

## STOCK PURCHASE AGREEMENT

This **STOCK PURCHASE AGREEMENT** (“**Agreement**”), dated as of September 30, 2016 (the “**Effective Date**”), is by and among **CARE1ST HEALTH PLAN**, a California nonprofit corporation (the “**Seller**”), **CARE1ST HEALTH PLAN ARIZONA, INC.**, an Arizona corporation, **ONECARE BY CARE1ST HEALTH PLAN OF ARIZONA, INC.**, an Arizona corporation (each a “**Company**” and collectively the “**Companies**”), and **THE WELLCARE MANAGEMENT GROUP, INC.**, a New York corporation (the “**Purchaser**”) (collectively the “**Parties**”).

### WITNESSETH

**WHEREAS**, Care1st Health Plan Arizona, Inc., has contracted with the Arizona Health Care Cost Containment System (“**AHCCCS**”) to service Arizona’s Medicaid population and with the Arizona Department of Economic Security, Division of Developmental Disabilities (“**ADES**”) to service Arizona’s population with developmental disabilities (“**DDD**”).

**WHEREAS**, the Seller is the sole shareholder, who owns 100% of each Company’s issued and outstanding shares of common stock (the “**Seller’s Stock**”);

**WHEREAS**, the Seller desires to sell, convey, assign, transfer and deliver to the Purchaser, and the Purchaser desires to purchase and acquire from the Seller, all of the Seller’s Stock, subject to the terms and conditions set forth in this Agreement and the related documents to be executed and delivered in connection herewith.

**NOW THEREFORE**, in consideration of the foregoing premises, the mutual covenants, agreements, representations and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.01. Definitions.** Unless otherwise provided herein, the following terms shall have the following meanings:

“**Accounting Firm**” shall have the meaning given to such term in Section 2.06(b) hereof.

“**Action**” means, with respect to any Person, any claim, action, suit, arbitration, inquiry, investigation or proceeding by or before any Governmental Authority.

“**ADES**” shall have the meaning set forth in the preamble.

“**AHCCCS**” shall have the meaning set forth in the preamble.

“**AHCCCS Contract**” means the Contract (Contract # [REDACTED] by and between AHCCCS and Care1st Health Plan Arizona, Inc., effective as of October 1, 2015, as amended and as may be amended from time to time following the Effective Date, and any successor Contract thereto.

“**Affiliate**” means, with respect to any specified Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. For purposes of this Agreement, the term “control” 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 representation on the board of directors, management committee or similar governing body, by contract or otherwise.

“**Affiliated Group**” means any affiliated group within the meaning of Section 1504(a) of the Code or any similar group defined under a similar provision of state, local or non-U.S. Legal Requirement.

“**Agreement**” has the meaning set forth in the preamble.

“**Base Purchase Price**” shall have the meaning given to such term in Section 2.02 hereof.

“**Basket**” shall have the meaning given to such term in Section 7.04(c) hereof.

“**Blue Shield Trademarks**” means all trademarks owned or held by Blue Shield of California, as identified in Exhibit A hereto.

“**Business Day**” means any day other than a Saturday, Sunday or a day on which banks in Arizona are authorized or required by law to close.

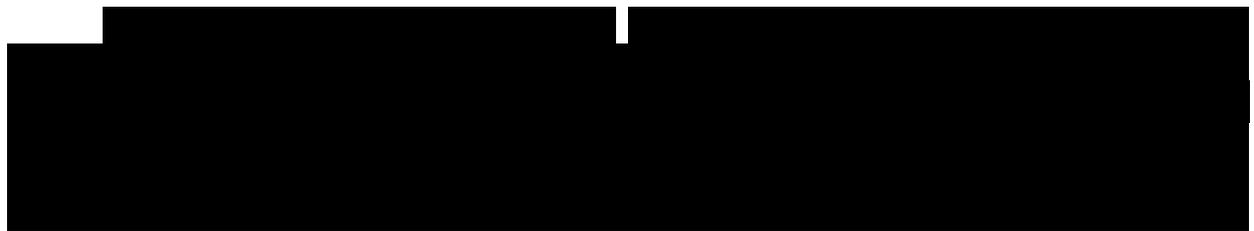
“**Claim Deductible**” shall have the meaning given to such term in Section 7.04(b) hereof.

“**Closing**” shall have the meaning given to such term in Section 2.03 hereof.

“**Closing Date**” shall have the meaning given to such term in Section 2.03 hereof.

“**Closing Enrollment Files**” means the Enrollment Files that reflect the Closing Enrollees.

“**Closing Enrollees**” means those Enrollees included in the Enrollment Files made available to each of the Companies in the month in which the Closing takes place.



[REDACTED]

“**CMS**” means the U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services.

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

“**Company**” and “**Companies**” has the meaning set forth in the Preamble.

“**Company Forms**” shall have the meaning set forth in Section 3.15(e) hereof.

“**Company Intellectual Property**” means the Intellectual Property owned by the Companies or the Subsidiary, including without limitation Company-Owned Software. For the avoidance of doubt, Company Intellectual Property shall not include Third-Party Software.

“**Company-Owned Software**” shall have the meaning given to such term in Section 3.12(b) hereof. For the avoidance of doubt, Company-Owned Software shall not include Third-Party Software.

“**Confidentiality Agreement**” means that certain Non-Disclosure and Non-Use Agreement entered into by and between the Companies and WellCare Health Plans, Inc., dated as of May 5, 2016.

“**Consent**” means any approval, consent, license, permit, waiver, registration, approvals or other authorization issued, granted or given by or under the authority of a Governmental Authority or any other Person.

“**Contract**” means any written or oral agreement, contract, subcontract, lease, indenture, note, guaranty, option, warranty, purchase order, license, sublicense, insurance policy or legally binding commitment or undertaking of any nature as in effect as of the Effective Date or as may hereinafter be in effect (and all amendments, exhibits, attachments, waivers, modifications or supplements thereto).

“**DDD Contract**” means the Contract (Contract # [REDACTED]) by and between the ADES and Care1st Health Plan Arizona, Inc., amended effective as of October 1, 2015, and as may be amended from time to time following the Effective Date, and any successor Contract thereto.

“**Designated Contract Activities**” has the meaning set forth in Section 5.11 hereof.

“**Direct Claim**” shall have the meaning given to such term in Section 7.05(a) hereof.

“**Direct Claim Notice**” shall have the meaning given to such term in Section 7.05(a) hereof.

“**Direct Claim Response Period**” shall have the meaning given to such term in Section 7.05(a) hereof.

“**Disclosure Schedule**” has the meaning set forth in Article III.

“**Disputed Items**” shall have the meaning given to such term in Section 2.06(b) hereof.

“**Effective Date**” has the meaning set forth in the preamble.

“**Employee Benefit Plan**” means each Plan that is maintained, sponsored or contributed to or required to be contributed to by the Companies or the Subsidiary on behalf or for the benefit of any current or former employees, independent contractor, consultant, officer, or director (and/or dependents or beneficiaries thereof) or with respect to which the Companies or the Subsidiary has any obligation or Liability.

“**Enrollees**” mean individuals who are properly enrolled in a Medicaid, D-SNP or DDD managed care plan offered by either of the Companies.

“**Enrollment Files**” means the enrollment files sent by AHCCCS or any other Governmental Authority, as applicable, that set forth Medicaid, D-SNP and DDD, as applicable, enrollment under the applicable managed care plan maintained by the Companies.

“**Environmental Claim**” means any Action by any Person alleging liability of whatever kind or nature arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“**Environmental Law**” means any applicable Legal Requirement: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata) or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

“**Environmental Permit**” means any permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

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

“**ERISA Affiliate**” of any entity means any trade or business that is, or at any relevant time was, together with such entity, treated as a “single employer” under Section 414(b), 414(c) or 414 (m) of the Code.

“**Estimated Closing Balance Sheet**” shall have the meaning given to such term in Section 2.04 hereof.

[REDACTED]

**“Estimated Purchase Price”** shall have the meaning given to such term in Section 2.08(a) hereof.

**“Financial Statements”** shall have the meaning given to such term in Section 3.07(a) hereof.

**“FLSA”** means the Fair Labor Standards Act, as amended.

**“FMLA”** means the Family and Medical Leave Act, as amended.

**“Fraud”** means and is limited solely to the occurrence of all of the following elements: (i) a representation of fact made by a Maker concerning a material fact; (ii) the representation’s falsity; (iii) the representation is material; (iv) the Maker knows the representation is false or is ignorant of the representation’s truth; (v) the Maker intends that the representation should be acted upon by the other party in the manner reasonably contemplated; (vi) the other party did not know the representation was false; (vii) the other party relied on the representation’s truth; (viii) the other party had the right to rely on the representation; and (ix) the other party sustained consequent and proximate injury as a result of the false representation.

**“GAAP”** means generally accepted United States accounting principles consistently applied.

**“General Cap Amount”** shall have the meaning given to such term in Section 7.04(a) hereof.

**“Governing Documents”** means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs, in each case, as amended to date. For example, the “Governing Documents” of a corporation are its articles or certificate of incorporation and by-laws, and the “Governing Documents” of a limited liability company are its articles of organization and its operating agreement or limited liability company agreement.

**“Governmental Authority”** means any foreign, federal, state or government, political subdivision or governmental or regulatory authority, company, board, bureau, commission, instrumentality or court or quasi-governmental authority of competent jurisdiction.

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, request for corrective action plan, determination or award entered by or with any Governmental Authority.

**“Hazardous Materials”** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived

products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

**“Health Care Laws”** means all Legal Requirements relating to (i) the licensure, certification, qualification or authority to transact business as a Medicaid, Medicare, DDD programs or Medicare Advantage health plan in the State of Arizona, and the regulation of third-party administrators, utilization review organizations, managed care, third-party payors and persons bearing financial risk for the provision or arrangement of health care items and services; (ii) the Programs, including without limitation, all Legal Requirements and CMS requirements (including, without limitation, CMS manuals, instructions, FAQs and guidance) related to Medicare, Medicare Advantage, Medicaid, and DDD, including but not limited to 42 C.F.R. Parts 422 and 423, the CMS guidance found in the Medicare Managed Care Manual and the Medicare Prescription Drug Manual, the AHCCCS guidance found in the AHCCCS Contractor’s Operations Manual and the guidance of ADES found in its policy manuals; (iii) the solicitation or acceptance of improper incentives, inducements or remuneration, fraud and abuse, patient inducements, patient referrals or Provider incentives, including without limitation the following statutes and all regulations and guidance promulgated thereunder: the Federal anti-kickback law (42 U.S.C. § 1320a-7b), the Stark laws (42 U.S.C. § 1395nn), the Federal False Claims Act (31 U.S.C. §§ 3729, et seq.), the Federal Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Federal Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.), the Federal Health Care Fraud law (18 U.S.C. § 1347), and any similar state Legal Requirements; (iv) the administration of healthcare claims or benefits or processing or payment for health care services, treatment, devices or supplies furnished by Providers, including third party administrators, utilization review agents and persons performing quality assurance, credentialing or coordination of benefits; (v) coding, coverage, reimbursement, claims submission, billing and collections related to any Program or otherwise related to insurance fraud; (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (**“COBRA”**); (vii) the privacy, security, integrity, accuracy, transmission, storage or other protection of information, including without limitation HIPAA and those Legal Requirements and regulations pursuant to which any of Seller, the Companies or the Subsidiary is required to be licensed or authorized to transact business; (ix) state professional practice, corporate practice of professionals, and professional fee-splitting, (x) Medicare; and (xi) the Patient Protection and Affordable Care Act (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), and all regulations promulgated thereunder and all similar state Legal Requirements.

**“HIPAA”** means the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (**“HITECH”**) and their respective implementing regulations including the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 160 and Part 164, Subparts A, D and E) (**“Privacy Standards”**), the Transactions and Code Set Standards (45 CFR Part 162) (**“TCS Standards”**) and Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164, Subparts A and C) (**“Security Standards”**), as in effect on the Effective Date.

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

“**IBNR**” means a reserve for liabilities for claims for health care services that have been incurred by, but not yet reported to, the Companies, calculated in accordance with GAAP, AHCCCS requirements, and generally accepted actuarial standards, as modified by the Specified Accounting Principles and, to the extent consistent with the foregoing, in accordance with past practice of the Companies.

“**Indebtedness**” means, with respect to any Person, without duplication, the outstanding principal amount of, accrued and unpaid interest on, and other payment obligations (including any prepayment or other fees, expenses, breakage or other costs, commitment fees, penalties, make-whole premiums or other similar fees or premiums payable as result of the Transaction contemplated by this Agreement) arising under, any Liabilities or obligations of either of the Companies or the Subsidiary consisting of: (a) all indebtedness of such Person for borrowed money; (b) all vendor financing of such Person or other indebtedness for the deferred purchase price of property or services, but excluding trade payables and liabilities incurred in the ordinary course of business and payable in accordance with customary practice; (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments; (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (e) all obligations of such Person as lessees under leases that are required, in accordance with GAAP, to be recorded as capital leases; (f) any other indebtedness which would be classified as “Indebtedness” under GAAP; (g) obligations of such Person under interest rate cap, swap, collar or similar transaction or currency hedging transactions; and (h) guarantees of such Person of any such indebtedness referred to in clauses (a)-(g) of any other Person.

“**Indemnified Party**” shall have the meaning set forth in Section 7.01 hereof.

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“**Intellectual Property**” means all U.S. and foreign (a) trademarks, service marks, trade names, Internet domain names, designs, logos, slogans and other distinctive indicia of origin, together with goodwill, registrations and applications relating to the foregoing (“**Trademarks**”); (b) patents and pending patent applications, invention disclosure statements, and any and all divisions, continuations, continuations-in-part, reissues, reexaminations, and any extensions thereof, any counterparts claiming priority therefrom and like statutory rights (“**Patents**”); (c) registered and unregistered copyrights, rights of publicity and all registrations and applications to register the same (“**Copyrights**”); (d) confidential or proprietary technology, know-how, inventions, processes, formulae, algorithms, models and methodologies (“**Trade Secrets**”); (e) computer programs, including any and all software implementations of algorithms, models and methodologies whether in source code or object code form, databases and compilations, including any and all electronic data and electronic collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Web site (“**Software**”); and (f) all other proprietary or intellectual property rights of any kind or nature that do not comprise or are not protected by Trademarks, Patents, Copyrights, Trade Secrets or Software, including without limitation any such rights to all other forms of technology, in each case whether or not registered with a Governmental Authority or embodied in any tangible form.

**“Intercompany Contract”** shall have the meaning set forth in Section 3.20 hereof.

**“IP Licenses”** means licenses or agreements pursuant to which any of the Companies or the Subsidiary has licensed, granted or transferred any Intellectual Property to a third party, including license agreements, settlement agreements and covenants not to sue.

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

**“Knowledge of the Companies”** or **“the Companies’ Knowledge”** or any other similar knowledge qualification relating to the Companies means the actual knowledge of any of [REDACTED] and the knowledge that each such person would reasonably be expected to obtain after reasonable inquiry.

**“Knowledge of the Purchaser”** or **“the Purchaser’s Knowledge”** or any other similar knowledge qualification relating to the Purchaser means the actual knowledge of any of [REDACTED] and the knowledge that each such person would reasonably be expected to obtain after reasonable inquiry.

**“Lease”** shall have the meaning given to such term in Section 5.16 hereof.

**“Leased Real Property”** shall have the meaning given to such term in Section 3.11(a) hereof.

**“Legal Requirements”** means all laws, statutes, codes, acts, or ordinances, orders, judgments, decrees, injunctions, rules, rulings, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities (including, without limitation, fire, health, handicapped access, sanitation, ecological, historic, zoning, environmental protection, wetlands and building laws), ordinary or extraordinary, that now or at any time hereafter may be applicable to Seller, the Companies, the Subsidiary or their properties.

**“Liabilities”** means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, including, without limitation, those arising under any Legal Requirement, contract, or as required by any Governmental Authority.

**“Licensed Intellectual Property”** means all Third-Party Software or other Intellectual Property licensed to or otherwise used by either Company or the Subsidiary (excluding the Other Licensed Software that does not constitute Company Intellectual Property and the Blue Shield Trademarks).

**“Lien”** means any security interest, pledge, mortgage, lien, charge, encumbrance, adverse claim, preferential arrangement or restriction of any kind, including, without limitation, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, but excluding restrictions on transfer under applicable federal, state, or foreign securities laws.

**“Loss”** or **“Losses”** means all damages, awards, losses, Liabilities, payments, fines, penalties, interest, costs and expenses (including reasonable attorneys’ fees and costs of

investigation and expenses, court costs and other reasonable professional fees and expenses and any amounts paid in settlement or compromise). Loss shall not include any punitive damages except to the extent awarded to a third party in connection with a Third Party Claim.

“**Maker**” shall mean the Person who made a representation which forms the basis of a claim for Fraud. Notwithstanding the foregoing, the Maker of any representation (i) on behalf of Seller shall be limited to [REDACTED]; and (ii) on behalf of Purchaser shall be limited to [REDACTED]

“**Material Adverse Change**” or “**Material Adverse Effect**” means any event, occurrence, fact, condition or change that has, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect on (a) the business, results of operations, financial condition or assets of the Companies and the Subsidiary, taken as a whole, or (b) the ability of the Seller or the Companies to consummate the Transaction; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition, circumstance or change, directly or indirectly, arising out of, attributable to or relating to: (i) any changes, conditions, effects or circumstances in the United States or foreign economies or financial, banking or securities markets (including any disruption thereof or any decline in the price of any security or any market index), except to the extent that such changes have a materially disproportionate adverse effect on the Companies and the Subsidiary relative to the adverse effect such changes have on other operating in the industries in which the Companies and the Subsidiary operate; (ii) any national or international political or social conditions, changes, effects or circumstances, including acts of terrorism or war (whether or not declared), except to the extent that such changes have a materially disproportionate adverse effect on the Companies and the Subsidiary relative to the adverse effect such changes have on other operating in the industries in which the Companies and the Subsidiary operate; (iii) any changes, conditions, effects or circumstances caused by or relating to any natural or man-made disaster or other acts of God, except to the extent that such changes have a materially disproportionate adverse effect on the Companies and the Subsidiary relative to the adverse effect such changes have on other operating in the industries in which the Companies and the Subsidiary operate; (iv) any changes in GAAP (or in the enforcement or interpretations thereof); (v) any changes in any Legal Requirement or other binding directives issued by any Governmental Authority (or in the enforcement or interpretations thereof), except to the extent that such changes have a materially disproportionate adverse effect on the Companies and the Subsidiary relative to the adverse effect such changes have on other operating in the industries in which the Companies and the Subsidiary operate; (vi) any change, condition, effect or circumstance that is generally applicable to the industries or markets in which the Companies and the Subsidiary operate; (vii) any failure by the Companies or the Subsidiary to meet any internal or published projections, forecasts or revenue or earnings predictions for any period (provided, however, the underlying cause of such failure will be included); (viii) any change, condition, effect or circumstance resulting from the announcement of this Agreement, any of the Transaction Documents or the Transactions, including the identity of the Purchaser; (ix) any change, condition, effect or circumstance resulting from an action required by this Agreement or the other Transaction Documents (other than any requirements to operate in the ordinary course of business); or (x) any matter about which the Purchaser had Knowledge as of the Effective Date that would reasonably be expected to have a material adverse effect on (I) the business, results of operations, financial condition or

assets of the Companies and the Subsidiary, taken as a whole, or (II) the ability of the Seller or the Companies to consummate the Transaction.

“**Material Contract**” shall have the meaning given to such term in Section 3.09(a) hereof.

