the Archdiocese of New York, Alliance for Downtown New York Inc. and Brooklyn Information and Culture (BRIC) as well as Trustee of The Churchill School and Center.</p>
Carla Harris	<p>Carla Harris is Vice Chairman, Global Wealth Management and Senior Client Advisor at Morgan Stanley. Ms. Harris is the past Chair of the Board of the Morgan Stanley Foundation , The Executive Leadership Council and The Food Bank of New York City. Ms. Harris is currently a member of the Board of Overseers of Harvard University, a member of the Board of Directors of A Better Chance, Inc., Sponsors for Educational Opportunity (SEO) and of St. Vincent's Healthcare. In August 2013, Carla was appointed by President Barack Obama as Chair the National Women's Business Council.</p>
Catherine R. Kinney	<p>Catherine R. Kinney served as the President and Co-Chief Operating Officer of the New York Stock Exchange from 2002 to 2008. Prior to that, Ms. Kinney served as the Executive Vice President of the New York Stock Exchange. Ms. Kinney is a member of the Board of Directors of MetLife, MSCI and Quality Technology Services. She serves as the Chairman of the Board of Catholic Charities of the Archdiocese of New York. Ms. Kinney previously served on the Boards of the New York City Ballet, Georgetown University, NetSuite and Depository Trust Company.</p>
Sister Pietrina Raccuglia, MSC	<p>Sister Pietrina Raccuglia, MSC is the President and Chair of the Board of the New York City-based Cabrini Mission Foundation. The Cabrini Mission Foundation supports programs that provide healthcare, education, and social services for women, children, immigrants, and the elderly. Sister Pietrina also serves on the Board of Trustees of the Cabrini University and Cabrini Senior Housing in Seattle. Sister Pietrina also served in Provincial Leadership for nine years.</p>
Kathryn Ruscitto	<p>Kathryn Ruscitto served as the President and Chief Executive Officer of St. Joseph's Health from 2011 through 2017. St. Joseph's Health, a non-profit regional health care system based in Syracuse, N.Y., has stood as a community landmark since 1869 and</p>

	<p>today has over 5000 employees and physicians. Previously, Ms. Ruscitto served as Senior Vice President of Strategy at Loretto, the largest provider of elder care in Central New York, and as the Administrator for Human Services of Onondaga County. Ms. Ruscitto previously served as a Member and Trustee of Healthcare Association of New York State from 2013-2017, member of the Iroquois Executive Committee, and a member of the Executive Committee of the CenterState Corporation for Economic Opportunity.</p>
Kevin Ryan	<p>Kevin Ryan currently serves as the President and Chief Executive Officer of Covenant House, one of the largest charities in North and Central America providing shelter, food, immediate crisis care, and an array of other services to homeless, runaway and trafficked young people. Founded in 1972, Covenant House's work has been recognized with several of the world's most distinguished human rights awards, including the Conrad Hilton Humanitarian Award, the WOLA Human Rights Prize and the Olof Palme Peace Prize. Mr. Ryan previously served as the first public Child Advocate in New Jersey and the first Commissioner of the New Jersey Department of Children and Families, where he led a reform of the State's child welfare system.</p>
Robert Unanue	<p>Robert Unanue is the President and Chief Executive Officer of Goya Foods, Inc., the largest Hispanic-owned food company in the United States. Under Mr. Unanue's leadership, Goya Foods has supported more than 250 nonprofit organizations that seek to improve the wellness of Hispanic communities. Through its "Can Do campaign," Goya partners with Feeding America and local foodbanks to donate a minimum of 600,000 pounds of Goya products to citizens who lack access to nutritious foods. Mr. Unanue served as a Director of the United States Hispanic Chamber of Commerce.</p>

## EXHIBIT 40

### Proposed List of the Initial Members of the Investment and Audit Committees

MOTHER CABRINI HEALTH FOUNDATION, INC.

PROPOSED INITIAL MEMBERS OF THE INVESTMENT AND AUDIT COMMITTEES

Investment Committee:

Stanley E. Grayson

Alfred F. Kelly, Jr.

Catherine R. Kinney

Audit Committee:

Samuel A. DiPiazza, Jr.

Robert M. Bennett

Kathryn Connerton

# EXHIBIT 41

## Foundation's Conflict of Interest Policy

**MOTHER CABRINI HEALTH FOUNDATION, INC.**

**CONFLICT OF INTEREST POLICY**

The Board of Directors (the “Board”) of the Mother Cabrini Health Foundation, Inc. (the “Corporation”) has adopted this Conflict of Interest Policy (the “Policy”) to:

- Protect the interests of the Corporation;
- Describe circumstances that may give rise to conflicts of interest, including those that may result in an “excess benefit transaction” under Section 4958 of the Internal Revenue Code of 1986, as amended (the “Code”) and/or a Related Party Transaction under Section 715 of the New York Not-for-Profit Corporation Law; and
- Set forth the appropriate procedures for identifying, monitoring, reporting and addressing conflicts of interest in accordance with legal requirements and fiduciary duties.

This Policy is intended to comply with Section 715-a of the New York Not-for-Profit Corporation Law, effective July 1, 2014 as amended, and supplement, but not replace, any other applicable federal or state laws or regulations.

**A. Definitions**

In addition to the definitions set forth in the provisions of this Policy, the following terms shall have the meanings ascribed to them below:

“Affiliate” means any entity controlled by, or in control of, the Corporation.

“Director” means a member of the Board of Directors.

“Financial Interest” means any economic benefit, direct or indirect, that is received or that will be received from any transaction, agreement or other arrangement involving the Corporation, including direct or indirect remuneration, as well as gifts or favors that are not *de minimis* in value.

“Key Person” means any person, other than a Director or Officer (whether or not an employee of the Corporation) who (i) has responsibilities, or exercises powers or influence over the Corporation as a whole similar to the responsibilities, powers or influence of a Director or Officer; (ii) manages the Corporation, or a segment of the Corporation that represents a substantial portion of the activities, assets, income or expenses of the Corporation; or (iii) alone or with others controls or determines a substantial portion of the Corporation’s capital expenditures or operating budget.

“Officer” means an individual appointed or elected by the Board to serve as an officer of the Corporation.

“Related Entity” means any entity in which a Director, Officer, or Key Person of the Corporation or an Affiliate of the Corporation, or a Relative of any such individual, has a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%).

“Related Party” means (i) any Director, Officer or Key Person of the Corporation or an Affiliate of the Corporation; (ii) any Relative of a Director, Officer or Key Person of the Corporation or an Affiliate of the Corporation; or (iii) any Related Entity of a person described in clause (i) or (ii).

“Related Party Transaction” means any transaction, agreement or other arrangement in which a Related Party has a Financial Interest and in which the Corporation or any Affiliate of the Corporation is a participant.

“Relative” means an individual’s spouse, domestic partner, parent, ancestor, child, grandchild, great-grandchild or sibling, and the spouse or domestic partner of a child, grandchild, great-grandchild or sibling.

**B. Procedures for Disclosing and Addressing Conflict Transactions**

1. A conflict of interest will be deemed to arise under this Policy whenever a Director, Officer or Key Person of the Corporation contemplates entering into a Related Party Transaction or (ii) has a non-financial interest in a transaction that could reasonably be perceived to impair such individual’s ability to independently and objectively discharge his or her responsibilities and duties to the Corporation (each, a “Conflict Transaction”).
2. When a Director, Officer or Key Person of the Corporation becomes aware that he or she, or his or her Relatives or Related Entities, may be involved in a Conflict Transaction, he or she shall immediately disclose in writing the existence and material facts of the Conflict Transaction, including the details of any Financial Interest, to the Chair of the Audit Committee of the Board (the “Audit Committee”). In the event the Chair of the Audit Committee must disclose a Conflict Transaction, he or she shall make such disclosure to the Chair of the Board.
3. No Conflict Transaction may be entered into by the Corporation unless the Audit Committee determines that the Conflict Transaction is fair, reasonable and in the best interest of the Corporation.
4. In determining whether to approve a Conflict Transaction in which a Related Party has a “substantial financial interest” (as such term is interpreted from time to time for purposes of Section 715 of the New York Not-for-Profit Corporation Law), the Audit Committee shall also:
  - a. Consider alternative transactions to the extent available;
  - b. Approve the Conflict Transaction by not less than a majority vote of the disinterested Directors present at the meeting of the Audit Committee; and

- c. Contemporaneously document in the meeting minutes the basis for the Audit Committee's approval of the Conflict Transaction, including its consideration of any alternative transactions.
- 5. To ensure the objectivity and independence of the decision-making process, the Director, Officer or Key Person who is involved in the Conflict Transaction:
  - a. Shall not be present for or participate in the deliberation or vote on the Conflict Transaction (however, such person may participate in the information-gathering stage of the Audit Committee's review);
  - b. If a Director, shall not vote on the Conflict Transaction; and
  - c. Shall not improperly influence the deliberation or vote on the Conflict Transaction.
- 6. All Audit Committee determinations regarding Conflict Transactions, including all questions as to whether a Related Party has a Financial Interest or substantial financial interest in a Conflict Transaction, shall be resolved by a majority vote of the disinterested Directors present at the meeting. An interested individual, if he or she is a Director, may be counted for quorum purposes but, as set forth above, may not be present for or participate in the deliberation or vote on the Conflict Transaction.
- 7. In making such determination, the disinterested Directors shall also take into account the rules applicable to excess benefit transactions under Section 4958 of the Code. In particular, if the contemplated transaction pertains to compensation for services or the transfer of property or other economic benefit to a Related Party, the Audit Committee must determine that the value of the economic benefit provided by the Corporation to the Related Party does not exceed the value of the consideration received in exchange by obtaining and reviewing appropriate comparable data prior to entering the transaction. Such determination should be based on comparability data, including, for example, compensation surveys, market data, independent property appraisals, competitive offers or bids received for the services or properties, or other relevant data or information.
- 8. The minutes of the meeting of the Audit Committee considering the Conflict Transaction shall be documented contemporaneously and shall, to the extent applicable:
  - a. Reflect that the Related Party's interest in the Conflict Transaction was disclosed;
  - b. Describe the nature of the conflict of interest;
  - c. State the names of the persons who were present for the deliberations and voting on the Conflict Transaction, and that the relevant Director, Officer, or Key Person left the meeting during the deliberations and voting. If a Director, state that the Director did not vote on the Conflict Transaction;
  - d. Describe the action taken by the Audit Committee relating to the Conflict Transaction (e.g., approval or disapproval). If the Conflict Transaction was



approved, state the basis for the Audit Committee's determination that the Conflict Transaction was fair, reasonable and in the best interest of the Corporation; and

- e. Describe any consideration of comparability data and/or alternative transactions by the Audit Committee.

**C. Conflict of Interest Disclosure Statements**

1. Each Director, Officer and Key Person of the Corporation shall complete and sign a conflict of interest disclosure statement prior to his or her election or appointment as a Director, Officer or Key Person, as applicable, and thereafter on an annual basis (in the form set forth in Appendix A hereto).
  - a. Each such individual shall submit the disclosure statements to the Chair of the Audit Committee. The Chair of the Audit Committee shall notify the Audit Committee of any matters requiring Audit Committee review.
  - b. Each disclosure statement shall identify, to the best of the Director's, Officer's or Key Person's knowledge, (i) any entity of which the Director, Officer or Key Person is an officer, director, trustee, member, owner (either as a sole proprietor or partner) or employee and with which the Corporation has a relationship, (ii) any Financial Interest (either directly or through a Related Entity) in any corporation, organization, partnership or other entity which provides professional or other goods or services to the Corporation for a fee or other compensation, and (iii) any Conflict Transaction in which such Director, Officer or Key Person or any of his or her respective Relatives or Related Entities is involved or expects to be involved.
2. In accordance with Section B.2. above, in addition to completing the annual disclosure statement, during the course of the year, Directors, Officers, and Key Persons shall report promptly to the Chair of the Audit Committee any potential conflict of interest as and when it arises.
3. The Audit Committee may, in its sole discretion, elect to treat any relationship or potential conflict of interest disclosed by any Director, Officer or Key Person of the Corporation as a "Conflict Transaction" subject to the terms of this Policy.

**D. Additional Conflict of Interest Guidelines**

In addition to the guidelines and procedures for Conflict Transactions set forth above, no Director, Officer or Key Person of the Corporation shall:

- a. Divulge to any outside source any confidential information regarding the Corporation;
- b. Utilize any information secured by reason of their position, for personal advantage or profit, unless the information was equally available to the general public;

- c. Accept commissions, gifts, credit, loans, entertainment or any other favors from outside parties in connection with any transaction entered into by the Corporation, which go beyond courtesies of *de minimis* value associated with acceptable business practices; and
- d. Pursue or assume outside employment and other activities which interfere with their duties or which involve obligations that may conflict with the interest of the Corporation.

**E. Compliance with Policy.**

If the Audit Committee has reasonable cause to believe any individual covered by this Policy has failed to disclose an actual or possible conflict of interest, including any Financial Interest, it shall notify such individual of its belief and afford him or her an opportunity to explain the alleged failure to disclose. If, upon its review, the Audit Committee determines that the individual involved has failed to comply with this Policy, such individual shall be subject to appropriate disciplinary and corrective action.

\* \* \* \*

This Policy was adopted by the Corporation's Board of Directors on \_\_\_\_\_.

**Appendix A**

**MOTHER CABRINI HEALTH FOUNDATION, INC.**

**CONFLICT OF INTEREST DISCLOSURE STATEMENT**

**Name:** \_\_\_\_\_

1. Please list below each corporation, organization, or other entity in which you serve as a director, officer, trustee, member or employee, or in which you hold a thirty-five percent (35%) or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent (5%). *(Please attach additional pages if necessary).*

Entity Name	Role and/or Relationship

2. Do you, or any Relative, (a) serve as a director, officer, trustee, member, owner (either as a sole proprietor, a partner or substantial shareholder) or employee of any corporation, organization, partnership or other entity with which the Mother Cabrini Health Foundation, Inc. (the "Corporation") has or expects to have a financial, business or other relationship, or (b) have any Financial Interest (either directly or through a Related Entity) in any corporation, organization, partnership or other entity which provides goods or services to the Corporation for a fee or other compensation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, (1) provide the name of each such entity, (2) provide your or your Relative's position with, or Financial Interest in, each such entity, and (3) disclose all material facts and other relevant information relating to the Corporation's relationship with each such entity. *(Please attach additional pages if necessary).*

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3. During the past 12 months, did you or any Relatives or Related Entities accept any gifts, gratuities, loans, entertainment or any other favors or items of value from outside parties in connection with any transaction entered into by the Corporation, which go beyond courtesies of *de minimis* value associated with acceptable business practices?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, disclose all material facts and other relevant information relating to the receipt of such items of value, including the name of the entity providing the items and the monetary value of such items. *(Please attach additional pages if necessary).*

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4. Other than as disclosed above, are you or any Relative involved, or do you or a Relative expect to be involved, in a Conflict Transaction or any other transaction, agreement or arrangement that may give rise to a conflict of interest (including, for the avoidance of doubt, through any Related Entity)? For these purposes include any transaction which would otherwise be exempt under the definition of Related Party Transaction.

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, please (1) identify all of the parties to each such transaction, (2) disclose all material facts concerning your interest in each such transaction, or any other Related Party's interest in each such transaction, and (3) disclose all other information relevant to each such transaction. *(Please attach additional pages if necessary).*

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Capitalized terms not defined herein have the same meaning as in the Corporation's Conflict of Interest Policy, a copy of which is attached hereto.

\*\*\*\*\*

I hereby certify that I have received a copy of the Corporation's Conflict of Interest Policy (attached hereto), have read and understand the policy, and agree to abide by it.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# EXHIBIT 42

## Foundation's Investment Policy

## **MOTHER CABRINI HEALTH FOUNDATION, INC.**

### **INVESTMENT POLICY**

#### **Purpose**

The purpose of this Investment Policy is to set forth the standards and guidelines governing the investment and management of the investment assets (the "Investment Portfolio") of the Mother Cabrini Health Foundation, Inc. (the "Foundation"). The Foundation's policies and procedures with respect to investing, managing and spending from the Investment Portfolio are governed by and shall comply with The New York Prudent Management of Institutional Funds Act ("NYPMIFA").

#### **Investment Objectives**

The goals of the Foundation's investment program are to (1) earn at least enough of a return to achieve a long-term net rate of return sufficient to cover the Foundation's spending policy (currently targeted at 5%), and (2) enhance the purchasing power of the Investment Portfolio assets, if possible, in order to further the mission and programs of the Foundation. These goals should be pursued without incurring undue risk relative to the practices of comparable charities.

#### **Responsibilities**

##### **A. Board of Directors**

The Board of Directors of the Foundation (the "Board") is responsible for establishing this Investment Policy and approving all amendments to the Policy. The Board has delegated to the Investment Committee of the Board (the "Investment Committee"), comprised of three or more members of the Board, the responsibility of supervising the investment and management of the Investment Portfolio. The Board will monitor and oversee the activities of the Investment Committee,

The Board is responsible for determining and approving, upon recommendation by the Investment Committee, overall asset allocation ranges and targets, risk/return objectives, spending policy, setting guidelines for reporting and monitoring performance, and the use of any consultants.

##### **B. Investment Committee**

The Investment Committee will be responsible for the Foundation's investment program and will provide prudent oversight of the Investment Portfolio in order to further the Foundation's goals and mission and to ensure that the Foundation's investment and management of its investment

assets comply with NYPMIFA. To that end, the Investment Committee will develop objectives and strategies for the Investment Portfolio consistent with this Investment Policy and NYPMIFA, meet quarterly to review and evaluate the Investment Portfolio's performance and identify areas for improvement and/or correction and report at least annually to the Board of Directors on the Investment Portfolio's performance as well as other substantive issues related to the Foundation's investment program. In carrying out its responsibilities, the Investment Committee shall comply with the duties of loyalty and care, which require each member of the Committee to act in what he or she believes are the best interests of the Foundation and in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

In addition to the above duties, the Investment Committee is specifically responsible for the following:

- Selecting specific investments, professional investment managers, brokers, and administrators, and negotiating and monitoring terms and conditions of their services.
- Causing investment purchases to be made, via staff, in accordance with policy, and instructing or assisting staff in carrying out policy as needed.
- Monitoring performance of the Investment Portfolio against appropriate benchmarks at least quarterly, and more often if necessary.
- Assuring proper custody of the investments.
- Reporting the Investment Portfolio's asset allocation and performance results at least quarterly to the Board.
- Retaining an investment consultant to assist with this process as necessary.

### **Moral and Social Responsibility**

With regard to morally and socially responsible investing, the Board characterizes the investment management of Foundation assets as a process of avoidance; that is, the Board believes that it will be meeting the needs of the Foundation and society by excluding securities of companies whose practices or characteristics conflict with the tenets and teachings of the Catholic Church. Specifically, investments in excluded securities are prohibited; the Board will supply a list of excluded securities to the investment manager(s) on an annual basis or more frequently as needed. This investment process does not require any changes to an investment manager's investment process other than that it, in effect, reduces that universe of securities in which to invest. The Board believes that, in the long-term, the socially responsible investment process



implemented by the Foundation will not present a significant trade-off of risk or return as compared to the market.

### **Investment Policies**

In managing and investing the Investment Portfolio, the Investment Committee, subject to the oversight and review of the Board, will consider the purposes of the Foundation and the purposes of the funds that comprise the Foundation's investment assets. Investment decisions regarding an individual asset will not be made in isolation but rather in the context of the Foundation's portfolio of investments as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the Foundation and the Investment Portfolio. The Investment Committee also will consider each of the following factors, if relevant, in managing and investing the Investment Portfolio:

1. general economic conditions;
2. possible effect of inflation or deflation;
3. expected tax consequences, if any, of investment decisions or strategies;
4. the role that each investment or course of action plays within the overall Investment Portfolio;
5. expected total return from the income and appreciation of investments;
6. other resources of the Foundation;
7. the needs of the Foundation and the funds within the Investment Portfolio to make distributions and preserve capital; and
8. an asset's special relationship or special value, if any, to the Foundation's purposes.

Other factors that the Investment Committee may consider in making investment and management decisions include price level trends, investment mix and maturities, and the quality of investments and risk considerations.

In managing and investing the Foundation's Investment Portfolio, the Investment Committee will incur only those costs that are appropriate and reasonable in relation to the Investment Portfolio, the Foundation's purposes and the skills available to the Foundation. The Investment Committee will make reasonable efforts to verify the accuracy of information that the Investment Committee uses in making decisions regarding the management and investment of the Investment Portfolio. Within a reasonable time after the Foundation's receipt of a gift of investment assets, the Investment Committee will make and oversee the implementation of decisions regarding retaining or disposing of such property or the rebalancing of the Foundation's Investment Portfolio in order to ensure compliance with the provisions of this Investment Policy.

## **Delegation of Investment Management**

The Investment Committee may delegate investment management functions to external agents, including investment managers, investment consultants and custodians. Any investment manager retained must either be (1) registered under the Investment Company Act of 1940, (2) registered under the Investment Advisors Act of 1940, (3) a bank, as defined in that Act, (4) an insurance company qualified under the laws of more than one state to perform the services of managing, acquiring or disposing of the Foundation's assets, or, (5) such other person or organization authorized by applicable law or regulation to function as an investment manager. Each investment manager investing a separately managed account on behalf of the Foundation must acknowledge in writing that the manager is a fiduciary with respect to the Foundation.

In delegating investment management authority to external agents, the Investment Committee will act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances in (i) selecting, continuing or terminating the external agent, including assessing the external agent's independence including any conflicts of interest such agent has or may have; (ii) establishing the scope and terms of the delegation, including the payment of compensation, consistent with the purposes of the Foundation and the relevant fund; and (iii) monitoring the external agent's performance and compliance with the scope and terms of the delegation. In selecting, continuing or terminating an external agent, the guidelines and procedures set forth in the Foundation's Conflict of Interest Policy will be followed to determine whether any conflict of interest exists and, if so, to address such conflict.

Each contract or other agreement between the Foundation and an external agent to whom investment management authority is delegated will provide that (i) the Foundation may terminate the contract or agreement at any time, without penalty, upon no more than 60 days notice to the external agent and (ii) the external agent owes a duty to the Foundation to exercise reasonable care, skill and caution to comply with the scope and terms of the authority delegated to the external agent.

