BINDING AGREEMENT

THIS BINDING Agreement (hereinafter the "Agreement") is entered into on the 27th day of June, 2008 (the "Effective Date") by and between ERIE COUNTY MEDICAL CENTER CORPORATION (hereinafter "ECMCC"), a public benefit corporation having a principal place of business at 462 Grider Street, Buffalo, New York 14215; KALEIDA HEALTH (hereinafter "Kaleida"), a not-for-profit corporation having a principal place of business at 100 High Street, Buffalo, New York 14203; and WESTERN NEW YORK HEALTH SYSTEM, INC. (hereinafter "WNYHS"), a not-for-profit corporation. Kaleida, ECMCC and WNYHS are at times referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, pursuant to Western Region Recommendation 5 (hereinafter "WRR 5") of the Final Report of the New York Commission on Health Care Facilities in the 21st Century (hereinafter the "Commission"), the facilities controlled by ECMCC and Kaleida are to be joined under a single unified governance structure controlled by an entity other than ECMCC, Kaleida or any other public benefit corporation; and

WHEREAS, the Parties intend that WNYHS be granted all necessary power and authority to implement the requirements of WRR 5 as the same may be modified or interpreted by the New York State Department of Health (hereinafter the "Department") and to bring ECMCC and Kaleida under a single unified governance structure; and

WHEREAS, the Parties acknowledge that bringing ECMCC and Kaleida under a single unified governance structure that is able to effectively and efficiently deliver health care services, including tertiary, quaternary, psychiatry and long term care services to the residents of the Western New York region, cannot be accomplished without a full and complete understanding of the operations of ECMCC and Kaleida and their roles as community health care providers, and without a commitment by ECMCC and Kaleida to take all necessary steps to implement a unified governance structure through WNYHS; and

WHEREAS, ECMCC, Kaleida and WNYHS desire to enter into this Agreement (i) to confirm their commitment to a single unified governance structure which will be controlled and directed by WNYHS; (ii) to ultimately enter into a full asset merger pursuant to which the assets of ECMCC and Kaleida shall be contributed to WNYHS; and (iii) to document the process to be taken in order to effectuate such merger.

WHEREAS, the Parties intend that WNYHS exercise its powers and fulfill its duties and responsibilities in accordance with the fiduciary obligation it acknowledges that it has toward both ECMCC and Kaleida by virtue of this Agreement and otherwise;

NOW, THEREFORE, in consideration of the foregoing, including incorporation of the above recitals as if set forth at length herein, and the mutual promises and agreements contained in this Agreement, the Parties agree as follows:

1.0 Agreement to Merge. The Parties agree (a) that the most efficient structure to meet the requirements of the Commission (as stated therein) requires a full and complete integration of ECMCC and Kaleida by way of a full asset merger, combining the assets and operations of ECMCC and Kaleida into WNYHS (the "Merger"); (b) to take those actions necessary to effectuate the Merger, as outlined herein; (c) that the separate legal existence of ECMCC and Kaleida shall cease upon completion of the Merger; and (d) that the Merger shall become effective at such time as WNYHS determines that the following conditions are satisfied:

1.1 All necessary legislative amendments and approvals including, by way of example and without limitation, amendments and/or approvals required by the New York State legislature, the Erie County legislature, the Department, the Federal Trade Commission (if applicable), bond holders, HUD, IDA and other bond issuers, bond insurers, lenders and other necessary and appropriate bodies or agencies to effectuate the Merger have been enacted and/or obtained, respectively.

1.2 All approvals required to provide necessary and appropriate governmental funding and other appropriations to WNYHS have been obtained, in order to enable WNYHS to (A) implement the recommendations of the Commission applicable to the Parties as same may be modified or interpreted; (B) effectuate the Merger and pay all costs incurred in connection with the Merger; (C) meet its liabilities, if any, for payment of retirement benefits and rights to post retirement medical insurance benefits to ECMCC employees (collectively the "ECMCC Retirement Benefits"); and (D) obtain such other funding as shall be necessary and appropriate to permit the transactions contemplated hereby to result in a financially viable, high quality, efficient health care delivery system for Western New York.