“**Material Producers**” shall have the meaning given to such term in Section 3.15(k) hereof.

“**Material Suppliers**” shall have the meaning given to such term in Section 3.09(i) hereof.

“**Medicaid**” means the means-tested entitlement program under Title XIX of the Social Security Act, which provides federal grants to states for medical assistance based on specific eligibility criteria, as set forth at 42 U.S.C. § 1396, et seq., as the same may be amended, and any successor law in respect thereof.

“**Medicare**” means that government-sponsored entitlement program under Title XVIII of the Social Security Act, which provides for a health insurance system for eligible elderly and disabled individuals, as set forth at 42 U.S.C. § 1395 et seq., as the same may be amended, and any successor laws or regulations in respect thereof, including, without limiting the generality of the foregoing, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and the Medicare Improvements for Patients and Providers Act of 2008, as each has been amended, modified, revised or replaced, as well as any final rules and final regulations adopted pursuant to such laws and any written directives, instructions, guidelines, bulletins, manuals, requirements, policies and standards issued by CMS.

“**Most Recent Financial Statements**” shall have the meaning given to such term in Section 3.07(a) hereof.

“**Open Source Software**” means any Software subject to a license or other agreement whose terms require the distribution of source code in connection with the distribution of the Software to which such license applies or that prohibits the licensee from charging a fee or otherwise limit the licensee’s freedom of action with regard to seeking compensation in connection with sublicensing or distributing the Software to which such license applies (whether in source code or executable code form), including the licenses commonly referred to as the “Artistic License”, the “Mozilla Public License”, the “General Public License”, the “Lesser General Public License” and other similar licenses applicable to software distributed without charge to the public in source code form.

“**Order**” means any judgment, award, decision, order, decree, writ, injunction, assessment or ruling that is in effect and is adverse to either Company or the Subsidiary entered or issued by any Governmental Authority resulting from a finding that either Company or the Subsidiary engaged in a violation of a Legal Requirement.

“**Other Licensed Software**” means Software that is licensed to either Company or the Subsidiary under a “click-wrap” or “shrink-wrap” agreement or an agreement contained in “off-

the-shelf” Software or under the terms of use or service of a website subject to one-time or annual payments of [REDACTED] or less.

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

“**Permit**” means permits, licenses, approvals, certificates and other registrations, accreditations, authorizations and exemptions of and from all applicable Governmental Authorities.

“**Permitted Liens**” means (a) mechanics’, carriers’, workmen’s, repairmen’s, landlord’s or other similar Liens arising or incurred in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate proceedings, (b) Liens for Taxes and other governmental charges that are not yet delinquent or that are being contested in good faith by appropriate proceedings, (c) restrictions, easements, covenants, reservations, rights of way or other similar matters of title to Leased Real Property of record, and (d) immaterial Liens arising under or in connection with reinsurance agreements existing on the Effective Date or entered into in the ordinary course of business.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or similar entity, or any Governmental Authority. The term Person shall specifically include the Seller, the Companies, and the Purchaser.

“**Plan**” means each “employee benefit plan” as defined in Section 3(3) of ERISA, and each other employee compensation or benefit plan, program, arrangement, agreement, policy or commitment, including, but not limited to, each deferred compensation, incentive compensation, stock purchase, stock option or other equity-based, retention, employment, consulting, change in control, severance or termination pay, hospitalization or other medical, life, dental, vision, disability or other insurance, supplemental unemployment benefits, profit-sharing, pension, and retirement plan.

“**Post-Closing Period**” shall have the meaning given to such term in Section 9.03(a)(ii) hereof.

“**Pre-Closing Period**” shall have the meaning given to such term in Section 9.03(a)(ii) hereof.

“**Producer**” means any sales agent, consultant, solicitor, producer or agency thereof or insurance broker who or which arranges, on behalf of any Company, for the sales of, or enrollment into the Medicare Advantage benefits offered by any Company.

“**Program**” means the Medicare and Medicaid programs, the Arizona Long Term Care System and DDD program and any other health care programs operated by or financed, in whole or in part, directly or indirectly, by any foreign or domestic federal, state or local Governmental Authority (including, but not limited to, state health care programs as defined in Section 1128(h) of the Social Security Act).

“**Provider**” means any professional, practitioner, provider or supplier of healthcare services, devices, or supplies to individuals, including but not limited to nurses, nurse

practitioners, physicians or groups of physicians, hospitals, nursing homes, clinical laboratories, imaging provider, durable medical equipment, prosthetic, orthotics and supplies suppliers, and any other ancillary service providers.

“**Provider Contract**” means any Contract between any Company or the Subsidiary, on the one hand, and a Provider, on the other hand.

“**Purchase Price**” shall have the meaning given to such term in Section 2.02 hereof.

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

“**Purchaser Closing Documents**” shall have the meaning given to such term in Section 4.02 hereof.

“**Purchaser Indemnified Party**” shall have the meaning given to such term in Section 7.02 hereof.

“**Qualified Claim**” shall have the meaning given to such term in Section 7.04(b) hereof.

“**Records**” shall have the meaning given to such term in Section 5.09 hereof.

“**Reference Balance Sheet**” means the balance sheet set forth in Exhibit B.

“**Released Claims**” shall have the meaning given to such term in Section 5.03(b) hereof.

“**Remedies Exception**” means: (a) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar Legal Requirement of general application, heretofore or hereafter enacted or in effect, affecting the rights and remedies of creditors generally; and (b) general principles of equity.

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

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

“**Seller Closing Documents**” shall have the meaning given to such term in Section 3.02 hereof.

“**Seller Indemnified Party**” shall have the meaning given to such term in Section 7.03 hereof.

“**Seller’s Stock**” has the meaning set forth in the recitals.

“**Signing Enrollment Files**” shall have the meaning given to such term in Section 3.22 hereof.

“**Specified Accounting Principles**” means those principles set forth on Exhibit C.

“**Subsidiary**” shall have the meaning given to such term in Section 3.06(c) hereof.

**“Surviving Representations”** shall have the meaning given to such term in Section 7.01 hereof.

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

**“Tax Contest”** shall have the meaning given to such term in Section 9.03(c) hereof.

**“Tax Returns”** means any return, report or statement filed or required to be filed with respect to any Tax (including any elections, declarations, schedules or attachments thereto, and any amendment thereof), including any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes the Companies, the Subsidiary or their Affiliates.

**“Tax Sharing Agreements”** means all existing agreements or arrangements (whether or not written) binding on each of the Companies or the Subsidiary as of the Closing Date that provide for the allocation, apportionment, sharing or assignment of any Tax liability or benefit, or the transfer or assignment of income, revenues, receipts, or gains for the purpose of determining any Person’s Tax liability (excluding this Agreement and any arrangement pertaining to the sale or lease of assets).

**“Tax”** or **“Taxes”** means any tax imposed by a Governmental Authority, including net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, franchise, capital, paid up capital, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, escheat or unclaimed property, environmental or windfall profit tax, custom, duty, transfer, documentary or other tax, governmental fee or other like



**Section 1.02. Construction.** For purposes of this Agreement (and the Disclosure Schedule), (a) the words “including”, “include” and “includes” shall be deemed to be followed by the words “without limitation”, (b) the word “or” is not exclusive (and shall be construed in the inclusive sense of “and/or”), (c) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (d) the words “herein,” “hereof,” “hereby,” “hereto” or “hereunder” refer to this Agreement (including the Disclosure Schedule and Exhibits to this Agreement) as a whole, (e) definitions in Section 1.01 and elsewhere in this Agreement shall apply equally to both the singular and plural forms of the terms defined, (f) accounting terms used but not otherwise defined herein shall have the meanings given to them under GAAP, (g) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Any reference in this Agreement to a “day” or a number of “days” (without explicit reference to Business Days) shall be interpreted as a reference to a calendar day or number of calendar days, and (h) references to this Agreement means this Agreement, the Disclosure Schedule and Exhibits to this Agreement. If any action is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action may be deferred until the next Business Day. Unless the context otherwise requires, references in this Agreement: (A) to Articles, Sections, Exhibits and Disclosure Schedule mean the Articles and Sections of, and the Exhibits and Disclosure Schedule attached to, this Agreement and (B) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented or modified from time to time to the extent permitted by the provisions thereof and by this Agreement. Except as otherwise expressly set forth in this Agreement, all references in Article III to any Legal Requirement shall be deemed to refer to such Legal Requirement as enacted prior to the Closing Date. The Disclosure Schedule and Exhibits referred to in this Agreement shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Any capitalized terms used in any of the Disclosure Schedule or Exhibits to this Agreement, but not otherwise defined therein, shall have the meaning as defined in this Agreement. The Disclosure Schedule shall be arranged in sections and subsections corresponding to the numbered section and lettered subsections of this Agreement, and the exceptions and disclosures in each such section and subsection of the Disclosure Schedule, and any fact or item disclosed in any Section or portion of the Disclosure Schedule shall apply to the correspondingly numbered section and lettered subsection of this Agreement and to each other numbered section and lettered section of this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure would apply to such other correspondingly numbered section and lettered subsection. Any fact or item disclosed on any Section or portion of the Disclosure Schedule shall not by reason only of such inclusion be deemed to be material and shall not be employed as a point of reference in determining any standard of materiality under this Agreement. Titles to Articles and headings of Sections in this Agreement or any of the Disclosure Schedule or Exhibits to this Agreement and the table of contents to this Agreement are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Agreement or any of the Disclosure Schedule or Exhibits to this Agreement. Notwithstanding the fact that this Agreement has been drafted or prepared by one of the Parties, each Party confirms that both it and its counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. 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.

## ARTICLE II

### PURCHASE AND SALE OF STOCK

**Section 2.01. Agreement to Purchase and Sell.** Subject to the terms and conditions set forth herein, at the Closing, the Seller shall sell, convey, assign and transfer to the Purchaser, and the Purchaser shall purchase from the Seller, all of the Seller's Stock, free and clear of all Liens (except for Liens imposed by federal or state securities Legal Requirements).

**Section 2.02. Purchase Price.** The base purchase price for the Seller's Stock shall be an amount equal to [REDACTED] (the "Base Purchase Price"). The Base Purchase Price shall be subject to adjustment as provided in Section 2.06, (as adjusted, the "Purchase Price"). At the Closing, the Purchaser shall pay the Estimated Purchase Price (defined below) to the Seller by wire transfer of immediately available funds to the account designated by the Seller, by notice to Purchaser, which notice shall be delivered not later than two (2) Business Days prior to the Closing Date.

**Section 2.03. Closing.** The closing (the "Closing") of the purchase and sale of the Seller's Stock hereunder shall take place at the offices of [REDACTED] on the last Business Day of the month in which all conditions set forth in Article VI (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing) are satisfied or, to the extent permissible, waived by the party or parties entitled to the benefit of the conditions, or at such other time or on such other date or at such other place as Purchaser and Seller may mutually agree in writing (the day on which the Closing takes place being the "Closing Date"). The Closing shall be deemed effective for accounting purposes as of 12:01 a.m. on the date following the Closing Date.

**Section 2.04. Estimated Closing Balance Sheet.** No later than three (3) Business Days prior to the Closing, Seller shall deliver to Purchaser (i) a consolidated balance sheet of the Companies and the Subsidiary prepared in good faith by Seller and in accordance with GAAP and AHCCCS requirements, [REDACTED] (collectively, the "Estimated Closing Balance Sheet"), and (ii) a certificate based on such Estimated Closing Balance Sheet setting forth Seller's calculation of the [REDACTED]. The Estimated Closing Balance Sheet shall be in a form substantially identical to, and shall include the same line items as the Reference Balance Sheet. No later than five (5) Business Days prior to the Closing, Seller shall deliver to Purchaser a draft of the Estimated Closing Balance Sheet, which shall reflect Seller's good faith estimate of the amounts stated therein, but which shall not be considered final for any purpose. Seller and Purchaser shall confer regarding the draft Estimated Closing Balance Sheet, correct any errors that they agree are contained therein, and make commercially reasonable efforts to resolve any differences of opinion regarding the draft Estimated Closing Balance Sheet, prior to Seller's delivery to Purchaser of the Estimated Closing Balance Sheet.

**Section 2.05. Closing Enrollment Files.** As promptly as practicable, but no later than five (5) days prior to the Closing Date, Seller will deliver to Purchaser the Closing Enrollment Files or, if they are not yet available, the most recent Enrollment Files made available to each Company prior to the Closing. Seller agrees to provide such additional documentation as may be reasonably requested by Purchaser related to the Closing Enrollment Files.

**Section 2.06. Adjustment of Purchase Price.**

(a) No later than the end of the calendar month that includes the date that is 365 days following the Closing Date, Purchaser will cause to be delivered to Seller (i) a consolidated balance sheet of the Companies and the Subsidiary as of the Closing Date (collectively, the “**Proposed Closing Balance Sheet**”),

[REDACTED]

and (ii) a certificate based on such Proposed Closing Balance Sheet setting forth Purchaser’s calculation of [REDACTED]. The Proposed Closing Balance Sheet shall be in a form substantially identical to, and shall include the same line items as, the Reference Balance Sheet.

[REDACTED]

(b) If Seller disagrees with the calculation of the [REDACTED] Seller may, within 45 days after delivery of the documents referred to in Section 2.06(a), deliver a notice to Purchaser disagreeing with such calculation and which specifies Seller’s calculation of such amount and in reasonable detail Seller’s grounds for such disagreement. Notice of disagreement shall specify those items or amounts included in the [REDACTED] as to which Seller disagrees (the “**Disputed Items**”), and Seller shall be deemed to have agreed with all other items and amounts included in the calculation of the [REDACTED]

In the event the Parties are unable to resolve the dispute after good faith efforts they shall promptly thereafter cause Ernst and Young, or such other nationally or regionally recognized independent accounting firm as may be mutually agreed to by the parties (the “**Accounting Firm**”), promptly to review this Agreement and the Disputed Items for the purpose of calculating [REDACTED]. In making such calculation, the Accounting Firm shall consider only the Disputed Items. The determination of the remaining unresolved Disputed Items by the Accounting Firm shall

be final, binding and conclusive and shall constitute an arbitral award that is unappealable and not subject to further review, challenge or adjustment and upon which a judgment may be entered by a court having jurisdiction thereof. Purchaser and Seller shall use commercially reasonable efforts to cause the Accounting Firm to reach a determination as promptly as practicable (and in any event within 30 days from the date that the Disputed Items is submitted to it). Within 10 days after the Accounting Firm has been retained, each of Purchaser and Seller shall furnish, at its own expense, to the Accounting Firm and the other Party a written statement of their position with respect to the Disputed Items. Within 5 Business Days after the expiration of such 10-day period, each of Purchaser and Seller may deliver to the Accounting Firm and the other Party its response to the position taken by the other Party on the Disputed Items. With each submission, each of Purchaser and Seller may also furnish to the Accounting Firm such information, workpapers and other documents as it deems relevant to the resolution of the Disputed Items, with appropriate copies or notification being given to the other Party. In addition, Purchaser and Seller shall each furnish the Accounting Firm such workpapers and other documents and information relating to the Disputed Items, and shall provide interviews and answer questions, as such Accounting Firm may reasonably request. The Accounting Firm may, at its discretion, conduct a conference concerning the disagreement with Purchaser and Seller, at which conference Purchaser and Seller shall each have the right to present additional documents, materials and other information and to have present its advisors, counsel and accountants. The cost of such review and report shall be paid by Purchaser and Seller based on the inverse of the percentage the Accounting Firm's determination bears to the total amount of the Disputed Items as originally submitted to the Accounting Firm. For example, should the Disputed Items total an amount equal to \$1,000 and the Accounting Firm awards \$600 in favor of Seller's position, 60% of the costs of the Accounting Firm's review would be borne by Purchaser and 40% of the costs of the Accounting Firm's review would be borne by Seller.

(c) Purchaser and Seller agree that they will, and agree to cause their respective independent accountants and the Companies to, reasonably cooperate and assist in the preparation and review of the Proposed Closing Balance Sheet and the calculation of [REDACTED] and in the conduct of the audits and reviews referred to in this Section 2.06, including, to the extent reasonably necessary and available, the making available of books, records, workpapers and personnel; provided, however, that each Party shall execute such documents as may be reasonably requested (for example, a non-reliance letter) by the other Party's independent accountants in obtaining the work papers and related items prepared by such independent accountants.

(d) [REDACTED]

[REDACTED]

(e) Any payment pursuant to Section 2.06(d) shall be made within 10 Business Days after the [REDACTED] has been determined by delivery by Purchaser or Seller, as the case may be, by wire transfer in immediately available funds to such account of such other Party as may be designated by such other Party.

[REDACTED]

beginning October 1, 2016 through and including the Closing Date, and the denominator of which is 12 months.

**Section 2.07. Closing Deliveries by the Seller.** In addition to any other documents to be delivered under other provisions of this Agreement, at or prior to the Closing, Seller shall deliver, or shall cause the Companies to deliver, to Purchaser:

(a) original stock certificates representing all of the Seller's Stock and original minute books of the Companies and the Subsidiary;

(b) instruments of transfer of the Seller's Stock, validly executed by Seller evidencing the transfer of the Seller's Stock to Purchaser;

(c) a certificate of Seller dated as of the Closing Date, in accordance with Treasury Regulation Section 1.1445-2(b), certifying that Seller is not a foreign person;

(d) written resignations and releases from each of the directors and officers of the Companies (in their capacity as such) that Purchaser has requested to resign effective as of the Closing;

(e) a certificate of an officer of Seller, dated as of the Closing Date, to the effect that the conditions specified in Section 6.02(a) and (b) have been satisfied;

(f) a certificate of the Secretary or other authorized officer of Seller, dated as of the Closing Date, certifying as to the resolutions or actions of Seller's board of directors approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and certifying to the incumbency of the officers of Seller executing this Agreement and any other documents being executed in connection with the consummation of the transactions contemplated hereby;

(g) a certificate of the Secretary of each of the Companies, dated as of the Closing Date, certifying as to the resolutions or actions of such Company's board of directors approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and certifying to the incumbency of the officers of such Company executing this Agreement and any other documents being executed in connection with the consummation of the transactions contemplated hereby;

(h) the certificates of incorporation (or similar organizational documents) of the Companies (certified by the Secretary of State of the applicable jurisdiction of incorporation or formation) and a certificate of good standing from the applicable jurisdiction of incorporation and each other jurisdiction in which the Companies are qualified to do business, each dated within twenty (20) Business Days prior to the Closing Date;

(i) originals, if available, or copies of each Permit set forth in Section 2.07(i) of the Disclosure Schedule;

(j) the Transition Services Agreement, duly executed by Seller;

- (k) the Trademark License Agreement, duly executed by Seller and Purchaser;
- (l) the Technology License Agreement, duly executed by Seller and Purchaser;
- (m) evidence of the release of any Liens upon the Seller's Stock and the assets of the Companies (other than Permitted Liens set forth in Section 2.07(m) of the Disclosure Schedule) and the payment of any Indebtedness, in form and substance reasonably satisfactory to Purchaser;
- (n) evidence of the consents set forth in Section 2.07(n) of the Disclosure Schedule, in the form and substance reasonably satisfactory to Purchaser; and
- (o) such other documents as agreed to by the Parties prior to Closing.