The Investment Committee will also review from time to time the Foundation's arrangements with any investment managers, investment advisors, custodians and the banks and other entities with which the Foundation maintains its financial assets to ensure that the costs and fees associated with each such arrangement are appropriate and reasonable in relation to the assets, the Foundation's purposes and the skills available to the Foundation.

## **Investment Guidelines**

### **A. Investment Manager Autonomy**

Investment managers retained by the Foundation will invest the Foundation's investment assets in accordance with this Investment Policy and any specific guidelines for the investment

manager established by the Foundation. However, decisions as to the selection of individual investments, security size and quality, number of industries and holdings, turnover and other tools employed by active investment managers will be left to the broad discretion of the investment manager, within the limits set forth in this Investment Policy and any specific guidelines established by the Foundation, and subject to the prudence standards under NYPMIFA.

In complying with the Foundation's objectives, the investment managers are to avoid becoming wedded to a narrow investment style or to mechanical investment practices. The Foundation expects that the investment managers' strategies and tactics will shift as may be called for by the economic and securities environments. Fundamental industry and company analysis should be the primary basis for investment decisions, coupled, however, with a long-term perspective and sensitivity to both market factors and price.

#### B. Asset Allocation

The assets in the Investment Portfolio may be distributed among all classes of equities and fixed income securities. The Foundation's strategic asset allocation policy will be determined from time to time by the Investment Committee, in consultation with any managers or advisors, if desired, in order to reflect a proper balance of the Foundation's investment objective, risk for tolerance and need for liquidity.

The Investment Committee will establish asset allocation targets and prudent ranges for each asset class for the Foundation, subject to approval by the Board. The ranges protect the policy and the Foundation from the pressure to abandon sound long-term strategy in the face of short-term adversity. The asset allocation of the Investment Portfolio should reflect the proper balance of the Foundation's need for liquidity, preservation of purchasing power, and risk tolerance.

The Investment Committee will review the strategic asset allocation policy at least annually.

#### C. Diversification and Investment Quality

The Investment Portfolio will be broadly diversified to limit the impact of large losses of individual securities on the Investment Portfolio. Each investment manager is required to diversify its holdings so that the Investment Portfolio is not exposed unduly to any single security issuer or sector.

Except for securities issued or guaranteed by the United States of America, an investment manager will not purchase the securities of any issuer if the purchase would cause the Foundation to have more than 5% of the market value of the Investment Portfolio at the time of purchase invested in the securities of such issuer, except as otherwise may be approved by the Investment Committee.

Each investment manager may invest in fixed income securities, as it deems prudent, including United States Government and agency obligations, marketable corporate bonds and debentures, commercial paper, certificates of deposit, short-term investment funds and other such investments. All of the bonds in the portfolio will be rated A or better or the equivalent in standard rating service while at least 70% of the bonds will be rated AA or better, except as otherwise may be approved by the Investment Committee.

#### D. Liquidity

The Foundation will advise investment managers of any anticipated needs for liquidity, as such needs become known. Investment managers are to presume no need to maintain cash reserves other than that identified by the Foundation.

#### E. Performance Review

The Investment Committee will meet at least twice per year with each investment manager to review the performance of the Investment Portfolio, the performance of the investment manager and the investment guidelines.

#### **Changes to the Investment Policy**

This Investment Policy may be amended or repealed, in whole or in part, at any time by the Board. The Investment Committee will review the Investment Policy at least annually to ensure its continued appropriateness. The Committee may propose revisions to the Policy at any time, which will then be presented to the Board for its consideration.

# EXHIBIT 43

## Description of Key Executive Positions

**MOTHER CABRINI HEALTH FOUNDATION, INC.**  
**Executive Position Descriptions**

**Chief Executive Officer**

*Job Description*

- Responsible for setting the vision and strategic direction of the organization with input and oversight from the board of directors
- Recommend and implement organization policies that amplify the mission of the organization
- Provide direct management to key employees and leadership to the overall organization
- Serve or appoint key staff to serve on appropriate board committees
- Serve as public voice of organization within guidelines established by the board of directors

*Preferred Qualifications*

- Substantial experience managing a high-profile, large charitable organization, preferably with \$1 billion or more in assets
- Well versed in the areas of grantmaking expected to be carried out by the Foundation
- Significant experience with board development and fiscal management
- Successful track record of building and maintaining relationships with stakeholders
- Executive or board experience at prominent nonprofits, preferably with healthcare or social service delivery programs or grantmaking programs
- Familiarity with grantmaking within the principles of the Catholic Church
- Experience in planning and building start-up charitable foundations

**Chief Investment Officer**

*Job Description*

- Implement investment policy with input and oversight from the board of directors and Investment Committee
- Develop and recommend to the Investment Committee objectives and guidelines for managing Foundation assets
- In consultant with Investment Committee, develop appropriate investment allocation strategies consistent with the Foundation's investment policy
- Recommend annual spending policy for the Foundation
- Oversee the performance of outside investment advisors
- Reports dually to CEO and Investment Committee

*Qualifications*

- 10-15 years' experience in managing and overseeing substantial investment portfolios
- Chartered Financial Analyst (CFA), Masters of Business Administration (MBA) or equivalent credential
- Significant investment experience across asset classes, including public, privates and alternatives

## **Chief Operating Officer**

### *Job Description*

- Work in partnership with the CEO to support strategic plan and implement processes and approaches to achieve Foundation objectives
- Prepare annual budget
- Supervise the business affairs of the Foundation
- Serve as the administrative leader of the organization, responsible for all operational employees
- Lead the performance management process to ensure that goals are set and met
- Develop and maintain personnel policies, together with Human Resources
- Oversee Finance function and leadership

### *Qualifications*

- Demonstrated ability to manage operations and administer a comparable charitable organization
- Thorough understanding of finance, systems and HR; broad experience with the full range of business functions and systems, including strategic development and planning, budgeting, business analysis, finance, information systems, human resources, and marketing
- MBA or similar advanced degree preferred

## **Vice President of Programming**

### *Job Description*

- Oversee and formulate strategies for grantmaking portfolios, and ensure that they align with mission of the Foundation
- Manage grantmaking staff across program areas
- Represent Foundation programs to communities and stakeholders across the state
- Develop and implement budgets for strategies, together with Chief Operating Officer
- Based on Board and/or CEO direction, develop grantmaking criteria, applications, review processes, evaluation practices and reporting systems

### *Qualifications*

- Senior-level experience in developing and managing grantmaking programs
- Experience in healthcare and/or poverty foundations, including with Social Determinants of Health
- Experience leading program staff in priority program areas, including program development, delivery, and evaluation
- Proven effectiveness in working with boards, programs, grantseekers and non-profit organizations

# EXHIBIT 44

## Proposed Initial Budget



**Mother Cabrini Health Foundation, Inc.**  
**Initial Estimated Multi-Year Budget**

	Remainder of 2018	2019	2020
<b>Revenue, Gains and Other Support:</b>			
Contributions and Grants (1)	\$4,645,000,000		
Investment Return	\$60,000,000	\$160,000,000	\$160,000,000
Release of Indemnification Escrow		\$375,000,000	
<b>Total Transaction Receipts and Investment Gains:</b>	<b>\$4,705,000,000</b>	<b>\$535,000,000</b>	<b>\$160,000,000</b>
<b>Transaction Payments:</b>			
Payment to New York State	\$1,000,000,000	\$400,000,000	
Transfer to Indemnification Escrow	\$375,000,000		
<b>Total Transaction Payments:</b>	<b>\$1,375,000,000</b>	<b>\$400,000,000</b>	
<b>Core Operating Expenses:</b>			
Grants (2)	\$40,000,000	\$150,000,000	\$150,000,000
Salaries and Benefits (3)	\$2,725,000	\$7,633,783	\$7,939,134
Investment Consultant (4)	\$480,000	\$960,000	\$960,000
Custodial Fees (4)	\$160,000	\$320,000	\$320,000
Consultants & Temporary Employment	\$550,000	\$385,000	\$310,000
Legal Fees	\$500,000	\$600,000	\$700,000
Accounting Fees	\$260,000	\$350,000	\$375,000
Recruiting Costs	\$400,000	\$150,000	\$150,000
Office Expenses (5)	\$115,527	\$226,053	\$226,053
Information Technology (Including Consultants)	\$577,000	\$443,000	\$438,000
Occupancy (6)	\$553,450	\$1,021,800	\$941,800
Travel	\$57,500	\$140,000	\$140,000
Conferences, Conventions & Meetings	\$20,000	\$40,000	\$40,000
Insurance	\$100,000	\$150,000	\$150,000
<b>Total Core Operating Expenses:</b>	<b>\$46,498,477</b>	<b>\$162,419,636</b>	<b>\$162,689,987</b>
<b>Non-Operating Expense:</b>			
Rego Park Building (7)	\$1,500,000	\$10,800,000	\$10,800,000
<b>Total Expenses:</b>	<b>\$1,422,998,477</b>	<b>\$573,219,636</b>	<b>\$173,489,987</b>
<b>Operating Surplus (Deficit)</b>		<b>(\$38,219,636)</b>	<b>(\$13,489,987)</b>
<b>Net Assets - End of Year:</b>	<b>\$3,282,001,523</b>	<b>\$3,243,781,887</b>	<b>\$3,230,291,900</b>

## Mother Cabrini Health Foundation, Inc. Footnotes

- (1) Contributions and Grants: includes transaction proceeds, net of closing costs and expenses, and Fidelis Care assets transferred to Foundation. Amount includes value of interest in Rego Park Office Tower LLC.
- (2) Grants: Under its agreement with New York State as described in the Petition, Petitioner agreed to make a contribution of \$50 million in each of 2021 and 2022, which is expected to be satisfied through grants from the Foundation to organizations that are mutually satisfactory to the Foundation and the State.
- (3) Salaries and Benefits: Based on the Median Salary of Foundations with \$2B+ in Assets as reported by 2017 Council on Foundations Grantmakers Salary and Benefits Report for the following positions:
- Chief Executive Officer - \$587,000

Chief Investment Officer - \$624,000

Chief Operating Officer - \$321,074

Vice President of Programming - \$260,998

Programming Officer - \$120,000
- Plus required support staff at market rate salaries.
- The above salary levels are lower than benchmark data from peer group foundations comparable to the Foundation. Salaries may need to be increased to align with benchmark data of peer group foundations in order to attract necessary talent.
- Benefits were calculated at 10% of base salary with a 5% match on 403(b) for all executive positions noted above.
- Benefits were calculated at 20% of base salary with a 5% match on 403(b) for all non-executive positions.
- Y1: Assumes 15 staff members for the 1st 6 months
- Y2: Assumes 30 staff members
- Y3: Assumes 4% cost of living increase from Y2, assumes 30 staff members
- (4) Investment Consultant: are calculated at 3 bps of total net assets; 2018 represents half year. Custodial Fees: are calculated at 1 bps of total net assets; 2018 represents half year.
- (5) Office Expenses: Includes office and pantry supplies, printing/copying, postage and delivery fees, membership dues and registration, bank and credit card fees, filing fees, human resource fees.
- (6) Occupancy: includes rent, utilities, maintenance, supplies, storage, office furniture, equipment rental and maintenance.
- (7) Rego Park Building: includes amounts necessary to pay debt service on building loans. The net income annually for Rego Park office tower is \$3.8M which offsets the payments on note payable of \$14.6M leading to a net expense \$10.8M. The amounts included assume no UBITT will be required to be paid.



# **Mother Cabrini Health Foundation, Inc.** **Expense Details**

	Remainder of 2018	2019	2020
Payment to New York State	\$1,000,000,000	\$400,000,000	
Transfer to Indemnification Escrow	\$375,000,000		
<b>Transaction Payments:</b>	<b>\$1,375,000,000</b>	<b>\$400,000,000</b>	
<b>Core Operating Expenses:</b>			
<b>Total Grants</b>	<b>\$40,000,000</b>	<b>\$150,000,000</b>	<b>\$150,000,000</b>
<b>Salaries &amp; Benefits:</b>			
Chief Executive Officer	\$337,525	\$675,050	\$702,052
Chief Investment Officer	\$358,800	\$717,600	\$776,304
Chief Operating Officer	\$184,618	\$369,235	\$384,005
Vice President of Programming	\$150,074	\$300,148	\$312,154
Programming Officers	\$414,000	\$2,070,000	\$2,152,800
Administrative Staff	\$279,984	\$1,201,750	\$1,249,820
Staff Members	\$1,000,000	\$2,300,000	\$2,392,000
<b>Total Salaries &amp; Benefits:</b>	<b>\$2,725,000</b>	<b>\$7,633,783</b>	<b>\$7,939,134</b>
<b>Professional Services &amp; Fees:</b>			
Programming Consultant	\$200,000	\$150,000	\$100,000
IT Consultant	\$300,000	\$300,000	\$300,000
Design Consultant	\$50,000	\$25,000	\$25,000
Communications Consultant	\$150,000	\$150,000	\$150,000
Evaluation Consultant	\$50,000	\$10,000	\$10,000
Investment Consultant Outsourced	\$480,000	\$960,000	\$960,000
Custodial Fees	\$160,000	\$320,000	\$320,000
Legal Fees	\$500,000	\$600,000	\$700,000
Accounting Fees	\$260,000	\$350,000	\$375,000
Temporary Employment	\$100,000	\$50,000	\$25,000
Recruiting Costs	\$400,000	\$150,000	\$150,000
Memberships, Dues and Registrations	\$37,131	\$74,261	\$74,261
Bank and Credit Card Fees	\$19,681	\$39,362	\$39,362
Filing Fees	\$3,015	\$6,030	\$6,030
ADP Human Resources/HR Fees	\$25,000	\$45,000	\$45,000
Insurance	\$100,000	\$150,000	\$150,000
<b>Total Professional Services &amp; Fees:</b>	<b>\$2,834,827</b>	<b>\$3,379,653</b>	<b>\$3,429,653</b>



# **Mother Cabrini Health Foundation, Inc. (Continued)** **Expense Details**

	Remainder of 2018	2019	2020
<b>Operating Expenses:</b>			
Rent	\$396,000	\$792,000	\$792,000
Utilities	\$3,150	\$12,600	\$12,600
Building Maintenance	\$10,000	\$40,000	\$40,000
Housekeeping Supplies	\$1,250	\$5,000	\$5,000
Storage	\$1,500	\$6,000	\$6,000
Equipment Rental & Maintenance	\$16,550	\$66,200	\$66,200
Office Furniture & Design	\$125,000	\$100,000	\$20,000
Telecommunications	\$15,000	\$30,000	\$30,000
Internet Communications	\$17,000	\$30,000	\$30,000
Website Expense	\$25,000	\$18,000	\$18,000
Computer (Hardware) Expense	\$20,000	\$15,000	\$10,000
Software Expense	\$200,000	\$50,000	\$50,000
Office Supplies	\$9,775	\$19,550	\$19,550
Pantry Supplies	\$2,500	\$5,000	\$5,000
Printing and Copying	\$10,900	\$21,800	\$21,800
Postage	\$1,450	\$2,900	\$2,900
Expenses and Overnight Delivery	\$6,075	\$12,150	\$12,150
<b>Total Operating Expenses:</b>	<b>\$861,150</b>	<b>\$1,226,200</b>	<b>\$1,141,200</b>
<b>Program Expenses:</b>			
Staff Travel	\$25,000	\$75,000	\$75,000
Member Meeting Expense	\$12,500	\$25,000	\$25,000
Board Meeting Expense	\$20,000	\$40,000	\$40,000
Conferences - Networking	\$7,500	\$15,000	\$15,000
Business Meetings	\$5,000	\$10,000	\$10,000
Events	\$7,500	\$15,000	\$15,000
<b>Total Program Expenses:</b>	<b>\$77,500</b>	<b>\$180,000</b>	<b>\$180,000</b>
<b>Total Transaction Payments &amp; Core Operating Expenses:</b>	<b>\$1,421,498,477</b>	<b>\$562,419,636</b>	<b>\$162,689,987</b>
<b>Non-Operating Expense:</b>			
Rego. Park Building	\$1,500,000	\$10,800,000	\$10,800,000
<b>Total Expenses (including non-operating expense):</b>	<b>\$1,422,998,477</b>	<b>\$573,219,636</b>	<b>\$173,489,987</b>

# **EXHIBIT 45**

## **Grant Program Guide**

**Mother Cabrini Health Foundation, Inc.**

**Grant Program Guide<sup>1</sup>**

May 2018

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<sup>1</sup> This document has been prepared with the assistance of Rockefeller Philanthropy Advisors. It will be updated as necessary to reflect input from the Foundation's board of directors, advisory boards, stakeholders, and health and social welfare experts, and will be subject to approval by the Foundation's members. It is being provided to the New York State Attorney General's Office as part of its review of the sale of substantially all of the assets of New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York.

## **MOTHER CABRINI HEALTH FOUNDATION, INC.**

### **GRANT PROGRAM GUIDE**

Following in the tradition of the New York State Catholic Health Plan's longstanding commitment to the poor, disadvantaged and underserved populations of New York State and guided by the research and experience of other leading health and poverty foundations, the Mother Cabrini Health Foundation, Inc. (the "Foundation"), with the assistance of Rockefeller Philanthropy Advisors, has developed this Grant Program Guide (the "Guide") to set forth the strategy and guidelines for the Foundation's grantmaking program.

This Guide is subject to approval of the Foundation's board of directors as well as the Foundation's members, the eight Catholic Diocesan Bishops of the New York State. This Guide will be updated periodically to address evolving healthcare and healthcare-related developments and population needs.

### **GRANTMAKING STRATEGY**

The Foundation's grantmaking program will support activities, programs and initiatives that improve the health and well-being of New York's poor, disadvantaged and underserved populations, by:

1. Enhancing access to affordable quality healthcare and healthcare-related services, including services related to preventative health, behavioral health, nutrition, substance abuse, childhood cognition and social skills, home and community-based services, early intervention, education and literacy, elder care, safe and affordable quality housing, employment, and other factors that influence health outcomes ("Social Determinants of Health"); and
2. Meeting the unmet healthcare and healthcare-related needs of individuals, families and communities across New York State by addressing the Social Determinants of Health.

***Enhance Access to Affordable Quality Healthcare and Healthcare-Related Services, Including Through the Social Determinants of Health***

Across New York State, people of color, low-income individuals, immigrants and rural residents bear a highly disproportionate risk of having little or no affordable access to care.<sup>2</sup> Inequality in access to care can be attributed to a number of factors, including geography, transportation, health insurance/cost of care, hours of service, childcare, knowledge, residency, cultural norms, and trust in doctors and healthcare systems.<sup>3</sup> Public health experts refer to the differences among populations in accessing quality healthcare and achieving favorable health outcomes as “disparities in care.”<sup>4</sup>

In addition, in New York State, all non-White racial/ethnic groups have higher rates of infant mortality, cardiovascular disease, diabetes, HIV infections/AIDS, and cancer; this is a mirror of national trends where nonelderly adults, Hispanics/Latinos, Blacks, and American Indians and Alaska Natives are more likely than Whites to delay or go without needed care.<sup>5</sup> Low-income individuals also experience more barriers to care and receive poorer quality care than high-income individuals.<sup>6</sup> Within immigrant communities, language barriers can inhibit care, even when individuals have insurance and can access services.<sup>7</sup>

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<sup>2</sup> New York State Department of Health, 2012 New York State Minority Health Surveillance Report (2012) available at

[https://www.health.ny.gov/statistics/community/minority/docs/surveillance\\_report\\_2012.pdf](https://www.health.ny.gov/statistics/community/minority/docs/surveillance_report_2012.pdf)

<sup>3</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4285826/>;

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265215/>; <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/21/2016/02/Patients-Perspectives-on-Health-Care-in-the-United-States-National-Report-with-topline-Feb2016.pdf>;

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2696665/>;

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3393009/>

<sup>4</sup> <https://www.ncbi.nlm.nih.gov/pubmed/12171751/>

<sup>5</sup> Kaiser Family Foundation analysis of CDC, Behavioral Risk Factor Surveillance System, 2014;

<https://www.cdc.gov/mmwr/volumes/65/wr/mm6540a3.htm>; Kaiser Family Foundation Key Facts on Health and Health Care by Race and Ethnicity, June 2016

<http://files.kff.org/attachment/Chartpack-Key-Facts-on-Health-and-Health-Care-by-Race-and-Ethnicity>

<sup>6</sup> Agency for Healthcare Research and Quality, 2014 *National Healthcare Quality and Disparities Report*, Rockville, MD: Agency for Healthcare Research and Quality (May 2015). Available at <http://www.ahrq.gov/sites/default/files/wysiwyg/research/findings/nhqdr/nhqdr14/2014nhqdr.pdf>.

<sup>7</sup> Kaiser Commission on Medicaid and the Uninsured, *Overview of Health Coverage for Individuals with Limited English Proficiency*, (Washington, DC: Kaiser Commission on Medicaid and the Uninsured, August 2012). Available at <https://www.kff.org/uninsured/8343.cfm>.



In response, the Foundation plans to support initiatives such as the following to improve access to care:

### **Developing Healthcare Workforce**

The lack of qualified medical professionals in underserved communities, particularly rural areas, is a key impediment to these individuals' accessing appropriate medical care. Examples to remedy this issue include:

1. Providing stronger incentives for primary care physicians to locate in or relocate to underserved areas and or expand service hours;
2. Developing systems to increase availability of nurse practitioners and other allied health professionals in areas with insufficient or no primary care physicians;
3. Supporting innovative and effective healthcare models that deliver care to underserved regions and populations of New York State, such as co-locating behavioral and physical healthcare in community settings or developing mobile clinics and other methods to bring care to those unable to access it;
4. Developing programs with medical and nursing schools that support education and training to advance the distribution and diversity of the primary care workforce;
5. Applying previously successful workforce development models to build a strong base of indigenous and culturally competent healthcare workers in under-resourced communities across the State;
6. Promoting a diverse health workforce by providing education and training opportunities to individuals from disadvantaged backgrounds; and
7. Supporting secondary and post-secondary vocational education initiatives that address local healthcare needs.

### **Reducing Barriers to Care**

Systemic barriers to healthcare are prevalent throughout New York State, particularly for low-income residents. Lack of childcare, the inability to access care during working hours, and cultural barriers discourage and delay health treatment. Transportation presents an additional significant barrier for the poor, where long travel distances, lack of vehicle and high transportation cost result in missed or delayed healthcare appointments, increased health expenditures and overall poorer health outcomes. These barriers extend to dental care, which is an often overlooked and is key to achieving and maintaining good health.<sup>8</sup> Furthermore, more than 400,000 undocumented immigrants in New York State are ineligible for insurance under the Affordable Care Act,<sup>9</sup> and access to traditional healthcare systems is characterized by risk of exposure and prohibitive cash expenditures.