1.3 All steps necessary to convert ECMCC employees from public employees to employees of WNYHS have been completed.

2.0 Steps Necessary to Implement the Merger; Transition Period. Recognizing that numerous complex issues must be addressed incrementally in order to achieve the integrated governance structure required by the Commission, the Parties agree to undertake the following steps (in the order set forth in this Section 2), culminating in the Merger. With respect to empowering WNYHS to take the actions necessary to implement WRR 5, the Parties agree to utilize the membership corporation model available under the New York Not-for-Profit Corporation Law, with WNYHS functioning as the sole member of Kaleida and as the equivalent of ECMCC's sole member (as discussed below), until the Merger is finalized. It is the intent of the Parties that, throughout this process, WNYHS' powers and authority with respect to ECMCC and Kaleida shall be identical (or as identical as possible, in light of ECMCC's and Kaleida's structure as a Public Benefit Corporation and a Not-for-Profit corporation, respectively).

2.1 Step 1 – Legislation is Passed Permitting WNYHS to Function as the Equivalent of ECMCC's Sole Member. Recognizing that WNYHS cannot become the sole member of ECMCC under the New York State Public Authorities Law, under the direction of WNYHS, the Parties agree to submit to the New York State and Erie County legislatures mutually agreeable proposed legislation, and shall consult with Erie County in the preparation thereof, that would allow WNYHS to exercise the same powers in relationship to ECMCC that are exercisable by a

sole member under the Not-for-Profit Corporation Law. The legislation shall include allowing WNYHS to exercise those powers listed below in Section 4.1 (the "Reserved Powers") with respect to ECMCC, as a co-operator of ECMCC under Article 28 of the New York Public Health Law ("Article 28"), upon the approval of the Department. The Parties shall cooperate with the Department so that the Department's approval of WNYHS' status as the co-operator of ECMCC and the operator of Kaleida, with authority to exercise the Reserved Powers with respect to ECMCC and Kaleida, shall occur simultaneously.

The Parties recognize that the legislation ultimately enacted under Step 1 may include certain requirements that are not typically imposed upon the sole member of a Not-for-Profit corporation (for purposes of example only, the applicable legislation may require WNYHS to obtain the input and/or approval of State and/or local officials in connection with the appointment of ECMCC's Board of Directors), and the Parties agree to accept such requirements, provided the requirements are acceptable to WNYHS and the Department.

2.2 Step 2 – WNYHS Becomes the Sole Member of Kaleida. WNYHS and Kaleida shall take all actions necessary (including, without limitation, amending Kaleida's certificate of incorporation and bylaws) to install WNYHS as Kaleida's sole member under the Not-for-Profit Corporation Law simultaneously with and conditioned upon the implementation of the requirements of Step 1 above and enactment of the legislation envisioned by Step 1 above.

2.3 Step 3 – Standstill Arrangement Prior to WNYHS Obtaining Departmental Approval to Operate ECMCC and Kaleida. Until WNYHS obtains all necessary authority to exercise the Reserved Powers with respect to ECMCC and Kaleida, and in order to permit WNYHS to carry out its purpose to implement WRR 5, the Parties hereby agree to the following actions as set forth in this Section 2.3. The Parties agree that (i) the intent of this Section 2.3 is to allow time for WNYHS to become established under Article 28 as the co-operator of ECMCC and the operator of Kaleida; and (ii) the terms of this Section 2.3 shall not be interpreted to contravene the requirements of the Public Authorities Law.

2.3.1 The Parties shall promptly (A) prepare and file Certificate of Need applications to amend the certificate of incorporation of Kaleida and establish WNYHS as the operator of Kaleida having the Reserved Powers; and (B) work together under the direction of WNYHS to obtain all necessary approvals (including, without limitation, the approval of appropriate Certificate of Need applications by the Department) to permit WNYHS to exercise the same Reserved Powers with respect to ECMCC. Such approvals shall be acceptable to the Parties, provided the approvals are reasonably acceptable to WNYHS and further provided that, as a result of such approvals, WNYHS' powers and authority with respect to ECMCC and Kaleida shall be identical (or as identical as possible, in light of the ECMCC's and Kaleida's structure as a Public Benefit Corporation and a Not-for-Profit Corporation, respectively).

2.3.2. Both ECMCC and Kaleida shall refrain from taking any action that would require the approval of WNYHS if WNYHS had already been authorized to exercise the Reserved Powers. Such action shall be permitted only upon WNYHS' prior notification and written concurrence.