**Section 2.08. Closing Deliveries by the Purchaser.** In addition to any other documents to be delivered under other provisions of this Agreement, at or prior to the Closing, Purchaser shall deliver, or shall cause to be delivered:

- (a) to Seller, the Estimated Purchase Price. "**Estimated Purchase Price**" means the sum of (i) the Base Purchase Price and (ii) the difference (whether a positive or negative number) between [REDACTED]
- (b) a certificate of an officer of Purchaser, dated as of the Closing Date, to the effect that the conditions specified in Section 6.03(a) and (b) have been satisfied;
- (c) a certificate of the Secretary or other authorized officer of Purchaser, dated as of the Closing Date, certifying as to the resolutions or actions of Purchaser's board of directors approving the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and certifying to the incumbency of the officers of Purchaser executing this Agreement and any other documents being executed in connection with the consummation of the transactions contemplated hereby; and
- (d) the Transition Services Agreement, duly executed by Comprehensive Health Management, Inc., an Affiliate of Purchaser.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF SELLER AND THE COMPANIES

Except as set forth in the Disclosure Schedule ("**Disclosure Schedule**"), Seller hereby represents and warrants to Purchaser as of the Effective Date and, except as otherwise expressly noted in this Article III, as of the Closing Date as follows:

##### **Section 3.01. Organization and Good Standing.**

(a) Seller is a nonprofit corporation, duly organized, validly existing and in good standing under the Legal Requirements of the State of California and has the requisite corporate power and authority to own, lease and operate its properties. Each of the Companies and the Subsidiary is a corporation duly organized, validly existing and in good standing under the Legal Requirements of the State of Arizona and has the requisite corporate power and authority to carry on its business as presently conducted and to own, lease and operate its properties. Each of the Companies and the Subsidiary is duly qualified or licensed to transact business and is in good standing (if applicable) in each jurisdiction in which the property and assets owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed or in good standing would not have a Material Adverse Effect. Each jurisdiction in which each of the Companies and the Subsidiary is qualified to do business is listed in Section 3.01(a) of the Disclosure Schedule.

(b) Section 3.01(b) of the Disclosure Schedule lists the board of directors and officers of each of the Companies and the Subsidiary. Seller has made available to Purchaser correct and complete copies of the Governing Documents, the minute book and stock record books of the Seller, each Company and the Subsidiary. Neither the Seller, nor any of the Companies, nor the Subsidiary is in default under or in violation of any provision of its respective Governing Documents.

**Section 3.02. Authority.** Seller and the Companies have the requisite corporate power and authority to execute and deliver this Agreement and each of the documents and instruments to be executed and delivered by Seller and the Companies at Closing pursuant to Section 2.07 or otherwise pursuant to this Agreement (collectively, the “**Seller Closing Documents**”), to perform their obligations hereunder and thereunder and to consummate the Transactions contemplated hereby and thereby. The execution, delivery and performance by Seller and the Companies of this Agreement and the Seller Closing Documents and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by all necessary corporate action on the part of Seller and the Companies. This Agreement has been duly executed and delivered by Seller and the Companies and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes the legal, valid and binding obligation of Seller and the Companies, enforceable against Seller and the Companies in accordance with its terms, subject to the Remedies Exception. Upon the execution and delivery by Seller and the Companies of the Seller Closing Documents, each of the Seller Closing Documents will, assuming the due authorization, execution and delivery by the other parties thereto, constitute a legal, valid and binding obligation of Seller and the Companies (to the extent a party thereto), enforceable against Seller and the Companies in accordance with their respective terms, subject to the Remedies Exception.

**Section 3.03. No Conflicts.** Except for applicable requirements under the HSR Act or as set forth in Section 3.03 of the Disclosure Schedule, neither the execution or delivery of this Agreement or the Seller Closing Documents by Seller or the Companies, nor the consummation or performance by Seller or the Companies of the Transactions contemplated hereby or thereby will, directly or indirectly (with or without the giving of notice, lapse of time or both): (a) conflict with, contravene or result in a violation of any provision of the Governing Documents of

Seller, any Company or the Subsidiary; (b) contravene, conflict with or constitute a violation of in any material respect, require any payment under, or give any Person the right to declare a default or terminate, or result in the cancellation or acceleration of any material right or obligation (or the loss of any material benefit) under, any Material Contract, Provider Contract or material Permit; (c) result in the creation or imposition of any Lien upon the Seller's Stock or any of the assets of the Companies or the Subsidiary; or (d) contravene, conflict with or result in a violation of any Legal Requirement or any Order to which Seller, any Company or the Subsidiary is subject or by which any of the properties or assets of Seller, any Company or the Subsidiary are bound.

**Section 3.04. Consents.** Except as set forth in Section 3.04 of the Disclosure Schedule, no Consent, notification or filing of, with or to any Governmental Authority or other Person is required to be obtained or made by Seller, any Company or the Subsidiary in connection with the execution and delivery of this Agreement or any of the Seller Closing Documents or in connection with the consummation of the Transactions contemplated hereby and thereby, except for filings and other applicable requirements of the HSR Act and such other Consents, notifications or filings, which if not obtained or made would not, individually or in the aggregate, reasonably be expected to impair in any material respect the conduct of the business of the Companies or the Subsidiary upon the Closing.

**Section 3.05. Title to Seller's Stock.** Seller is the record and beneficial owner of the Seller's Stock free and clear of all Liens, or any other restrictions on transfer other than restrictions on transfer arising under applicable federal and state securities Legal Requirements.

**Section 3.06. Capitalization.**

(a) Section 3.06(a) of the Disclosure Schedule sets forth (i) the number of authorized shares of each class of capital stock of the Companies and (ii) the number of issued and outstanding shares of each class of capital stock of the Companies.

(b) All of the shares of capital stock of the Companies have been duly authorized and validly issued, and are fully paid and non-assessable. All of the shares of capital stock of the Companies are owned beneficially and of record by Seller. There are no outstanding (i) securities convertible into or exchangeable for shares of capital stock or other equity interest of the Companies; or (ii) options, warrants, calls, subscriptions or other rights, agreements, arrangements or commitments of any kind relating to the capital stock or other equity interests of the Companies, or obligating the Companies to issue or sell any shares of capital stock of, or any other equity interests in, any of the Companies. There are no outstanding or authorized equity appreciation, phantom equity or similar rights with respect to any of the Companies. There are no proxies, agreements or understandings in effect with respect to the voting or transfer of any of the capital stock or other equity interests of the Companies.

(c) Except for the subsidiary set forth in Section 3.06(c) of the Disclosure Schedule (the "**Subsidiary**"), no Company owns, of record or beneficially, any direct or indirect equity or other ownership, capital, voting or participation interest in any Person or any right (contingent or otherwise) to acquire the same in any Person. Section 3.06(c)

of the Disclosure Schedule sets forth (i) the number of authorized shares of each class of capital stock of the Subsidiary and (ii) the number of issued and outstanding shares of each class of capital stock of the Subsidiary.

(d) All of the shares of capital stock of the Subsidiary have been duly authorized and validly issued, and are fully paid and non-assessable. All of the shares of capital stock of the Subsidiary are owned beneficially and of record by holder of record set forth in Section 3.06(d) of the Disclosure Schedule free and clear of all Liens, or any other restrictions on transfer other than restrictions on transfer arising under applicable federal and state securities Legal Requirements. There are no outstanding (i) securities convertible into or exchangeable for shares of capital stock or other equity interest of the Subsidiary; or (ii) options, warrants, calls, subscriptions or other rights, agreements, arrangements or commitments of any kind relating to the capital stock or other equity interests of the Subsidiary, or obligating the Subsidiary to issue or sell any shares of capital stock of, or any other equity interests in, the Subsidiary. There are no outstanding or authorized equity appreciation, phantom equity or similar rights with respect to the Subsidiary. There are no proxies, agreements or understandings in effect with respect to the voting or transfer of any of the capital stock or other equity interests of the Subsidiary.

### **Section 3.07. Financial Statements.**

(a) Attached to Section 3.07(a) of the Disclosure Schedule are true and complete copies of (i) the consolidated audited financial statements of each of the Companies for the fiscal years ended as of December 31, 2014 and December 31, 2015, including the auditor's notes thereto; and (ii) unaudited consolidated financial statements of each of the Companies for the period ended July 31, 2016 (the "**Most Recent Financial Statements**") (collectively, the "**Financial Statements**"). The Financial Statements (A) were prepared in accordance with the books and records of the Companies and the Subsidiary; (B) have been prepared in accordance with GAAP on a consistent basis for the period stated thereon; (C) the Most Recent Financial Statements are subject to year-end adjustment (consistent with past practice) and will not include auditor's notes; and (D) fairly present in all material respects the financial condition and the results of operations of each of the Companies and the Subsidiary for the time periods that they encompass.

(b) Except as set forth in Section 3.07(b) of the Disclosure Schedule, the Companies and the Subsidiary have implemented and maintain a system of internal controls over financial reporting sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP.

(c) The loss reserves and other actuarial amounts of the Companies contained in the Financial Statements and any other financial statements filed by the Companies with any applicable Governmental Authority subsequent to the dates of the Financial Statements and prior to the Closing Date, as of their respective dates: (i) include provisions for actuarial reserves and related items; (ii) were determined in all material

respects in accordance with generally accepted actuarial standards consistently applied; and (iii) were fairly stated in all material respects in accordance with sound actuarial principles.

(d) Except as set forth in Section 3.07(d) of the Disclosure Schedule, neither Company nor the Subsidiary has any material Liabilities, except for Liabilities reflected or reserved against in the Most Recent Financial Statements.

(e) Except as set forth in Section 3.07(e) of the Disclosure Schedule, neither the Companies nor the Subsidiary has any Indebtedness and is not liable for any Indebtedness of any other Person.

**Section 3.08. Absence of Certain Developments.** From December 31, 2015 to the Effective Date, no Material Adverse Effect has occurred, and the Companies and the Subsidiary have conducted their respective businesses in the ordinary course of business consistent with past practice. Except as set forth in Section 3.08 of the Disclosure Schedule, between December 31, 2015 and the Effective Date, neither of the Companies nor the Subsidiary has:

(a) except as disclosed on the Most Recent Financial Statements, experienced any change in its premium or other revenues, claims or other costs, including IBNR, or relations with any Governmental Authority or any of its Enrollees, Providers, payors, employees, agents, underwriters or others, that would result in any adverse effect on the financial conditions and results of operations of the Companies that, taken individually, would reasonably be expected to entail a Liability or Loss in excess of [REDACTED];

(b) amended its Governing Documents;

(c) (i) declared, set aside, made or paid any dividend or other distribution or payments (whether in cash, stock or property or any combination thereof) in respect of any of its shares of capital stock or (ii) redeemed or otherwise acquired any of its shares of capital stock, issued any new capital stock or granted any Person any right or option to acquire any shares of capital stock;

(d) (i) merged or consolidated with any business or any corporation, partnership, limited liability company, association or other business organization or division thereof, (ii) acquired any assets or other properties from any Person, other than in the ordinary course of business consistent with past practice or (iii) made any investments in any Persons, except in the ordinary course of business consistent with past practice, or otherwise made any loans, advances or capital contributions to any Persons;

(e) sold, leased, licensed or otherwise transferred any assets or properties of any Company or the Subsidiary, other than in the ordinary course of business consistent with past practice;

(f) adopted a plan of complete or partial liquidation, dissolution, merger, consolidation, recapitalization or other reorganization or taken any action for the appointment of a receiver, administrator, trustee or similar officer;

(g) entered into, amended, renewed or terminated any Material Contract (or any Contract that would have been required to be listed in Section 3.09(a) of the Disclosure Schedule) other than (i) in order to comply with applicable Legal Requirements or (ii) if a termination, resulting from the expiration of the contract's stated term, and no Person has accelerated, terminated, modified or cancelled or waived any right under any such Contract or given written notice of its intent to do so;

(h) except as required by applicable Legal Requirement, (i) increased the base salary of, or paid any bonuses or other compensation to (including, without limitation, any severance or termination pay to), any employee, director or officer of such Company or the Subsidiary, as applicable, other than in the ordinary course of business consistent with past practice, or (ii) entered into, adopted or amended, in any material respect, any Employee Benefit Plan in any manner that established, increased or accelerated the vesting of the compensation of any employee, director or officer of such Company or the Subsidiary, as applicable;

(i) authorized, or made any commitment with respect to, any single capital expenditure that is in excess of [REDACTED] or capital expenditures that are, in the aggregate, in excess of [REDACTED]

(j) experienced any damage, destruction or casualty loss (whether or not covered by insurance) to any of its assets in excess of [REDACTED]

(k) compromised or settled any Action other than (i) de minimis claims not exceeding [REDACTED] in value and (ii) settlements with respect to which the amounts to be paid are funded in full by insurance;

(l) instituted any material change in its internal controls over financial reporting or accounting practices or methods or cash management practices, except as required by applicable Legal Requirement or GAAP;

(m) made or revised any material Tax election or settled or compromised any Tax Liability;

(n) instituted any change in its internal controls over financial reporting that has materially affected, or is reasonably likely to materially affect, such Company's or the Subsidiary's, as applicable, internal controls over financial reporting;

(o) accelerated the collection of its accounts receivable or delayed or deferred the payment of its enrollee claims, accrued liabilities, accounts payable, expenses or other items, in each case other than in the ordinary course of business consistent with past practice; or

(p) entered into any agreement or commitment, whether oral or written, to do any of the foregoing.

**Section 3.09. Material Contracts.**

(a) Section 3.09(a) of the Disclosure Schedule sets forth a correct and complete list of the following Contracts (and a description of all material terms of all such oral Contracts) to which any of the Companies or the Subsidiary are a party or by which they are bound (each, a “**Material Contract**”):

(i) indentures, credit agreements, security agreements, mortgages, guarantees, promissory notes and other Contracts relating to or evidencing Indebtedness in an amount in excess of fifty thousand dollars (\$50,000) or any letter of credit or performance bond issued for the account of the Companies or the Subsidiary;

(ii) each Contract containing any covenant that purports to restrict the business activity of the Companies or the Subsidiary or limit the freedom of the Companies or the Subsidiary to engage in any line of business or to compete with any Person;

(iii) all Contracts relating to any joint venture or partnership, co-development, cost-sharing, profit-sharing, or other similar Contracts with any Person;

(iv) each Contract relating to the sale of any assets of the Companies or the Subsidiary (other than in the ordinary course of business consistent with past practice);

(v) each Contract relating to any acquisition to be made by any of the Companies or the Subsidiary of any operating business, business unit or product line or the capital stock or assets of any other Person, in each case for consideration in excess of [REDACTED] which was consummated within two (2) years prior to the Effective Date;

(vi) any Contract between a Company or the Subsidiary, on the one hand, and any employees or consultants or Affiliates of such Company or the Subsidiary, as applicable, on the other hand, that (a) obligates such Company or the Subsidiary, as applicable, to make cash payments to any Person in the event of a termination of such Person’s employment or consulting arrangement with such Company or the Subsidiary, as applicable, or on account of the transactions contemplated by this Agreement; or (b) contains non-competition provisions for the benefit of any Company or the Subsidiary from an employee or a consultant;

(vii) any Contract which provides for indemnification by any Company or the Subsidiary of any Person (other than Contracts entered into in the ordinary course of business consistent with past practice);

(viii) each Contract involving the settlement of any Action or threatened Action involving payments by any Company or the Subsidiary in excess of [REDACTED]

(ix) each Provider Contract that involved more than [REDACTED] in payments in 2015 or that is anticipated to involve more than [REDACTED] in payments in 2016 or any succeeding calendar year;

(x) each Lease;

(xi) any Contract with any governmental payor (including under Medicare);

(xii) any reinsurance Contract;

(xiii) any pharmacy benefit management Contract;

(xiv) any individual or employer group subscription Contract, membership Contract or Contract for network or physician rental providing for the participation by any Company or the Subsidiary in a network;

(xv) any third party administrator Contract;

(xvi) any Intercompany Contract;

(xvii) any outstanding powers of attorney empowering any Person to act on behalf of Seller, the Companies or the Subsidiary;

(xviii) any Contract with any Material Supplier; and

(xix) each other Contract (excluding Provider Contracts and excluding any Contract already disclosed pursuant to Section 3.09(a)(i) through 3.09(a)(xviii)) involving or expected to involve annual payments to or from any Company or the Subsidiary in excess of [REDACTED]

(b) Each Material Contract set forth in Section 3.09(a) of the Disclosure Schedule is valid, binding, enforceable, and in full force and effect, with respect to the applicable Company or the Subsidiary and, to the Companies' Knowledge, each of the other parties thereto, subject in each case to the Remedies Exception. Neither of the Companies nor the Subsidiary, nor, to the Companies' Knowledge, any other party to any Material Contract, is in breach, violation or default under (or is alleged to be in breach, violation or default under), or has provided or received any notice of any intention to terminate, any Material Contract, except for breaches, violations or defaults which would not, individually or in the aggregate, be material to the Companies or the Subsidiary, as applicable. Neither the Companies nor the Subsidiary has released or waived any of its material rights under any Material Contract. Correct and complete copies of each of the Material Contracts have been made available to Purchaser.

(c) With respect to the top 50 Provider Contracts (as measured by annual payments anticipated in 2016), Section 3.09(c)(i) of the Disclosure Schedule includes a summary of the provisions regarding termination, notice and renewal. Section 3.09(c)(ii)

of the Disclosure Schedule contains a true and complete list of all Provider Contracts that will terminate on or before December 31, 2017.

(d) Except as set forth in Section 3.09(d) of the Disclosure Schedule, none of the Provider Contracts: (i) has a term greater than a year; (ii) obligates the Companies or the Subsidiary to any minimum spend requirement; (iii) contains any exclusivity, most favored nations or other similar provisions; or (iv) includes any provision for rate escalation without the written consent of the Companies or the Subsidiary (other than escalations occasioned by increases by CMS to the applicable Medicare payment schedules).

(e) The Companies or the Subsidiary, as applicable, have compensated and currently compensate each Provider for services to the Enrollees in accordance with the rates and fees set forth in the applicable Provider Contract in all material respects.

(f) No Provider who or which is a “physician” or “physician group” (as such terms are defined at 42 C.F.R. § 417.479 et. seq.) are placed at “substantial financial risk” (as also defined by such regulations) as a result of the Provider Contracts.

(g) Section 3.09(g)(i) of the Disclosure Schedule lists the following Providers: (i) top twenty (20) hospitals, (ii) the top twenty (20) primary care physician and physician groups, (iii) the top ten (10) pharmacies or pharmacy companies, and (iv) the top thirty (30) specialist or ancillary Providers that have received the greatest amount of payments from the Companies relative to the Medicaid, D-SNP, DDD or Medicare Advantage business for each of the 2015 and 2016 calendar years. Section 3.09(g)(ii) of the Disclosure Schedule sets forth all pending cancellation, termination or nonrenewal notices furnished to the Companies or the Subsidiary by any such Provider.

(h) Section 3.09(h)(i) of the Disclosure Schedule sets forth a correct and complete list of the 30 largest suppliers (by dollar volume) of products or services (excluding Providers) to the Companies and the Subsidiary during calendar year 2015 and the six (6) month period ended June 30, 2016 (“**Material Suppliers**”). Section 3.09(h)(ii) of the Disclosure Schedule also sets forth, for each such supplier, the aggregate payments to such Person by the Companies and the Subsidiary during such periods. Since December 31, 2015, none of Material Suppliers has indicated in writing or, to the Knowledge of Companies’ indicated verbally, that it shall stop, or materially decrease the rate of, supplying materials, services or products to the Companies or the Subsidiary or that it will otherwise seek to renegotiate the applicable terms of such relationship.