The Foundation plans to address these challenges by supporting efforts that:

1. Establish or expand the capacity of existing primary care clinics with nurses, telemedicine and in-home patient care management;
2. Establish primary care and behavioral health clinics in regions without care;
3. Improve case management for chronic disease and strengthen a healthcare clinic's ability to meet their patient population's medical/behavioral needs (including co-locating behavioral healthcare);
4. Design community based solutions that include grants for coordinating public hospitals and clinics with nonprofit community health centers to provide reliable access to trusted, low-cost care for uninsured/undocumented;
5. Support the establishment of mobile dental and/or medical clinics across New York State targeted to areas with undocumented workers;

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<sup>8</sup> Oral Health: A Window to your Overall Health, Mayo Clinic, April 30, 2016

<https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/dental/art-20047475>

<sup>9</sup> New York State Health Foundation, <https://nyshealthfoundation.org/resource/how-can-new-york-provide-health-insurance-coverage-to-uninsured-immigrants/>

6. Expand local access to wellness activities and referral to charity care through community health worker programs that provide cultural competence, medication compliance, nutrition, and patient advocacy (e.g. health and outreach workers);
7. Encourage innovative practice models that allow for serving diverse patients with limited or inflexible schedules;
8. Support education and literacy efforts for individuals at risk to ensure they have the to obtain, process and understand health information and services needed to make appropriate health decisions and manage their health.
9. Support the development of transportation approaches that limit the distance and time to access care; and
10. Enhance transportation solutions by linking them to flexible child and elder care providers.

### **Supporting Inclusive and Culturally Competent Quality Healthcare**

Given the State's increasingly diverse population, improving access to quality and appropriate care requires that healthcare and healthcare-related services be inclusive and culturally sensitive. Towards this end, the Foundation plans to consider grantmaking activities that achieve these objectives. Examples include grants that:

1. Promote culturally competent care and address other social barriers to finding or obtaining care through a range of social supports;
2. During enrollment periods, support local solutions that allow trusted members of communities to refer and educate on enrollment's importance, such as "ambassadors" who raise awareness of health insurance eligibility within hard-to-reach communities and populations;
3. Support programs which provide interpreters in hospitals, healthcare and healthcare-related settings;

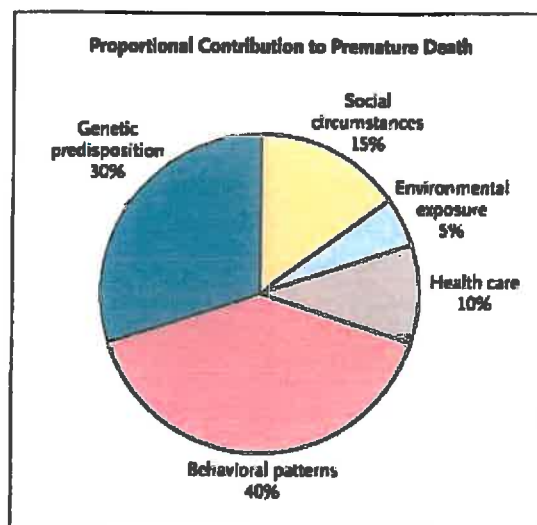
4. Develop effective skills training for the professional and paraprofessional healthcare workforce;
5. Increase the capacity of community based primary care clinics to manage diverse communities;
6. Support improved individualized care, most often for high-risk, high-need patients, by supporting transition from short-term to long-term care, and programs that effectively involve family and community where appropriate;
7. Continue to support efforts that increase enrollment in affordable healthcare systems by low-income residents; and
8. Help to ensure through advocacy efforts that Federal regulatory and policy action do not jeopardize enrollment rates, access or affordability for low-income New Yorkers, and that the needs of undocumented uninsured are addressed.

***Address the Unmet Healthcare and Healthcare-Related Needs through Social Determinants of Health***

Across the country, regulators, healthcare experts, academics and advocates are increasingly recognizing that addressing the “social determinates of health” is critical to not only improving the health of the poor and underserved but also to eliminating health disparities and reducing healthcare costs. According to research, only 10 percent of an individual’s health can be directly attributed to direct healthcare while the other 90 percent is determined by social determinants of health.<sup>10</sup>

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<sup>10</sup> “The Grantmaking of Health Insurers Aims at Social Determinants,” Nonprofit Quarterly available at <https://nonprofitquarterly.org/2017/08/24/grantmaking-health-insurers-aims-social-determinants/>; We Can Do Better — Improving the Health of the American People, Steven A. Schroeder, M.D, <http://www.nejm.org/doi/full/10.1056/NEJMsa073350#t=article>.



The Foundation is building upon strategies being implemented by New York State government, which has taken a leadership role in advancing social determinants of health as a matter of public policy. For example, Governor Cuomo’s “Health Across All Policies” initiative, launched in 2017, is premised on the belief that health strategies must target the broad range of social factors that contribute to health outcomes.<sup>11</sup> As explained on the Department of Health’s website:

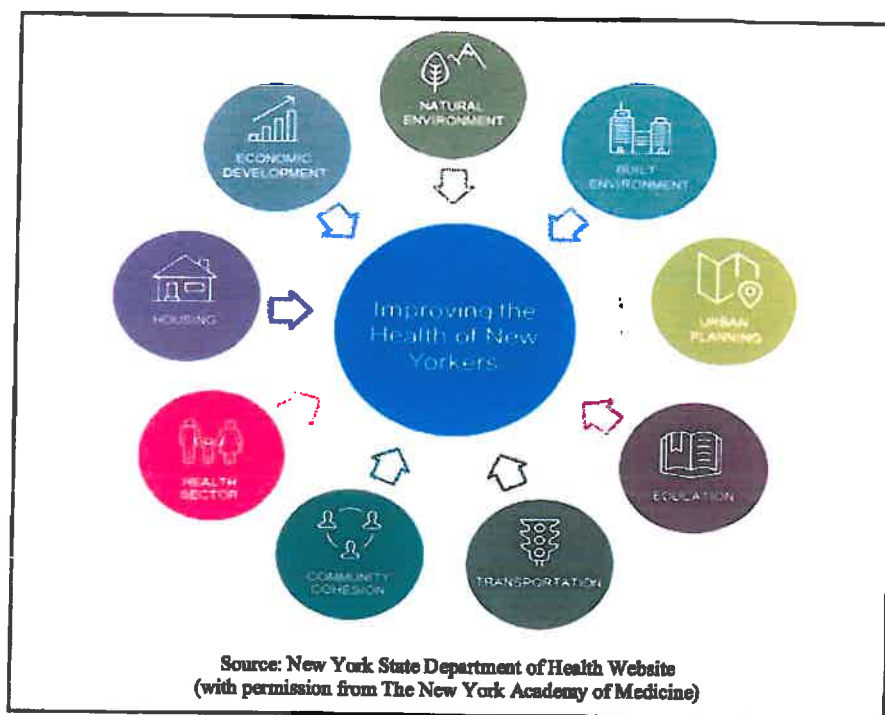
A community's greatest health challenges are complex and often linked with other societal issues that extend beyond healthcare and traditional public health activities. To successfully improve the health of all communities, health improvement strategies must target social determinants of health and other complex factors that are often the responsibility of non-health partners such as housing, transportation, education, environment, parks, and economic development.<sup>12</sup>

The following chart emphasizes how social factors drive positive health outcomes:

<sup>11</sup> *Health Across all Policies Initiative Launched to Support the Prevention Agenda Goal of Becoming the Healthiest State*, New York State Department of Health, announced by Governor Andrew M. Cuomo (January 2017), available at

[https://www.health.ny.gov/prevention/prevention\\_agenda/health\\_across\\_all\\_policies/](https://www.health.ny.gov/prevention/prevention_agenda/health_across_all_policies/)

<sup>12</sup> [https://www.health.ny.gov/prevention/prevention\\_agenda/health\\_across\\_all\\_policies/](https://www.health.ny.gov/prevention/prevention_agenda/health_across_all_policies/)



In furtherance of New York State's public health objectives, the Foundation plans to support programs that advance the full range of Social Determinants of Health, such as those described below.

### **Increasing Availability and Quality of Mental Health Services**

Mental health is widely viewed as critical to a person's physical health and mental well-being.<sup>13</sup> With that in mind, New York State launched its *Mental Health and Prevent Substance Abuse Action Plan* in 2012 and has since been leading efforts towards creating a holistic approach to mental health.<sup>14</sup> The Foundation plans to build upon and expand on the work already underway in New York State through initiatives such as the following:

<sup>13</sup> Office of the Surgeon General. National Prevention Strategy. America's Plan for Better Health and Wellness, p. 48-50 (2011) available at <https://www.surgeongeneral.gov/priorities/prevention/strategy/report.pdf>

<sup>14</sup> New York State Prevention Agenda: Promote Mental Health and Prevent Substance Abuse Action Plan available at [https://www.health.ny.gov/prevention/prevention\\_agenda/2013-2017/docs/mental\\_health\\_prevent\\_substance\\_abuse.pdf](https://www.health.ny.gov/prevention/prevention_agenda/2013-2017/docs/mental_health_prevent_substance_abuse.pdf)

1. Supporting efforts to increase availability and accessibility of mental health and allied behavioral health professionals in underserved areas,<sup>15</sup> including by:
  - a. Establishing behavioral and mental health services in community-based settings that are accessible and trusted;
  - b. Supporting partnerships between hospitals and community-based clinics/institutions to develop mental health aides to support mentally ill individuals in areas without access to providers; and
  - c. Expanding service delivery hours to include evenings, weekends, and to accommodate walk-ins.
2. Supporting programs that train providers in culturally competent care for diverse populations.<sup>16</sup>
3. Support overall healthcare coordination to integrate behavioral health and primary care services.<sup>17</sup>

### **Promote Child Wellbeing**

Research has shown that Social Determinants of Health play a critical role in eliminating health disparities among children. Preventative health, safe housing and communities, access to nutritious food, positive adult role models, and quality education contribute substantially to healthy childhood development, particularly among disadvantaged populations. In furtherance of these objectives, the Foundation plans to consider grant opportunities that seek to:

1. Promote a child's health in its first 1,000 days of life;
2. Support programs which encourage pregnant women to access recommended prenatal and postnatal care;<sup>18</sup>

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<sup>15</sup> [https://www.washingtonpost.com/news/to-your-health/wp/2015/10/22/why-its-so-hard-to-find-a-mental-health-professional/?noredirect=on&utm\\_term=.29e75e668a3c](https://www.washingtonpost.com/news/to-your-health/wp/2015/10/22/why-its-so-hard-to-find-a-mental-health-professional/?noredirect=on&utm_term=.29e75e668a3c)

<sup>16</sup> [https://www.omh.ny.gov/omhweb/cultural\\_competence/reports/unmet\\_needs.pdf](https://www.omh.ny.gov/omhweb/cultural_competence/reports/unmet_needs.pdf);  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3863706/>

<sup>17</sup> <http://m.jabfm.org/content/30/2/130.full>; <http://farleyhealthpolicycenter.org/wp-content/uploads/2016/02/Culture-of-Whole-Health-Brief.pdf>



3. Support programs focused on cyber-bullying;
4. Prevent childhood obesity through the promotion of nutrition and fitness through in-school and after-school programs;
5. Train teachers and school social workers to identify at-risk behavior and signs of an adverse home environment as well as where/how additional services can be accessed;
6. Promote school based dental hygiene programs for children from low-income households;
7. Support programs in the home or healthcare setting that promote positive early childhood development, including positive parenting, safe home environments, appropriate feeding and sleep behavior, and stages of child development;<sup>19</sup>
8. Support afterschool programs which target students in need of extra assistance in order to reduce drop-out rates;
9. Ensure that primary pediatric and family healthcare sites across New York State have access to allied health workers that may help with mental health and trauma-informed care to support positive family relationships and healthy child development;
10. Fund medical examinations for low-income, undocumented youth;
11. Subsidize home childcare and institutional daycare programs; and
12. Support nutritional interventions for pre-natal and post-natal care or children with identified dietary or food health issues – celiac disease, diabetes, failure to thrive, allergies and asthma.

### **Increasing Access to Adequate Housing with Supportive Services**

A key contributor to disparities in health outcomes is “inadequate access to housing and social supports for underserved populations, including the aging, mentally ill,

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<sup>18</sup> Weir, K., *The beginnings of mental illness*, American Psychological Association, February 2012, Vol 43, NO. 2 pg. 36. Available at <http://www.apa.org/monitor/2012/02/mental-illness.aspx>

<sup>19</sup> <https://www.ncbi.nlm.nih.gov/m/pubmed/26183001/>



and those with limited resources who cannot afford the care they need.”<sup>20</sup> Research corroborates this view, demonstrating that:

- Residential instability is associated with emotional, behavioral and academic problems among children, increased risk of teen pregnancy, early drug use, and depression during adolescence.<sup>21</sup>
- Low-income individuals who have difficulty paying rent are less likely to have a primary care physician and therefore, more likely to postpone treatment or use the emergency rooms as a substitute.<sup>22</sup>
- High housing costs force many individuals to take additional jobs or move far away from their work, resulting in less time engaged in activities which promote a healthy lifestyle and more importantly, less time spent with their families.

In short, housing instability can dictate the course of an individual’s or family’s health and create a cycle of despair.<sup>23</sup> Issues such as extreme poverty, violence, mental illness and chronic health conditions make it increasingly challenging, and increasingly necessary, to secure stable housing, which in turn creates negative health outcomes.

In New York, this is particularly relevant as the State currently ranks 45<sup>th</sup> in the nation for availability of affordable housing – only 49 units are available and affordable for every 100 renter households with very low incomes.<sup>24</sup> With this in mind, the Foundation will consider various housing approaches designed to

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<sup>20</sup> Governor Andrew M. Cuomo, 2017 State of the State available at <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2017StateoftheStateBook.pdf>

<sup>21</sup> Haveman R, Wolfe B and Spaulding J. "Childhood Events and Circumstances Influencing High School Completion." *Demography*, 28(1): 133-57, 1991; Lubellz J, Crain R and Cohen R. *Framing the Issues--the Positive Impacts of Affordable Housing on Health*. Washington, D.C.: Center for Housing Policy, 2007.

<sup>22</sup> <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html>

<sup>23</sup> *Housing is the Best Medicine: Supportive Housing and the Social Determinants of Health*, CHS, July 2014. Available at [http://www.csh.org/wp-content/uploads/2014/07/SocialDeterminantsofHealth\\_2014.pdf](http://www.csh.org/wp-content/uploads/2014/07/SocialDeterminantsofHealth_2014.pdf); <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1525-1497.2005.00278.x>

improve health outcomes for disadvantaged populations, with a focus on health-related housing for Medicaid-eligible populations in New York. These include supportive housing initiatives as well broader housing programs that align with New York public health objectives, such as:

***Housing Stability:***

1. Supporting programs that provide permanent housing to people in need rapidly, including wraparound services, such as on-site case workers, social workers, and drug treatment counselors;
2. Increasing transitional housing, including services and planning to support independent living and prevent homelessness;
3. Supporting short-term rental assistance to individuals in danger of eviction and homelessness;
4. Improving legal services for individuals with physical disabilities in need of aid to effectively access government housing benefits;
5. Housing and support for homeless persons at risk of negative health outcomes and frequent emergency room visits because of serious, chronic or disabling conditions; and
6. Supporting comprehensive, multilingual services for families at risk of homelessness, including rental assistance, mental health interventions, and if necessary domestic violence help, to prevent homelessness.

***Housing Quality:***

1. Enhancing water quality, housing safety and recreational space at public and affordable housing facilities;
2. Launching educational efforts to residents of public housing to address standards for quality, expanded learning programs that address the specific needs of youth in public housing;

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<sup>24</sup> <https://talkpoverty.org/state-year-report/new-york-2016-report/>

3. Developing new models and expanding successful programs that provide housing and wrap-around social and health services for disadvantaged populations;
4. Supporting efforts to improve health outcomes and conditions within public housing;
5. Programs that improve environmental conditions in low-income housing; and
6. Support accessible, safe parks and community plots to allow for recreation, exercise and projects such as neighborhood gardening.

### **Care for the Elderly**

With New York's population aging, new and innovative programs are required to keep New Yorkers healthy and improve the quality of their lives. Research has shown that addressing Social Determinants of Health is critical to achieving this objective. As the AARP Foundation described in a recent Issue Brief:

Older adults who fare well with regard to SDOH [Social Determinants of Health] are more likely to be in better health and better able to maintain their health in the long-term. Alternatively, unfulfilled social needs can have detrimental effects on the health of older adults, and those with multiple social needs may experience even greater risk of poor health.<sup>25</sup>

In this regard, social isolation for the elderly correlates with adverse health outcomes, contributing to medical conditions such as dementia and depression.<sup>26</sup> To combat these issues and strengthen the health and wellbeing of elderly individuals, the Foundation plans to support such initiatives as:

1. Expanding "aging in place" efforts for the elderly, which includes services and activities for adults 60+ that enables them to continue living in their residence of choice, rather than moving to a healthcare environment;

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<sup>25</sup> [http://endseniorhunger.aarp.org/wp-content/uploads/2017/11/SDOH-among-older-adults-2017\\_IssueBrief\\_COR-Final.pdf](http://endseniorhunger.aarp.org/wp-content/uploads/2017/11/SDOH-among-older-adults-2017_IssueBrief_COR-Final.pdf)

<sup>26</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4694557/>

2. Supporting education and training to help healthcare providers create age-friendly environments;
3. Targeting programs which address social isolation;
4. Promoting independence and community connection through community based day-programs;
5. Funding visiting nurse and home health-aid programs which enable the elderly to remain in their homes for longer;
6. Supporting programs for people suffering from age-related dementia and mental illness;
7. Supporting ride sharing programs specifically geared towards the elderly to provide rides to and from doctor appointment and errands; and
8. Promoting technology skills training for elderly to enable access to telemedicine and promote connections with family members;
9. Funding the purchase of at-home blood pressure and cholesterol monitors and similar equipment; and
10. Supporting the development and implementation of elder abuse prevention intervention programs.

### **Confronting the Opioid Epidemic**

The opioid epidemic is one of the worst crises in American history, with nearly 64,000 drug overdose deaths in the United States last year.<sup>27</sup> Opioids kill more Americans than breast cancer<sup>28</sup> and more Americans than “the entire Vietnam War and car crashes, gun violence, and HIV/AIDS ever did in a single year.”<sup>29</sup> Combating the opioid crisis requires a comprehensive approach which includes innovative treatment programs and prevention solutions that focus on both demand and supply. Examples of grants include:

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<sup>27</sup> NCHS Data Brief, *Drug Overdose Deaths in the United States, 1999-2016*, No. 294, December 2017 available at <https://www.cdc.gov/nchs/data/databriefs/db294.pdf>

<sup>28</sup> “Opioids Now Kill More People than Breast Cancer,” Nadia Kounang, CNN, December 21, 2017

<sup>29</sup> German Lopez, *How to stop the deadliest drug overdose crisis in American history*, available at <https://www.vox.com/science-and-health/2017/8/1/15746780/opioid-epidemic-end>

***Treatment:***

1. Expand support for services that address co-occurring mental health disorders that may inhibit recovery from addiction, and provide mental health expertise for such disorders;
2. Increase treatment programs in jails and prisons;<sup>30</sup>
3. Support research into new treatment areas such as a patch or non-opioid pain relief therapy;
4. Support efforts to integrate primary health and addiction treatment, including helping emergency rooms to refer overdose patients to follow-up addiction treatment;<sup>31</sup>
5. Expand harm reduction programs that reduce death from drug misuse and overdose, including supporting greater use of Naloxone distribution programs and government efforts to expand the number of trained law enforcement personnel with access to Naloxone;<sup>32</sup>
6. Increase the capacity of programs that combine more than one type of evidence- based therapeutic intervention and treatment help, including Methadone;
7. Support the use of mobile treatment centers, including Methadone vans, which can reduce access to treatment issues in rural parts of the State; and
8. Increase the capacity of treatment clinics through evidence-based improvements, building on New York State's capital outlays for behavioral addiction treatment programs.<sup>33</sup>

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<sup>30</sup> <https://www.hrw.org/report/2009/03/24/barred-treatment/punishment-drug-users-new-york-state-prisons>

<sup>31</sup> <https://www.npr.org/sections/health-shots/2018/03/06/590923149/jump-in-overdoses-shows-opioid-epidemic-has-worsened>

<sup>32</sup> <https://www.cdc.gov/drugoverdose/prevention/reverse-od.html>; <https://ag.ny.gov/cop-report>

<sup>33</sup> New York State Office of Alcoholism and Substance Abuse Services. "NYS OASAS Announces Expanded Opioid Addiction Treatment Capacity in Onondaga County." April 2017 available at <https://oasas.ny.gov/pio/press/NewOTPOndaga041017.cfm>

***Demand-Focused Prevention Solutions:***

1. Support social programs for re-integration into society post-incarceration;
2. Support and/or launch education campaigns to increase awareness of prescription and other opioid drug misuse;
3. Support education campaigns and programs that encourage those who are addicted to seek treatment services, including the use of advocates to conduct outreach and help people get to evaluation and treatment; and
4. Support community development in areas of child care, family services and other services to facilitate participation in treatment and prevention programs.

***Supply-Focused Prevention Solutions:***

1. Support or enhance the State's efforts to improve the tracking and monitoring systems that help detect "doctor shoppers" and identify doctor prescribing practices;
2. Support diversion initiatives including drug take-back events and the production of more secure prescription containers; and
3. Support the development of new surveys and health questionnaires which enable doctors to better assess a patients risk for opioid abuse.

## GRANT GUIDELINES

### Grant Types

The Foundation plans to provide grants through three separate grantmaking programs: the Statewide Grants Program, the Regional Grants Program and the Special Initiative Grants Program.