2.3.3. ECMCC and Kaleida shall promptly report to WNYHS (and provide timely updates to WNYHS in connection with) all audits, investigations, claims (both for and against such Party) and all other matters having a material effect on such Party or matters for which WNYHS would be responsible if it were authorized to exercise the Reserved Powers. ECMCC and Kaleida shall also advise WNYHS on all matters on which such Parties would seek to be advised if they were acting in the capacity of WNYHS. The Parties shall determine and implement a reasonable mechanism to ensure that such reporting requirements are satisfied. Notwithstanding any provision to the contrary, in the event that the disclosure of any information to WNYHS pursuant to this Section 2.3.3 is prohibited by law or otherwise protected by a statutory privilege, such information shall be provided to WNYHS only to the extent permissible by law, and only to the extent consistent with the maintenance of such privilege.

2.4 Step 4 – WNYHS Exercises Reserved Powers; the Parties Prepare for Merger. Upon the Department's authorization of WNYHS to exercise the Reserved Powers with respect to ECMCC and Kaleida (and assuming the necessary legislation has been enacted in connection therewith), the Parties shall work diligently under WNYHS' direction to reconfigure the provision of services by ECMCC and Kaleida in accordance with Article 5.0, to the extent applicable, and in order (i) to satisfy WRR 5; (ii) to address the preconditions to Merger as set forth in this Agreement; and (iii) to improve the delivery of health care. It is envisioned that during this period the Parties shall also work together, under WNYHS' direction, to promote and submit mutually agreeable legislation, and shall consult with Erie County, in the preparation thereof, addressing (A) liabilities relating to ECMCC Retirement Benefits; (B) the conversion of ECMCC's public employees to WNYHS employees effective as of the Merger; and (C) the dissolution of ECMCC (the Parties agree that similar legislation is not necessary with respect to Kaleida, because Kaleida will be dissolved by operation of law upon its merger into WNYHS).

The Parties acknowledge and agree that it is their specific intent that unless a merger takes place as described in Step 5 below, neither Party shall assume or otherwise be responsible for the liabilities, debts or obligations of any other Party unless same is or are specifically assumed in writing specifying which such liability, debt or obligation is thereby assumed.

2.5 Step 5 – Merger. Upon completion of the preconditions set forth in this Agreement, the Parties shall effectuate the full and complete integration of ECMCC and Kaleida by way of a full asset merger, combining the assets and operations of ECMCC and Kaleida into WNYHS.

3.0 Timeline. The reports and presentations identified in this Section 3 shall be prepared under the direction of WNYHS.

3.1 On or before September 30, 2008, the Parties shall present a report to the Board of Directors of WNYHS which, among other things, identifies: (i) the projected aggregate annual amount of New York State, U.S. Federal and Erie County governmental funding and other appropriations (including, but not limited to, funding and appropriations from HEAL NY and F-SHRP sources) which would be necessary to enable WNYHS to conduct its operations at a profit for a period of five (5) years following the Merger; (ii) the legal and financial impediments to the transfer of the assets and operations of ECMCC to WNYHS arising under the terms of the bonds

issued by Erie County in connection with the establishment of ECMCC as a Public Benefit Corporation; (iii) the legal and financial impediments to the transfer of the long term indebtedness of Kaleida to WNYHS; (iv) the legal impediments to the removal of the employees of ECMCC from the Erie County public employees union; (v) the legal impediments to the modification or elimination of the unfunded medical liabilities of ECMCC; (vi) the legal impediments to the dissolution of ECMCC and transfer of its assets and operations to WNYHS under the Public Authorities Law; (vii) the legal and legislative impediments to the transfer to any one or more of the U.S. Federal government, New York State and/or Erie County of the obligation to pay and provide funding for the ECMCC Retirement Benefits; and (viii) a list, including contact information, of all governmental agencies and authorities and all non-governmental entities whose consent or approval to the Merger is required if the failure to obtain such consent or approval would have a material adverse effect on the ability of WNYHS to conduct the business of providing health care to the residents of Western New York following the Merger.

3.2 On or before October 31, 2008, the Parties shall present a report to the Board of Directors of WNYHS which identifies: (i) the legislative action required to be taken by the New York State legislature and the Erie County legislature (A) to allow WNYHS to function as the equivalent of ECMCC's sole member, as set forth in Section 2.1 above; and (B) to remove statutory impediments to the Merger; and (ii) the items required to be delivered to all governmental agencies and authorities and all non-governmental entities identified in the report described in Section 3.1 above, in order to obtain the consent or approval of such entities.