**Section 3.10. Title to Assets; No Liens.** Each of the Companies and the Subsidiary has good and valid title to, or a valid leasehold interest in, free and clear of all Liens (except Permitted Liens), all material personal property shown to be owned or leased on the balance sheet in the Financial Statements, except property disposed in the ordinary course of business in accordance with past practice which is not in the aggregate material in amount.

**Section 3.11. Real Property.**

(a) Section 3.11(a) of the Disclosure Schedule also sets forth a correct and complete list of all leases of real property (such real property, the “**Leased Real Property**”) to which any of the Companies or the Subsidiary is currently a party (each a “**Lease**”), including the street address, approximate square footage, annual rent, expiration date and any renewal options. A correct and complete copy of each written Lease (including all amendments and other modifications) has been made available to Purchaser prior to the Effective Date. None of the Leases have been modified or amended, except pursuant to written amendments described in Section 3.11(a) of the Disclosure Schedule.

(b) Neither the Companies nor the Subsidiary owns any interest (fee, leasehold or otherwise) in any real property, and the Leased Real Property collectively constitutes all real property held or used by the Companies and the Subsidiary to conduct, operate or manage their business.

(c) The Companies and the Subsidiary are current in all payments due under each Lease (including any utility charges, common area maintenance charges, real property taxes or assessments payable by such Companies and the Subsidiary under each Lease), and the Companies and the Subsidiary have performed in all material respects all other obligations required to be performed by it under each Lease.

(d) Except as disclosed Section 3.11(d) of the Disclosure Schedule, neither the Companies nor the Subsidiary has subleased, licensed or otherwise granted any Person the right to use or occupy the Leased Real Property or any portion thereof.

(e) The use of the Leased Real Property by the Companies or the Subsidiary, as applicable, for the purposes for which it is currently being used conforms, to the Companies’ Knowledge, in all material respects to all applicable public and private restrictions, fire, safety, zoning and building laws and ordinances, laws relating to the disabled, and any other applicable Legal Requirements.

### **Section 3.12. Intellectual Property.**

(a) Section 3.12(a) of the Disclosure Schedule sets forth with respect to Company Intellectual Property a correct and complete list of all (i) issued Patents and Patent applications, (ii) Trademark registrations and applications for registration thereof and material unregistered Trademarks, (iii) Copyright registrations and applications for registration thereof and material unregistered Copyrights, (iv) internet domain name registrations, and (v) any other Company Intellectual Property that is the subject of an application, certificate or registration issued by any intellectual property registry or other Governmental Authority and including for each item listed, as applicable, the owner, the jurisdiction, the application/serial number, the patent/registration number, the filing date, and the issuance/registration date.

(b) Section 3.12(b) of the Disclosure Schedule lists all (i) Software that is owned by the Companies or the Subsidiary (“**Company-Owned Software**”), (ii) IP Licenses, and (iii) Licensed Intellectual Property. Each IP License and license for the

Licensed Intellectual Property is valid and binding and in full force and effect, and the Companies and the Subsidiary have not taken or failed to take any action that could subject such licenses to terminate or otherwise cause any such licenses not to be in effect in the foreseeable future. Such licenses listed in Section 3.12(b) of the Disclosure Schedule, constitute all of the material Company or Subsidiary Contracts relating to any Licensed Intellectual Property. None of the IP Licenses grant any Person any exclusive rights to or under or any right to sublicense any Company Intellectual Property that is owned by the Companies or the Subsidiary.

(c) The Companies or the Subsidiary exclusively own all rights, title and interests in and to all Company Intellectual Property and the Companies or the Subsidiary possess a valid and enforceable license to use all Licensed Intellectual Property and Other Licensed Software as necessary for the conduct of the business as currently conducted and proposed to be conducted, free and clear of all Liens. The Company Intellectual Property, the Licensed Intellectual Property and the Other Licensed Software constitute all of the Intellectual Property necessary to the conduct of the business. To the extent that any Company Intellectual Property has been developed or created by any current or former employee or independent contractor for any of the Companies or the Subsidiary, such Company or the Subsidiary, as applicable, has a written agreement containing a valid assignment of Intellectual Property with such employee or third party with respect thereto and thereby has obtained ownership of, and is the exclusive owner of all Intellectual Property in such Company Intellectual Property.

(d) The Companies and the Subsidiary have taken all commercially reasonable measures to protect the secrecy, confidentiality and value of their respective Trade Secrets and other confidential or proprietary information, and the Trade Secrets such confidential or proprietary information have not been used, divulged or appropriated either for the benefit of any Person (other than the Companies and the Subsidiary) or to the detriment of the Companies and the Subsidiary.

(e) Except as set forth in Section 3.12(e) of the Disclosure Schedule:

(i) There are no unresolved claims or threat of claims pending, asserted or threatened by any third party against any of the Companies or the Subsidiary with respect to the Company Intellectual Property, the Licensed Intellectual Property or Other Licensed Software, and/or any of the Companies' or the Subsidiary's use or exploitation thereof. To the Knowledge of Companies, no valid basis exists for same;

(ii) The conduct of the business of the Companies and the Subsidiary as currently conducted or formerly conducted and the Company Intellectual Property has not and does not infringe, misappropriate, dilute or otherwise violate any intellectual property rights of any third party. To the Knowledge of Companies, no third party has or is currently infringing, misappropriating, diluting or otherwise violating any Company Intellectual Property;

(iii) The Company Intellectual Property (A) is owned by the Companies or the Subsidiary, valid, enforceable and subsisting; and (B) is not subject to any settlement agreements, consents, judgments, orders, forbearances to sue or similar obligations limit or restrict any of the Companies' or the Subsidiary's rights in and to any Company Intellectual Property;

(iv) The Software and information technology systems used to operate the businesses of the Companies and the Subsidiary, including the Company-Owned Software, (A) are in working order, operate in accordance with their specifications or documentation, and are scalable to meet current and reasonably anticipated capacity; (B) have appropriate security, backups, disaster recovery arrangements, and hardware and software support and maintenance to minimize the risk of material error, breakdown, failure, data loss or security breach occurring and to ensure if such event does occur that it does not cause a material disruption to any of the Companies or the Subsidiary; (C) are configured and maintained to minimize the effects of viruses and, except as would not be material to the Companies and the Subsidiary taken as whole, do not contain Trojan horses, spyware, adware, malware, or other malicious code; and (D) have not suffered any material error, breakdown, failure, or security breach in the last twenty-four (24) months that has caused disruption or damage to the businesses of any of the Companies or the Subsidiary or was reportable to any Governmental Authority or Person;

(v) None of the source code owned or purported to be owned by any of the Companies or the Subsidiary has been published, disclosed or put into escrow by any of the Companies or the Subsidiary for any reason, and except for source code provided to third-party developers to make modifications or derivative works thereof solely for the benefit of the Companies and the Subsidiary, no licenses or rights have been granted to any Person to distribute, or to otherwise use or create derivative works of, the source code for any Company-Owned Software. Except as disclosed in Section 3.12(e)(v) (showing in each case the governing license and the product or service in which the Open Source Software is used), the Company-Owned Software does not contain, incorporate or use any Open Source Software. No Open Source Software has been incorporated into or used with any Company-Owned Software that would in any way obligate the Company or any Subsidiary to (i) disclose or distribute to any third party the source code for any such Company-Owned Software, (ii) permit any third party the right to make derivative works based upon any Company-Owned Software or otherwise grant to any third party any rights to or immunities under any of the Company Intellectual Property; or (iii) permit any third party to redistribute any Company-Owned Software at no or minimal charge. The Companies and the Subsidiary are in compliance in all material respects with the obligations under any agreement pursuant to which the Companies or the Subsidiary have obtained the right to use any Open Source Software; and

(vi) The Companies and the Subsidiary have established and maintained safeguards since their respective inception against the destruction,

loss, or alteration of employee, director, customer and other end user data or information in its possession or control that comply with all contractual obligations to which the Companies or the Subsidiary are bound, the Companies' and the Subsidiary's privacy policies, notice and proceeding, and applicable Legal Requirements regarding personally identifiable information, sensitive information or cardholder data. No claims have been asserted or threatened against the Companies or the Subsidiary (and no such claims are likely to be asserted or threatened against the Companies or the Subsidiary) by any third party or entity alleging a violation of such third party or entity's privacy, personal or confidentiality rights under any such rules, policies or procedures.

### **Section 3.13. Litigation.**

(a) Except as set forth in Section 3.13(a) of the Disclosure Schedule, there is no (and during the last two years preceding the Effective Date, there has not been any) ongoing Action pending by or before any Governmental Authority or, to the Companies' Knowledge, threatened (i) against any of the Companies or the Subsidiary or any of their respective properties or against any of their respective officers or directors (in their capacities as such) or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated hereby.

(b) Except as set forth in Section 3.13(b) of the Disclosure Schedule, neither the Companies nor the Subsidiary is subject to any outstanding Order and, to the Companies' Knowledge, no such Order is threatened.

### **Section 3.14. Permits.**

(a) Section 3.14(a) of the Disclosure Schedule contains a correct and complete list of all material Permits held by the Companies and the Subsidiary, and the jurisdictions where such Permits are maintained. Such Permits (i) constitute all Permits necessary for the operation of the business of the Companies and the Subsidiary and (ii) are in full force and effect. The Companies and the Subsidiary are in compliance in all material respects with the terms of such Permits. No Action is pending or, to the Knowledge of the Companies, threatened that could reasonably be expected to result in the termination, revocation or limitation of any such Permit.

(b) Without limiting the generality of Section 3.14(a), the Companies have valid Contracts with CMS, ADES and AHCCCS, and the Subsidiary holds a valid Third-Party Administrator license issued by applicable state insurance Governmental Authorities, which are in full force and effect. Except as set forth in Section 3.14(b) of the Disclosure Schedule, neither CMS, ADES nor AHCCCS has restricted or otherwise modified the terms of, or the rights and obligations under, any such Contract in a manner adverse to any of the Companies in any material respect. The Companies and the Subsidiary are in full compliance with all deposit, reserve, capital, and net worth requirements applicable to any of the Companies or the Subsidiary, including, without

limitation, all Legal Requirements and Orders issued by applicable Governmental Authorities.

**Section 3.15. Legal Compliance.**

(a) Except as set forth in Section 3.15(a) of the Disclosure Schedule, the Companies and the Subsidiary are, and at all times since January 1, 2013, have been, in compliance in all material respects with all applicable Legal Requirements and Orders, including, but not limited to, all applicable Health Care Laws and Orders pursuant to any Health Care Laws that are applicable to any of the Companies or the Subsidiary.

(b) Except as set forth in Section 3.15(b) of the Disclosure Schedule, since January 1, 2013, (i) neither the Companies nor the Subsidiary has received any written or, to the Knowledge of the Companies, oral notice from any Governmental Authority that alleges or asserts any material violation (or that any of the Companies is under investigation or the subject of any inquiry by any such Governmental Authority for such alleged material violation) with any applicable Legal Requirements (including, without limitation, Health Care Laws) or Orders, and (ii) neither the Companies nor the Subsidiary has entered into any written or, to the Knowledge of the Companies, oral agreement or settlement with any Governmental Authority with respect to any actual or alleged material violation with any applicable Legal Requirements (including, without limitation, Health Care Laws) or Orders.

(c) Neither the Companies nor the Subsidiary has received any written or oral notice, citation, suspension, revocation, limitation, demand, warning or request for repayment or refund issued by a Governmental Authority that has not been fully and finally resolved without further liability to the Companies or the Subsidiary.

(d) Each of the Companies meets the requirements for participation in, and receipt of payment from, the Programs in which each of the Companies and the Subsidiary currently participates.

(e) All material evidences of coverage and member handbooks that are issued by the Companies, and any and all marketing materials (the "Company Forms"), are and have been, to the extent required under applicable Legal Requirements, on forms approved by applicable Governmental Authorities (other than non-material deviations). All Company Forms and all forms of Contracts with Providers, Producers, brokers and other third parties which are currently in use by the Companies or the Subsidiary conform in all material respects to the requirements of all applicable Legal Requirements (including, without limitation, Health Care Laws).

(f) All rates and benefits currently used by the Companies that are required to be filed with and/or approved by Governmental Authorities, including CMS, have been in all material respects so filed and, to the extent required, approved in compliance with applicable Legal Requirements, and comply in all material respects with all applicable Legal Requirements (including, without limitation, Health Care Laws) and Orders.

(g) Each Company and the Subsidiary has timely filed all material regulatory reports, statements, documents, data, registrations, schedules, forms, filings and submissions, together with any amendments required to be made with respect thereto, that each was required to file with any Governmental Authority. All such regulatory filings complied in all material respects with applicable Legal Requirements (including, without limitation, Health Care Laws) and Orders.

(h) Neither the Companies nor the Subsidiary, nor any of their respective officers, directors or employees: (i) has been or is currently suspended, excluded or debarred from contracting with any Governmental Authority or from participating in any Program or is subject to any pending or threatened investigation or proceeding by any Governmental Authority that could result in such suspension, exclusion, or debarment, (ii) has been assessed a civil monetary penalty under the Federal Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a) or any regulation promulgated thereunder; (iii) is or has been a party to a corporate integrity agreement or settlement with the Office of the Inspector General of the U.S. Department of Health and Human Services or the DOJ; or (iv) has been convicted of any criminal offense relating, directly or indirectly, to the delivery of any item or service reimbursable under any Program. In addition, to the Knowledge of the Companies, no current network Provider or other contractor of any of the Companies or the Subsidiary has been excluded from participation in any Program, and to the Knowledge of Companies, no such exclusion is pending or threatened

(i) The Companies and the Subsidiary maintain effective compliance programs that meet in all material respects the requirements of applicable Health Care Laws, including without limitation the requirements of 42 C.F.R. §§ 422.503(b)(4)(vi) and 423.504(b)(4)(vi), as amended, and applicable compliance program guidance issued by the Office of the Inspector General of the U.S. Department of Health and Human Services, and such compliance program includes policies and procedures reasonably designed to prevent, detect and correct violations with all applicable Health Care Laws.

(j) To the Companies' Knowledge, none of the respective directors, officers, agents, or employees of any of the Companies or the Subsidiary, in their individual capacities, has since January 1, 2013, directly or indirectly made or offered to make, or solicited or received, any contribution, gift, bribe, rebate, payoff, influence payment, kickback or inducement to any Person or entered into any financial arrangement, regardless of form: (i) in violation of the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b), the federal Physician Self-Referral (Stark) Law (42 U.S.C. §1395nn), the Foreign and Corrupt Practices Act of 1977, the Federal Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), or any analogous state laws; or (ii) to obtain or maintain favorable treatment in securing business in violation of any applicable Health Care Law.

(k) Each sales agent employed by any of the Companies or the Subsidiary and, to the Companies' Knowledge, each Producer contracted with any of the Companies or the Subsidiary is properly licensed and appointed to sell the Medicare plans offered by either of the Companies. The commissions payable by the Companies or the Subsidiary to their employed and contracted Producers comply with applicable Health Care Laws. To the Companies' Knowledge, none of the Producers has violated any of the Legal

Requirements applicable to the marketing or enrollment of the Medicare plans offered by the Companies. Section 3.15(k) of the Disclosure Schedule sets forth a list of each non-employee Producer which, in calendar year 2015, was paid more than one percent (1%) of the total commissions paid by the Companies or the Subsidiary to all non-employee Producers in 2015 (the “**Material Producers**”). The Companies and the Subsidiary have made available to Purchaser true and correct copies of all forms of Contracts currently used by the respective Companies with respect to their non-employee Producers and copies of Contracts entered into with their Material Producers. All forms of Contracts with Producers which are currently in use by the Companies or the Subsidiary conform to the requirements of applicable Legal Requirements.

(l) To the extent that any of the Companies or the Subsidiary has identified any overpayments from any Program, it has notified the applicable agency and returned such overpayments (as defined by 42 U.S.C. § 1320a-7k(d)(3)(4) and regulation promulgated pursuant thereto) within sixty (60) days of identifying such overpayment in accordance with the requirements of the Patient Protection and Affordable Care Act (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), as amended.

(m) The bid submissions of the Companies to CMS for all plan benefit packages to be offered by any of the Companies during the 2017 contract year satisfy in all material respects all CMS regulations and Medicare requirements (including, without limitation, CMS manuals, instructions, FAQs and guidance).

(n) The Companies and the Subsidiary are in and, since January 1, 2013, have been in compliance with the applicable requirements of HIPAA, the Privacy Standards, the Security Standards and the TCS Standards. The Companies have in effect with each entity acting as a business associate (as defined in HIPAA) of any of the Companies an agreement that satisfies all of the requirements of 45 CFR §§ 164.504(e) and 164.314(a), and the Companies are in compliance with all such agreements in all material respects. Neither Company has received any written complaint or notice of investigation, or to the Companies’ Knowledge, an oral complaint or notice of investigation, including but not limited to from the Department of Health and Human Services Office for Civil Rights, from any person, entity or government agency regarding Companies’, the Subsidiary’s or any of their business associates’ uses or disclosures of, or security practices or security incidents regarding, protected health information of the Enrollees. With regard to protected health information of the Enrollees, there have not been any non-permitted uses or disclosures, security incidents, or breaches involving the Companies or their business associates. The Companies and the Subsidiary are, and at all times since the date compliance became required have been, in compliance with all applicable Legal Requirements related to reporting to individuals, customers, governmental or regulatory authorities, the media or credit reporting agencies, as applicable, breaches involving protected health information, including but not limited to HIPAA and the Privacy Standards and Security Standards.

**Section 3.16. Environmental Matters.** Each of the Companies and the Subsidiary is and has been in compliance in all material respects with all Environmental Laws. During the

past three (3) years, neither the Companies nor the Subsidiary has received any written notice of any violation of, or Liability or corrective or remedial obligation under, any Environmental Laws. Neither the Companies nor the Subsidiary has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or Released any Hazardous Materials in violation of any Environmental Laws. Neither the Companies nor the Subsidiary has entered into or is subject to any consent decree, agreement or Order imposing any material Liability or requirement to investigate or clean up any Hazardous Materials under any Environmental Law. All environmental assessments, studies or compliance audits, which contain material information relating to the Companies or the Subsidiary and are in the possession of a Company or the Subsidiary, as applicable, have been provided to Purchaser.

### **Section 3.17. Employee Matters**

(a) Section 3.17(a) of the Disclosure Schedule sets forth a complete and correct list of all employees of the Companies and the Subsidiary, showing for each: (i) name, (ii) hire date, (iii) current job title, (iv) actual base salary, bonus, commission or other remuneration paid during 2015, (v) 2016 base salary level and 2016 target bonus, (vi) current severance amount (assuming termination at Closing), (vii) amount of any retention bonuses payable for 2016, (viii) full/part time status, (ix) FLSA status (exempt or non-exempt), (x) accrued paid time off and vacation, and (xi) medical, disability and FMLA status.

(b) No collective bargaining agreement or similar agreement with any labor union or other organization representing employees of any of the Companies or the Subsidiary is currently in effect with respect to any employee of any of the Companies or the Subsidiary, and neither of the Companies nor the Subsidiary is presently negotiating any collective bargaining agreement or similar agreement in respect of any employee of such Company. To the Knowledge of Companies, no organizational effort is presently being made or threatened by or on behalf of any labor union with respect to employees of any of the Companies or the Subsidiary. Neither the Companies nor the Subsidiary has, with respect to any employees of the Companies or the Subsidiary, as applicable, experienced any material strike, slowdown, picketing or lockouts during the past three (3) years.