- The *Statewide Grants Program* will provide grants to nonprofit organizations serving low-income individuals, families and communities throughout New York State. The Foundation currently plans to allocate 45% of the total annual grantmaking budget to the Statewide Grants Program.
- The *Regional Grants Program* will provide grants to nonprofit organizations serving low-income individuals, families and communities in eight (8) designated regions across the State to ensure that each region of the State receives proportionate funding. The Foundation currently plans to allocate 45% of the total annual grantmaking budget to the Regional Grants Program.
- The *Special Initiatives Grants Program* will provide grants for innovative or impactful projects that help further the mission of the Foundation and have a focus on systemic or statewide impact on health or social determinants of health. The Foundation currently plans to allocate 10% of the total annual grantmaking budget to the Special Initiatives Grants Program.

Program	Description of Program	Annual Percentage
Statewide Grants Program	Grants focused on Statewide initiatives or initiatives that cross multiple regions.	45%
Regional Grants Program	Grants made across eight geographic regions to ensure that each region of the State receives proportionate funding, including rural and upstate areas.	45%
Special Initiatives Grants Program	Grants used for special initiatives or to supplement Regional or Statewide programs.	10%

Grants may be awarded for up to 24-month periods. Grant recipients are encouraged to seek diversified funding support; renewal grants are not assured.

### **Grant Eligibility**

**Applicant organizations must meet the following eligibility requirements:**

- **Applicant must be a domestic tax-exempt organization in good standing under sector 501(c)(3) of the Internal Revenue Code, or must be a project of a fiscal agent/sponsor that is designated as such. Grants may only be made to a domestic public charity as described in Internal Revenue Code section 509(a)(1) or (2) or an exempt operating foundation as described in Internal Revenue Code section 4940(d)(2).**
- **Applicant must be located in the state of New York or primarily serve New York State residents.**
- **The grant must benefit poor, disadvantaged or underserved New York residents.**
- **Applicant must demonstrate its capacity to work with the populations to be served by the project.**
- **Applicant must have a record of strong governance, leadership, and financial stability.**
- **Applicant may be a Catholic or non-Catholic organization. Applicants must agree to use grant funds in compliance the Ethical and Religious Directives and other applicable guidelines promulgated by the United States Conference of Catholic Bishops, as directed by the Foundation.**
- **Applicants must not participate or intervene in political campaigns on behalf of or in opposition to candidates for public office.**
- **Applicants may not re-grant funds to other organizations.**



## **Statewide Grants Program Application Process**

### **Stage 1: Letter of Inquiry (LOI)**

- Eligible applicants are invited to submit a Letter of Inquiry (LOI) on a **rolling basis** (see guidelines below).
- Applicants will be notified about the status of the inquiry generally **60-90 days from submission**.
- A subset of applicants will be invited to submit full proposals.

### **Stage 2: Full Proposal**

- Full proposals will be accepted on an **invitation-only** basis following the successful submission and review of an LOI.
- Proposals are accepted on a **rolling basis** and will be considered by the Board of Directors.
- An invitation to submit a proposal does not guarantee funding.

### **Stage 1: Letter of Inquiry Guidelines**

#### **LOI Submission**

Applicants are strongly encouraged to submit Letters of Inquiry via the online grants portal (INSERT LINK), though submissions will be accepted three ways:

1. *Submit via online portal (LINK)*
2. *Submit via email* using Microsoft Word or PDF (INSERT EMAIL ADDRESS)
3. *Submit a hard copy* via postal service or by hand to:

INSERT ADDRESS

We urge you to read the following Guidelines carefully and to keep the eligibility criteria in mind as you develop the Letter of Inquiry.

**LOI Guidelines**

Please provide a **two-page overview** of the proposed project for funding, including:

- Requested grant amount and grant period (number of months)
- Brief overview of program/project for which you are requesting funds and how it aligns with the focus areas of the Mother Cabrini Health Foundation
- Demographics of those anticipated to be served through the funding (including geography, socio-economic status, race/ethnicity, immigration status, and age) and how the proposed program/project will improve outcomes
- Description of experience and organizational capacity to effectively serve the target population or project
- A basic outline of the program/project plan (activities) over the grant period

On a separate page, please include an anticipated budget summary showing how funds would be used, including list of funding sources.

All LOIs will be reviewed and a subset of applicants will be invited to submit a full proposal.

**Stage 2: Full Proposal Guidelines****Proposal Submission**

Applicants are strongly encouraged to submit full proposals via the online grants portal (INSERT LINK), though submissions will be accepted three ways:

1. *Submit via online portal (LINK)*
2. *Submit via email using Microsoft Word or PDF (INSERT EMAIL ADDRESS)*
3. *Submit a hard copy via postal service or by hand to:*

INSERT ADDRESS

## **Application**

### ***A. Cover Sheet***

The proposal cover sheet must include the following information:

- Name of the Organization;
- Mailing Address;
- Primary Contact;
- Brief description of Grant Purpose (<25 words);
- Grant Amount and Timeframe;
- Grant History with Foundation (if any);
- Board of Directors (with affiliations); and
- Top Five Funders (with amounts).

### ***B. Application Narrative***

Proposal narratives should not exceed 10 pages in length. Additional information offering details may be included as attachments.

Narrative must include the following sections:

1. **Organizational Description** of no more than two paragraphs should include history of the organization and its ongoing programs. Please include organization's experience and success with services proposed, and/or populations and communities to be served through the proposed project, including length of time providing such services.
2. **Project Description** should include the following information:
  - A. Description of how the program/project relates to priority program areas of the Mother Cabrini Health Foundation.
  - B. Description of the population(s) to be served (including geography, socio-economic status, race/ethnicity, immigration status, and age).

- C. Description of how the program/project will serve low-income, underserved and/or disadvantaged individuals.
  - D. Description of how the program/project addresses the needs of the target population(s). Please describe chosen modalities and justification of their efficacy with the population(s) to be served. If this proposal represents a new program/project of the applicant organization, please include a timeline and plan for the startup phase.
  - E. Capacity of the applicant organization to implement the proposed program/project.
  - F. If partners or collaborative agencies are proposed, describe their roles in this program/project.
  - G. Roles and responsibilities of key staff. Include specific experience the applicant organization's staff has with the target population(s) and what skills they will use to implement the proposed program/project.
  - H. At least two to three expected outcomes and how those outcomes which can be measured. Clarify quantitative and qualitative data you plan to collect.
- 3. Impact of the grant on your organization's objectives.** Describe how you will evaluate the outcomes and impact of the grant as well as how you will use the evaluations to improve the program.
- 4. Anticipated Challenges and Mitigation Strategy** should be described.
- 5. Potential for Sustainability** and long term program plans for sustainability should be included.
- 6. Budget Summary** of one to two paragraphs should include the total project budget, a brief description of the major expense areas (i.e. salaries, consulting fees, event expenses, etc.), and any additional funding pending or received for the proposed time period.

***C. Attachments***

- A. IRS determination letter or other evidence of tax-exemption.**
- B. Most recent financial statements, audited if available.**
- C. Most recent IRS Form 990.**
- D. Most recent annual report, if available.**
- E. Current annual budget of the applicant organization (or fiscal agent whichever is appropriate) including expenses and revenues (please list any current major funders).**
- F. Program budget.**
- G. Bios or resumes of key staff.**
- H. Other information the applicant organization feels is pertinent to understanding the quality and nature of the proposed project(s) and its constituency, including any relevant summary reports and/or quantifiable data on previously funded service or efficacy studies if appropriate.**

### **Regional Grants Program Application Process**

- Full proposals will be accepted on an **invitation-only** basis
- Proposals are accepted on a **rolling basis** and will be considered by the Regional Grants Committee of the Board of Directors.
- An invitation to submit a proposal does not guarantee funding.

#### **Proposal Submission**

Applicants are strongly encouraged to submit full proposals via the online grants portal (INSERT LINK), though submissions will be accepted three ways:

1. *Submit via online portal (LINK)*
2. *Submit via email using Microsoft Word or PDF (INSERT EMAIL ADDRESS)*
3. *Submit a hard copy via postal service or by hand to:*

INSERT ADDRESS

#### **Application**

##### ***A. Cover Sheet***

The proposal cover sheet must include the following information:

- Name of the Organization;
- Mailing Address;
- Primary Contact;
- Brief description of Grant Purpose (<25 words);
- Grant Amount and Timeframe;
- Grant History with Foundation (if any);
- Board of Directors (with affiliations); and
- Top Five Funders (with amounts).

***B. Application Narrative***

Proposal narratives should not exceed 10 pages in length. Additional information offering details may be included as attachments.

Narrative must include the following sections:

- 1. Organizational Description** of no more than two paragraphs should include history of the organization and its ongoing programs. Please include organization's experience and success with services proposed, and/or populations and communities to be served through the proposed project, including length of time providing such services.
- 2. Project Description** should include the following information:
  - A. Description of how the program/project relates to priority program areas of the Mother Cabrini Health Foundation.
  - B. Description of the population(s) to be served (including geography, socio-economic status, race/ethnicity, immigration status, and age).
  - C. Description of how the program/project will serve low-income, underserved, and/or disadvantaged individuals.
  - D. Description of how the program/project addresses the needs of the target population(s). Please describe chosen modalities and justification of their efficacy with the population(s) to be served. If this proposal represents a new program/project of the applicant organization, please include a timeline and plan for the startup phase.
  - E. Capacity of the applicant organization to implement the proposed program/project.
  - F. If partners or collaborative agencies are proposed, describe their roles in this program/project.

- G. Roles and responsibilities of key staff. Include specific experience the applicant organization's staff has with the target population(s) and what skills they will use to implement the proposed program/project.
  - H. At least two to three expected outcomes and how those outcomes which can be measured. Clarify quantitative and qualitative data you plan to collect.
- 3. **Impact** of the grant on your organization's objectives. Describe how you will evaluate the outcomes and impact of the grant as well as how you will use the evaluations to improve the program.
  - 4. **Anticipated Challenges and Mitigation Strategy** should be described.
  - 5. **Potential for Sustainability** and long term program plans for sustainability should be included.
  - 6. **Budget Summary** of one to two paragraphs should include the total project budget, a brief description of the major expense areas (i.e. salaries, consulting fees, event expenses, etc.), and any additional funding pending or received for the proposed time period.

**C. Attachments**

- A. IRS determination letter or other evidence of tax-exemption.
- B. Most recent financial statements, audited if available.
- C. Most recent IRS Form 990.
- D. Most recent annual report, if available.
- E. Current annual budget of the applicant organization (or fiscal agent whichever is appropriate) including expenses and revenues (please list any current major funders).
- F. Program budget.
- G. Bios or resumes of key staff.



H. Other information the applicant organization feels is pertinent to understanding the quality and nature of the proposed project(s) and its constituency, including any relevant summary reports and/or quantifiable data on previously funded service or efficacy studies if appropriate.

### **Special Initiatives Grants Program Application Process**

Special Initiative Grant projects are identified on an annual basis by program staff for recommendation to the Board. The program is structured to allow for a flexible response to changing needs or to identify innovative projects in furtherance of the Foundation's grantmaking strategy. Grants may support more than one organization in a coordinated effort to tackle and address important impediments to health and well-being, where appropriate.

Proposals for Special Initiatives Grants will be solicited by Foundation staff pursuant to direction by the Board or a committee designated by the Board.

#### **Proposal Submission**

Applicants are strongly encouraged to submit full proposals via the online grants portal (INSERT LINK), though submissions will be accepted three ways:

1. *Submit via online portal (LINK)*
2. *Submit via email using Microsoft Word or PDF (INSERT EMAIL ADDRESS)*
3. *Submit a hard copy via postal service or by hand to:*

INSERT ADDRESS

#### **Application**

##### ***A. Cover Sheet***

The proposal cover sheet must include the following information:

- Name of the Organization;
- Mailing Address;
- Primary Contact;
- Brief description of Grant Purpose (<25 words);
- Grant Amount and Timeframe;

- Grant History with Foundation (if any);
- Board of Directors (with affiliations); and
- Top Five Funders (with amounts).

### ***B. Application Narrative***

Proposal narratives should not exceed 10 pages in length. Additional information offering details may be included as attachments.

Narrative must include the following sections:

1. **Organizational Description** of no more than two paragraphs should include history of the organization and its ongoing programs. Please include organization's experience and success with services proposed, and/or populations and communities to be served through the proposed project, including length of time providing such services.
2. **Project Description** should include the following information:
  - A. Description of how the program/project relates to priority program areas of the Mother Cabrini Health Foundation.
  - B. Description of the population(s) to be served (including geography, socio-economic status, race/ethnicity, immigration status, and age).
  - C. Description of how the program/project will serve low-income, underserved and/or disadvantaged individuals.
  - D. Description of how the program/project addresses the needs of the target population(s). Please describe chosen modalities and justification of their efficacy with the population(s) to be served. If this proposal represents a new program/project of the applicant organization, please include a timeline and plan for the startup phase.
  - E. Capacity of the applicant organization to implement the proposed program/project.

- F. If partners or collaborative agencies are proposed, describe their roles in this program/project.
  - G. Roles and responsibilities of key staff. Include specific experience the applicant organization's staff has with the target population(s) and what skills they will use to implement the proposed program/project.
  - H. At least two to three expected outcomes and how those outcomes which can be measured. Clarify quantitative and qualitative data you plan to collect.
- 3. **Impact** of the grant on your organization's objectives. Describe how you will evaluate the outcomes and impact of the grant as well as how you will use the evaluations to improve the program.
  - 4. **Anticipated Challenges and Mitigation Strategy** should be described.
  - 5. **Potential for Sustainability** and long term program plans for sustainability should be included.
  - 6. **Budget Summary** of one to two paragraphs should include the total project budget, a brief description of the major expense areas (i.e. salaries, consulting fees, event expenses, etc.), and any additional funding pending or received for the proposed time period.

***C. Attachments***

- A. IRS determination letter or other evidence of tax-exemption.
- B. Most recent financial statements, audited if available.
- C. Most recent IRS Form 990.
- D. Most recent annual report, if available.
- E. Current annual budget of the applicant organization (or fiscal agent whichever is appropriate) including expenses and revenues (please list any current major funders).
- F. Program budget.

- G. Bios or resumes of key staff.
- H. Other information the applicant organization feels is pertinent to understanding the quality and nature of the proposed project(s) and its constituency, including any relevant summary reports and/or quantifiable data on previously funded service or efficacy studies if appropriate.

### **Requirements for All Grant Types**

Organizations awarded grants are expected to comply with the following:

- Submission of semiannual grant reports using a standard format to be provided with the grant award letter. In most cases, grantees will be required to submit an annual and interim grant report, and in some cases, quarterly or special reports on particular issues.
- A financial statement on the project budget must be submitted with the annual and interim grant reports using a format to be provided.
- In certain cases, a site visit will be required to review proposed grant activity both prior to grant award and at interim and final reporting periods.
- Any publicity regarding this grant should include an acknowledgement that the project was supported by the Mother Cabrini Health Foundation.
- Grantees must maintain documentation of current licensure for all professionally licensed staff and retention of financial records. Audit requirements will be outlined in grant agreement.
- Other requirements at the discretion of Mother Cabrini Health Foundation to ensure stewardship of the funds, accountability and sound project management.

**Appendix A: GRANT APPLICATION FORM**

## Mother Cabrini Health Foundation Grant Application

**A. Cover Sheet**

<b>Name of Organization</b>		
<b>Mailing Address</b>		
<b>Primary Contact</b>	<b>Name</b>	
	<b>Phone</b>	
	<b>Email</b>	
<b>Grant purpose (&lt; 25 words)</b>		
<b>Requested Grant Amount</b>		
<b>Grant Timeframe</b>		
<b>Grant history with the Foundation (if applicable)</b>	<b>Year</b>	<b>Amount</b>

<b>Board of Directors (with affiliations)</b>	<b>Name</b>	<b>Affiliation</b>
<b>List of top 5 current funders (private and public, with amounts)</b>	<b>Amount (USD)</b>	<b>Funder (please note public sources with an asterisk (*))</b>

## **B. Grant Application Narrative**

### **Organization Description**

Describe the organization's history, mission and services.

[Click here to enter text.](#)

### **Project Description**

Describe in detail the work you plan to do in the coming year with the support of this grant. Please include what success looks like for this grant. It should include the following:

- A. Description of how the program/project relates to priority program areas of the Mother Cabrini Health Foundation.
- B. Description of the population(s) to be served (including geography, socio-economic status, race/ethnicity, immigration status, and age).
- C. Description of how the program/project will serve low-income, underserved, disadvantaged, and/or minority individuals.
- D. Description of how the program/project addresses the needs of the target population(s). Please describe chosen modalities and justification of their efficacy with the population(s) to be served. If this proposal represents a new program/project of the applicant organization, please include a timeline and plan for the startup phase.
- E. Capacity of the applicant organization to implement the proposed program/project.
- F. If partners or collaborative agencies are proposed, describe their roles in this program/project.
- G. Roles and responsibilities of key staff. Include specific experience the applicant organization's staff has with the target population(s) and what skills they will use to implement the proposed program/project.
- H. At least two to three expected outcomes and how those outcomes which can be measured. Clarify quantitative and qualitative data you plan to collect.

[Click here to enter text.](#)



### **Impact**

Describe how you evaluate the outcomes and impact of your work. Highlight objectives that point to wider, long-term impact. Also discuss how you learn from evaluation to refine and improve your program.

[Click here to enter text.](#)

### **Anticipated Challenges & Mitigation Strategy**

We appreciate your candor in helping us understand potential challenges that may affect program implementation or success.

[Click here to enter text.](#)

### **Potential for Sustainability**

Discuss your plans for long term program sustainability.

[Click here to enter text.](#)

### **Budget Summary**

of one to two paragraphs should include the total project budget, a brief description of the major expense areas (i.e. salaries, consulting fees, event expenses, etc.), and any additional funding pending or received for the proposed time period.

[Click here to enter text.](#)

### **C. Attachments**

#### **Required Financial Information & Other Supporting Material**

- A. IRS determination letter or other evidence of tax-exemption.**
- B. Most recent financial statements, audited if available. This statement should reflect actual expenditures and funds received during your most recent fiscal year.**
- C. Most recent IRS Form 990.**
- D. Most recent annual report, if available.**
- E. Current annual budget of the applicant organization (or fiscal agent whichever is appropriate) including expenses and revenues (please list any current major funders).**
- F. Program budget.**
- G. Bios or resumes of key staff.**
- H. Other information the applicant organization feels is pertinent to understanding the quality and nature of the proposed project(s) and its constituency, including any relevant summary reports and/or quantifiable data on previously funded service or efficacy studies if appropriate.**

## **Appendix B: GRANT REPORT FORM**

### **Final or Interim Report on xxx Grant**

#### **Project Goal**

State the goals and objectives that were outlined in your proposal to be supported through the grant.

[Click here to enter text.](#)

#### **Outcomes & Results**

Please be as specific as possible in describing the outcomes and impact generated by your work as they relate to your proposed goals and objectives. This should include quantitative and qualitative measures.

[Click here to enter text.](#)

#### **Successes, Challenges & Changes**

Describe what has happened in your organization this year: successes, difficulties, changes, transitions, whatever we need to know about.

[Click here to enter text.](#)

#### **Lessons Learned, and Plans for the Future**

Please describe how your programmatic outcomes and measurement of your impact will inform your work in the future as described in your proposal.

[Click here to enter text.](#)

#### **Financial Report**

Please attach separately a financial report showing how the grant funds were spent.

## **Appendix C: GRANT AWARD LETTER**

DATE

TO

Dear XX:

It is a pleasure to inform you that the Mother Cabrini Health Foundation ("Foundation") has approved a grant in the amount of \$X to X. This grant is to support XXX as described in your proposal of XXX. The term of the grant is XX months, commencing on XX.

Enclosed with the award letter is the Grant Agreement. Please sign, date, and return one copy to us, retaining one for your files. The Foundation will issue payment of the grant proceeds by wire transfer after receiving the signed grant agreement. Funding obtained under this agreement may not be used for any purpose other than described above and in the enclosed Agreement without prior written permission from the Foundation.

The Foundation requires two reports: an interim written report describing your progress; and a final written report of accomplishments accompanied by an accounting of the grant expenditures. If the reporting schedule or any other terms and conditions of this grant present significant difficulties for you, please contact your program officer as soon as possible. In all correspondence with us, please use the reference number which appears on the enclosed Agreement.

We are pleased to be able to assist you in your important work. We wish you success and look forward to receiving a signed copy of the Agreement at your earliest convenience. Grant funds will be released only after receiving a signed grant Agreement.

Sincerely,

XXXX

**Appendix D: GRANT AGREEMENT****GRANT AGREEMENT # XXXX**

**GRANTEE:** XX

**AMOUNT OF GRANT:** XX

**GRANT PERIOD:** XX

**PAYMENT SCHEDULE:** On or about XX

**FINAL REPORT DUE:** XX

**EXPENDITURE REPORT DUE:** XX

This agreement refers to and incorporates the grant Award Letter dated XX from the Mother Cabrini Health Foundation ("Foundation"). As conditions to the receipt of the grant funds announced in the Award Letter, the undersigned organization certifies that it is a charitable entity.

The Foundation has approved a grant in the amount of \$XX to XX. This grant is to support XX as described in proposal dated xxx and amendments xxx[if applicable]. The term of the grant is XX months with interim and final reports due xxx, xxx respectively.

[Recipient organization] agrees that it will:

1. Submit full and complete reports on the manner in which the funds are spent based upon the approved program plan and budget it submitted, and the progress made in accomplishing the purpose of the grant, such reports to be made as described below:

a. Interim Report

Using template provided, a review of progress to date and any success or challenges.

**b. Final Report**

Using template provide, a review of the accomplishments achieved during the entire grant period, unusual circumstances or problems encountered during the reporting period, and efforts made to resolve them.

**c. Expenditure Report**

Complete and accurate record of how grant monies were spent during interim period and at final report.

2. Maintain clear and accurate records of receipts and expenditures for this grant, and make such records available to the Trust upon request.
3. Any publicity regarding this grant should include an acknowledgement that the project was supported by the Mother Cabrini Health Foundation.
4. Grantees must maintain documentation of current licensure for all professionally licensed staff and retention of financial records.
5. Permit the Foundation and/or its authorized representatives to monitor and evaluate the project funded by this grant through discussions with staff and others, site visits, and the review of records, as appropriate.
6. Inform the Foundation in a timely manner of changes in key personnel, significant difficulties in making use of the funds for the purposes described in the grant proposal, or inability to expend the grant funds in the time period set forth.
7. Use Foundation funds solely for the purposes specified in the Award Letter and Agreement and agree to the following:
  - No part of this Grant shall be used to fulfill a personal or corporate pledge of financial support.
  - No goods, services or benefits have been or shall be provided in connection with this grant.
  - No part of this grant shall be used in exchange for payment for tickets to benefit events, auction items or membership.
  - No part of this grant may be used to participate or intervene in political campaigns on behalf of or in opposition to candidates for public office.
  - Use grant funds in compliance the Ethical and Religious Directives and other applicable guidelines promulgated by the United States Conference of Catholic Bishops, as directed by the Foundation.
  - [The Grant shall be used only for [PROJECT/RESTRICTED PURPOSE]].