3.3 On or before November 15, 2008, under the direction of WNYHS, the Parties shall submit: (i) to the New York State legislature; (ii) to the Erie County legislature; and (iii) to the Department, mutually agreeable proposed legislation to allow WNYHS to function as the equivalent of ECMCC's sole member, as set forth in Section 2.1 above, and shall consult with Erie County in the preparation thereof.

3.4 On or before October 31, 2008, the Parties shall present a report to the Board of Directors of WNYHS which: (i) identifies the terms of legislation to be proposed to the New York State legislature and the Erie County legislature to remove statutory impediments to the Merger, including, but not limited to, legislation: (A) providing for the dissolution of ECMCC; (B) providing for the transfer of the assets and operations of ECMCC to WNYHS; (C) terminating the participation of employees of ECMCC in the Erie County public employees union; (D) providing for New York State and Erie County funding and other appropriations to be made available to WNYHS during an appropriate period following the Merger; and (E) to the extent applicable, providing for payment and funding of the ECMCC Retirement Benefits by New York State and Erie County; and (ii) contains a form of a plan and agreement of merger to be entered into by and between Kaleida and ECMCC, respectively, with WNYHS.

3.5 On or before December 1, 2008, the Parties shall submit any additional legislation that the Parties deem necessary to remove impediments to the Merger to: (i) the New York State legislature; (ii) the Erie County legislature; and (iii) the Department.

4.0 WNYHS

4.1 Reserved Powers. The Reserved Powers of WNYHS are as follows, subject to Article 5, to the extent applicable:

4.1.1 to approve and coordinate submission of Certificate of Need applications by ECMCC and Kaleida for any new clinical programs or services that meet the threshold dollar amount established by law for the submission of Certificate of Need applications to the Department;

4.1.2 to negotiate and approve any and all managed care contracts for ECMCC and Kaleida to the extent permissible by law;

4.1.3 to develop the operating budget for WNYHS and approve and oversee the operating budgets of ECMCC and Kaleida consistent with the needs of WNYHS and of the communities served by ECMCC and Kaleida;

4.1.4 to approve and oversee the capital budgets of WNYHS and of ECMCC and Kaleida consistent with the needs of WNYHS and of the communities served by ECMCC and Kaleida;

4.1.5 to develop, approve and oversee the implementation of the strategic plans of WNYHS, ECMCC and Kaleida consistent with the needs of the communities served by ECMCC and Kaleida;

4.1.6 to approve (i) unbudgeted expenditures on behalf of ECMCC or Kaleida with respect to a particular item, service, payee or otherwise or a group of items, services, payees or otherwise of an amount greater than $500,000 in any twelve (12) month period or (ii) the execution of any contract or series of related contracts obligating ECMCC or Kaleida to make unbudgeted capital expenditures of an aggregate amount greater than $1,500,000 under the terms of such contract or contracts;

4.1.7 to approve the transfer or closure of a service involving a specific condition or procedure with greater than a total of 40 discharges per year or any service line change that would require a full Certificate of Need application for approval by the Department ("Service Line Realignment") by an affirmative vote of 80 percent of the members of the WNYHS Board of Trustees;

4.1.8 to develop a system-wide, consolidated quality improvement program, joint primary source verification program related to credentialing, and other shared services among ECMCC and Kaleida which is intended to include quality benchmarks and best practices based upon generally accepted clinical criteria and outcome measurements;

4.1.9 to approve any new affiliation between WNYHS, Kaleida or ECMCC and any health system, hospital, academic medical center or other institutional health care provider;

4.1.10 to coordinate, consistent with the strategic plan developed by WNYHS, and approve any physician recruitment activities of ECMCC and Kaleida;

4.1.11 to approve the addition of any new regionalized health care services;

4.1.12 to approve any merger, consolidation, or transfer of all or substantially all of the assets of ECMCC or Kaleida whether pursuant to a plan of dissolution or otherwise, a change in ECMCC's or Kaleida's governance structure or rules, or a combination of ECMCC or Kaleida with any other person or entity, or the dissolution of ECMCC or Kaleida;

4.1.13 to approve the closure of any ECMCC or Kaleida facility or of a major service of ECMCC or Kaleida;

4.1.14 to approve any borrowings by ECMCC or Kaleida in excess of $1,000,000 per loan or $1,000,000 dollars in the aggregate per year, unless such borrowings are included in that organization's approved budget;

4.1.15 to approve the overall marketing and advertising plans of WNYHS, ECMCC and Kaleida;