### **Section 3.18. Employee Benefit Plans.**

(a) Section 3.18(a) of the Disclosure Schedule lists all Employee Benefit Plans. With respect to each Employee Benefit Plan and except as noted in Section 3.18(a) of the Disclosure Schedule, the Company has made available to Purchaser correct and complete copies, as applicable, of (i) each written plan document (including any amendments thereto and all administration agreements, insurance policies, investment management or advisory agreements and all prior Employee Benefit Plan documents, if amended within the last two years) and descriptions of all material terms of any such plan that is not in writing, (ii) the most recent summary plan description (and summary of material modifications), (iii) any trust documents or funding arrangements relating thereto (including any amendments thereto), (iv) the three most recent Form 5500 annual reports with accompanying schedules and attachments, filed with the IRS,

(v) the most recent opinion or determination letter from the IRS, (vi) any actuarial reports, (vii) all correspondence with the IRS, Department of Labor and the Pension Benefit Guaranty Corporation regarding any Employee Benefit Plan; (viii) with respect to each Employee Benefit Plan subject to Title IV of ERISA, a copy of the three most recent Form PBGC-1 reports, (ix) all discrimination tests for each Employee Benefit Plan for the three most recent plan years (if any), and (x) any other related materials or documents regarding the Employee Benefit Plans.

(b) With respect to each Employee Benefit Plan: (i) if intended to qualify under Section 401(a) of the Code, such Employee Benefit Plan has received a favorable determination letter or is entitled to rely on a favorable opinion letter from the IRS in each instance regarding the most recent remedial amendment cycle applicable to such Employee Benefit Plan, or has pending or has time remaining in which to file an application for such a determination from the IRS, and, to the Companies' Knowledge, no event or circumstance exists that would reasonably be expected to adversely affect such qualification or exemption; (ii) such Employee Benefit Plan has been operated and administered, in material compliance with its terms and all applicable Legal Requirements (including but not limited to ERISA and the Code); (iii) there are no pending or, to the Knowledge of the Companies, threatened claims against, by or on behalf of any Employee Benefit Plan (other than routine claims for benefits); (iv) no examination, voluntary correction proceeding, or audit of any Employee Benefit Plan by any Governmental Authority is currently in progress, pending or, to the Knowledge of Companies, threatened; and (v) neither Company is a party to any agreement or understanding with the Pension Benefit Guaranty Corporation, the IRS or the Department of Labor.

(c) To the Companies' Knowledge, no non-exempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) has occurred with respect to any Employee Benefit Plan that could reasonably be expected to result in material liability to either Company or the Subsidiary.

(d) Except as set forth in Section 3.18(d) of the Disclosure Schedule, no Employee Benefit Plan is, and neither Company nor any ERISA Affiliate thereof contributes to, has within the preceding six years contributed to, or has any obligation or Liability with respect to, (i) a "multiemployer plan" (within the meaning of Section 3(37) of ERISA); (ii) a pension plan subject to Title IV or Section 302 or 303 of ERISA or Section 412 or 436 of the Code; (iii) a multiple employer plan as defined in Section 413(c) of the Code; or (iv) a multiple employer welfare arrangement as defined in Section 3(40) of ERISA.

(e) Each Employee Benefit Plan that is a "nonqualified deferred compensation plan" (within the meaning of Section 409A(d)(1) of the Code) is in written compliance and has been operated in compliance with Section 409A of the Code, Treasury Regulations issued under Section 409A of the Code, and any subsequent guidance relating thereto. Each option, stock appreciation right, or other similar right to acquire common stock of either Company or other equity of either Company, granted to or held by an individual or entity who is or may be subject to United States taxation, (i)

has an exercise price that is not less than the fair market value of the underlying equity as of the date such option, stock appreciation right or other similar right was granted, (ii) has no feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such option, stock appreciation right or other similar right, (iii) to the extent it was granted after December 31, 2004, was granted with respect to a class of stock of either Company that is “service recipient stock” (within the meaning of Section 409A of the Code and the proposed or final regulations or other IRS guidance issued with respect thereto), and (iv) has been properly accounted for in accordance with GAAP in the Most Recent Financial Statements. No additional tax under Section 409A(a)(1)(B) of the Code has been or is reasonably expected to be incurred by a participant in any such Employee Benefit Plan, and no employee of the Company is entitled to any gross-up or otherwise entitled to indemnification by either Company or any ERISA Affiliate for any violation of Section 409A of the Code.

(f) None of the Employee Benefit Plans that are “welfare benefit plans,” within the meaning of Section 3(1) of ERISA, provide for continuing benefits or coverage after termination or retirement from employment, except for COBRA rights under a “group health plan” as defined in Section 4980B(g) of the Code and Section 607 of ERISA.

(g) Except as set forth in Section 3.18(g) of the Disclosure Schedule, the consummation of the Transactions contemplated hereby will not (i) result in an increase in or accelerate the vesting of any of the benefits available under any Employee Benefit Plan, or (ii) otherwise entitle any current or former director or employee of the Company to severance pay or any other payment from either Company. Neither Company nor, to the Knowledge of Companies, any other Person has announced any type of plan or binding commitment to (1) create any additional Employee Benefit Plan, or (2) amend or modify any existing Employee Benefit Plan with any current or former employee, independent contractor or director.

(h) Neither the Company nor any ERISA Affiliate has used the services or workers provided by third party contract labor suppliers, temporary employees, “leased employees” (as that term is defined in Section 414(n) of the Code), or individuals who have provided services as independent contractors, to an extent that would reasonably be expected to result in the disqualification of any of the Employee Benefit Plans or the imposition of penalties or excise taxes with respect to any of the Employee Benefit Plans by the IRS, the Department of Labor or the Pension Benefit Guaranty Corporation.

### **Section 3.19. Taxes.**

(a) All U.S. federal and state income Tax Returns and all other material Tax Returns required to be filed, on or before the due date for filing thereof (taking into account any valid extensions) by each Company and the Subsidiary have been timely filed. All such Tax Returns are true, correct and complete in all material respects. All Taxes due and owing by each Company and the Subsidiary, except for those Taxes set forth in Schedule 3.19(a) of the Disclosure Schedule which are being contested in good faith and for which adequate reserves have been provided, have been timely paid. Each

Company and the Subsidiary has withheld and paid over to the appropriate Taxing Authority all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party and have properly reported all such amounts on applicable IRS Forms W-2 and 1099. Neither Company nor the Subsidiary is currently the beneficiary of any extension of time within which to file any Tax Return.

(b) Adequate reserves and accruals have been established to provide for the payment of all Taxes which are not yet due and payable with respect to the Companies and the Subsidiary for any Pre-Closing Period.

(c) Except as set forth in Section 3.19(c) of the Disclosure Schedule, there are no pending audits, requests for information related to Tax matters, assessments or, to the Companies' Knowledge, other Actions by a Tax Authority for or relating to any liability in respect of income Taxes or material liability in respect of other Taxes of either Company or the Subsidiary.

(d) Except as set forth in Section 3.19(d) of the Disclosure Schedule, neither Company nor the Subsidiary has granted (or is subject to) any waiver or extension that is currently in effect for the period of limitations for the assessment, collection or payment of any Tax or the filing of any Tax Return. No claim has been made by a Taxing Authority in a jurisdiction where any Company or the Subsidiary does not file Tax Returns that such Company or the Subsidiary, as applicable, is or may be subject to taxation by that jurisdiction.

(e) Section 3.19(e) of the Disclosure Schedule lists any audit report issued within the last three years relating to any Taxes due from or with respect to each of the Companies and the Subsidiary.

(f) Neither Company nor the Subsidiary nor any other Person on their behalf has (i) agreed to or is required to make any adjustments pursuant to Section 481(a) of the Code or any similar Legal Requirements relating to a change in method of accounting for a taxable period ending on or prior to the Closing Date for any period ending after the Closing Date (and, to the Knowledge of Companies, no Taxing Authority has proposed any such adjustment), or has any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to such Company or the Subsidiary, (ii) executed or entered into a closing agreement pursuant to Section 7121 of the Code or any similar Legal Requirements with respect to such Company or the Subsidiary affecting it after the Closing Date, or (iii) executed or entered into any agreement with, or obtained any consents or clearances from, any Taxing Authority, or been subject to any ruling guidance specific to such Company or the Subsidiary, any of which would be binding on Purchaser for any taxable period (or portion thereof) ending after the Closing Date that would have an impact on the Taxes of the Companies or the Subsidiary.

(g) Neither Purchaser nor its Affiliates (including, following the Closing, the Companies and the Subsidiary) will be required to include any material item of income

in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) an installment sale or open transaction disposition by any Company or the Subsidiary (or any of their Affiliates) on or prior to the Closing Date; (ii) prepaid amount received by any of the Companies or the Subsidiary (or any of their Affiliates) on or prior to the Closing Date; (iii) an election by or on behalf of any Company (or any of its Affiliates) to defer cancellation of indebtedness income under section 108(i) of the Code; or (iv) any intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income tax law).

(h) Neither of the Companies nor the Subsidiary has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(i) Except as disclosed in Section 3.19(i) of the Disclosure Schedule, neither of the Companies nor the Subsidiary: (i) is a party to, bound by or has any obligation under any Tax allocation, sharing, indemnity or similar agreement or arrangement, (ii) has any obligation for Taxes of any Person under Treas. Reg. Section 1.1502-6 (or any analogous or similar Legal Requirements), as a transferee or successor, by contract or otherwise, or (iii) is or has ever been a member of an Affiliated Group.

(j) Neither of the Companies nor the Subsidiary has consummated, has participated in or is currently participating in any transaction that was or is a “listed transaction” as defined in Treas. Reg. Section 1.6011-4(b).

(k) Neither of the Companies nor the Subsidiary is a party to any agreement, contract, arrangement, or plan that has resulted or, as a result of any payment required to be made in connection with the consummation of the Transactions, could result, separately or in the aggregate, in the payment of and “excess parachute payment” within the meaning of Section 280G (or any corresponding provision of state, local or foreign tax law) (including any payments required to be made in connection with the consummation of the transactions contemplated hereby).

(l) Neither of the Companies nor the Subsidiary has experienced an “ownership change” as defined in section 382(g) of the Code, and sections 382, 383 and 384 of the Code currently have no effect on a Company or the Subsidiary.

(m) Neither of the Companies nor the Subsidiary has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by sections 355 or 361 of the Code.

(n) The Companies and the Subsidiary have filed with the appropriate Governmental Authorities all unclaimed property reports as required under applicable Legal Requirements.

(o) Neither of the Companies nor the Subsidiary has an interest in an entity classified as a partnership for federal income tax purposes.

**Section 3.20. Intercompany Obligations.** Except as set forth in Section 3.20 of the Disclosure Schedule, (a) neither of the Companies nor the Subsidiary is a party to any Contract with the Seller or any of its Affiliates, including any such Contract with a third party, and (b) neither Seller nor any of its Affiliates is a party to a Contract with a third party entered into on behalf of, or for the benefit for, the Companies or the Subsidiary (each such Contract described in this Section 3.20, a “**Intercompany Contract**”).

**Section 3.21. Insurance Policies.** Section 3.21 of the Disclosure Schedule sets forth a correct and complete list of all material in-force insurance policies maintained by the Companies and/or the Subsidiary of any of the Companies or the Subsidiary. The Companies or the Subsidiary (or an Affiliate thereof), as applicable, have paid all premiums due, and have otherwise performed in all material respects all of their respective obligations under, each such policy of insurance. There is no material claim pending under such policies.

**Section 3.22. Enrollees.** Each Company has made available to Purchaser true, correct and complete copies of the most recent Enrollment Files made available to each Company prior to the Effective Date (the “**Signing Enrollment Files**”). When delivered to Purchaser pursuant to Section 2.05 hereof, the Closing Enrollment Files or the most recent Enrollment Files shall be true, correct and complete copies thereof.

**Section 3.23. Brokers.** Except as set forth in Section 3.23 of the Disclosure Schedule, no Party has incurred, or will incur, directly or indirectly, any liability for brokerage or finders’ fees or agents’ commissions or any similar charges in connection with the Transaction.

**Section 3.24. No Other Representations and Warranties.** Except for the representations and warranties expressly set forth in this Article III or any Seller Closing Document, none of the Seller or the Companies or any of their respective directors, officers, employees, Affiliates, shareholders, partners, members, managers, accountants, legal counsel, agents or other representatives (or any Affiliate of any of the foregoing) or any other Person on behalf of any of the foregoing makes or has made any representation or warranty.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES CONCERNING THE PURCHASER

Except as set forth in the Disclosure Schedule, the Purchaser makes the following representations and warranties to each of the Seller and the Companies as of the Effective Date and as of the Closing Date:

**Section 4.01. Organization and Good Standing.** The Purchaser is a corporation duly organized, validly existing and in good standing under the Legal Requirements of the State of New York. The Purchaser has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated herein.

**Section 4.02. Authority.** Purchaser has the requisite corporate power and authority to execute and deliver this Agreement and each of the documents and instruments to be executed and delivered by Purchaser at Closing pursuant to Section 2.08 or otherwise pursuant to this Agreement (the “**Purchaser Closing Documents**”), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Purchaser of this Agreement and the Purchaser Closing Documents and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by all necessary corporate action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to the Remedies Exception. Upon the execution and delivery by Purchaser of the Purchaser Closing Documents, each of the Purchaser Closing Documents will, assuming the due authorization, execution and delivery by the other parties thereto, constitute a legal, valid and binding obligation of Purchaser (to the extent a party thereto), enforceable against Purchaser in accordance with their respective terms, subject to the Remedies Exception.

**Section 4.03. No Conflicts.** Except for applicable requirements under the HSR Act, neither the execution or delivery of this Agreement or the Purchaser Closing Documents by Purchaser, nor the consummation or performance by Purchaser of the transactions contemplated hereby or thereby will, directly or indirectly (with or without the giving of notice, lapse of time or both): (a) conflict with, contravene or result in a violation of any provision of the Governing Documents of Purchaser; (b) contravene, conflict with or constitute a violation of in any material respect, require any payment under, or give any Person the right to declare a default or terminate, or result in the cancellation or acceleration of any material right or obligation (or the loss of any material benefit) under, any material Contract or material Permit, instrument or arrangement to which Purchaser is a party or by which any of the properties or assets of Purchaser are bound, (c) contravene, conflict with or result in a violation of any Legal Requirement or any Governmental Order to which Purchaser is subject or by which any of the properties or assets of Purchaser are bound; or (d) result in the creation or imposition of any Lien upon the shares of capital stock of Purchaser or any of the assets of Purchaser.

**Section 4.04. Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser as to which either Company or the Seller shall be liable after the Closing.

**Section 4.05. Investment Purpose.** The Purchaser is acquiring the Seller’s Stock for investment and for its own account, not as a nominee or agent, and not with a view to any public resale or other distribution thereof except in compliance with applicable federal or state securities laws and regulations. Purchaser understands that the Seller’s Stock has not been, and will not be, registered under any federal, state, or foreign securities laws. The Purchaser is able to bear the economic risk of holding the Seller’s Stock for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

**Section 4.06. Sufficient Funds.** Purchaser has sufficient cash on hand or other sources of immediately available funds to enable it to (i) pay the Estimated Purchase Price at Closing as provided in Section 2.08(a), and (ii) consummate the Transactions.

**Section 4.07. No Public Market; No Guaranteed Return.** Purchaser understands that no public market now exists for any of the securities issued by the Companies and that the Companies have made no assurances that a public market will ever exist for their securities. Purchaser understands that the Companies make no representations, warranties or guarantees of any return on the Seller's Stock in the form of dividends and distribution and the prospects for any such recovery are speculative.

**Section 4.08. Legal Proceedings.** There are no Actions pending or, to the Purchaser's knowledge, threatened against or by the Purchaser that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated herein.

**Section 4.09. Investigation.** The Purchaser acknowledges and agrees that, other than as expressly set forth in Article III, none of the Seller, the Companies, the Subsidiary or any of their respective directors, officers, employees, Affiliates, shareholders, partners, members, managers, accountants, legal counsel, agents or other representatives (or any Affiliate of any of the foregoing) or any other Person on behalf of any of the foregoing makes or has made any representation or warranty, either express or implied (or written or oral), (A) as to Seller, the Companies, the Subsidiary, this Agreement, or the any of the Transactions contemplated hereby, or (B) with respect to any projections, forecasts, estimates, plans or budgets of future revenues, profitability, expenses or expenditures, future results of operations (or any component thereof), future cash flows (or any component thereof), future financial condition (or any component thereof) or future success (or any component thereof) of the Companies or the Subsidiary heretofore or hereafter delivered to or made available to the Purchaser or any of its directors, officers, employees, Affiliates, shareholders, partners, members, managers, accountants, legal counsel, agents or other representatives (or any Affiliate of any of the foregoing) or any other Person.

## ARTICLE V

### COVENANTS

**Section 5.01. Access and Information; Confidentiality.**

(a) Subject to compliance with applicable Legal Requirements, from and after the Effective Date until the earlier of the Closing Date and the termination of this Agreement in accordance with its terms, upon reasonable advance notice from the Purchaser to the Companies, the Companies shall provide to the Purchaser and its authorized representatives reasonable access, during normal business hours (and under supervision of the Company's personnel or representatives), to the premises, books, records, key personnel, properties, systems, documents, data and contracts of or pertaining to the Companies and the Subsidiary; provided that such investigations and inquiries do not unreasonably interfere with the normal business operations of the Companies or the Subsidiary. Any access to the offices, properties, books and records of

the Companies and the Subsidiary shall be subject to the following additional limitations: (i) such access shall be subject to restrictions under applicable Legal Requirements so long as the Companies and the Subsidiary have taken reasonable steps to permit such access on a basis that is not subject to such restrictions; (ii) such access shall not require disclosure of information subject to attorney-client privilege; and (iii) Purchaser shall use its commercially reasonable efforts to perform all on-site due diligence reviews on an expeditious and efficient basis. Between the Effective Date and the Closing Date, Seller and the Companies will permit Purchaser's transition planning team both remote access and on-site access during normal business hours and upon reasonable prior notice at the Companies' and the Subsidiary's offices and to the Companies' and the Subsidiary's personnel and information technology systems during normal business hours for purposes of planning the transition of the Companies' and the Subsidiary's business, and the Companies will use commercially reasonable efforts to cooperate with and facilitate such transition planning and related matters as promptly as practicable, consistent with the terms of applicable Legal Requirements, provided that such access to facilities and personnel shall not unreasonably disrupt the normal business operations of either Company or the Subsidiary. No information provided to Purchaser and its representatives pursuant to this Section 5.01 shall affect any representation, warranty, condition, right or remedy in this Agreement.

(b) Subject to compliance with applicable Legal Requirements, from and after the Effective Date until the earlier of the Closing Date and the termination of this Agreement in accordance with its terms, the Companies shall use commercially reasonable efforts to provide to the Purchaser and its authorized representatives reasonable access to the Providers, CMS, AHCCCS, ADES, vendors and suppliers of the Companies and the Subsidiary. Except as otherwise contemplated herein, such access shall be subject to the consent of the Companies, which shall not be unreasonably withheld, conditioned or delayed, as well as the consent of their Providers, vendors and suppliers.