In addition, you represent that your organization is either (i) a domestic public charity as described in IRC section 509(a)(1) or (2) or (ii) an exempt operating foundation as described in IRC section 4940(d)(2).

You further represent that this grant will not result in private inurement or personal benefit of any kind.

Mother Cabrini Health Foundation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:

Read and agreed to by [recipient organization]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
ID: XXX

# EXHIBIT 46

## Minutes and Resolutions of September 7, 2017 Director Meeting Approving Transaction and Purchase Agreement



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**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK  
BOARD OF DIRECTORS MEETING  
SEPTEMBER 7, 2017**

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A Special Meeting of the Board of Directors (the "Board") of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York ("Fidelis"), was held on September 7, 2017 at Fidelis' offices at 95-25 Queens Boulevard, Rego Park, New York 11374.

Present: Reverend Donald J. Harrington (via telephone)  
Karl P. Adler, M.D.  
M. William Benedetto (via telephone)  
Sister Patricia Burkard (via telephone)  
James Corrigan (via telephone)  
Reverend John Coughlin (via telephone)  
Thomas F. Doodian (via telephone)  
Reverend Patrick J. Frawley (*ex officio*, non-voting)  
John J. Hurley (via telephone)  
Thomas L. Kelly (via telephone)  
Donna O'Brien  
Reverend Leo J. O'Donovan, S.J. (via telephone)  
Gino J. Pazzaglini (via telephone)  
Reverend Monsignor Alan J. Placa (Director Emeritus, non-voting)  
Joseph Slavik (via telephone)  
Deacon Frank J. Thomas, M.D. (via telephone)  
Mary Thompson (via telephone)  
Michael J. Tooley (via telephone)  
John A. Werwaiss

Excused: Jack Balinsky  
John J. Rydzewski

In attendance: David P. Thomas, President and Chief Operating Officer  
Thomas Halloran, EVP & Chief Financial Officer  
Santo F. Russo, Esq., Chief Legal Officer

Invited Guests:     **Citigroup Global Markets, Inc.**  
Lorrie Warner  
Milad Hadziabdic

**Norton Rose Fulbright US LLP**  
Andrew B. Roth, Esq.  
Warren J. Nimetz, Esq.  
Kimberly J. Gold, Esq.  
William Stelwagon, Esq.(via telephone)

Father Harrington presided as Chairman and Mr. Russo recorded. Father Harrington called the meeting to order at 1:00 p.m. The Special Meeting of the Board was called for the purpose of considering a proposed transaction (the "Transaction") involving the sale of substantially all of the assets of Fidelis to Centene Corporation ("Centene"); specifically, whether to approve the Transaction and make a recommendation to the Members of Fidelis to approve the Transaction.

The Board considered the following matters:

**I.     Review of Key Legal and Business Issues for the Transaction**

**A.     Overview of Current Status of the Transaction**

Father Frawley stated that the most recent draft of the Asset Purchase Agreement (the "APA") between Fidelis and Centene was distributed to the Board, together with a draft of a Fairness Opinion issued by Citigroup Global Markets, Inc. ("Citi"), and an independent valuation report prepared by Navigant Consulting, Inc. ("Navigant"). Father Frawley stated that the APA is almost fully negotiated and that the negotiations and due diligence have resulted in a purchase price of \$3.75 billion. Father Frawley noted that one item remains outstanding relating to protections sought by the Members regarding use of the Transaction proceeds and the proposed purposes of "new Fidelis" (i.e., Fidelis as the surviving corporation, which would function as a foundation) that will remain in place following the Transaction.

Father Frawley indicated that Centene's Board of Directors would meet later in the day to vote to approve the Transaction. Father Frawley also informed the Board that when the APA is signed, Fidelis will inform key regulators of the Transaction. Father Frawley stated that Centene is planning to issue a press release announcing the Transaction; Fidelis will issue a press release shortly thereafter. In addition, he noted that Fidelis will then reach out to a variety of constituencies – most importantly, the four thousand employees of the company, to inform them that their jobs are secure, that they have brought great value to Fidelis, and that the Transaction is a benefit for Fidelis as an insurance company, and for new Fidelis as a foundation.

Ms. O'Brien asked about the timing of signing the APA. Father Frawley responded that he did not have a definitive answer because the negotiations with Centene remain ongoing. He added that the Board's job is to review the Transaction and determine if it is appropriate to approve and recommend the Transaction to the Members for approval.

Father Frawley re-emphasized that the Members have the final say on the Transaction, and that the Members and Centene are working together to find an acceptable solution to the open issues that are still being negotiated.

**B. Citi Review of the Transaction Terms**

Ms. Warner began her review of the Transaction. She stated that as to total consideration, Centene's offer is superior to the prior offer from United HealthGroup ("United"). She added that Centene has no competing New York health care insurance business, meaning that the Transaction likely would present little antitrust risk.

Ms. Warner emphasized that overall, Centene is a strong strategic fit for Fidelis. She stated that Centene is the largest operator of government-sponsored programs (e.g. Medicaid, Medicare Advantage, etc.) across the country. Ms. Warner added that Centene is a good fit because it is a highly qualified, publicly traded company that offered an attractive deal. Ms. Warner stated that it is unusual for a company to receive a second offer that is far superior to the first, but that is what has now happened vis-à-vis a comparison of the Centene offer to that of United.

Ms. Warner then explained that Centene intends to deliver all cash consideration at closing, and that it has already secured a bridge loan in the amount of the purchase price. She stated, however, that Centene has asked for flexibility to deliver up to \$500 million of the \$3.75 billion of consideration in the form of Centene common stock; \$125 million of Centene common stock would be fully tradable immediately after the closing and \$375 million of Centene common stock would fund the contractually required 10% escrow to cover possible claims. The escrowed shares would be registered in the name of an escrow agent, and Centene would be obligated to replace those shares with cash prior to conclusion of the escrow period. Ms. Warner stated that this is the functional equivalent of a cash transaction, and that in any event Centene has stated its expectation to deliver the purchase price all in cash. Ms. Warner stated that Centene's equity is at a high level compared to historical trends.

Sister Burkard asked how much the Centene stock is trading for currently. Ms. Warner responded that as of September 7, 2017, it was trading at \$89.15 per share.

Ms. Warner then discussed the various purchase price adjustments, including both upside and downside enrollment adjustments. Ms. Warner also addressed the IBNR adjustment,

and stated that Fidelis would deliver the balance sheet at closing reflecting its reserves. She added that there would be a true-up with the IBNR adjustment valued at 14%. Ms. Warner noted that the target net working capital is \$1.2 billion, subject to a two-step true-up adjustment, with a final reconciliation 12 months post-closing. She also stated that the excess cash and risk based capital results in a quantitative difference, favorable to Fidelis, between the Centene and United offers.

Regarding post-closing commitments and communications, Ms. Warner stated that Centene's CEO, Michael Neidorff, has prepared a transmittal letter which states his commitment to many of the principles important to Fidelis, including continuing to serve the poor and underserved, to invest in Fidelis, to search for opportunities, to maintain the current geography, and to expand Fidelis' portfolio. She emphasized that he is also committed to retaining all employees and guaranteeing employment to those employees for one year. Ms. Warner stated that the letter makes a commitment to the scope and type of services Fidelis will offer, and that there is a parallel statement around adopting concepts in Fidelis' mission, maintaining a New York presence, and continuing to conform to the principles and practices of the Ethical and Religious Directives for Catholic Health Services. Father Frawley added that the current Fidelis management staff will remain in place post-closing.

Ms. Warner stated that, with respect to the very large for-profit managed care transactions that have been announced in recent years, Centene's transaction with Healthnet in 2016 was the only one that was successful from a regulatory approval perspective. She added that Centene was able to obtain the many required California state regulatory approvals, and noted that California is a difficult state in which to do so. Ms. Warner commented that Centene utilizes RFPs for Medicaid in multiple states, and noted that Centene has been successful with respect to obtaining approvals in new markets it enters.

### **C. Norton Rose Fulbright Review of the Transaction**

#### **Assets and Liabilities**

Mr. Roth explained the structure of the Transaction. He stated that Fidelis itself is not being sold; rather, its assets and insurance business are being sold. He added that Fidelis, as a 501(c)(3) charitable organization, will stay in existence, and will be the recipient of the consideration paid by Centene. Mr. Roth said that the assets being transferred are all of the insurance lines of business, the "Fidelis" name, the stock of Salus Administrative Services, Inc., and the membership interests in Salus IPA, LLC. He noted that the membership interests and assets of Rego Park Office Tower, LLC, including the building that Fidelis currently occupies, are excluded from the Transaction. He stated that the office space in the building will be leased to Centene post-closing.

Mr. Roth reported that Centene will also acquire virtually all of Fidelis' liabilities, which is different from the typical asset deal. He said that Centene will not assume outstanding loans, back taxes, etc. Adding to the points made by Ms. Warner, Mr. Roth stated that Centene will pay Fidelis a purchase price of \$3.75 billion, and Centene is entitled to pay up to \$500 million of the purchase price in Centene common stock as follows: up to \$375 million of Centene common stock may be used to fund an escrow account to fund post-closing Centene indemnification claims, provided that Centene is required to replace the escrowed stock with cash; and up to \$125 million of Centene common stock may be used to fund a portion of the closing date purchase price, provided that such shares are freely tradeable as of the closing. Mr. Roth added that since Fidelis itself will remain in existence, the corporation will survive and continue as a 501(c)(3) charitable organization, remaining exempt from taxation.

#### **Material Adverse Effect**

Mr. Roth explained the "Material Adverse Effect" provision in the APA. Mr. Roth stated that Centene would not be required to close the transaction if a Material Adverse Effect takes place with respect to the Fidelis business during the period between the signing of the APA and the closing. Mr. Roth said that adverse effects arising from the enactment of the repeal and replace legislation that has been considered by Congress would not be deemed to be a Material Adverse Effect under the APA. He stated that neither Fidelis nor Centene would be required to close the Transaction if a "Burdensome Condition" is imposed as a condition to obtaining the required regulatory approvals in order to close. He added that a party terminating the purchase agreement as a result of the imposition of a "Burdensome Condition" would be required to pay the other party a \$5 million termination fee.

Mr. Roth explained that Material Adverse Effect provisions generally have not been upheld by courts, so there is little or no precedent of a Material Adverse Effect causing a deal to fall apart. He noted that the parties are in the process of negotiating the ultimate final language on the Burdensome Condition provision. Mr. Roth explained Centene's current proposal: a "Burdensome Condition" is any restriction imposed on Fidelis by a governmental authority that has or would reasonably be expected to have a material and adverse effect on the overall benefits it reasonably expects to derive from the consummation of the Transaction.

#### **Other Key Terms**

Mr. Nimetz explained Fidelis' obligation to indemnify Centene for losses arising from breaches of representations, covenants, and excluded liabilities. He said that the survival period of claims for representations generally is 12 to 18 months, but certain representations last longer, such as those related to benefits and taxes (which is typical), and other fundamental representations that survive indefinitely. Mr. Nimetz said that there

is a \$25 million deductible, a \$375 million cap for general representations, and a \$3.75 billion cap for fundamental representations. He said that there is no cap for breaches of covenants or excluded liabilities. Mr. Nimetz explained when either party can terminate the APA, including termination for breaches, the Burdensome Condition, or if the Transaction has not closed by March 31, 2018 (with the possibility of extension by three months if certain conditions are unsatisfied).

Mr. Nimetz also explained that it is very important to Centene to purchase the Fidelis name. He said that Fidelis agreed to grant Centene a royalty-free license to use its legal name (New York State Catholic Health Plan, Inc.) for up to nine months after closing, and Fidelis would also grant Centene a royalty-free license to use its corporate name in connection with the performance by Centene of its obligations pursuant to the reinsurance agreements.

Regarding post-closing covenants, Mr. Nimetz reiterated several points noted earlier, namely that Centene has a one-year commitment to employ the current Fidelis employees, that Centene also has made a commitment to maintain a corporate presence in New York for three years, and to comply with Fidelis protocols and policies relating to the Ethical and Religious Directives for Catholic Health Care Services for one year post-closing.

#### **Internal and External Approvals**

Mr. Roth explained the internal and external approvals that will need to be obtained in order for the Transaction to close. He stated that internal approvals are governed by the New York Not-for-Profit Corporation Law ("N-PCL") and Fidelis' corporate documents. He noted that there are two levels of internal approvals: the Board is required to approve the Transaction and issue a recommendation to the Members, who then will consider and determine whether to approve the Transaction.

Mr. Roth next explained the required external approvals, starting with antitrust review under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR"). Mr. Roth explained that because Centene has very little business in New York, the parties do not anticipate significant issues from an antitrust perspective. He added that there is a thirty-day waiting period after the HSR filing is submitted; if that period expires without action by the Department of Justice, then the Transaction will be deemed approved. He added that in some situations, companies can receive early termination of the waiting period, and that this may occur here.

Mr. Roth explained that the federal U.S. Centers for Medicare and Medicaid Services ("CMS") will need to approve the novation of the Medicare provider agreement. He said that at the state level, the New York State Department of Health and New York State Department of Financial Services will need to approve the Transaction as well. Mr. Roth noted that the most significant regulatory approval will be that of the New York State Attorney General. He added that Fidelis will be working collaboratively with the Members

and Centene to prepare and provide as strong a submission to the Attorney General as possible. In response to a question from Ms. O'Brien, Mr. Roth stated that the advisors to the Members include three separate law firms.

Mr. Roth then explained the two-prong standard for approval of a sale of substantially all of the assets of a corporation under the N-PCL: 1) the consideration is fair and reasonable; and 2) the interests of the corporation or its members are promoted thereby. Mr. Roth stated that these two standards will need to be demonstrated in the petition that Fidelis will submit to the Attorney General and/or the Court for approval. Mr. Roth stated that the first prong generally can be shown by means of a reasonableness or fairness opinion obtained in connection with the Transaction, or a valuation report. Mr. Roth noted that Fidelis would be submitting both a fairness opinion from Citi and a fair market valuation analysis from Navigant with the petition.

Mr. Werwaiss asked whether Centene had seen Navigant's valuation report. Mr. Roth responded that Centene has not seen it as yet, but will see it when it is attached to the draft of the submission to the Attorney General. Mr. Nimetz noted that the valuation amount (\$3.4 – \$3.58 billion) is lower than the sale price in the Transaction documents, but that is because Navigant specifically did not take into account any synergies or related factors that the buyer brings to the table. Mr. Nimetz stated it is common for the buyer to pay more than the figure arrived at in a valuation report because the buyer often takes into account additional factors.

Ms. Warner added that Centene has its own financial advisor, Allen and Co., which is preparing a fairness opinion that Centene will rely on. Mr. Roth added that Fidelis will be entitled to rely on the fairness opinion from Citi.

Ms. Thompson asked how long it would take for the Attorney General to approve the Transaction. Mr. Roth responded that for the first prong, the timing cannot be predicted with certainty, but that in Fidelis' situation, he expects it will take several months due to the magnitude of the Transaction and the parties involved. He said that it is unlikely that the Transaction will close by December 31, 2017, which is why the transaction documents contemplate closing in the first quarter of 2018.

Ms. O'Brien noted that the Reproductive Rights Bureau might also get involved. Mr. Roth agreed that this is something Fidelis has been considering.

#### Ancillary Agreements

Mr. Roth discussed the following ancillary agreements: the Escrow Agreement; the Registration Rights Agreement; and the Reinsurance Agreements. He stated that the Escrow Agreement provides that \$375 million of the purchase price will be held in escrow as a fund that would be available to satisfy any post-closing claims that Centene may assert

during the escrow period. Mr. Roth stated that the Registration Rights Agreement provides that, if Centene elects to pay \$125 million of the purchase price in the form of Centene common stock, Centene will be obligated to register the stock under federal securities laws so that it can be sold immediately following the closing. Regarding the Reinsurance Agreements, Mr. Roth said that Fidelis' Medicare, QHP and EP product lines will be transferred to Centene on an indemnity reinsurance basis under reinsurance agreements pursuant to which Fidelis will continue to issue the policies, but Centene will perform Fidelis' obligations and indemnify Fidelis for associated costs and expenses. Mr. Roth explained that because there is insufficient time to novate the agreements to Centene and have Centene issue the insurance coverage on its own paper until CMS can provide the necessary approvals, the parties agreed to utilize the reinsurance agreements.

#### **D. Additional Transaction Issues**

Dr. Adler recommended that Cardinal Dolan inform the Attorney General and Governor about the Transaction, and Father Frawley responded that this is the current plan.

In response to a question from Msgr. Placa, Mr. Roth mentioned that the Members have, through their advisors, been directly involved in many aspects of the Transaction, including with respect to negotiating the APA.

Father Frawley added that the Members have created something noble and admirable in the proposed purposes of "new Fidelis" with respect to the future use of the funds. He said that the Members are making efforts to ensure that the funds will be used for the extension of the existing Fidelis mission, and for the health and well-being of the poor and medically underserved. Mr. Roth added that the Members have also included housing in the draft as a purpose they believe the new Fidelis will engage in.

Mr. Hadziabdic then spoke about Citi's fairness opinion. He stated that Citi relied on several categories of information in the issuance of its fairness opinion, including discussions with management, the financial projection for Fidelis for the next five years, and recent precedent transactions. He also stated that the Financial Analysis Summary provided to the Board reflects three different valuation methodologies with three different ranges, all of which capture the enterprise value of the purchase price. He noted that, based on Citi's analysis and Citi's experience as investment bankers, the consideration to be paid to Fidelis is fair from a financial point of view. He added that the fairness opinion has been reviewed by Citi's internal fairness committee.

#### **II. Executive Staff Employment Agreements**

Mr. Roth noted that the seven Fidelis executives have engaged their own independent legal counsel, which is separate from Norton Rose Fulbright, as Norton Rose Fulbright represents the corporation and not the individual executives. Father Frawley noted that



independent counsel will assist the executives with respect to their Fidelis employment agreements and the change of control provisions set forth therein, which the Fidelis executives have agreed to waive in connection with the Transaction.

### III. Next Steps

Father Frawley stated that if the Board passes the resolutions in the form contained in the Board's materials, the Board is approving the Transaction and recommending the approval of the Transaction to the Members. He said that the Board would also be delegating to Father Frawley the authority to negotiate and finalize the remaining open issues.

Mr. Roth stated that, assuming the Board passes the resolutions and the pending issues with the Members are resolved, there is no need to hold the scheduled Board meeting tomorrow. He said that if significant issues arise after the Board authorizes the Transaction, the Board may meet again to discuss the changes and provide approval.

Father Frawley then stated that tomorrow's Board meeting would be kept on the calendar, and that he would notify the Board if it is canceled.


### IV. The Vote


Father Coughlin and Mr. Slavik departed the meeting prior to the vote. Mr. Werwaiss made a motion to approve the resolutions attached. Dr. Adler seconded the motion.

The vote was as follows: fifteen (15) directors voted unanimously to pass the resolutions.

\* \* \*

There being no further business, the meeting thereafter adjourned at 2:30 p.m.

  
Reverend Donald J. Harrington, C.M.  
Chairman, Fidelis Care New York

  
Santo F. Russo, Esq.  
Recording Secretary

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## RESOLUTIONS

# CORPORATE RESOLUTIONS

NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
d/b/a FIDELIS CARE NEW YORK

## RESOLUTIONS OF THE BOARD OF DIRECTORS

September 7, 2017

WHEREAS the Board of Directors of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York (respectively, the "Board" and "Fidelis"), was convened in a duly called Special Meeting on September 7, 2017; and

WHEREAS, the Board of Directors (the "*Board*") of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York, a New York not-for-profit corporation (the "*Corporation*"), believes it to be advisable and in the best interests of the Corporation that the Corporation enter into an Asset Purchase Agreement with Centene Corporation ("*Buyer*"), the form of which has been presented to the Board (the "*Purchase Agreement*"), which, among other things, provides for the following:

(a) the Corporation will (i) sell substantially all of its assets, including intellectual property rights in respect of the "Fidelis" name, the stock of the Corporation's wholly-owned subsidiary, Salus Administrative Services, Inc., and the membership interests of the Corporation's wholly-owned subsidiary, Salus IPA, LLC, and (ii) transfer and assign substantially all of the liabilities of the Corporation to Buyer for an aggregate purchase price of approximately \$3.75 billion;

(b) the purchase price payable at closing will be subject to adjustment for unpaid Corporation transaction expenses, and certain indebtedness of the Corporation as of the closing, and \$375 million of the purchase price shall be placed in escrow as described in subparagraph (c) below;

(c) Buyer will be entitled to pay up to \$500 million of the purchase price in the form of Buyer common stock, with up to \$375 million of Buyer common stock used to fund an escrow account to satisfy post-closing Centene indemnification claims, provided that Buyer is required to replace the escrowed stock with cash prior to the conclusion of the escrow period, and up to \$125 million of Centene common stock may be used to fund a portion of the closing date purchase price, provided that such shares are freely tradable as of the closing;

(d) the purchase price also will be subject to adjustment after closing for fluctuations in enrollment volume, total adjusted net assets and working capital;

(e) the Corporation will retain an amount of company cash equal to the excess of Fidelis' total adjusted net assets above Fidelis' statutory minimum capital requirements;

(f) the Corporation will grant Buyer a royalty-free license to use the legal name of the Corporation (i) for a period of no longer than nine (9) months after closing solely to effectuate the transition by Buyer to new names and marks as promptly as possible and (ii) solely to the extent necessary in connection with its performance of its rights and obligations under certain agreements and/or administrative matters relating thereto;

**WHEREAS**, the Board has received and duly considered an Independent Fair Market Valuation Analysis in respect of the Corporation from Navigant Consulting, Inc. and a fairness opinion in respect of the transactions contemplated by the Purchase Agreement (the "**Transactions**") from Citigroup Global Markets Inc.;

**WHEREAS**, the Board believes it to be advisable and in the best interests of the Corporation that, after consummation of the Transactions, the Corporation shall continue in existence as a New York not-for-profit corporation acting as a charitable foundation and the dissolution of the corporation is not contemplated thereafter; and

**WHEREAS**, the Board believes it to be advisable and in the best interests of the Corporation that the Corporation shall use the net proceeds received by the Corporation in connection with the Transactions and the retained cash and cash equivalents excluded from the assets transferred to Buyer in the Transactions (the "**Transaction Proceeds**"), to make charitable donations or otherwise to support organizations and programs in furtherance of the mission and purposes of the Corporation and in support of the Corporation's Members, in imitation of the compassionate and healing Christ, consistent with the tradition of Catholic health care and maintaining the highest moral and ethical standards, to strive to promote health through quality, accessible care and services for all, to join in partnership with health professionals to assist them in their healing work, to act as a facilitator to build linkages and systems for the coordination of care and services among healthcare, behavioral and social services, as well as educators and religious leaders, to address the spiritual, emotional, and physical needs and to advocate for a health policy that accords true dignity and respect for all human persons, especially the poor and underserved (the "**Mission**").