4.2 Governing Body. WNYHS, ECMCC and Kaleida agree that WNYHS shall be governed by a Board of Trustees comprised of seventeen (17) members. ECMCC, Kaleida and University at Buffalo, The State University of New York ("UB") shall each appoint three (3) voting members to the Board of Trustees. The respective presidents of the medical/dental staffs of ECMCC and Kaleida shall serve as additional voting members. The Board of Trustees shall appoint five (5) community members who shall be voting members. Except to the extent that representational members are identified in this section 4.2, the board shall be self-perpetuating. The Chief Executive Officer of WNYHS shall be a voting member of the Board of Trustees. Members currently serving as Trustees under the Articles of Incorporation shall continue to serve in such capacity for the remainder of their terms, in the representational roles identified in Exhibit A. The total number of voting members of the WNYHS Board of Trustees shall not exceed seventeen (17) without the approval of at least 80 percent of the total number of board members, or in the case of 17 total voting members, 14 must vote for a change. The number of the individual constituent representatives, as identified above, shall not be changed without the approval of 80 percent of the total number of board members. In the event of an inconsistency between the Bylaws of WNYHS and this Agreement, this Agreement shall prevail.

5.0 Professional Steering Committee

5.1 Authority and Composition. There shall be an advisory Professional Steering Committee ("PSC") that shall be subordinate to WNYHS in accordance with the duties, powers and responsibilities described in section 5.2 of this Agreement. The PSC shall be comprised of ten (10) physicians. The physicians shall include physicians from both UBMD and community physicians and shall be chosen to reflect the diversity of the community. Members of the PSC shall serve staggered terms of two years and shall be eligible for re-appointment. Five (5) of its physician members shall be selected by the Medical Executive Committee of Kaleida and five (5) of its members and shall be selected by the Medical Executive Committee of ECMCC. Each physician selected as a member of

the PSC shall be a physician licensed to practice medicine in the State of New York and an active staff member from the staff of the organization appointing him or her. The chair of the PSC shall be elected by the members of the PSC, shall rotate between the appointing institutions on an annual basis, and shall serve as a non-voting ex officio member of the WNYHS Board of Trustees. A member of the PSC may be removed by a two-thirds vote of the Medical Executive Committee that appointed that member. The Chief Medical Officers of ECMCC and Kaleida, or their physician-designees, shall serve as non-voting ex officio members of the PSC. The Directors of Nursing, or their equivalent, of ECMCC and Kaleida, or their nurse-designees, shall serve as non-voting ex officio members of the PSC. The Dean of the UB School of Medicine and Biomedical Sciences, or his or her physician-designee, shall serve as a non-voting ex officio member of the PSC.

5.2 Advisory Functions. The PSC shall make advisory recommendations in accordance with the following duties, powers and responsibilities:

5.2.1 to make recommendations for defining, integrating, coordinating and deploying clinical services that align patient, physician and institutional needs and resources to identify gaps in clinical expertise, recruit new physicians, build new programs, right-size existing programs, identify infrastructure needs, encompass the teaching and clinical research needs of UB, and maximize the operational and financial efficiencies to improve the delivery of health care by WNYHS, ECMCC and Kaleida;

5.2.2 to review and provide recommendations regarding all proposals and plans for new services, substantial expansion of existing services, the movement or transfer of services to another site or organization, closing or adding new sites for existing services, Service Line Realignments, and Certificate of Need applications in conjunction therewith;

5.2.3 to make recommendations at the request of WNYHS, ECMCC or Kaleida or upon its own initiative;

5.2.4 to access systems resources and financial data and information necessary and appropriate to aid in the review of the proposals and plans described in this Agreement to the extent permissible by law;

5.2.5 to retain external consultants to aid in the review of the proposals and plans described in this Agreement; the hiring of such consultants shall be done with the preapproval of WNYHS;

5.2.6 to appoint subcommittees or task forces comprised of members or non-members of the PSC to assist the PSC in the review and analysis of the proposals and plans described in this Agreement;

5.2.7 to create, approve and amend rules for the conduct of the business of the PSC consistent with this Agreement and the organizational documents of WNYHS; and

5.2.8 to have the reasonable expenses incurred by the PSC related to its activities hereunder reimbursed or paid in advance by WNYHS. The PSC must obtain preapproval by WNYHS before incurring expenses greater than $500.