(c) The Parties acknowledge and agree that the Confidentiality Agreement shall continue to be in full force and effect in accordance with its terms, and Purchaser acknowledges and agrees that it is jointly and severally obligated with WellCare Health Plans, Inc. thereunder as if Purchaser executed the Confidentiality Agreement as a "Recipient" thereunder. Accordingly, Purchaser shall hold, and cause its representatives to hold, any applicable information confidential in accordance with the terms of the Confidentiality Agreement. Effective as of the Closing, Purchaser's and its Affiliates' obligations under the Confidentiality Agreement shall terminate, except with respect to the Seller's Confidential Information (as that term is defined in the Confidentiality Agreement). Prior to the Closing, Seller, the Companies and their Affiliates will not, except in the ordinary course of business and subject to commercially standard confidentiality agreements, disclose, disseminate, divulge, discuss, copy or otherwise use any confidential or proprietary information of the Companies or the Subsidiary. After the Closing, except and only to the extent as may be requested pursuant to, or required by, applicable Legal Requirements or Orders, Seller will not, and will cause its Affiliates not to disclose, disseminate, or divulge any confidential or proprietary information of the Companies or the Subsidiary. After the Closing, in the event that Seller or its

representatives are requested pursuant to, or required by, applicable Legal Requirements or Order to disclose any such confidential or proprietary information, Seller shall provide Purchaser prompt written notice of such request or requirement in order to enable Purchaser to seek an appropriate protective order or other remedy (and if Purchaser seeks such an order, Seller and its Affiliates will provide such cooperation as Purchaser shall reasonably request at Purchaser's expense) or to consult with Purchaser with respect to taking steps to resist or narrow the scope of such request or legal process.

**Section 5.02. Commercial Efforts.** Subject to the terms and conditions herein provided, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Legal Requirements to consummate and make effective the transactions contemplated by this Agreement (including the satisfaction, but not waiver, of the closing conditions set forth in Article VI). Following the Closing, the Parties shall cooperate reasonably with each other and with their respective representatives and agents in connection with any steps required to be taken as part of their respective obligations under this Agreement, and the Parties agree (i) to execute and deliver to each other such other documents and (ii) to do such other acts and things, all as the other Parties may reasonably request, for the purpose of carrying out the intent of this Agreement and the transactions contemplated hereby.

**Section 5.03. Intercompany Accounts; Release.**

(a) Seller shall take, or cause to be taken, such action as may be necessary so that, as of the Closing Date, (i) all intercompany accounts and Indebtedness between Seller and any Affiliate thereof (other than the Companies and the Subsidiary), on the one hand, and either Company or the Subsidiary on the other hand, shall be settled or otherwise eliminated, and (ii) except as otherwise provided in Section 5.11, all Contracts between Seller and any Affiliate (other than the Companies or the Subsidiary), on the one hand, and either Company or the Subsidiary, on the other hand, shall be terminated without any Party having any continuing obligation to the other, except with respect to the Transition Services Agreement.

(b) If and only if the Closing occurs, Seller, for itself and its Affiliates, successors and assigns hereby forever fully and irrevocable releases and discharges the Purchaser and its predecessors, successors, direct or indirect subsidiaries and past and present stockholders, members, managers, directors, officers, employees, agents and other representatives, and Purchaser for itself and its Affiliates, successors and assigns hereby forever fully and irrevocably releases and discharges Seller and its predecessors, successors, direct or indirect subsidiaries and past and present stockholders, members, managers, directors, officers, employees, agents and other representatives, from any and all actions, suits, claims, demands, debts, agreements, obligations, promises, judgments or liabilities of any kind whatsoever in law or equity and causes of action of every kind and nature, or otherwise (including claims for damages, costs, expense and attorneys', brokers' and accountants fees and expenses) arising out of or related to events, facts, conditions or circumstances existing or arising prior to the Closing Date, which the releasing party can, shall or may have against the other, whether known or unknown, suspected or unsuspected, unanticipated as well as anticipated (collectively, the

“**Released Claims**”), and hereby irrevocably agree to refrain from directly or indirectly asserting any claim or demand or commencing (or causing to be commenced) any Action of any kind, in any court or before any tribunal based upon any Released Claim. Notwithstanding the preceding sentence of this Section 5.03(b), “Released Claims” does not include, and the provisions of this Section 5.03(b) shall not release or otherwise diminish, the obligations of any Party hereto that is set forth in or arising under any provisions of this Agreement or the other Transaction Documents. In no event shall the Companies have any liability whatsoever to Seller for any breaches of the representations, warranties, agreements or covenants of Seller, or the Companies hereunder, and in any event Seller may not seek contribution from the Companies in respect of any payments required to be made by Seller pursuant to this Agreement.

**Section 5.04. Exclusivity.** Prior to the Closing or earlier termination of this Agreement, neither Seller, nor either Company, nor any of their respective affiliates, related parties, employees, representatives, business brokers, or consultants, shall pursue, solicit or discuss any opportunities to acquire, control or encumber, enter into or otherwise pursue negotiations or discussions to sell or encumber, any of either the Seller’s Stock or all or any portion of its or the Company’s or the Subsidiary’s assets as a going concern.

**Section 5.05. Conduct of Business Prior to the Closing.**

(a) From and after the Effective Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Companies and the Subsidiary shall conduct their business in the ordinary course consistent with past practice, subject to any modifications that are mandated by Legal Requirement, Governmental Order or Order, and subject further to the right of the Companies and the Subsidiary to withdraw any assets of the Companies or the Subsidiary in excess of the [REDACTED]. From and after the Effective Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, except (i) as set forth in Section 5.05(a) of the Disclosure Schedule, (ii) as consented to in writing by the Purchaser (which consent shall not be unreasonably withheld, conditioned, or delayed and provided, further, that in the absence of Purchaser’s response to any request of Seller within 10 business days of receipt such request shall be deemed approved by Purchaser), or (iii) as required by applicable Legal Requirements, the Companies shall use commercially reasonable efforts to, the Companies shall cause the Subsidiary to use commercially reasonable efforts to, and Seller shall cause each of the Companies and the Subsidiary to use commercially reasonable efforts to (A) preserve intact its present business organization, (B) preserve its relationships with Providers, Enrollees, licensors, suppliers, and others to whom it has material contractual obligations or material business dealings or relations, and (C) keep available the services of the employees of the Companies and the Subsidiary.

(b) Without limiting the generality of Section 5.05(a), and except (i) as otherwise expressly contemplated by this Agreement; (ii) as set forth in Section 5.05(a) of the Disclosure Schedule, (iii) as consented to in writing by the Purchaser (which consent shall not be unreasonably withheld, conditioned, or delayed provided, further, that in the absence of Purchaser’s response to any request of Seller within 10

business days of receipt such request shall be deemed approved by Purchaser), or (iv) as required by applicable Legal Requirements, from and after the Effective Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, the Companies shall not, the Companies shall not permit the Subsidiary, and Seller shall not permit either of the Companies or the Subsidiary to cause to occur, perform, incur or suffer any of the following actions or circumstances:

(i) amend its Governing Documents;

(ii) (A) declare, set aside, make or pay any dividend or other distribution or payments (whether in cash, stock or property or any combination thereof) in respect of any of its shares of capital stock, except to (1) withdraw any assets of the Companies or the Subsidiary in excess of the

or

or (B) redeem or otherwise acquire any of its shares of capital stock, issue any new capital stock or granted any Person any right or option to acquire any shares of capital stock;

(iii) (A) merge or consolidate with any business or any corporation, partnership, limited liability company, association or other business organization or division thereof, (B) acquire any assets or other properties from any Person, other than in the ordinary course of business consistent with past practice or (C) make any investments in any Persons, except in the ordinary course of business consistent with past practice, or otherwise make any loans, advances or capital contributions to any Persons;

(iv) sell, lease, license or otherwise transfer any assets or properties of any Company or the Subsidiary, other than in the ordinary course of business consistent with past practice;

(v) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, recapitalization or other reorganization or take any action for the appointment of a receiver, administrator, trustee or similar officer;

(vi) enter into, amend, renew, accelerate, waive any right under or terminate any Material Contract (or any Contract that would have been required to be listed in Section 3.09(a) of the Disclosure Schedule if entered into prior to the Effective Date) other than (A) in order to comply with applicable Legal Requirement; or (B) in the ordinary course of business consistent with past practice and which would not reasonably be expected to have an adverse effect on the financial results of the Companies and the Subsidiary taken as a whole.

(vii) except as required by applicable Legal Requirement, (A) increase the base salary of, or pay any bonuses or other compensation to (including, without limitation, any severance or termination pay to), any employee, director

or officer of such Company or the Subsidiary, as applicable, (other than in the ordinary course of business consistent with past practice), or (B) enter into, adopt or amend, in any material respect, any Employee Benefit Plan in any manner that establishes, increases or accelerates the vesting of the compensation of any employee, director or officer of such Company or the Subsidiary, as applicable;

(viii) authorize, or make any commitment with respect to, any single capital expenditure that is in excess of [REDACTED] or capital expenditures that are, in the aggregate, in excess of [REDACTED]

(ix) compromise or settle any Action other than (A) claims not exceeding [REDACTED] in value which are settled in cash and provide for a full release of the Company or the Subsidiary, as appropriate and (B) settlements with respect to which the amounts to be paid are funded in full by insurance;

(x) institute any material change in its internal controls over financial reporting, accounting practices or methods or cash management practices, except as required by applicable Legal Requirement or GAAP;

(xi) make or revise any material Tax election or settle or compromise any Tax Liability;

(xii) accelerate the collection of its accounts receivable or delay or defer the payment of its enrollee claims, accrued liabilities, accounts payable, expenses or other items, in each case other than in the ordinary course of business consistent with past practice; or

(xiii) enter into any agreement or commitment, whether oral or written, to do any of the foregoing.

Nothing contained herein shall require or be construed to require either Company, the Subsidiary or any of their respective affiliates to take any action or omit to take any action which could result in noncompliance with any applicable Legal Requirement.

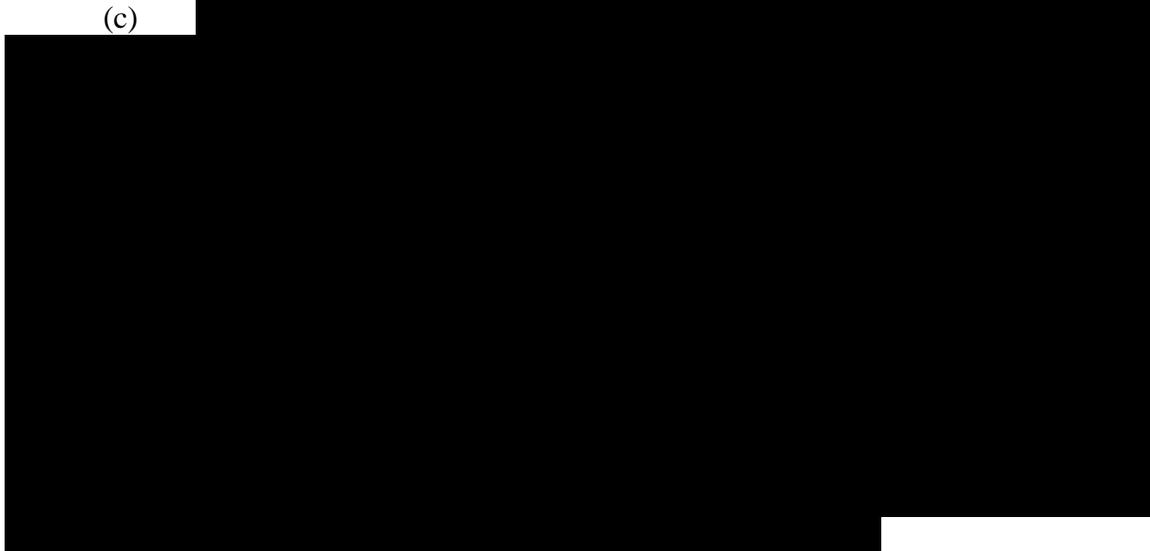
**Section 5.06. Regulatory and Other Authorizations; Notices and Consents.**

(a) Promptly following the Effective Date, (i) each Party shall use commercially reasonable efforts to obtain Consents of all Governmental Authorities necessary to consummate the transactions contemplated hereby; and (ii) Seller and the Companies shall use commercially reasonable efforts to obtain all Consents and make all notifications or filings set forth in Section 3.03 and 3.04 of the Disclosure Schedule. Promptly after the Effective Date, each of the Parties shall provide any required notices to, and make any other required filings with, all Governmental Authorities required to consummate the transactions contemplated hereby, including any notifications required to be filed with AHCCCS and ADES. Subject to applicable Legal Requirements, upon request of any Governmental Authority, each Party shall promptly provide such

Governmental Authority with any additional information and documentary material that may reasonably be requested by such Governmental Authority in connection with the transactions contemplated hereby. Any action taken by the Seller or the Companies pursuant to this Section 5.06(a) may, at the option of the Companies or the Seller, be conditioned upon and effective as of the Closing.

(b) Without limiting the foregoing, each Party shall make and not withdraw an appropriate filing, if necessary, pursuant to the HSR Act with respect to the Agreement promptly (and in any event, within ten (10) Business Days) after the Effective Date and shall supply as promptly as practicable to the appropriate Governmental Authorities any additional information and documentary material that may be requested pursuant to the HSR Act. Subject to applicable Legal Requirements, the Parties shall consult and cooperate with each other in connection with any analysis, appearance, notification, filing, presentation, memorandum, brief, argument, opinion or proposal made or submitted by or on behalf of any Party relating to an Action under the HSR Act and shall provide to the Companies', the Seller's, or the Purchaser's outside counsel, as applicable, all documents and information reasonably requested by such counsel promptly upon request, subject to any reasonable restrictions.

(c)



(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, notifications, arguments, and proposals made by or on behalf of either Party to or before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the Agreement (but, for the avoidance of doubt, not including any interactions between the Seller or the Companies with Governmental Authorities in the ordinary course of business or any disclosure which is not permitted by law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, 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, notifications, arguments, and proposals. Subject to applicable Legal Requirements, 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 in connection with the Agreement (but, for the avoidance of doubt, not including any meetings, discussions, appearances, contacts or interactions between the Seller or the Companies with Governmental Authorities in the ordinary course of business), with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Nothing herein shall be construed to (i) require Purchaser, or any of its Affiliates to hold separate, divest, or agree to hold separate or divest, any of their businesses, services, products or assets or to take any other actions that reasonably would be expected to materially impair the operation of their respective businesses, or (ii) litigate, pursue or defend against any Action (including any temporary restraining order or preliminary injunction) challenging the transactions contemplated by this Agreement as violative of the HSR Act or any applicable foreign antitrust Legal Requirement.

(f) Notwithstanding anything to the contrary in this Agreement, nothing contained in this Agreement shall give Purchaser, directly or indirectly, the right to control or direct the operations of the business of the Companies or the Subsidiary prior to the Closing. Prior to the Closing, Seller, the Companies and the Subsidiary shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over the operations of such business.

**Section 5.07. Employees.** Seller and the Companies acknowledge, and Purchaser agrees, that Purchaser has the complete discretion to retain or dismiss any employees of either Company or the Subsidiary, subject to the terms of any written employment agreements. Notwithstanding the foregoing, Purchaser acknowledges that AHCCCS may require Purchaser to retain certain employees of the Companies or the Subsidiary who are knowledgeable about and have expertise in the management and operation of AHCCCS plans. Purchaser shall be responsible for any severance pay or other liabilities with respect to any employees of either Company or the Subsidiary who are terminated by Purchaser at or following the Closing. Each Company or the Subsidiary, as applicable, shall pay such amounts each of its employee is due and owing up through the Closing Date, withholding and reporting such sums and making such payment in the time periods as required by applicable Legal Requirements.

**Section 5.08. Public Announcements.** Unless otherwise required by applicable Legal Requirements, stock exchange requirements (based upon the reasonable advice of counsel), no Party shall make any public announcements in respect of this Agreement or the transactions contemplated thereby or otherwise communicate with any news media without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed) or as otherwise required by any applicable Legal Requirement (including with respect to any filings required by Purchaser with the Securities and Exchange Commission). Promptly following the execution of this Agreement, each of Seller and Purchaser may issue a press release, in each case, in a form mutually agreed to by Seller and Purchaser announcing the execution of this Agreement. Thereafter, each of Seller and Purchaser hereby agrees to (a) obtain prior approval (which approval shall not be unreasonably withheld, conditioned or

delayed) from the other Party prior to issuing any press release or otherwise making any public statement with respect to this Agreement or the terms hereof and (b) provide to the other Party for review and approval (which approval shall not be unreasonably withheld, conditioned, or delayed) a copy of any such press release or statement, and shall not issue any such press release or make any such public statement prior to such consultation, review and approval by the other Party, unless in any such case required by applicable Legal Requirements or securities exchange rules or regulations. Prior to Closing, the Parties will consult with each other concerning the means by which any employee, Provider, customer or supplier of the Companies or any other Person having any business relationship with the Companies will be informed of the transactions contemplated by this Agreement.

**Section 5.09. Post-Closing Access; Preservation of Records.** From and after the Closing, Seller and Purchaser agree that each of them shall preserve and keep the pre-Closing books, records and documents (including, for purposes of this Section 5.09, Tax Returns) (collectively “**Records**”) held by them or their Affiliates relating to the respective businesses of the Companies for a period equal to the greater of (i) seven (7) years from the Closing Date or (ii) such period required by applicable Legal Requirements, and shall make such Records available during regular business hours to the other as may be reasonably required in connection with: (a) investigating, settling, preparing for the defense or prosecution of, defending or prosecuting any Action by or before any court or other Governmental Authority; (b) preparing reports to Governmental Authorities; (c) preparing and delivering any accounting or other statement provided for under this Agreement or otherwise in order to enable Seller or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby; or (d) preparing Tax Returns related to any Pre-Closing Period or the first tax year immediately following the Pre-Closing Period, or responding to or disputing any Tax inquiry, audit or assessment; provided, however, that such access does not unreasonably interfere with normal operations of the Companies and shall occur during normal business hours upon reasonable notice, shall be subject to restrictions under applicable Legal Requirements and shall, in the case of disclosure by Purchaser or the Company, not require disclosure of information subject to attorney-client privilege.

**Section 5.10. Notification of Certain Matters.**

(a) If any Party becomes aware prior to Closing of any event, fact or condition or non-occurrence of any event, fact or condition that causes or would reasonably be expected to cause a breach of any representation, warranty, covenant or agreement of such Party or that causes or would reasonably be expected to cause a breach of any representation or warranty of such Party if such representation or warranty were made on the date of the occurrence or discovery of such event, fact or condition or on the Closing Date, then such Party will promptly provide the other Parties with a written description of such fact or condition. In addition, between the Effective Date and Closing, if (i) a Party obtains Knowledge of any event, fact or condition or non-occurrence of any event, fact or condition that causes a breach of any representation, warranty, covenant or agreement of any other Party or that causes a breach of any representation or warranty of any other Party if such representation or warranty were made on the date of the occurrence or discovery of such event, fact or condition or on the Closing Date and (ii) such Party has Knowledge that the other Party is not aware of such fact or condition, then such Party

will promptly provide the other Parties written notice of such fact or condition (provided, however, that failure to give the notification set forth in this sentence shall not constitute a breach of covenant, except to the extent the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure, nor shall such failure affect any condition to Closing). No information provided to a Party pursuant to this Section 5.10 shall affect any representation, warranty, condition, right or remedy in this Agreement.

(b) Until the Closing Date, the Companies and the Subsidiary shall deliver to Purchaser within fifteen (15) days after the end of each month a copy of the interim, monthly financial reporting package for such month prepared in a manner and containing information consistent with the Companies' and the Subsidiary's current practices.

**Section 5.11. Designated Contracts.** Seller and its Affiliates shall complete the activities (at Seller's expense) set forth on Section 5.11 of the Disclosure Schedule (the "**Designated Contract Activities**").