**NOW, THEREFORE, BE IT RESOLVED**, that the Transactions and the Purchase Agreement be, and they hereby are, authorized and approved in all respects, and that the Chief Executive Officer of the Corporation or such other officers of the Corporation as the Chief Executive Officer may designate (the "**Authorized Officers**") be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Purchase Agreement, and to execute, deliver and perform the Purchase Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Purchase Agreement by

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such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Board hereby recommends that the Members of the Corporation approve and adopt the Purchase Agreement and the Transactions; and it is further

**RESOLVED**, that the Registration Rights Agreement, the form of which is an exhibit to the Purchase Agreement and has been presented to the Board (the "**Registration Rights Agreement**"), be, and it hereby is, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Registration Rights Agreement, and to execute, deliver and perform the Registration Rights Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Registration Rights Agreement by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Escrow Agreement, the form of which is an exhibit to the Purchase Agreement and has been presented to the Board (the "**Escrow Agreement**"), be, and it hereby is, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Escrow Agreement, and to execute, deliver and perform the Escrow Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Escrow Agreement by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Coinsurance Agreements, the forms of which are exhibits to the Purchase Agreement and have been presented to the Board (the "**Reinsurance Agreements**"), be, and they hereby are, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Reinsurance Agreements, and to execute, deliver and perform the Reinsurance Agreements, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Reinsurance Agreements by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Transition Services Agreement, the form of which is an exhibit to the Purchase Agreement and has been presented to the Board (the "**Transition Services Agreement**"), be, and it hereby is, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Transition Services Agreement, and to execute, deliver and perform the Transition

Services Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Transition Services Agreement by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Authorized Officers be, and each of them hereby is, authorized and empowered to prepare, execute and file such governmental and regulatory filings as may be necessary or required by law in connection with the Transactions, including without limitation filings with the New York State Attorney General and/or the Supreme Court of New York in accordance with Section 511 or 511-a of the New York Not-For-Profit Corporation Law, filings with the New York State Department of Health and New York State Department of Financial Services, filings with the United States Centers for Medicare and Medicaid Services, and filings with the United States Department of Justice and the United States Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976; and it is further

**RESOLVED**, that the authority and power given hereunder shall be deemed retroactive and any and all acts authorized hereunder performed prior to the passage of these resolutions be, and they hereby are, ratified, approved and confirmed; and it is further

**RESOLVED**, that each of the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate, prepare, execute, deliver and perform all such other documents, certificates, instruments and agreements, including without limitation a bill of sale, assignment and assumption agreement and intellectual property assignment, and take all actions that the Authorized Officers executing the Purchase Agreement may in his or their discretion deem necessary or appropriate in order to carry out the full intent and purposes of the foregoing resolutions, the negotiation, preparation, execution, delivery or performance thereof by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation.

## CERTIFICATION

I, Santo F. Russo, Recording Secretary and Chief Legal Officer of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York, do hereby **CERTIFY** that the foregoing is a true and complete copy of the Resolutions duly adopted by the Board of Directors of New York State Catholic Health Plan, Inc. on September 7, 2017, and now in full force and effect.

**WITNESS my hand and official seal of New York State Catholic Health Plan, Inc. this 19th day of March 2018.**



Santo F. Russo  
Recording Secretary & Chief Legal Officer

STATE OF NEW YORK)

) SS.:

COUNTY OF QUEENS )

On the 19<sup>th</sup> day of March 2018, before me personally came Santo F. Russo and known to me to be the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that he executed the same.

FRANK FRANK  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 02816742510  
Qualified in Suffolk County  
My Commission Expires March 10, 2022

  
NOTARY PUBLIC

## EXHIBIT 47

Minutes and Resolutions of September 12, 2017 Director Meeting  
Approving the Transaction



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**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK  
BOARD OF DIRECTORS MEETING  
SEPTEMBER 12, 2017**

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A Special Meeting of the Board of Directors (the "Board") of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York ("Fidelis"), was held on September 12, 2017 via telephone conference.

Present:           Reverend Donald J. Harrington  
                      Karl P. Adler, M.D.  
                      M. William Benedetto  
                      Sister Patricia Burkard  
                      James Corrigan  
                      Thomas F. Doodian  
                      Reverend Patrick J. Frawley (*ex officio*, non-voting)  
                      John J. Hurley  
                      Thomas L. Kelly  
                      Donna O'Brien  
                      Reverend Leo J. O'Donovan, S.J.  
                      Gino J. Pazzaglini  
                      Reverend Monsignor Alan J. Placa (Director Emeritus, non-voting)  
                      John J. Rydzewski  
                      Joseph Slavik  
                      Deacon Frank J. Thomas, M.D.  
                      John A. Werwaiss

Excused:           Jack Balinsky  
                      Rev. John Coughlin  
                      Mary Thompson  
                      Michael J. Tooley

In Attendance:    David P. Thomas, President and Chief Operating Officer  
                      Thomas Halloran, EVP & Chief Financial Officer  
                      Santo F. Russo, Esq., Chief Legal Officer

Invited Guests: **Norton Rose Fulbright US LLP**  
Andrew B. Roth, Esq.,  
Warren J. Nimetz, Esq.  
Kimberly J. Gold, Esq.  
William Stelwagon, Esq.

Father Harrington presided as Chairman and Mr. Russo recorded. Father Harrington called the meeting to order at 10:30 a.m. and led the meeting with a prayer.

The Special Meeting of the Board was called for the purpose of further considering a proposed transaction (the "Transaction") involving the sale of substantially all of the assets of Fidelis to Centene Corporation ("Centene").

Specifically, Father Frawley stated that the meeting was called to discuss and ratify changes that have been made to the Asset Purchase Agreement ("APA") between Fidelis and Centene since the Special Meeting of the Board held on September 7, 2017, at which time the Board passed resolutions approving the Transaction and recommending the Transaction to the Members for approval.

The Board considered the following matters:

**I. Updates to the Asset Purchase Agreement**

Father Frawley reported that the parties have been negotiating the definition and mechanics of the "Burdensome Condition" issue in the APA, which Mr. Roth would discuss in more detail. Father Frawley added that the Members are scheduled to meet at 1:00 p.m. today to review the Board's recommendation and vote on whether to approve the Transaction.

**A. Change to Burdensome Condition Provision**

Mr. Roth thanked the Board for convening on such short notice and for signing waivers of notice of the meeting.<sup>1</sup> He said that the changes made to the APA since the September 7, 2017 meeting are largely non-material, and that the basic terms of the Transaction have remained unchanged, including the following: the purchase price; included and excluded assets and liabilities; deal structure; and triggers that relate to computation of working capital. Mr. Roth added that, although the new language regarding "Burdensome Condition" may not be material, it is being presented to the Board as suggested by the Members' counsel.

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<sup>1</sup> The meeting was called on less than 10 business days' notice as required by the By-Laws. Thus, the Board members signed waivers of such notice in accordance with Section 711(c) of the New York Not-for-Profit Corporation Law.

Mr. Roth stated that the revised definition of Burdensome Condition involves two primary issues: (1) if a governmental agency imposes a term, limitation, restriction, condition or requirement that would affect the Transaction proceeds in an amount greater than \$375,000,000; or (2) if the "new Fidelis" foundation is unable to carry out the "Applicable Purposes" as set forth in the form of the proposed amendment to the Certificate of Incorporation in Exhibit S to the APA; then Fidelis will have the ability to walk away from the Transaction. Mr. Roth stated that the new definition of Burdensome Condition is very broad, and addresses the types of activities that Fidelis has been involved with and the Board has approved throughout the years, including grant-making, social determinants of health, housing, nutrition, social services, and behavioral health. Mr. Roth added that the resolutions before the Board state that the Board previously ratified the Transaction, but that it will ratify it again given the new definition of Burdensome Condition.

## **B. Board Discussion**

Msgr. Placa asked about the reference to Section 6.07 in the definition of "Applicable Purposes" in the APA. Mr. Roth responded that it is a reference to the restrictive covenant provision in the APA; i.e., the new Fidelis foundation could conduct the purposes set forth in the definition, unless any of those actions violate the restrictive covenant.

Mr. Doodian asked about executive compensation to be paid to the current Fidelis executives. Mr. Roth stated that any issues relating to executive compensation have been resolved. He said that the seven members of the executive staff have signed waivers in which they waived their right to receive from Fidelis the change of control benefits, including transaction bonuses, which were set forth in their employment or other agreements.

Father Harrington asked whether there were any further questions, and there were none.

## **II. The Vote**

Msgr. Placa made a motion to pass the resolution attached, and it was seconded by Dr. Adler.

The vote was as follows: fifteen (15) directors voted unanimously to pass the resolutions.

## **III. Concluding Remarks**


Father Harrington thanked the Board for convening and voting to pass the resolutions. He said that he believes that the Transaction is the right thing for the Church and the poor in the State of New York. He also thanked Father Frawley for his efforts in making the Transaction happen.

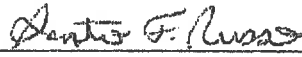
Father Frawley stated that the next steps are as follows:

- Father Frawley will notify Cardinal Dolan that the Board passed the resolutions.
- The Members will meet at 1:00 p.m. to consider the Board's recommendation for approval of the Transaction, and vote on whether to approve the Transaction.
- If the Members approve the Transaction, Father Frawley will notify the Board of such approval, and will share the press releases announcing the Transaction (he noted that there would be no public discussion of the Transaction until the market closed for the day).
- The Cardinal will call the Governor and the Attorney General to notify them of the Transaction.
- Father Frawley will call the New York Medicaid director to notify him of the Transaction.

\* \* \*

There being no further business, the meeting thereafter adjourned at 11:00 a.m.

  
Reverend Donald J. Harrington, C.M.  
Chairman, Fidelis Care New York

  
Santo F. Russo, Esq.  
Recording Secretary

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## **RESOLUTIONS**

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# CORPORATE RESOLUTIONS

NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
d/b/a FIDELIS CARE NEW YORK

## RESOLUTIONS OF THE BOARD OF DIRECTORS

September 12, 2017

**WHEREAS** the Board of Directors of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York (respectively, the "Board" and "Fidelis"), was convened in a duly called Special Meeting on September 12, 2017; and

**WHEREAS**, the Board of Directors (the "**Board**") of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York, a New York not-for-profit corporation (the "**Corporation**"), believes it to be advisable and in the best interests of the Corporation that the Corporation enter into an Asset Purchase Agreement with Centene Corporation ("**Buyer**"), the form of which has been presented to the Board (the "**Purchase Agreement**"), which, among other things, provides for the following:

(a) the Corporation will (i) sell substantially all of its assets, including intellectual property rights in respect of the "Fidelis" name, the stock of the Corporation's wholly-owned subsidiary, Salus Administrative Services, Inc., and the membership interests of the Corporation's wholly-owned subsidiary, Salus IPA, LLC, and (ii) transfer and assign substantially all of the liabilities of the Corporation to Buyer for an aggregate purchase price of approximately \$3.75 billion;

(b) the purchase price payable at closing will be subject to adjustment for unpaid Corporation transaction expenses, and certain indebtedness of the Corporation as of the closing, and \$375 million of the purchase price shall be placed in escrow as described in subparagraph (c) below;

(c) Buyer will be entitled to pay up to \$500 million of the purchase price in the form of Buyer common stock, with up to \$375 million of Buyer common stock used to fund an escrow account to satisfy post-closing Centene indemnification claims, provided that Buyer is required to replace the escrowed stock with cash prior to the conclusion of the escrow period, and up to \$125 million of Centene common stock may be used to fund a portion of the closing date purchase price, provided that such shares are freely tradable as of the closing;

(d) the purchase price also will be subject to adjustment after closing for fluctuations in enrollment volume, total adjusted net assets and working capital;

(e) the Corporation will retain an amount of company cash equal to the excess of Fidelis' total adjusted net assets above Fidelis' statutory minimum capital requirements;

(f) the Corporation will grant Buyer a royalty-free license to use the legal name of the Corporation (i) for a period of no longer than nine (9) months after closing solely to effectuate the transition by Buyer to new names and marks as promptly as possible and (ii) solely to the extent necessary in connection with its performance of its rights and obligations under certain agreements and/or administrative matters relating thereto;

**WHEREAS**, the Board has received and duly considered an Independent Fair Market Valuation Analysis in respect of the Corporation from Navigant Consulting, Inc. and a fairness opinion in respect of the transactions contemplated by the Purchase Agreement (the "*Transactions*") from Citigroup Global Markets Inc.;

**WHEREAS**, the Board believes it to be advisable and in the best interests of the Corporation that, after consummation of the Transactions, the Corporation shall continue in existence as a New York not-for-profit corporation acting as a charitable foundation and the dissolution of the corporation is not contemplated thereafter;

**WHEREAS**, the Board believes it to be advisable and in the best interests of the Corporation that the Corporation shall use the net proceeds received by the Corporation in connection with the Transactions and the retained cash and cash equivalents excluded from the assets transferred to Buyer in the Transactions (the "*Transaction Proceeds*"), to make charitable donations or otherwise to support organizations and programs in furtherance of the mission and purposes of the Corporation and in support of the Corporation's Members, in imitation of the compassionate and healing Christ, consistent with the tradition of Catholic health care and maintaining the highest moral and ethical standards, to strive to promote health through quality, accessible care and services for all, to join in partnership with health professionals to assist them in their healing work, to act as a facilitator to build linkages and systems for the coordination of care and services among healthcare, behavioral and social services, as well as educators and religious leaders, to address the spiritual, emotional, and physical needs and to advocate for a health policy that accords true dignity and respect for all human persons, especially the poor and underserved (the "*Mission*");

**WHEREAS**, the Board voted unanimously to approve the Transactions and the Purchase Agreement at a duly called meeting of the Board held on September 7, 2017 and the Board believes it to be advisable and in the best interests of the Corporation to reapprove the Transactions and the Purchase Agreement based on revised terms and conditions therein that have been negotiated between the Corporation and Buyer since the September 7, 2017 meeting.

**NOW, THEREFORE, BE IT RESOLVED**, that the Transactions and the Purchase Agreement be, and they hereby are, authorized and approved in all respects, and that the Chief Executive Officer of the Corporation or such other officers of the

Corporation as the Chief Executive Officer may designate (the "*Authorized Officers*") be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Purchase Agreement, and to execute, deliver and perform the Purchase Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Purchase Agreement by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Board hereby recommends that the Members of the Corporation approve and adopt the Purchase Agreement and the Transactions; and it is further

**RESOLVED**, that the Registration Rights Agreement, the form of which is an exhibit to the Purchase Agreement and has been presented to the Board (the "*Registration Rights Agreement*"), be, and it hereby is, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Registration Rights Agreement, and to execute, deliver and perform the Registration Rights Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Registration Rights Agreement by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Escrow Agreement, the form of which is an exhibit to the Purchase Agreement and has been presented to the Board (the "*Escrow Agreement*"), be, and it hereby is, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Escrow Agreement, and to execute, deliver and perform the Escrow Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Escrow Agreement by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Coinsurance Agreements, the forms of which are exhibits to the Purchase Agreement and have been presented to the Board (the "*Reinsurance Agreements*"), be, and they hereby are, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Reinsurance Agreements, and to execute, deliver and perform the Reinsurance Agreements, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Reinsurance Agreements by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further



**RESOLVED**, that the Transition Services Agreement, the form of which is an exhibit to the Purchase Agreement and has been presented to the Board (the "*Transition Services Agreement*"), be, and it hereby is, authorized and approved in all respects, and that the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate the final terms and conditions of the Transition Services Agreement, and to execute, deliver and perform the Transition Services Agreement, with such changes therein and additions thereto as the Authorized Officers executing such document may in his or their discretion deem appropriate, the execution and delivery of the Transition Services Agreement by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation; and it is further

**RESOLVED**, that the Authorized Officers be, and each of them hereby is, authorized and empowered to prepare, execute and file such governmental and regulatory filings as may be necessary or required by law in connection with the Transactions, including without limitation filings with the New York State Attorney General and/or the Supreme Court of New York in accordance with Section 511 or 511-a of the New York Not-For-Profit Corporation Law, filings with the New York State Department of Health and New York State Department of Financial Services, filings with the United States Centers for Medicare and Medicaid Services, and filings with the United States Department of Justice and the United States Federal Trade Commission under the Hart-Scott-Rodino Antitrust Improvements Act of 1976; and it is further

**RESOLVED**, that the authority and power given hereunder shall be deemed retroactive and any and all acts authorized hereunder performed prior to the passage of these resolutions be, and they hereby are, ratified, approved and confirmed; and it is further

**RESOLVED**, that each of the Authorized Officers be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to negotiate, prepare, execute, deliver and perform all such other documents, certificates, instruments and agreements, including without limitation a bill of sale, assignment and assumption agreement and intellectual property assignment, and take all actions that the Authorized Officers executing the Purchase Agreement may in his or their discretion deem necessary or appropriate in order to carry out the full intent and purposes of the foregoing resolutions, the negotiation, preparation, execution, delivery or performance thereof by such Authorized Officers to be conclusive evidence of the approval thereof by the Corporation.

## CERTIFICATION

I, Santo F. Russo, Recording Secretary and Chief Legal Officer of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York, do hereby **CERTIFY** that the foregoing is a true and complete copy of the Resolutions duly adopted by the Board of Directors of New York State Catholic Health Plan, Inc. on September 12, 2017, and now in full force and effect.

**WITNESS my hand and official seal of New York State Catholic Health Plan, Inc. this 19th day of March 2018.**



Santo F. Russo

Recording Secretary & Chief Legal Officer

STATE OF NEW YORK)

)

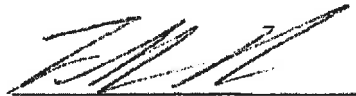
ss.:

COUNTY OF QUEENS )

On the 19<sup>th</sup> day of March 2018, before me personally came Santo F. Russo and known to me to be the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that he executed the same.

RIRALDI FRANK  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 02616142310

Qualified in Suffolk County  
My Commission Expires March 10, 2022



NOTARY PUBLIC

## **EXHIBIT 48**

**Waiver of Notice of September 7, 2017 Special Meeting  
of the Board of Directors and September 12, 2017  
Special Meeting of the Board of Directors**

**WAIVER OF NOTICE**  
**OF THE**  
**SEPTEMBER 7, 2017 SPECIAL MEETING**  
**OF THE**  
**BOARD OF DIRECTORS**  
**OF**  
**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.**  
**D/B/A FIDELIS CARE NEW YORK**

I am a member of the Board of Directors of New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York (the "Corporation").

I hereby waive notice of the Special Meeting of the Board of Directors of the Corporation to be held on September 7, 2017, at [ ]:00 A.M./P.M., at the offices of the Corporation, 95-25 Queens Boulevard, Rego Park, New York 11374 (the "Special Meeting"), as required pursuant to Section 8.04 of the By-Laws of the Corporation. I consent to the transaction of any and all lawful business at the Special Meeting relating to those matters described in the notice dated September 2, 2017, transmitted via email from Andrew Roth, Esq., of Norton Rose Fulbright US LLP, counsel for the Corporation, on behalf of Reverend Donald J. Harrington.

I hereby acknowledge and agree that this Waiver of Notice shall constitute a valid waiver of notice under Section 711(c) of the New York Not-for-Profit Corporation Law if (i) it is signed by me or I have caused my signature to be affixed to this waiver by any reasonable means, including by facsimile signature, and/or (ii) it is submitted by electronic mail with information from which it can be reasonably determined that I have authorized such transmission.

*September 5, 2017*  
Date

*Yael P. Rattner*  
By:  
Director

**WAIVER OF NOTICE  
OF THE  
SEPTEMBER 7, 2017 SPECIAL MEETING  
OF THE  
BOARD OF DIRECTORS  
OF  
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D/B/A FIDELIS CARE NEW YORK**

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9-5-2017  
Dated

By: Jack Balinsky (initials)  
Director

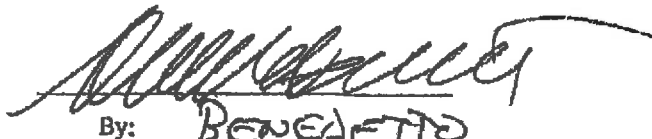
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Sept 2, 2017  
Dated

  
By: BENEDETTO  
Director

**WAIVER OF NOTICE  
OF THE  
SEPTEMBER 7, 2017 SPECIAL MEETING  
OF THE  
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OF  
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Sept. 5, 2017  
Dated

Dieter Patricia Burkhardt  
By:

Director

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Dated

9/4/2017

By:  
Director

James H. Coring



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**SEPTEMBER 7, 2017 SPECIAL MEETING**  
**OF THE**  
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Dated

9/2/17

By:

Director

John J. Coughlin

John J. Coughlin

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9-5-17  
Dated

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Director

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Dated

9/5/17

By:  
Director

Patrick J. Frawley  
REV. PATRICK J. FRAWLEY

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OF THE  
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9/7/17  
Dated

Donald J. Harrington  
By:  
Director


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OF  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

I am a member of the Board of Directors of New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York (the "Corporation").

I hereby waive notice of the Special Meeting of the Board of Directors of the Corporation to be held on September 7, 2017, at [ ]:00 A.M./P.M., at the offices of the Corporation, 95-25 Queens Boulevard, Rego Park, New York 11374 (the "Special Meeting"), as required pursuant to Section 8.04 of the By-Laws of the Corporation. I consent to the transaction of any and all lawful business at the Special Meeting relating to those matters described in the notice dated September 2, 2017, transmitted via email from Andrew Roth, Esq., of Norton Rose Fulbright US LLP, counsel for the Corporation, on behalf of Reverend Donald J. Harrington.