5.3 PSC Recommendation Procedure. The PSC shall follow the procedure set forth below:

5.3.1 The PSC shall determine on its own how best to develop the strategic process described in section 5.2.1 of this Agreement.

5.3.2 The PSC shall receive and evaluate plans and/or proposals from WNYHS, Kaleida, ECMCC, UB, and/or the Medical Executive Committee of any site or initiate recommendations for Service Line Realignments.

5.3.3 Consistent with the strategic process developed by the PSC, the PSC shall vote on the recommendation regarding any Service Line Realignment affecting WNYHS, ECMCC or Kaleida. Such vote shall take place within a reasonable time after a proposal is received, but in any event no later than six months after receipt. A recommendation in support of a Service Line Realignment shall require a vote of three-fourths of all PSC members, or it shall be deemed disapproved.

5.3.4 The PSC shall promptly communicate its recommendation to the proponent of the plan or proposal as well as to the Board of Trustees of WNYHS. In the case of a disapproval, the PSC may, in its reasonable discretion, identify how the proposal or plan could be modified to attain reconsideration by the PSC.

5.3.5 If the Board of Trustees of WNYHS votes against approving a recommendation of the PSC, an ad hoc committee will be appointed by the WNYHS Board of Trustees to further discuss the PSC's recommendation. If the ad hoc committee identifies a potentially acceptable resolution, the ad hoc committee will make a new recommendation to the Board of Trustees of WNYHS.

5.3.6 If WNYHS submits any request for Department approval subject to this Article 5, the report of the PSC shall be included with WNYHS's submission.

5.4 The WNYHS Board shall not act on matters subject to this Article 5 until it has received a recommendation of the PSC pursuant to sections 5.1 through 5.3.5. Nothing shall prevent the Board of Trustees from considering and voting upon any proposal after a recommendation has been communicated by the PSC.

6.0 ECMCC as Campus. ECMCC, Kaleida and WNYHS acknowledge that ECMCC on Grider Street shall be a full campus of the WNYHS system and will be recognized as such, publicly and otherwise.

7.0 ECMCC and Kaleida Autonomy. Unless legislation requires otherwise, WNYHS shall not have the authority to select who serves on the boards of ECMCC or Kaleida. The ECMCC Board of Directors shall have the authority to hire, evaluate and terminate, in its discretion, the senior management of ECMCC. The Kaleida Board of Directors shall have the authority to hire, evaluate and terminate, in its discretion, the senior management of Kaleida.

8.0 Equitable Treatment — Service Line Realignment. ECMCC, Kaleida and WNYHS agree that the parties will share equitably in the economic results from the movement or assignment or re-assignment of services, or Service Line Realignments. This will not be a dollar for dollar sharing, but rather, shall take into account actual performance before movement, assignment or re-assignment and actual performance after movement, assignment or re-assignment. The goal is to allow both ECMCC and Kaleida to benefit from clinical or other service movement, assignment or re-assignment.

9.0 Employees. Until such time as there is a full asset merger, each Party will retain its own employees subject to all agreements, policies and procedures applicable thereto. Any employment policies implemented by WNYHS should it employ its own employees, shall require that all WNYHS employees be treated fairly in comparison to one another. Nothing herein shall constitute an assumption by Kaleida, ECMC or WNYHS of the employees of each other or of the policies or collective bargaining agreements to which their respective employees are subject.

10.0 Physician Leadership. Clinical leadership positions shall be filled following a merit-based process without regard for the then-current institutional affiliation that a particular physician may have.

11.0 Necessary Legislative Changes. The parties acknowledge that one or more of the terms of this Agreement will require changes to the ECMCC Act, including the desire to implement a full asset merger of ECMCC and Kaleida at some time. The parties agree to jointly submit mutually acceptable legislation, under the direction of WNYHS, and shall consult with Erie County in the preparation thereof, consistent with this Agreement and to assist in the advancement of that legislation through the New York State Legislature, consistent with the Timeline set forth in Section 3 above.

12.0 Fiscal Integrity. ECMCC, Kaleida and WNYHS agree that the fiscal stability and integrity of ECMCC and Kaleida must be recognized and protected. ECMCC, Kaleida and WNYHS agree that ECMCC and Kaleida shall maintain separate balance sheets until these entities are merged as contemplated by this Agreement. Until these entities are merged, the assets and liabilities of ECMCC shall remain ECMCC assets and liabilities, and the assets and liabilities of Kaleida shall remain Kaleida assets and liabilities.