**Section 5.12. License Agreements.**

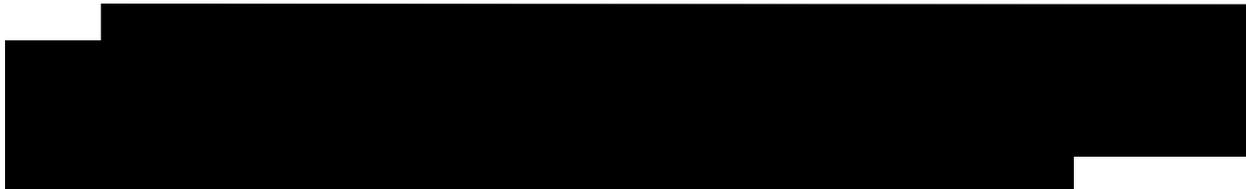
(a) At Closing, the Parties shall enter into a trademark license agreement in the form set forth in Exhibit E to this Agreement (the "**Trademark License Agreement**").



(b) At Closing, the Parties shall enter into a technology license agreement in the form attached hereto as Exhibit F (the "**Technology License Agreement**").

**Section 5.13. Transfer of Certain Assets.** Prior to Closing, all data and information that relates to the Companies, the Subsidiary or the Enrollees stored on the servers or information technology systems of Seller or its Affiliates shall be transferred out of such servers or information technology systems to servers of the Companies by Seller and its Affiliates.

**Section 5.14. Maintenance of Seller.** At Closing and until the date that is eighteen (18) months following the Closing, Seller shall maintain cash or cash equivalents on hand in an amount in excess of the minimum risk based capital or unrestricted equity requirement required by the Blue Cross Blue Shield Association.



**Section 5.16. Lease Matters.** From and after the Effective Date until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller and the Companies shall use commercially reasonable efforts to cause Seller to be released as a guarantor under the Office Building Lease dated June 24, 2003, as amended (the "Lease"), by and between the Teachers Insurance and Annuity Association of America and Care1st Health Plan of Arizona, Inc. In furtherance of the foregoing and to the extent necessary, Purchaser (or an Affiliate of Purchaser) shall agree to replace Seller as guarantor under such Lease effective as of Closing. In the event that Seller is not released as guarantor under such Lease effective as of Closing, Purchaser and Seller shall enter into a cross indemnity agreement in a form reasonably acceptable to Purchaser and Seller.

**Section 5.17. Insurance.** Prior to the Closing, Seller will obtain and maintain "tail" insurance policies effective as of Closing with the Companies and the Subsidiary each named as an insured with a claims period of one (1) year from the Closing Date with [REDACTED] ( [REDACTED] ) in aggregate coverage limits in connection with Liabilities resulting from [REDACTED]

[REDACTED] In the event there is a cost associated securing this coverage, the cost shall be split 50/50 by the Parties. Purchaser will not, or will cause the Companies and the Subsidiary to not, cancel or change such insurance policies in any respect.

## ARTICLE VI

### CONDITIONS PRECEDENT

**Section 6.01. Conditions Precedent to the Obligations of Each Party.** The obligations of each Party to consummate the Transactions are subject to the satisfaction (or, if permitted by applicable Legal Requirements, waiver by the Party or Parties for whose benefit such condition exists) of the following conditions:

(a) HSR. Any applicable waiting period under the HSR Act relating to the Transaction shall have expired or been terminated.

(b) Regulatory Consents and Approvals. The Parties shall have received all Consents from Governmental Authorities necessary for the consummation of the Transaction contemplated by this Agreement, in each case, in form and substance reasonably satisfactory to the Purchaser, the Companies, and the Seller, and no such Consent shall have been revoked; provided, however, that each of the Parties shall have complied with Section 5.06.

(c) Legal Prohibition. No rule, regulation, executive order, decree, temporary restraining order, preliminary or permanent injunction or other Governmental Order issued by any court of competent jurisdiction or other Governmental Authority shall be in effect, pending or threatened in writing nor any Action by or before any Governmental Authority shall be pending, or threatened in writing which (i) prevents (or makes illegal) the consummation of the transactions contemplated by the Agreement; (ii) seeks to restrain, prohibit or otherwise adversely affect the Purchaser's ownership of Seller's Stock or the Companies' operation of their respective businesses; (iii) seeks to require

divestiture by Purchaser or any of its Affiliates of any shares of Seller's Stock or any business or assets of Purchaser or any of its Affiliates; or (iv) seeks to rescind the execution of the Transaction contemplated by this Agreement.

**Section 6.02. Conditions Precedent to Obligation of the Purchaser.** The obligation of the Purchaser to consummate the Transaction is subject to the satisfaction or the Purchaser's waiver (where permitted), at the Closing, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of Seller and the Companies in Article III not qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all material respects as of the Effective Date and the Closing Date with the same effect as though made at and as of such date (except those such representations and warranties that address matters only as of a specified date, which shall be true and correct in all material respects as of that specified date). The representations and warranties of Seller and the Companies in Article III qualified by "materiality" or "Material Adverse Effect" shall be true and correct in all respects as of the Effective Date and the Closing Date with the same effect as though made at and as of such date (except those such representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Covenants. Seller and the Companies shall have duly performed and complied in all material respects with all covenants required by the Agreement to be performed or complied with by them prior to or on the Closing Date.

(c) Other Closing Deliveries. The Purchaser shall have received at or prior to the Closing all certificates, documents and materials identified in Section 2.07;

[REDACTED]

(e) No Material Adverse Effect. Since the Effective Date, the Companies shall not have suffered any change, development, circumstances or events that have had a Material Adverse Effect.

[REDACTED]

[REDACTED]

**Section 6.03. Conditions Precedent to the Obligation of the Seller and the Companies.** The obligation of the Seller and the Companies to consummate the transactions

contemplated hereby is subject to the satisfaction or the Seller's and Companies' waiver (where permitted), at the Closing Date, of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Purchaser in Article IV shall be true and correct in all respects as of the Effective Date and the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on the Purchaser's ability to consummate the Transactions.

(b) Covenants. The Purchaser shall have duly performed and complied in all material respects with all covenants required by the Agreement to be performed or complied with by it prior to or on the Closing Date.

(c) Other Closing Deliveries. The Seller shall have received at or prior to the Closing all certificates, documents and materials identified in Section 2.08 herein.

**Section 6.04. Effect of Waiver of Covenant.** If a Party hereto does not perform a covenant hereunder, such other Party may elect to require the Transactions contemplated hereby to be consummated without limiting or otherwise affecting its right to seek any remedies it may have against the Party in breach of a covenant or that failed to satisfy the condition precedent.

## ARTICLE VII

### INDEMNIFICATION

**Section 7.01. Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall terminate on the date that is [REDACTED]; provided, however, that the representations and warranties contained in (a) Section 3.01 (Organization and Good Standing), Section 3.02 (Authority), Section 3.05 (Title to Seller's Stock) and Section 3.06 (Capitalization) shall survive indefinitely; (b) Section 3.19 (Taxes) shall survive [REDACTED] [REDACTED] and (c) Section 3.23 (Brokers), Section 3.14 (Permits) and Section 3.15 (Legal Compliance) shall survive for [REDACTED] (each of the representations and warranties referenced in the foregoing clauses (a), (b) and (c) the "**Surviving Representations**"). Any written claim for indemnification with respect to a breach of any covenant or other agreement in this Agreement that by its terms is to be performed at or prior to the Closing by a Party may be made at any time prior to the date that is [REDACTED] [REDACTED] and, from and after such date, no claim for indemnification for a breach of such a covenant or agreement may be made hereunder. Covenants or other agreements which by their terms contemplate performance after the Closing Date, shall survive Closing for the period contemplated by their terms or until such time as they are terminated by their express terms or as a matter of applicable Legal Requirements. Notwithstanding the foregoing, (i) any claim for Fraud may be made subject to the applicable statute of limitations for intentional torts under Arizona law and (ii) if a written claim for breach or alleged breach of a representation or

warranty is made hereunder prior to the end of the applicable survival period, such representation or warranty shall survive, solely in relation to such claim, until such claim is resolved. Any Party providing indemnification pursuant to this Article VII is referred to herein as an “**Indemnifying Party**” and any Person entitled to indemnification pursuant to Section 7.02 or Section 7.03 is referred to herein as an “**Indemnified Party**”.

**Section 7.02. Indemnification by the Seller**. Subject to the other terms, conditions and limitations set forth in this Article VII, from and after the Closing, Seller shall indemnify Purchaser, its Affiliates (including, after the Closing, the Companies) and each of their respective directors, officers, employees, agents, successors, assigns and representatives (each such Person, including respective successors and assigns, a “**Purchaser Indemnified Party**”) from and against, and shall hold the Purchaser Indemnified Parties harmless from and against, any and all Losses based upon or arising from:

(a) any breach of any representation or warranty made by Seller or the Companies pursuant to Article III;

(b) any breach by Seller or the Companies of any of its respective covenants or obligations pursuant to this Agreement;

(c) except for any Taxes arising as a result of an event, action or transaction occurring after the Closing Date or from a transaction outside the ordinary course of business consistent with past practice that takes place on the Closing Date, (i) all Taxes (or the non-payment thereof) of the Companies and the Subsidiary for any Pre-Closing Period, (ii) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which either of the Companies or Subsidiary (or any predecessor of any of the foregoing) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation §1.1502-6 or any analogous or similar state, local, or non-U.S. law or regulation, (iii) any and all Taxes of any Person imposed on the Seller, the Companies or the Subsidiary as a transferee or successor, by Contract or pursuant to any Legal Requirement, or otherwise, which Taxes are imposed on the Companies or the Subsidiary and relate to an event or transaction occurring before the Closing; and (iv) any Taxes for which Seller is liable pursuant to Section 9.03(f); provided, however, that in the case of clauses (i), (ii), and (iii) above, Seller shall be liable only to the extent that such Taxes exceed the amount, if any, reserved for such Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) on the face of the Closing Date Balance Sheet (rather than in any notes thereto). Seller shall reimburse Purchaser for any Taxes that are the responsibility of Seller pursuant to this Section 7.02(c) within fifteen (15) business days after payment of such Taxes;

(d) any amounts owed by the Seller or the Companies to any Governmental Authority or third party arising out of overpayments to the Seller or the Companies identified by CMS, AHCCCS or ADES relating to periods of service prior to the Closing Date, whether such overpayments are determined as a result of any adjustment to premiums, audit, investigation or similar process to the extent not expressly accrued for on the Most Recent Financial Statements;

(e) any Transaction Expenses or Indebtedness of the Companies' or the Subsidiary incurred on or prior to the Closing Date; and

(f) any matters set forth in Section 7.02(f) of the Disclosure Schedule.

**Section 7.03. Indemnification by Purchaser.** From and after the Closing, Purchaser shall indemnify and hold Seller, its Affiliates and each of their respective directors, officers, employees, agents, successors, assigns and representatives (each such Person, including respective successors and assigns, a "**Seller Indemnified Party**") harmless from and against any and all Losses based upon or arising from:

(a) any breach of any representation or warranty made by Purchaser pursuant to Article IV; or

(b) any breach or failure by Purchaser to perform any of its covenants or obligations pursuant to this Agreement.

**Section 7.04. Additional Provisions Regarding Indemnification Obligations.** Notwithstanding Section 7.02 and Section 7.03, the rights to indemnification pursuant to the provisions of Section 7.02 and Section 7.03 are subject to the following agreements:

(a) The maximum aggregate Liability of Seller to all Purchaser Indemnified Parties taken together for (i) Losses for any claims for indemnification pursuant to Section 7.02(a), other than as a result of a breach of any representations made in Sections 3.01, 3.02, 3.05, 3.06, 3.19 and/or 3.23, shall be limited to an amount equal to [REDACTED] (collectively, the "**General Cap Amount**"). Liability of Seller for Losses arising from a breach of Sections 3.01, 3.02, 3.05, 3.06, 3.19 and/or 3.23 shall not be subject to the General Cap Amount, but shall be limited to an amount equal to the Base Purchase Price.

(b) Seller shall not be liable for Losses for any individual claim for indemnification pursuant to Section 7.02(a) (other than as a result of a breach of a Surviving Representation) unless the amount of Losses for such claim for indemnification against Seller pursuant to Section 7.02(a) (other than as a result of a breach of a Surviving Representation) shall exceed [REDACTED] (the "**Claim Deductible**"), and then for all such Losses from dollar one (each a "**Qualified Claim**"). For purposes of the preceding sentence, claims for indemnification based upon the same act, event, omission or set of facts shall be deemed a single individual claim. Liability of Seller for Losses based upon or arising from a breach of a Surviving Representation shall not be subject to the Claim Deductible.

(c) Seller shall not be liable for Losses for any claims for indemnification pursuant to Section 7.02(a) (other than as a result of a breach of a Surviving Representation) unless the aggregate Qualified Claims for indemnification against Seller pursuant to Section 7.02(a) (other than as a result of a breach of a Surviving Representation) shall exceed [REDACTED] in the aggregate (the "**Basket**"), and then only for such Losses to the extent they exceed such amount.

Liability of Seller for Losses based upon or arising from a breach of a Surviving Representation shall not be subject to the Basket.

(d) No Indemnifying Party shall be liable to an Indemnified Party hereunder for any punitive damages except to the extent awarded to a third party in connection with a Third Party Claim.

(e) The amount of Losses for which any Indemnified Party shall be entitled to recover for a Loss under Sections 7.02 or 7.03 shall be limited to the amount of any Losses, liability or damage that remains after deducting therefrom any insurance proceeds to the extent that such Indemnified Party has actually recovered such Loss under third-party insurance held by, or for the benefit of, the Indemnified Party. In the event an Indemnified Party receives insurance proceeds from unaffiliated third-party insurance with respect to any matter for which it was previously indemnified pursuant to this Article VII, such Indemnified Party shall promptly pay such insurance proceeds (net of deductibles, premium increases and similar or related costs) to the applicable Indemnifying Party but not in excess of prior related indemnification payments.

(f) The amount of Losses for which any Indemnified Party shall be entitled to recover for a Loss under Sections 7.02 or 7.03 shall be reduced by an amount equal to any Tax benefit actually realized as a result of such Loss by any of by such Indemnified Party in the tax year (or any prior tax year) in which the later of (i) such Loss occurred, or (ii) an indemnification payment was received hereunder (net of any other Tax effects of the Loss, including the receipt of an indemnification payment hereunder).

(g) Subject to the requirements and limitations set forth in this Agreement, nothing in this Agreement will limit any remedy any Indemnified Party may have against any Person for Fraud in connection with this Agreement and the Transactions contemplated hereby.

(h) For purposes of calculating the amount of Losses to which an Indemnified Party is entitled under this Article VII (and for purposes of determining whether a representation or warranty has been breached), the terms “material,” “materiality,” “Material Adverse Effect” and similar qualifications will be disregarded.

(i) For Tax purposes, 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 applicable Tax laws.

(j) The right to indemnification, reimbursement, or other remedy based on any representations, warranties, covenants and obligations set forth in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) about, the accuracy of or compliance with, any such representation, warranty, covenant or obligation.

**Section 7.05. Indemnification Procedures; Third Party Claims.**

(a) Any claim or demand for indemnification pursuant to this Article VII 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 prompt written notice thereof (a “**Direct Claim Notice**”) within ten (10) business days after such Indemnified Party first becomes aware of such Direct Claim (provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure). Such Direct Claim Notice shall describe the nature and basis of such 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 Losses for which indemnification is being sought. The Indemnifying Party shall have thirty (30) days after its receipt of such Direct Claim Notice (the “**Direct Claim Response Period**”) to investigate the Direct Claim and respond in writing to such Direct Claim. If the Indemnifying Party does not respond to the Direct Claim Notice within the Direct Claim Response Period, the Direct Claim shall be deemed disputed.

(b) If any Indemnified Party receives notice of (or becomes aware of) the assertion or commencement of any claim or demand made or brought by any Person (other than a Purchaser Indemnified Party or Seller Indemnified Party) (a “**Third Party Claim**”) with respect to which an Indemnifying Party is (or may be) obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof (a “**Third Party Claim Notice**”) within ten (10) business days after such Indemnified Party first becomes aware of such Third-Party Claim (provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure). Such Third-Party Claim Notice shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof (including copies of all notices and documents, including all court papers, involving or relating to such Third Party Claim) and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, within five (5) business days after the Indemnified Party’s receipt thereof (provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure), copies of all notices and documents, including all court papers, involving or relating to the Third Party Claim. The Indemnifying Party shall have the right to participate in, and subject to the limitations set forth in this Section 7.05 and by giving written notice to the Indemnified Party, to assume and control the defense of any Third Party Claim (in either case at the sole cost and expense of the Indemnifying Party) with Indemnifying Party’s own counsel; provided that (i) the Indemnifying Party notifies the Indemnified Party in writing within thirty (30) days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of the Losses the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (ii) the Third Party Claim only involves money damages and does not relate to matters that are not

indemnifiable hereunder or otherwise seek an injunction or other relief or remedies of any nature, (iii) the aggregate amount of potential Losses relating to such Third Party Claim could not, in the reasonable opinion of the Indemnified Party, exceed the then-unused portion of the General Cap Amount (in the event that the limitation of either the General Cap Amount applies to such Third Party Claim), (iv) the Third Party Claim does not involve an Action or claim by a Governmental Authority, and (v) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently. Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not, so long as it actively and diligently conducts such defense, be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. Subject to the immediately preceding sentence, the Indemnified Party shall have the right, at its own cost and expense (for which the Indemnified Party shall not be entitled to indemnification pursuant to this Article VII), to participate in the defense of any Third-Party Claim. If the Indemnifying Party has not assumed the defense of such Third Party Claim within thirty (30) days of receipt of written notice of such Third Party Claim, the Indemnified Party will (upon delivering written notice to such effect to the Indemnifying Party) have the right to undertake the defense of such Third Party Claim. Seller and Purchaser (and the Indemnified Party) shall reasonably cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party (including the Companies) as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(c) With respect to any Third Party Claim subject to indemnification under this Article VII, both the Indemnified Party and the Indemnifying Party, as the case may be, shall (i) keep the other Person fully informed in all material respects of the status of and any material developments, including settlement offers, relating to such Third Party Claim and any related Actions at all stages thereof where such Person is not represented by its own counsel and (ii) render to each other such assistance as they may reasonably require of each other and to cooperate in good faith in connection with the defense, negotiation or settlement of such Third Party Claim.

(d) With respect to any Third Party Claim subject to indemnification under this Article VII, the Indemnifying Party and the Indemnified Party shall cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information and the attorney-client and work-product privileges. In connection therewith, each Party agrees that: (i) it will use reasonable efforts, in respect of any Third Party Claim in which it has assumed or is participating in the defense, to avoid production of any confidential information (consistent with applicable Legal Requirement and rules of procedure), and (ii) all communications between any Parties and counsel responsible for or participating in the defense of any Third Party Claim will, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

(e) Notwithstanding anything in this Section 7.05 to the contrary, neither the Indemnifying Party nor the Indemnified Party shall, without the written consent of the other party (which consent shall not be unreasonably delayed, withheld or conditioned), settle or compromise any Third-Party Claim or admit any Liability or permit a default or consent to entry of any judgment with respect to any Third Party Claim; provided that if the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall be permitted to settle or compromise such Third Party Claim without the Indemnified Party's consent if (i) such settlement or compromise by its terms unconditionally releases the Indemnified Party from all Liability in connection with such Third Party Claim, (ii) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person, and (iii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.