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9/5/17  
\_\_\_\_\_  
Dated

  
\_\_\_\_\_  
By: JOHN J. HURLER  
Director

**WAIVER OF NOTICE  
OF THE  
SEPTEMBER 7, 2017 SPECIAL MEETING  
OF THE  
BOARD OF DIRECTORS  
OF  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

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9/2/2017  
Dated

Thomas L. Kelly  
By: Thomas L. Kelly  
Director

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OF THE  
SEPTEMBER 7, 2017 SPECIAL MEETING  
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BOARD OF DIRECTORS  
OF  
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Sept 3, 2017  
Dated

Danna M. O'Brien  
By: Danna M. O'Brien  
Director

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OF THE  
SEPTEMBER 7, 2017 SPECIAL MEETING  
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BOARD OF DIRECTORS  
OF  
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5 September 2017  
Dated

Rev. Dr. Harrington  
By:  
Director



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OF THE  
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OF  
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D/B/A FIDELIS CARE NEW YORK**

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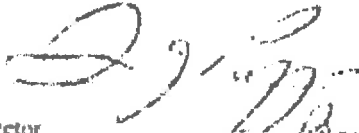
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Dated

9/3/17

By:  
Director

  
[Signature] / A2286 L.A.

**Gold, Kim**

---

**From:** Kathy Kapintschew <KKapintschew@fideliscare.org>  
**Sent:** Wednesday, September 06, 2017 12:51 PM  
**To:** Gold, Kim  
**Subject:** FW: Consent

Hi Kim,

Please see attached email from John Rydzewski.

Thank you.

Kathy

Kathy H. Kapintschew  
Manager, Executive Office | Fidelis Care  
95-25 Queens Boulevard, 8th Floor  
Rego Park, NY 11374  
Quality Health Coverage. It's our Mission.  
Office: (718) 393-6198  
Fax: (718) 896-2755  
Email: [kkapints@fideliscare.org](mailto:kkapints@fideliscare.org)

-----Original Message-----

**From:** John Rydzewski [<mailto:john.rydzewski@gmail.com>]  
**Sent:** Tuesday, September 05, 2017 7:49 PM  
**To:** Kathy Kapintschew <KKapintschew@fideliscare.org>  
**Subject:** Consent

Kathy - I received your voicemail, but I am running between meetings in Beijing and unable to fax/email. You have my verbal consent and I'll follow up with written when I can. Sorry for delayed response. John

John J. Rydzewski  
917-856-6046

This electronic message is intended to be for the use only of the named recipient, and may contain information from Fidelis Care that is confidential or privileged, or protected health information from Fidelis Care that is confidential under HIPAA. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited. If you have received this message in error or are not the named recipient, please 1) notify us immediately either by contacting the sender at the electronic mail address noted above or calling Fidelis Care collect at (718) 896-6500; and 2) delete and destroy all copies of this message. Fidelis Care offers free translation services. Information about those services and our nondiscrimination notice is available at [fideliscare.org](http://fideliscare.org). Thank you.

**WAIVER OF NOTICE  
OF THE  
SEPTEMBER 7, 2017 SPECIAL MEETING  
OF THE  
BOARD OF DIRECTORS  
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September 3, 2017  
Dated

  
By:  
Director


**WAIVER OF NOTICE  
OF THE  
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OF  
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9/3/17  
Dated

  
By: *Frank Thomas*  
Director

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September 5 2017

Dated \_\_\_\_\_

Mary Thompson  
By: Mary Thompson  
Director

**WAIVER OF NOTICE  
OF THE  
SEPTEMBER 7, 2017 SPECIAL MEETING  
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9/5/17  
Dated \_\_\_\_\_

M. J. J. J. J.  
By: \_\_\_\_\_  
Director

**WAIVER OF NOTICE**  
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**SEPTEMBER 7, 2017 SPECIAL MEETING**  
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9/4/17  
\_\_\_\_\_  
Dated

  
\_\_\_\_\_  
By: John A. Wenzel  
Director

**WAIVER OF NOTICE  
OF THE  
SEPTEMBER 12, 2017 SPECIAL MEETING  
OF THE  
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OF  
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September 12, 2017  
Dated

Yarl P. Pitter  
By:  
Director



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OF  
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September 12, 2017  
Dated

By:  
Director

Jack Dalinsky  
(125)

**WAIVER OF NOTICE**  
**OF THE**  
**SEPTEMBER 12, 2017 SPECIAL MEETING**  
**OF THE**  
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**OF**  
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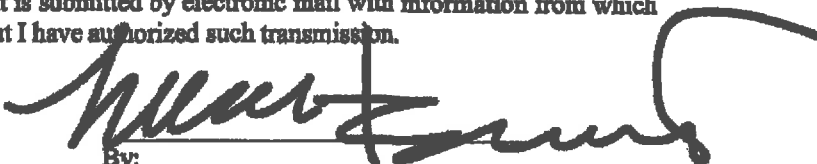
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**9-12-2017**

**Dated**

**By:**  
**Director**



**WAIVER OF NOTICE  
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Sept. 12, 2017  
Date

Reverend Patrick G. O'Shea  
By:

Director

**WAIVER OF NOTICE**  
**OF THE**  
**SEPTEMBER 12, 2017 SPECIAL MEETING**  
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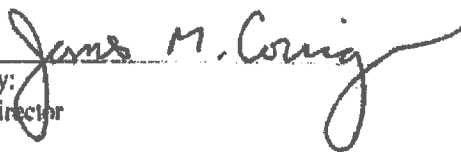
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Dated

7/12/2017

By:  
Director



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Sept. 12, 2017  
Dated

Don J. Harrington  
By: \_\_\_\_\_  
Director


**WAIVER OF NOTICE**  
**OF THE**  
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9-12-17  
Dated

  
By: \_\_\_\_\_  
Director

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Dated

9/11/17

By: REV. PATRICK J. FRAWLEY  
Director

*Patrick J. Frawley*

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9/12/17  
Dated

Donald J. Harrington, Esq.  
By:  
Director




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OF  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

I am a member of the Board of Directors of New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York (the "Corporation").

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9-12-17  
Dated

  
By: JOHN J. HVALBY  
Director

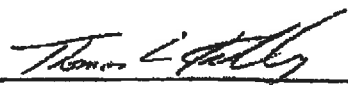
**WAIVER OF NOTICE  
OF THE  
SEPTEMBER 12, 2017 SPECIAL MEETING  
OF THE  
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D/B/A FIDELIS CARE NEW YORK**

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9-12-2017  
Dated

  
By: THOMAS L KELLY  
Director

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Sept 12, 2017  
Dated

Donna M. O'Brien  
By: Donna M. O'Brien  
Director

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12 September 2017  
Dated

Leo J. Donovan, Jr.  
By:  
Director

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Dated

9/12/17

By:  
Director

  
FARZA GLINI

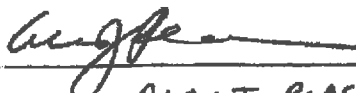
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12 SEPTEMBER 2017  
Dated

  
By: ALAN J. PLACA  
Director

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Dated

9/12/17

By:  
Director

John J. Rydzewski

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Dated 9/12/17

By:   
Director



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Dated

  
\_\_\_\_\_  
By:  
Director

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9-28-17  
Dated

  
By:  
Director

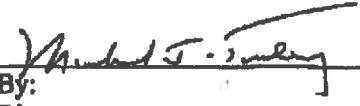
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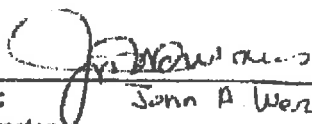
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9/12/17  
Dated \_\_\_\_\_

  
By: John A. Wenzel  
Director

## EXHIBIT 49

Minutes and Resolutions of September 12, 2017 Member Meeting  
Approving the Transaction

**MEETING MINUTES  
OF THE  
MEMBERSHIP  
OF  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK**

**a New York Not-for-Profit Corporation**

**September 12, 2017**

**Members in Attendance:**

Timothy Cardinal Dolan, Archbishop of New York  
Most Rev. John O. Barres, Bishop of Rockville Centre  
Most Rev. Robert J. Cunningham, Bishop of Syracuse  
Most Rev. Nicholas DiMarzio, Bishop of Brooklyn  
Most Rev. Terry R. LaValley, Bishop of Ogdensburg  
Most Rev. Richard J. Malone, Bishop of Buffalo  
Most Rev. Salvatore R. Matano, Bishop of Rochester  
Most Rev. Edward B. Scharfenberger, Bishop of Albany

Counsel and additional advisors were present.

**1) Call to Order; Opening Prayer**

A meeting of the Membership was held by conference call on September 12, 2017. The meeting convened at 1:00 p.m. with Cardinal Dolan, as President of the Membership, presiding.

Cardinal Dolan opened the meeting with a roll call, and confirmed that all Members were present.

Cardinal Dolan led the Members of the Committee in an opening prayer.

**2) Opening Comments**

Cardinal Dolan advised the Membership that the objective of this meeting was to evaluate and ultimately vote on whether to approve the proposed sale of substantially all of the assets of New York State Catholic Health Plan, Inc. ("Fidelis") to Centene Corporation ("Centene") pursuant to the proposed Asset Purchase Agreement ("APA") between Fidelis and Centene and the transactions contemplated thereunder (collectively, the "Transaction").

Prior to the meeting, each of the Members was provided with copies of: (i) the APA and related Transaction documents, (ii) a summary prepared by counsel to the Members detailing the material terms of the Transaction and changes made to the APA since the prior draft that was provided to the Members, (iii) a copy of the independent appraisal of the assets being sold pursuant to the Transaction prepared by Navigant Consulting, Inc. (the "Appraisal"), (iv) a copy of the letter from Michael Niedorff, the Chief Executive Officer of Centene, to Cardinal Dolan and Rev. Donald Harrington expressing Centene's commitments and objectives relating to the Transaction, and (v) a copy of the proposed new charitable purposes of Fidelis upon the consummation of the Transaction. The Membership was also presented with a proposed form of resolutions for consideration, a copy of which is attached hereto (the "Resolutions").

### **3) Deliberations of the Membership**

Cardinal Dolan made reference to prior discussions and deliberations of the Members regarding the importance of entering into this Transaction; namely, the risks relating to the current regulatory environment, increasing competition from larger, more well-capitalized insurance companies entering the New York market, the ability to invest in new technologies in growing Fidelis' business, ensuring protection against burdensome conditions imposed by the government, and the ability to serve and further the interests of the population served by Fidelis. Cardinal Dolan also referenced the increased capacity that Fidelis will have, going forward, to expand its grantmaking activities in furtherance of the Catholic Church's historic mission of serving the poor and underserved. The Members also discussed transition issues, including the expectation that there will be a need for new board members and a new management team. The Members were informed that each of Fidelis' current executives had agreed to waive all severance and/or retention payments that they would have otherwise been entitled to receive under their employment agreements. It was also reiterated that Fidelis constituencies are protected as Centene would retain all current Fidelis products and services, and continue to maintain Fidelis's current locations throughout the state, including its headquarters in Queens.

Next, legal counsel to the Members provided an overview of the key terms of the Transaction and changes to APA since the last draft that was reviewed by the Members.

Discussion ensued regarding:

- the primary objectives of the Transaction;
- how the Transaction would further the purposes of Fidelis and promote the interests of the Members;
- the key terms of the Transaction;
- the fairness of the consideration;
- the reasonableness of terms;

- the use of the Transaction proceeds; and
- the timing of the Transaction and issues relating to transition.

Based on the discussions that ensued, the substantial benefit to be derived from the Transaction, the fairness of the consideration as supported by the Appraisal, and the capacity of Centene to assume and successfully build upon Fidelis' historic success, the Members voted unanimously in favor of the Transaction and adopting the Resolutions.

**4) Communications Strategy**

The Members discussed issues relating to communications with the media and the enrollee population served by Fidelis.

**5) Closing Prayer**

Cardinal Dolan thanked the Members for their participation and thoughtful deliberation of the proposed Transaction, and led the Members in a closing prayer.

The meeting of the Membership was concluded and adjourned at approximately 2:00 p.m.



**RESOLUTIONS**  
**OF THE**  
**MEMBERS**  
**OF**  
**NEW YORK STATE CATHOLIC HEALTH PLAN, INC.,**  
**D/B/A FIDELIS CARE NEW YORK**

**September 12, 2017**

**WHEREAS**, New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York (the "*Corporation*") is a New York not-for-profit, tax-exempt corporation managed care company licensed under Article 44 of the Public Health Law to operate a special purpose comprehensive health services plan;

**WHEREAS**, motivated by the desire and intent to ensure that the services, programs, and benefits provided by the Corporation to the population served by the Corporation are able to be sustained and enhanced in the future notwithstanding the risks and challenges facing the Corporation, including, in particular, by reason of the current regulatory environment threatening to adversely impact the business and operations of the Corporation, and increasing competition from larger, more well-capitalized for-profit insurers and managed plans entering the New York managed care and insurance market, the Board of Directors of the Corporation has heretofore determined that it is in the best interests of the Corporation, the Members and, importantly, the population served by the Corporation, for the Corporation to sell substantially all of its assets and use the sale proceeds in furtherance of improving the health and wellness of the poor, underserved, disabled, and elderly individuals in the State of New York;

**WHEREAS**, the Corporation has heretofore engaged in an extensive auction process to identify a potential purchaser of its assets, and has engaged an independent appraisal firm to provide a valuation of the Corporation's assets in anticipation of a proposed sale of substantially all of its assets;

**WHEREAS**, following the auction process, Centene Corporation ("*Buyer*"), a publicly traded corporation that is one of the largest health insurers in the country with a significant commitment to the managed-care market, was identified as a desirable purchaser because of, among other reasons, its ability to withstand the regulatory risks in operating a Medicaid managed care plan and to invest and continue to grow and expand the Corporation's business to the population historically served by the Corporation and beyond;

**WHEREAS**, the Members (the "*Members*") of the Corporation believe that it is advisable and in the best interests of the Corporation and the population it serves that the Corporation enter into the transactions (the "*Transactions*") contemplated pursuant to the proposed Asset Purchase

Agreement with the Buyer, the terms of which have been presented to the Members (the "*Purchase Agreement*"), which, among other things, provides for the following:

(a) the Corporation will, for an aggregate purchase price of \$3.75 billion, (i) sell substantially all of its assets, including intellectual property rights in respect of the "Fidelis" name, the stock of the Corporation's wholly-owned subsidiary, Salus Administrative Services, Inc., and the membership interests of the Corporation's wholly-owned subsidiary, Salus IPA, LLC, and (ii) transfer and assign substantially all of the liabilities of the Corporation to Buyer;

(b) the purchase price payable at closing will be subject to adjustment for unpaid Corporation transaction expenses, and certain indebtedness of the Corporation as of the closing, and \$375 million of the purchase price shall be placed in escrow subject to subparagraph (c) below;

(c) Buyer will be entitled to pay up to \$500 million of the purchase price in the form of Buyer common stock, with up to \$375 million of Buyer common stock used to fund an escrow account to satisfy post-closing Centene indemnification claims, provided that Buyer is required to replace the escrowed stock with cash prior to the conclusion of the escrow period, and up to \$125 million of Centene common stock may be used to fund a portion of the closing date purchase price, provided that such shares are registered with the Securities and Exchange Commission and freely tradable as of the closing;

(d) the purchase price also will be subject to adjustment after closing for fluctuations in enrollment volume, total adjusted net assets and working capital;

(e) the Corporation will retain an amount of company cash equal to the excess of Fidelis' total adjusted net assets above Fidelis' statutory minimum capital requirements; and

(f) the Corporation will grant Buyer a royalty-free license to use the legal name of the Corporation (i) for a period of no longer than nine (9) months after closing solely to effectuate the transition by Buyer to new names and marks as promptly as possible and (ii) solely to the extent necessary in connection with its performance of its rights and obligations under certain agreements and/or administrative matters relating thereto;

**WHEREAS**, in order to induce the Buyer to enter into the transactions contemplated by the Purchase Agreement and the other agreements contemplated thereby, the Members are required to enter into the Member Non-Compete Agreement, the terms of which have been presented to the Members, pursuant to which the Members make certain covenants to the Buyer that they will not engage in certain businesses that compete with the business that is being sold by the Corporation to the Buyer pursuant to the Purchase Agreement for a period of time following the sale thereof (the "*Member Non-Compete Agreement*");

**WHEREAS**, that the Board of Directors of the Corporation has heretofore recommended to the Members that the Members approve and adopt the Purchase Agreement and the Transactions; and

**WHEREAS**, the Members have received and duly considered an Independent Fair Market Valuation Analysis in respect of the Corporation from Navigant Consulting, Inc., which such Independent Fair Market Valuation Analysis (the "*Navigant Valuation*") confirms that the

consideration to be paid by Buyer to the Corporation pursuant to the Purchase Agreement is consistent with the fair market value of the assets of the Corporation being sold to the Buyer;

**WHEREAS**, the Members have received and duly considered a letter from the Chief Executive Officer of the Buyer dated September 1, 2017, setting forth its commitment and intention to maintain, invest in, and continue to grow and expand the Corporation's business to the population historically served by the Corporation and beyond (the "**Commitment Letter**"), and the Members are acting in reliance on the commitments set forth in the Commitment Letter in considering whether to approve the Transactions; and

**WHEREAS**, the Members believe that it is advisable and in the best interests of the Corporation that, after consummation of the Transactions, the Corporation shall continue in existence as a New York not-for-profit corporation operating as a charitable foundation, and shall use the net proceeds received by the Corporation in connection with the Transactions, together with the retained cash and cash equivalents excluded from the assets transferred to Buyer in the Transactions (collectively, the "**Transaction Proceeds**"), for the purposes of improving the health and wellness of the poor, disabled, disadvantaged, elderly and underserved people of New York State and their families by engaging in, promoting, sponsoring and supporting activities, programs and initiatives that (i) enhance access to affordable quality healthcare and healthcare related services (including social determinants of health as recognized by the New York State Department of Health as being an important component of Medicaid and healthcare reform ("**Social Determinants of Health**")) and (ii) addressing the unmet healthcare and healthcare related needs (including Social Determinants of Health) of communities across New York State, in the case of each of such clauses (i) and (ii) consistent with the Catholic values that have historically guided the Corporation, in particular, in imitation of the compassionate and healing Christ, consistent with the tradition of Catholic health care and maintaining the highest moral and ethical standards, to strive to promote health through quality, accessible care and services for all, to join in partnership with health professionals to assist them in their healing work, to act as a facilitator to build linkages and systems for the coordination of care and services among healthcare, behavioral and social services, as well as educators and religious leaders, to address the spiritual, emotional, and physical needs and to advocate for a health policy that accords true dignity and respect for all human persons, especially the poor and underserved.

**NOW, THEREFORE, BE IT HEREBY**

**RESOLVED**, that having concluded that (i) in reliance upon the Navigant Appraisal, that the consideration for the Transactions is fair and reasonable, (ii) in reliance upon the Commitment Letter, that the Transactions will benefit the population served by the Corporation, and (iii) the purposes of the Corporation and the interests of the Members will be promoted by the Transaction, the Members hereby authorize and approve in all respects the Transactions; and it is hereby further

**RESOLVED**, that the terms and conditions of the Member Non-Compete Agreement are hereby authorized and approved in all respects.

CERTIFICATION OF MINUTES

New York State Catholic Health Plan, Inc.

I, Rev. Msgr. Gregory Mustaciulo, Vicar General, hereby certify on behalf of the Members of New York State Catholic Health Plan, Inc. D/B/A Fidelis Care ("Fidelis Care"), a New York State not-for-profit corporation, that attached hereto is a true, correct and complete copy of the minutes of a meeting of the Members of Fidelis Care duly held on September 12, 2017.

**IN WITNESS WHEREOF**, I have hereunto set my hand this 3rd day of May, 2018, on behalf of the Members of New York State Catholic Health Plan, Inc.



Rev. Msgr. Gregory Mustaciulo  
Vicar General

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK )

On the 3<sup>rd</sup> day of May 2018, before me personally came Rev. Msgr. Gregory Mustaciulo and known to me to be the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

AMY S. EBINGER  
Notary Public, State of New York  
No. 02EB636692  
Qualified in Kings County  
Commission Expires Nov. 6, 2021

# EXHIBIT 50

Certified Minutes of April 4, 2018 Member Meeting

MEETING MINUTES  
OF THE MEMBERSHIP  
OF  
NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
D/B/A FIDELIS CARE NEW YORK  
a New York Not-for-Profit Corporation

April 4, 2018

**Members in Attendance:**

Timothy Cardinal Dolan, Archbishop of New York  
Most Rev. John O. Barres, Bishop of Rockville Centre  
Most Rev. Robert J. Cunningham, Bishop of Syracuse  
Most Rev. Nicholas DiMarzio, Bishop of Brooklyn  
Most Rev. Terry R. LaValley, Bishop of Ogdensburg  
Most Rev. Richard J. Malone, Bishop of Buffalo  
Most Rev. Salvatore R. Matano, Bishop of Rochester  
Most Rev. Edward B. Scharfenberger, Bishop of Albany

Counsel and additional advisors were present.

**1) Call to order; Opening Prayer**

A meeting of the Membership was held telephonically at 1pm on April 4, 2018 with Cardinal Dolan, as President of the Membership, presiding.

Cardinal Dolan opened the meeting with a roll call, and confirmed that all Members were present.

Cardinal Dolan led the Members in an opening prayer.

**2) Deliberations of the Membership**

Cardinal Dolan explained that the purpose of the meeting was to discuss the results of the settlement negotiations with the State concerning the Fidelis/Centene transaction (the "Transaction") and to approve certain actions relating to the Transaction. Cardinal Dolan

made reference to prior discussions and deliberations of the Members regarding the Transaction, including the issues pertaining to the settlement.

Cardinal Dolan mentioned that he had spoken individually with each of the Members during the course of the past week about a potential settlement framework with the State, and the monetary parameters for the settlement. Cardinal Dolan reminded everyone that the State had routinely threatened to seize up to 95% of the proceeds from the Transaction and sweep “excess” cash on Fidelis’s balance sheet. While Fidelis had very strong legal arguments to challenge the State’s attempts to seize proceeds and assets from Fidelis, Cardinal Dolan noted that it has been the consensus view of the Members that it is in the best interests of Fidelis and its constituencies to attempt to work out a resolution.