13.0 Review By Independent Consultant. At the end of three years from the Effective Date of this Agreement, the Board of Trustees of WNYHS shall engage an independent consultant to review the functioning of WNYHS under the structure set forth in this Agreement, including the progress it has made towards meeting the goals described by the Commission, and the effectiveness with which the Board has functioned, including specifically the impact and utility of the requirement that 80 percent of the members of the Board of Trustees of WNYHS approve any Service Line Realignment. The consultant shall prepare a report containing the findings of its review, and the report will be made available to the Department. Upon issuance of the report, the Board of Trustees shall consider whether to change the requirement that an 80 percent vote is required for a Service Line Realignment, and may consider such a change thereafter, provided that any such changes

shall be implemented only if approved by at least an 80 percent vote of the Board of Trustees of WNYHS.

14.0 Further Documents. The Parties intend for this Agreement to be binding in accordance with its terms. The Parties also agree to enter into such other agreements and to prepare and file such other documents (including, without limitation, amended certificates of incorporation, amended bylaws, certificate of need applications and plans of merger) as may reasonably be requested by WNYHS and/or necessary in order to carry out the terms of this Agreement.

15.0 Cooperation. WNYHS, ECMCC and Kaleida acknowledge and agree that implementation of WRR 5 and the steps called for in this Agreement will require a commitment to the process set forth herein by their respective management personnel, and hereby agree to instruct their respective management personnel: (a) to fully cooperate with the management personnel of the other Parties; (b) to use their best efforts to supply documentation and information which may be requested in a timely manner; and (c) to meet in person or by teleconference with the management personnel and other representatives of the other Parties with such frequency as may reasonably be necessary to carry out the terms of this Agreement.

16.0 Expenses. Each of ECMCC and Kaleida shall be responsible for payment of all reasonable fees and expenses incurred by them in connection with the actions envisioned hereunder, including, but not limited to, the fees and expenses of financial advisors, legal advisors and other consultants. The fees and expenses incurred by WNYHS in pursuit of the actions envisioned hereunder, including, but not limited to, the fees and expenses of financial advisors, legal advisors, other consultants and lobbyists shall be shared equally by ECMCC and Kaleida. Nothing herein shall limit the ability of the Parties to apply for and/or receive funding for such costs and expenses from other sources, including governmental sources. This section does not apply to expenses incurred in conjunction with Article 5 above.

17.0 Period of Performance. The obligations of the Parties under this Agreement shall continue in effect until the Merger has been completed, unless the Parties otherwise mutually agree.

18.0 Miscellaneous.

18.1 Amendment. This Agreement may not be amended or modified except by an instrument in writing executed by each Party.

18.2 Governing Law and Jurisdiction. This Agreement and the legal relations among the parties shall be interpreted and construed in accordance with the internal laws of the State of New York without regard to its conflicts of law doctrines.

18.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.4 Severability. The invalidity or illegality of any provision, term or other part of this Agreement shall not affect the enforceability or validity of the remainder of this Agreement.

18.5 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter contained in this Agreement and supersedes all prior agreements, representations and/or warranties between the parties, including the terms expressed and agreed to by the parties on the record in open court on June 23, 2008.

18.6 Headings. The headings used in this Agreement are for convenience only and shall not constitute a part of this Agreement or affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement below on the date first written above.

KALEIDA HEALTH

EDWARD J. WALSH, JR.
CHAIR, BOARD OF DIRECTORS

ERIE COUNTY MEDICAL CENTER CORPORATION

KEVIN E. CICHOCKI, D.C.
CHAIR, BOARD OF DIRECTORS

APPROVED AS TO FORM:

ANTHONY J. COLUCCI, III
ECMCC COUNSEL

WESTERN NEW YORK HEALTH SYSTEM, INC.

ROBERT D. GIOIA
CHAIR, BOARD OF TRUSTEES

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KEVIN E. CICHOCKI, D.C.
CHAIR, BOARD OF DIRECTORS

APPROVED AS TO FORM:

ANTHONY J. COLUCCI, III
ECMCC COUNSEL

WESTERN NEW YORK HEALTH SYSTEM, INC.

ROBERT D. GIOIA
CHAIR, BOARD OF TRUSTEES

Exhibit A: Current WNYHS Board of Trustees

ECMCC Representatives

Kevin E. Cichocki, D.C.

Sharon L. Hanson

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