**Section 7.06. Exclusive Remedy.** Subject to Section 10.14 and except for claims based on Fraud, notwithstanding anything to the contrary contained in this Agreement, the remedies set forth in this Article VII constitute the sole and exclusive remedy with respect to any and all claims or causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth in this Agreement or otherwise relating to the subject matter of this Agreement. Notwithstanding the foregoing, Purchaser may pursue injunctive relief for breach of any covenant or agreement of Seller or the Companies contained in this Agreement and the foregoing shall not limit any claim or right of recovery arising out of any other Transaction Agreement (other than this Agreement).

## ARTICLE VIII

### TERMINATION

**Section 8.01. Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Companies, the Seller and the Purchaser;

(b) by either Purchaser or Seller, if the Closing shall not have been consummated on or before [REDACTED] (the "End Date"); provided, however, that the End Date may be extended by either such Party, by written notice to the other Party, to [REDACTED] in the event that all conditions to Closing in Article VI have been satisfied at the time of such extension other than the conditions set forth in Section 6.01 and other than those conditions that by their nature are to be satisfied at Closing; provided, further, that the right to terminate this Agreement under this Section 8.01(b) shall not be available to any such Party whose failure to comply with or perform in any material respect any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or prior to the End Date;

(c) by the Purchaser by written notice to the Seller and the Companies if the Purchaser is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty,

covenant or agreement made by the Companies or the Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 6.02 and such breach, inaccuracy or failure (A) cannot be or has not been cured within thirty (30) days following delivery of written notice from the Purchaser to the Seller and the Companies of such breach, inaccuracy or failure and (B) has not been waived by the Purchaser; or

(d) by the Seller by written notice to the Purchaser if the Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by the Purchaser pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 6.03 and such breach, inaccuracy or failure (A) cannot be or has not been cured within thirty (30) days following delivery of written notice from the Seller to the Purchaser of such breach, inaccuracy or failure and (B) has not been waived by the Seller;

(e) by the Purchaser or the Seller in the event that any Governmental Entity shall have issued a Governmental Order, decree or ruling or taken any other Action permanently enjoining, restraining or otherwise prohibiting the Transactions and such Governmental Order, decree or ruling or other Action shall have become final and unappealable; or

(f) by the Seller pursuant to Section 5.06(c).

**Section 8.02. Effect of Termination.** If this Agreement is terminated pursuant to Section 8.01, all rights and obligations of the Parties shall terminate and no Party shall have any Liability to the other Parties, except for obligations of the Parties in Section 5.08 (Public Announcements), this Section 8.02 (Effect of Termination), Article X (Miscellaneous) and the Confidentiality Agreement, which shall survive the termination of this Agreement in accordance with their terms. Notwithstanding anything to the contrary contained in this Agreement, (a) termination of this Agreement pursuant to Section 8.01 shall not release any Party from any Liability for any Fraud by such Party of the terms and provisions of this Agreement prior to such termination and [REDACTED]

## ARTICLE IX

### OTHER BUSINESS PROVISIONS

**Section 9.01. Non-Solicitation of Employees.** Seller, for itself and its respective Affiliates, and each of their respective directors, officers, employees, shareholders, partners, members or managers or any other Person on behalf of any of the foregoing (for purposes of this Section collectively referred to as “**Seller Affiliates**”), agrees that it shall not, either prior to, or for a period of [REDACTED], directly or indirectly, (i) induce, encourage or solicit any Person known by a Seller Affiliated to be an employee of Purchaser or, after Closing, the Companies or their respective Affiliates, to leave the employ of such Party or sever his or her relationship with such Party, or otherwise employ, contract with or retain as a consultant or

independent contractor such Person; or (ii) otherwise interfere with such Party's relationship with such employee; provided, however, that this non-solicitation provision shall not apply to the extent that any such Person initiates contact with a Seller Affiliate in response to general, non-targeted employment advertisements by a Seller Affiliate.

**Section 9.02. Noncompetition Covenant.**

(a) Seller, for itself and the other Seller Affiliates, and each of their respective directors, officers, employees, shareholders, partners, members and managers (or any Affiliate of any of the foregoing) or any other Person on behalf of any of the foregoing agrees that for a period of [REDACTED], and provided that Purchaser does not materially breach this Agreement, shall not, directly or indirectly, individually, or through any person, partnership, joint venture, corporation or other entity in which any Seller Affiliate has any interest, including, without limitation, as a shareholder, owner, member, partner, investor, director or officer compete with Purchaser, the Companies or the Subsidiary or their respective Affiliates known to a Seller Affiliate in the State of Arizona. For purposes of this Section 9.02, any actions or activities of any licensee of the Blue Cross Blue Shield Association (or any of their Affiliates) that is not under common control or ownership with Seller shall not be deemed to be in violation of this Section 9.02. Furthermore, any actions or activities of Seller or a Seller Affiliate with respect to its or their California enrollees who receive services while in the State of Arizona shall not be deemed to be in violation of this Section 9.02.

(b) The restrictive covenants in this Section 9.02 and Section 9.01 shall be construed as an agreement independent of any provision of this Agreement, and the existence of any claim or cause of action of Seller against Purchaser shall not constitute a defense to the enforcement by Purchaser of the restrictive covenants. It is specifically agreed that the periods during which the covenants of Seller shall be effective shall be computed by excluding from such computation any time during which Seller is in violation of any provision of this Agreement.

(c) In the event of a breach of Seller's covenants in this Section 9.02 and Section 9.01, it is agreed that damages will be difficult to ascertain, and Purchaser may petition a court of law or equity for, and be granted, injunctive relief in addition to any other relief which Purchaser may have under the law, including reasonable attorney's fees.

(d) The Parties agree that the restrictions set forth in this Section 9.02 and Section 9.01 are reasonable and necessary to preserve the business of the Companies and that the maximum protection available under the law shall be provided to Purchaser by this Agreement to protect Purchaser in the Business and the Confidential Information and that, if the restrictions imposed hereby are held by any court to be invalid, illegal or unenforceable as to time, territory, scope or otherwise, this Agreement shall be construed to impose restrictions which are valid, legal and enforceable as to time, territory, scope or otherwise, as the case may be, to the maximum extent permitted under applicable Legal Requirements.

### **Section 9.03. Tax Matters.**

(a) Allocation of Taxes.

(i) Seller shall be responsible for and shall pay or cause to be paid any and all Taxes that may be imposed upon or assessed against either Company or its assets following the later of consent by Seller thereto or the final determination thereof: (1) with respect to any Pre-Closing Period (as defined below), provided however that Seller shall not be liable for Taxes and Related Costs (as defined below) arising from transactions outside the ordinary course of business that take place on the Closing Date and after the Closing; or (2) arising by reason of any breach or inaccuracy of the representations, covenants or agreements contained in Section 3.19 (Tax Matters), Section 4.05 or Section 8.01. Seller shall also pay any losses, damages, liabilities, obligations, costs and expenses incurred by Purchaser (including, without limitation, reasonable expenses and fees for attorneys, consultants, expert witnesses and accountants and expenses reasonably incurred in prosecution, investigation, remediation, defense or settlement) (“**Related Costs**”) attributable or related to Taxes for which the Seller is responsible pursuant to Section 7.04(d) or any other provision of this Agreement.

(ii) For purposes of this Agreement, “**Pre-Closing Period**” shall mean a taxable period or portion thereof that ends on or prior to the Closing Date. If a taxable period begins on or prior to the Closing Date and ends after the Closing Date, then the portion of the taxable period that ends on (and includes) the Closing Date shall constitute a Pre-Closing Period. In the case of any Tax that is imposed on a periodic basis and is payable for a period that begins before the Closing Date and ends after the Closing Date, the portion of such Taxes attributable to the Pre-Closing Period shall be deemed to be the amount of such Tax for the entire period multiplied by a fraction the numerator of which is the number of days in the Tax period ending on and including the Closing Date and the denominator of which is the number of days in the entire Tax period. Any credit shall be prorated based upon the preceding sentence. In the case of any Tax based upon or measured by income or receipts, the portion allocable to the portion of the Tax period up to and including the Closing Date shall include operations through the Closing Date (i.e., with respect to operations based on an interim closing of the books on Closing). For purposes of this Agreement, “**Post-Closing Period**” means any period other than a Pre-Closing Period.

(b) Refunds and Carrybacks. Rights and benefits relating to all credits or refunds of Taxes of either Company or Subsidiary (including credits for overpayment of estimated Taxes) arising from or relating to any Pre-Closing Period or a liability for Tax for which Seller has provided an indemnity under Article VII or Section 9.03 hereof shall remain with and be for the benefit of Seller (except to the extent any such credit or refund was included in the determination of the Purchase Price or arose as a result of the

carryback of a loss sustained in a Post-Closing Period), and Purchaser shall pay to Seller the amount of any such Tax refund or credit against Taxes received by Purchaser or by either Company and/or Subsidiary plus any overpayment interest received by the Purchaser or either Company or Subsidiary, net of any out-of-pocket costs incurred by the Purchaser or the Company or Subsidiary in obtaining such refund or credit. The amount or economic benefit of any refunds or credits of either Company or Subsidiary for any Post-Closing Period shall be for the account of Purchaser. Each Party shall forward, and shall cause its Affiliates to forward, to the Party entitled to receive the amount or economic benefit of a refund, credit or offset to Tax the amount of such refund, or the economic benefit of such credit or offset to Tax, within ten (10) days after such refund is received or after such credit or offset is allowed or applied against another Tax liability, as the case may be.

(c) Contests. Purchaser shall inform Seller of the commencement of any audit, examination or proceeding (“**Tax Contest**”) relating in whole or in part to Taxes for which Seller is responsible hereunder within ten (10) days of its receipt of any notice of deficiency, proposed adjustment, assessment, audit, examination or other administrative or court proceeding, suit, dispute, or other claim in which a Taxing Authority makes or proposes to make a Tax adjustment that could result in an indemnity payment pursuant to Article VII or Section 9.03 hereof. Seller, at its option and at its own expense, shall control all proceedings and other Actions taken in connection with such Tax Contest except for (i) any Tax Contest involving a Tax period beginning before and ending after the Closing Date, or (ii) any Tax Contest that could reasonably be expected to affect the Tax liability of Purchaser or any of the Companies by greater than [REDACTED] for any Post Closing Period, in which case Seller and Purchaser shall jointly control all proceedings with respect to any such Tax Contest at their own cost and expense. Notwithstanding the foregoing, if notice is given to Seller of the commencement of any Tax Contest and Seller does not, within fifteen (15) Business Days after Purchaser’s notice is received, give notice to Purchaser of its election to assume the defense thereof, Purchaser shall control such Tax Contest and Seller shall be bound by any determination made in such Tax Contest or any compromise or settlement thereof effected by Purchaser. The failure of Purchaser to give reasonably prompt notice of any Tax Contest shall not release, waive or otherwise affect Seller’s obligations with respect thereto except to the extent that Seller can demonstrate actual and material loss and prejudice as a result of such failure.

(d) Preparation of Tax Returns.

(i) With the exception of any Tax Returns described in Section 9.03(f) (which shall be governed by such Section), Seller shall prepare or cause to be prepared and timely file or cause to be timely filed, all Tax Returns for the Companies for all periods ending on or prior to the Closing Date that are required to be filed after the Closing Date. Such Tax Returns of the Companies (excluding its affiliates) shall be subject to the prior review and approval by and consultation with the Purchaser at least 30 days prior to the due date thereof (including extensions). Except as otherwise agreed

herein, Seller shall timely pay such Taxes of the Companies with respect to all such periods.

(ii) With the exception of any Tax Returns described in Section 9.03(f) (which shall be governed by such Section), Purchaser shall prepare or cause to be prepared and timely file or cause to be timely filed, subject to the prior review and reasonable approval of Seller, any Tax Returns of the Companies for Tax periods which begin before the Closing Date and end after the Closing Date and, subject to Section 7.04(d) with respect to the portion of such period that begins before the Closing Date and ends on the Closing Date, timely pay all Taxes reported as due on such Tax Returns. Except as otherwise agreed herein, following written notification from the Purchaser of the amount of such Taxes and the date such Taxes are to be paid, Seller shall pay to Purchaser within fifteen (15) days before the date on which Taxes are paid with respect to such periods an amount equal to the portion of such Taxes which relates to the portion of such Tax period ending on and including the Closing Date.

With the exception of any Tax Returns described in Section 9.03(d) (which shall be governed by such Section), Purchaser shall prepare or cause to be prepared and timely file or cause to be timely filed any Tax Returns of the Companies and the Subsidiary for Tax periods which end after the Closing Date.

(e) Cooperation and Exchange of Information. Seller, Purchaser and the Companies will provide each other with such cooperation and information as any of them reasonably may request of another in filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes or participating in any audit or other proceeding in respect of Taxes. Each such party shall make its employees available on a mutually convenient basis to provide explanations of any documents or information provided hereunder. Each such party will retain all Tax Returns, schedules and work papers and all material records or other documents relating to Tax matters of the Companies for the Tax period first ending after the Closing and for all prior Tax periods until the later of (a) the expiration of the statute of limitations of the Tax periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by another party in writing of such extensions for the respective Tax periods, or (b) five years following the due date (without extension) for such Tax Returns. Any information obtained under this Section 9.03(e) shall be kept confidential, except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting an audit or other proceeding. Notwithstanding any other provision in this Agreement to the contrary, Purchaser shall have no right to obtain any information with respect to or regarding Seller except to the extent such information affects either Company's or Subsidiary's liability for Taxes after the Closing Date.

(f) Conveyance Taxes. All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection

with consummation of the transactions contemplated by this Agreement shall be paid by Seller when due. The Party required by applicable law shall file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by applicable law, the other Party will join in the execution of any such Tax Returns and other documentation.

(g) Tax Sharing Agreements. All Tax Sharing Agreements with respect to or involving the Companies and Subsidiary shall be terminated prior to Closing and, after the Closing, the Companies shall not be bound thereby or have any liability thereunder.

(h) Unified Loss Rule Covenant. In the event Seller recognizes a loss for federal income tax purposes on the sale of the Seller's Stock and, as a result of the recognition of any such loss, an attribute reduction amount exists (as determined pursuant to Treasury Regulation Section 1.1502-36(d)(3), then Seller and its Affiliates shall make a timely and proper election under Treasury Regulation Section 1.1502-36(d)(6)(i)(A) to reduce Seller's tax basis in the Seller's Stock to the extent necessary to eliminate such attribute reduction amount.

(i) No Election to Treat as Asset Sale. Neither the Purchaser nor the Seller shall make an election under Section 336(e) or Section 338(h)(10) of the Code (or any corresponding elections under state, local, or foreign law) with respect to the purchase and sale of the Seller's Stock, nor take any action that would cause any such election to be deemed made, or the purchase and sale of Seller's Stock to be treated as the acquisition of all or any of the assets of either Company or Subsidiary for any applicable federal, state, local or foreign tax purposes, without the prior written consent of the other party.

(j) Purchase Price Adjustment. The parties agree to treat all payments made under Article II, Article VII and this Article IX as adjustments to the Purchase Price for tax purposes unless otherwise required by applicable tax law.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Fees and Expenses**. All costs and expenses, including, without limitation, all fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred. For the avoidance of doubt, Transactions Expenses shall be the sole responsibility of Seller.

**Section 10.02. Notices**. All notices, requests and other communications to either party hereunder shall be in writing (including facsimile transmission) and shall be given by registered or certified mail (postage prepaid, return receipt requested) or personally delivered to the address provided below or sent by facsimile transmission (with verification thereof by the sender) to the facsimile number provided below:

If to the Purchaser:

WellCare Health Plans, Inc.

[REDACTED]

with copy to:  
(which shall not constitute notice)

[REDACTED]

If to the Seller:

Care1st Health Plan, c/o Blue Shield of  
California

[REDACTED]

with copy to:  
(which shall not constitute notice)

[REDACTED]

All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day in the place of receipt.

**Section 10.03. Entire Agreement; Third Party Beneficiaries.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by either Party hereto. Neither this Agreement nor any provision hereof shall confer upon any Person other than the Parties hereto any rights or remedies hereunder.

**Section 10.04. Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided that no Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of either other Party hereto except that either Party may transfer or assign, in whole or from time to time in part, to one or more of its

Affiliates, its rights under this Agreement, but no such transfer or assignment shall relieve the transferred Party of its obligations hereunder.

**Section 10.05. Section Headings.** The Section headings contained in this Agreement are inserted for convenience of reference purposes only and shall not affect the meaning or interpretation of this Agreement.

**Section 10.06. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

**Section 10.07. Waivers.** No extension or waiver granted by either Party in respect of its obligations under this Agreement constitutes a waiver of, or estoppel with respect to, any subsequent or other breach or failure to strictly comply with the provisions of this Agreement. The failure of either Party to insist on strict compliance with this Agreement or to assert any of its rights or remedies hereunder or with respect hereto shall not constitute a waiver of such rights or remedies.

**Section 10.08. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to principles of conflicts of laws.

**Section 10.09. Jurisdiction and Venue.** ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT SHALL BE BROUGHT IN THE MARICOPA COUNTY SUPERIOR COURT IN THE STATE OF ARIZONA AND ANY STATE APPELLATE COURT THEREFROM WITHIN THE STATE OF ARIZONA (OR, IF THE MARICOPA COUNTY SUPERIOR COURT DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, ANY FEDERAL COURT WITHIN THE STATE OF ARIZONA. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF TO SUCH PARTY BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO SUCH PARTY AT ITS ADDRESS SPECIFIED IN SECTION 10.02, OR BY ANY OTHER METHOD PERMITTED BY LAW. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. EACH OF THE PARTIES WAIVES THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY AFFILIATE OF ANY OTHER SUCH PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE. THE

PARTIES AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

**Section 10.10. Amendments.** This Agreement may not be amended or modified except by an instrument in writing signed by, or on behalf of, each of the Parties hereto.

**Section 10.11. Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

**Section 10.12. Failure or Indulgence not Waiver.** Except as otherwise expressly provided herein, no failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**Section 10.13. Fees and Expenses.** Except as otherwise expressly provided in this Agreement, all fees, charges and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees, charges or expenses. All filing fees relating to the filings required by the HSR Act shall be paid 50% by Purchaser and 50% by Seller.

**Section 10.14. Specific Performance.** The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 10.15. Attorney-Client Privilege.** All communications involving attorney-client confidences between Seller and Seller Affiliates, or the Companies and the Subsidiary and Kutak Rock LLP in the course of the negotiation, documentation and consummation of the Transactions shall be deemed to be attorney-client confidences that belong solely to Seller and Seller Affiliates and not to the Companies or the Subsidiary. Accordingly, the Companies and Subsidiary shall not have access to any such communications, or the files of Kutak Rock LLP relating to the Transaction, whether or not the Closing shall have occurred.

**Section 10.16. Incorporation of Schedules and References.** The Schedules identified in this Agreement are incorporated herein by reference and made a part hereof. Any reference in

this Agreement to a Schedule, Article or Section, unless expressed or indicated to the contrary, is a reference to the Schedules, Articles or Sections of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

PURCHASER

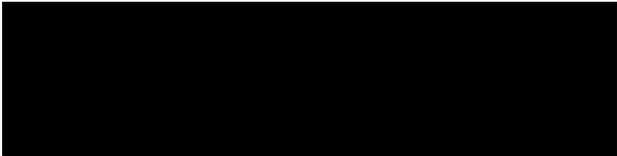
SELLER

THE WELLCARE MANAGEMENT GROUP, CARE1ST HEALTH PLAN  
INC.



COMPANIES

CARE1ST HEALTH PLAN ARIZONA, INC.



ONECARE BY CARE1ST HEALTH PLAN OF ARIZONA, INC.