Cardinal Dolan noted that after intensive discussions with the Governor’s office over the past week, a settlement was reached. He noted that the settlement will allow for the creation of a \$3.2 billion charitable foundation, the largest of its kind in the history of New York State. Cardinal Dolan noted that this result should be considered a significant victory under the circumstances.

Cardinal Dolan then asked Jason Lilien, counsel, to discuss the terms of the settlement. Mr. Lilien stated that the settlement was consistent with the framework that the Cardinal had discussed with the Members over the past week. He noted that Msgr. Mustaciuolo was actively involved in the negotiations. Under the settlement, \$1.4 billion of the transaction proceeds would be paid to the State – \$1 billion within 30 days of closing and \$400 million within 18 months thereafter. The settlement also provides for another \$100 million to be paid in 2021 and 2022, which may be satisfied through grants to mutually agreeable charitable organizations.

Mr. Lilien discussed other aspects of the settlement with the Members, and answered questions. Mr. Lilien also discussed the planned structure of Fidelis following the closing of the Transaction. Under the structure, Fidelis would be reorganized into two entities. The existing entity (New York State Catholic Health Plan) would hold certain insurance business lines until they are transferred to Centene pursuant to the terms of the Purchase Agreement with Centene. A new legal entity would be created to operate the charitable grantmaking program (the “Foundation”). To effectuate this structure, Fidelis will transfer the Transaction proceeds and all other financial and property assets to the new Foundation, and Fidelis will obtain approval from the State to eliminate the need for Fidelis to maintain any reserves or other assets. Mr. Lilien also discussed the formation of the Foundation and that the membership structure of the Foundation would be identical to Fidelis, with each Bishop serving as a Member and the Cardinal serving as President of the Membership. Mr. Lilien also discussed expected changes to the transaction documents that would be required to reflect the new structure.

After further discussion, the Members voted unanimously to ratify and approve the settlement with the State, on the terms discussed, and authorized the entering into any further agreements necessary to memorialize such settlement. The Members also unanimously voted to approve the new organizational structure discussed, including the formation of the

Foundation, which will receive the Transaction proceeds and other assets from Fidelis to enable it to carry out the charitable grantmaking program. The Members then agreed unanimously that Cardinal Dolan, as President of the Membership, or his designee will have all authority to enter into or approve all agreements necessary to close the Transaction, including effectuating the post-closing organizational structure and the transfer of assets and proceeds from Fidelis to the Foundation.

### **3) Closing Prayer**

Cardinal Dolan thanked the Members for their participation and thoughtful deliberation of the proposed Transaction, and led the Members in a closing prayer.

The meeting of the Membership was concluded and adjourned at approximately 2pm.

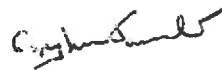


CERTIFICATION OF MINUTES

New York State Catholic Health Plan, Inc.

I, Rev. Msgr. Gregory Mustaciulo, Vicar General, hereby certify on behalf of the Members of New York State Catholic Health Plan, Inc. D/B/A Fidelis Care ("Fidelis Care"), a New York State not-for-profit corporation, that attached hereto is a true, correct and complete copy of the minutes of a meeting of the Members of Fidelis Care duly held on April 4, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of May, 2018, on behalf of the Members of New York State Catholic Health Plan, Inc.



Rev. Msgr. Gregory Mustaciulo  
Vicar General

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

On the 3<sup>rd</sup> day of May 2018, before me personally came Rev. Msgr. Gregory Mustaciulo and known to me to be the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

AMY S. EBINGER  
Notary Public, State of New York  
No. 02EB636692  
Qualified in Kings County  
Commission Expires Nov. 6, 2021

# EXHIBIT 51

Resolutions of May 3, 2018 Director Meeting

# CORPORATE RESOLUTIONS

NEW YORK STATE CATHOLIC HEALTH PLAN, INC.  
d/b/a FIDELIS CARE NEW YORK

## RESOLUTIONS OF THE BOARD OF DIRECTORS

May 3, 2018

**WHEREAS**, the Board of Directors of New York State Catholic Health Plan, Inc. d/b/a Fidelis Care, a New York not-for-profit corporation ("Fidelis Care") has heretofore authorized and approved Fidelis Care to enter into that certain Asset Purchase Agreement, dated as of September 12, 2017 (the "Asset Purchase Agreement"), and related transaction agreements (the Asset Purchase Agreement, together with all such related transaction agreements, hereinafter referred to collectively as the "Transaction Agreements"), with Centene Corporation ("Centene"), pursuant to which Fidelis Care has agreed to sell and assign, and Centene has agreed to purchase and assume, substantially all of the assets and liabilities of Fidelis Care subject to the terms and conditions set forth in the Transaction Agreements (the "Transaction");

**WHEREAS**, Fidelis Care and Centene believe that it is necessary and desirable to amend the Asset Purchase Agreement, as set forth in the form of proposed Amendment No. 1 to the Asset Purchase Agreement annexed as Exhibit A hereto (the "APA Amendment");

**WHEREAS**, in furtherance of accomplishing, and consistent with, the amendments being made by the APA Amendment, and otherwise, Fidelis Care and Centene believe that it is necessary and desirable to amend or adopt certain other Transaction Agreements;

**WHEREAS**, in accordance with the Transaction Agreements, the closing of the Transaction is subject to various conditions, including, as required under applicable law, the prior approvals of the New York State Department of Health ("DOH"), the New York State Department of Financial Services ("DFS"), the Office of the New York Attorney General ("OAG"), and other governmental authorities;

**WHEREAS**, in furtherance of obtaining the approvals of the Transaction from the DOH and DFS, Centene and Fidelis Care have heretofore submitted applications for approval of the Transaction to DOH and DFS, and DOH and DFS have subsequently issued their respective approvals for the consummation of the Transaction;

**WHEREAS**, in furtherance of obtaining the approval of the Transaction from the OAG, Fidelis Care is required to submit a petition to the OAG pursuant to Sections 510 and 511-a of the New York Not-for-Profit Corporation Law (the "Petition");

**WHEREAS**, the State of New York (the "State") had asserted various rights and interests to the consideration that Fidelis Care is entitled to receive from Centene upon closing of the Transaction and the cash and cash-equivalent assets that will be retained by Fidelis Care following the closing of the Transaction, and asserted the intent to enact legislation in connection with enforcing such rights;

**WHEREAS**, Fidelis Care disputed the State's position and asserted that the State has no right or interest in or to any portion of Fidelis Care's assets under existing law, and further disputed the State's ability to enact legislation that would deprive Fidelis Care of any portion of Fidelis Care's assets;

**WHEREAS**, in recognition of the value of the Transaction and the anticipated benefits to be realized by the population served by Fidelis Care, the Board of Directors of Fidelis Care agreed with the State to settle and resolve all existing and potential disputes between the State and Fidelis Care with respect to the State's asserted claims;

**WHEREAS**, by letter dated March 30, 2018, from Fidelis Care to the Director of the Division of the Budget, Fidelis Care memorialized its understanding of the terms and conditions of the agreement reached with the State, which such terms and conditions are expected to be reflected in a separate written agreement between the parties and include the following payments to be made by Fidelis Care to the State:

- (i) the sum of one billion dollars (\$1,000,000,000.00), which shall be paid within thirty (30) days after closing of the Transaction (the "First Fidelis Payment");
- (ii) the sum of four hundred million dollars (\$400,000,000.00) no later than eighteen (18) months following the Initial Fidelis Payment (the "Second Fidelis Payment");
- (iii) the sum of fifty million dollars (\$50,000,000.00), which shall be paid within twelve (12) months following the Second Fidelis Payment in the form of either (x) a grant for a mutually agreed upon purpose consistent with Fidelis Care's purposes as reflected in its Certificate of Incorporation as in effect immediately following the closing of the Transaction or (y) a cash payment for unrestricted purposes in the event that the parties cannot agree upon a mutually acceptable purpose (the "Third Fidelis Payment"); and
- (iv) the sum of fifty million dollars (\$50,000,000.00), which shall be paid within twelve (12) months following the Third Fidelis Payment in the form of either (x) a grant for a mutually agreed upon purpose consistent with the Applicable Purposes as defined in the Asset Purchase Agreement, as such shall be amended by the APA Amendment, or (y) in the form a cash payment for unrestricted purposes in the event that the parties cannot agree upon a mutually acceptable purpose (the "Fourth Fidelis Payment" and, together with the First Fidelis Payment, the Second Fidelis Payment, and the Third Fidelis Payment, collectively the "Fidelis-NYS Settlement Payments").

**WHEREAS**, Centene has entered into a separate agreement with the State under which the State will receive from Centene (i) the sum of three hundred and forty million dollars (\$340,000,000.00) in five (5) equal annual installments, and (ii) at least one hundred and sixty million dollars (\$160,000,000.00) in additional taxes and fees as a result of Centene's operation as a for-profit health insurer in New York State;

**WHEREAS**, Fidelis Care has determined that in order to advance its charitable purposes following the closing of the Transaction, it is in the best interest of Fidelis Care and its corporate Members, the eight Catholic Diocesan Bishops of New York State (the "Members") to transfer to the Mother Cabrini Health Foundation, Inc., a newly established New York not-for-profit corporation (the "Foundation") formed to carry out the charitable grantmaking purposes described in the Petition (the "Transfer"), all consideration that Fidelis Care is entitled to receive from Centene under the Asset Purchase Agreement together with all assets retained or received by Fidelis Care, or to which Fidelis Care has a right to receive, from and after the closing of the Transaction (other than claims for services provided on or after closing date pursuant to the Medicare Reinsurance Agreement and the QHP Reinsurance Agreement) (collectively, the "Transferred Assets"); and

**WHEREAS**, Fidelis Care will enter into certain agreements to effectuate the Transfer, including the Payment and Limited Joinder Agreement, substantially in the form annexed as Exhibit B hereto ("Payment and Limited Joinder Agreement"), pursuant to which the Foundation will agree to pay certain obligations on behalf of Fidelis Care pursuant to the terms of the Asset Purchase Agreement.

**NOW THEREFORE**, it is hereby

**RESOLVED**, that the Board of Directors hereby authorizes and approves the APA Amendment, the transactions contemplated thereby and the agreements and documents attached thereto; and be it further

**RESOLVED**, that the Board of Directors hereby authorizes and approves the Transfer to the Foundation upon the closing of the Transaction and thereafter of all Transferred Assets and the execution of such documentation which may be necessary to effectuate the Transfer; and be it further

**RESOLVED**, that in furtherance of consummating the Transaction and the Transfer to the Foundation, the Board of Directors hereby approves, and authorizes Fidelis Care to enter into, the Payment and Limited Joinder Agreement; and be it further

**RESOLVED**, that the Board of Directors hereby authorizes and approves the Fidelis-NYS Settlement Payments and authorizes Fidelis Care to enter into such agreements with the State as may be required with respect thereto, subject to the approval of the Members; and be it further

**RESOLVED**, that the Board of Directors hereby authorizes and approves Fidelis Care to file the Petition with the OAG; and be it further

**RESOLVED**, that the Officers of Fidelis Care are each hereby authorized and directed to take or cause to be taken all such further actions on behalf of Fidelis Care as they shall deem necessary, appropriate or advisable to carry out the intent of the foregoing resolutions, including, without limitation: (i) making any such revisions to the Payment and Limited Joinder Agreement, the APA Amendment and the agreements attached thereto as, on the advice of legal counsel to Fidelis Care, as may be deemed necessary or advisable; (ii) filing the Petition with the OAG with any such revisions as may be deemed, on the advice of counsel, to be necessary or advisable; (iii) effectuating the Transfer; (iv) executing all such agreements, instruments and other documents on behalf of Fidelis Care as may be deemed, on the advice of counsel, to be necessary or advisable; and (v) incurring any such fees and expenses as in his or her judgment may be necessary or advisable in order to carry out fully the intent and purposes of the foregoing resolutions, subject in each of the foregoing to approval as may be required by the Members.

## CERTIFICATION

I, Santo F. Russo, Recording Secretary and Chief Legal Officer of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York, do hereby **CERTIFY** that the foregoing is a true and complete copy of the Resolutions duly adopted by the Board of Directors of New York State Catholic Health Plan, Inc. on May 3, 2018, and now in full force and effect as of the date hereof.

**WITNESS my hand and official seal of New York State Catholic Health Plan, Inc. this 3<sup>rd</sup> day of May 2018.**



Santo F. Russo

Santo F. Russo  
Chief Legal Officer

STATE OF NEW YORK)

) ss.:

COUNTY OF QUEENS )

On the 3<sup>rd</sup> day of May 2018, before me personally came Santo F. Russo and known to me to be the individual described in and who executed the foregoing instrument, and who duly acknowledged to me that he executed the same.

KATHY H. KAPINTSCHEW  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01KA6219064  
Qualified in Queens County  
My Commission Expires March 18, ~~2018~~  
**2022**

Kathy H. Kapintschew  
NOTARY PUBLIC

## **EXHIBIT 52**

**Waiver of Notice of the May 3, 2018  
Special Meeting of the Board of Directors**



**WAIVER OF NOTICE  
OF THE  
MAY 3, 2018 SPECIAL MEETING  
OF THE BOARD OF DIRECTORS  
OF NEW YORK STATE CATHOLIC HEALTH PLAN, INC.,  
D/B/A FIDELIS CARE NEW YORK**

I am a member of the Board of Directors of New York State Catholic Health Plan, Inc., d/b/a Fidelis Care New York (the "Corporation").

I hereby waive notice of the Special Meeting of the Board of Directors of the Corporation to be held on May 3, 2018, at 3:00 P.M., via telephone conference call (the "Special Meeting"), as required pursuant to Section 8.04 of the By-Laws of the Corporation. I consent to the transaction of any and all lawful business at the Special Meeting relating to those matters described in the notice dated May 2, 2018, transmitted via email from Santo F. Russo, Chief Legal Officer for the Corporation, on behalf of Reverend Donald J. Harrington.

I hereby acknowledge and agree that this Waiver of Notice shall constitute a valid waiver of notice under Section 711(c) of the New York Not-for-Profit Corporation Law if (i) it is signed by me or I have caused my signature to be affixed to this waiver by any reasonable means, including by facsimile signature and/or (ii) it is submitted by electronic mail with information from which it can be reasonably determined that I have authorized such transmission.

May 3, 2018  
Dated

Yair P. Rattin  
By:  
Director


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**OF THE**  
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May 2, 2018  
Dated

John J. Balinsky  
By:   
Director

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**OF THE BOARD OF DIRECTORS**  
**OF NEW YORK STATE CATHOLIC HEALTH PLAN, INC.,**  
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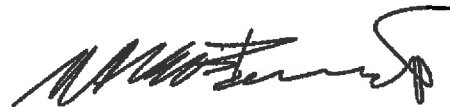
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2 May 2018

Dated



By: WILLIAM BENEDETTO  
Director

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5/2/2018  
Dated

*Antonia Patricia Boudard, OFC*  
By:  
Director

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Dated MAY 1, 2018

By: James H. Corrigan  
Director

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May 2, 2018  
Dated

John J. Coughlin  
By:  
Director

John J. Coughlin

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5.2.18  
Dated

  
By:  
Director

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5/2/18  
Dated

Patrick J. Crowley  
By: REV. PATRICK J. CROWLEY  
Director



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5/2/18  
Dated

Donald J. Harrington, Ch  
By:

Director

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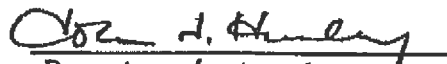
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5/2/18

Dated

  
By: JOHN J. HURLEY  
Director

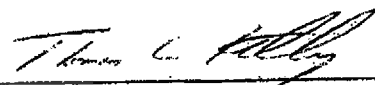
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I hereby waive notice of the Special Meeting of the Board of Directors of the Corporation to be held on May 3, 2018, at 3:00 P.M., via telephone conference call (the "Special Meeting"), as required pursuant to Section 8.04 of the By-Laws of the Corporation. I consent to the transaction of any and all lawful business at the Special Meeting relating to those matters described in the notice dated May 2, 2018, transmitted via email from Santo F. Russo, Chief Legal Officer for the Corporation, on behalf of Reverend Donald J. Harrington.

I hereby acknowledge and agree that this Waiver of Notice shall constitute a valid waiver of notice under Section 711(c) of the New York Not-for-Profit Corporation Law if (i) it is signed by me or I have caused my signature to be affixed to this waiver by any reasonable means, including by facsimile signature and/or (ii) it is submitted by electronic mail with information from which it can be reasonably determined that I have authorized such transmission.

5/2/2018  
Dated

  
By:  
Director


**WAIVER OF NOTICE  
OF THE  
MAY 3, 2018 SPECIAL MEETING  
OF THE BOARD OF DIRECTORS  
OF NEW YORK STATE CATHOLIC HEALTH PLAN, INC.,  
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May 2, 2018  
Dated

  
By:  
Director

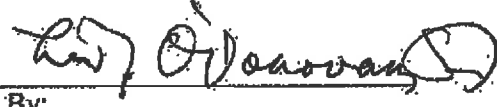
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2 May 2018  
Dated

  
By:  
Director

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Dated

5/2/18

By:  
Director

  
GINO S. PAZZAGLI

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Dated

5/2/18

By:

Director



*Frank J. Thomas*

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May 2, 2018  
Dated \_\_\_\_\_

Mary E Thompson  
By: \_\_\_\_\_  
Director



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OF NEW YORK STATE CATHOLIC HEALTH PLAN, INC.,  
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May 2, 2018  
Dated

Michael J. Tully  
By: MICHAEL J. TULLY  
Director

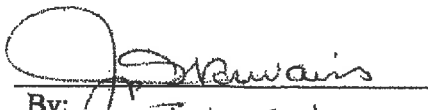
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2 May 2018  
Dated

  
By: John A. Wawarowski  
Director

**Patrick J. Frawley**

---

**From:** John Rydzewski <john.rydzewski@gmail.com>  
**Sent:** Wednesday, May 2, 2018 6:18 PM  
**To:** Santo Russo  
**Cc:** Patrick J. Frawley  
**Subject:** Re: Fidelis Care -- Notice of Special Board Meeting and Waiver

**\*\*\*\*External Email: Do not open attachments or click links that are unexpected.\*\*\*\***

Hi Santo - I'm traveling, unable to execute waiver of notice. But I agree to the waiver of notice for tomorrow's meeting. Regards, John

John J. Rydzewski  
917-856-6046

On May 2, 2018, at 10:25 AM, Santo Russo <[srusso@fideliscare.org](mailto:srusso@fideliscare.org)> wrote:

On behalf of Father Harrington, please be advised that a Special Meeting of the Board of Directors of Fidelis Care has been called and will be held by telephone conference at 3 pm on Thursday, May 3, 2018 in order to address the following:

1. Amendment to the Centene Corporation ("Centene") – Fidelis Care Asset Purchase Agreement dated September 12, 2017;
2. Fidelis Care Petition submitted to the Attorney General for consideration and approval of the Centene – Fidelis Care transaction;
3. The Agreement reached with the Governor's office regarding the State's claims to a portion of the proceeds of the transaction
4. The ultimate disposition of the proceeds from the Fidelis Care transaction into an affiliate foundation designated by the Members; and
5. Such other further business as the Board may deem necessary.

Any background materials related to the above will be shared in advance of tomorrow's 3 pm meeting and will be loaded onto your electronic board books as soon as they are available.

**PLEASE KINDLY SIGN AND RETURN TO ME THE WAIVER ATTACHED AS SOON AS POSSIBLE, EVEN IF YOU CANNOT PARTICIPATE IN TOMORROW'S 3 PM CALL. YOUR SIGNED WAIVER CAN BE RETURNED TO ME EITHER BY EMAIL OR FAX TO 718-393-6112.**

Thank you.

Santo F. Russo  
Chief Legal Officer  
Fidelis Care New York  
718-393-6109

# EXHIBIT 53

Foundation's Agreement with Attorney General

DRAFT

MOTHER CABRINI HEALTH FOUNDATION, INC.

May \_\_, 2018

Abigail Young  
Assistant Attorney General, Charities Bureau  
New York State Office of the Attorney General  
28 Liberty Street, 19th Floor  
New York, NY 10005

Re: Mother Cabrini Health Foundation, Inc.  
File No. 2017-3144-NYC

Dear Ms. Young:

On behalf of the Mother Cabrini Health Foundation, Inc. (the "Foundation"), I confirm that the Foundation will take the following actions, which I understand are necessary in order for the New York State Attorney General's Office ("OAG") to approve the Verified Petition submitted on May \_\_, 2018 (the "Petition") by New York State Catholic Health Plan, Inc. d/b/a Fidelis Care New York to sell substantially all of its assets pursuant to Sections 510 and 511-a of the Not-for-Profit Corporation Law (the "Transaction").

1. The Foundation will not make any charitable grants prior to receipt of its Internal Revenue Service determination letter recognizing it as tax-exempt under section 501(c)(3) of the Internal Revenue Code.
2. The Foundation will provide annual CHAR 500 reports and independently audited financial statements to the OAG pursuant to Article 7-A of the Executive Law and Section 8-1.4 of the Estates, Powers and Trusts Law.
3. The Foundation will maintain an independent audit committee meeting the requirements of section 712-a of the Not-for-Profit Corporation Law for the duration of the organization's corporate existence in New York State.
4. The initial meeting of the Board of Directors will take place as soon as practicable upon approval of the Transaction by the OAG.
5. The Foundation's initial Board members will prepare conflict of interest disclosure forms, which will be made available to the OAG for review.

DRAFT

6. The Foundation will provide to the OAG its Form 1023, *Application for recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, which will contain information consistent with the information contained in the Petition to the extent applicable, as well as its Internal Revenue Service determination letter.
7. The Foundation will provide the OAG its initial investment plan, which will be determined by the Foundation's Investment Committee in accordance with the Foundation's Investment Policy.

In addition, the Foundation accepts and confirms the undertakings and representations contained in the following paragraphs of the Petition: 139 and 147-176.

We thank the OAG for its review of the Petition and look forward to our working together to improve the health and well-being of New York's most vulnerable residents.

MOTHER CABRINI HEALTH FOUNDATION, INC.

By: \_\_\_\_\_

Name: Timothy Cardinal Dolan, Archbishop of New York

Title: President of Membership

cc: Jason R. Lilien, Esq.