

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

<b>IN RE:</b>	§	
<b>EL PASO CHILDREN’S HOSPITAL</b>	§	
<b>CORPORATION,</b>	§	<b>CASE NO. 15-30784-HCM</b>
<b>DEBTOR.</b>	§	<b>CHAPTER 11</b>
	§	
<b>EIN: 26-3075429</b>	§	
	§	
<b>4845 ALAMEDA AVENUE</b>	§	
<b>EL PASO, TEXAS 79905</b>	§	

**AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION**

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El Paso Children’s Hospital Corporation (“Debtor” and/or “EPCH”) and El Paso County Hospital District d/b/a University Medical Center of El Paso (“UMC), pursuant to 11 U.S.C. § 1121(a), propose the following Amended Joint Chapter 11 Plan of Reorganization for the Debtor (the “Plan”). UMC and the Debtor are sometimes collectively referred to herein as “Proponents.”

## **SUMMARY OF THE JOINT PLAN**

The Proponents’ collective intent in proposing this Plan is to respectfully and fully make every reasonable effort to continue, and to enhance, the Debtor’s mission of providing first class medical services to the children of El Paso County. In furtherance of this goal, the Plan includes provisions that will reorganize the Debtor’s obligations and operations to create a stable and sustainable future. After the Effective Date of the Plan, the result will be to strengthen and enhance existing, and build new relationships between UMC, EPCH, the County Commissioners Court (“CCC”), and the El Paso medical community in order to facilitate and promote a cooperative and interactive environment between medical professionals, hospital management, and civic officials.

The Plan contemplates full payment of all Allowed Claims except as otherwise agreed by the Holders of such Claims. The source of payments under the Plan include funds held by the Debtor, property to be vested in the Reorganized Debtor, funds advanced by UMC that are on deposit with the Registry of the Bankruptcy Court (“Plan Deposit”), and future operating revenues of the Reorganized Debtor.

Under the Plan, the Debtor’s agreements with Texas Tech University Health Science Center will be assumed under an extended payment plan as agreed to by Texas Tech University Health Science Center.

Under the Plan, the HHSC Provider Agreement will be assumed. The Debtor believes that no cure amount is due as a requirement of any assumption of the HHSC Provider Agreement, but resolution of this cure claim, if any, shall be as provided in the Plan as set forth in section 10.1.

Under the Plan, the Debtor’s Agreements with UMC, including the Lease, will be assumed and modified as provided herein. Additionally, under the Plan, any Executory Contract other than the Texas Tech Agreements, the UMC Agreements, and the Lease, to which the Debtor is a party shall be deemed assumed as of the Confirmation Date unless a particular Executory Contract has been expressly rejected before the Confirmation Date, or such Executory Contract is otherwise rejected under the Plan or is the subject of a pending motion to reject such Executory Contract on the Confirmation Date.

## **ARTICLE 1**

### **DEFINITIONS, CONSTRUCTION, AND INTERPRETATION**

#### **1.1.1 Definitions**

The capitalized terms used herein shall have the respective meanings set forth below:

**“Administrative Expense”** or **“Administrative Claim”** means any cost or expense of the administration of the Chapter 11 Cases incurred on or before the Effective Date entitled to priority under § 507(a)(2) and Allowed under § 503(b) of the Bankruptcy Code, including all Fee Claims (i.e. allowances of compensation or reimbursement of expenses of Professional Persons to the extent allowed by the Bankruptcy Court under the Bankruptcy Code) and all fees and charges assessed against the Estate pursuant to 28 U.S.C. § 1930.

**“Administrative Claim Reserve”** means a fund created on the Effective Date in the estimated amount necessary to pay all Allowed Administrative Claims.

**“Allowed”** when used with respect to any Claim, except for a Claim that is an Administrative Claim, means (i) such Claim to the extent it is not a Disputed Claim; (ii) such Claim to the extent it may be set forth pursuant to any stipulation or agreement that has been approved by Final Order; or (iii) a Disputed Claim, proof of which was filed timely with the Bankruptcy Court and (a) as to which no objection was filed by the Claim Objection Deadline, unless such Claim is to be determined in a forum other than the Bankruptcy Court, in which case such Claim shall not become Allowed until determined by Final Order of such other forum and Allowed by Final Order of the Bankruptcy Court; or (b) as to which an objection was filed by the Objection Deadline, to the extent Allowed by Final Order. With respect to Administrative Claims, **“Allowed”** means an Administrative Claim allowable pursuant to section 503 of the Bankruptcy Code and (a) an Administrative Expense Request was filed on or before the applicable Administrative Expense Bar Date or pursuant to other order of the Bankruptcy Court and is allowed by Final Order, (b) for which an Administrative Expense Request is not filed and which is listed in the Schedules and not listed as disputed, contingent or unliquidated or (c) is deemed Allowed under the Plan or by prior order of the Bankruptcy Court.

**“Allowed AmerisourceBergen Secured Claim”** means the Allowed Secured Claim held by AmerisourceBergen Drug Corporation, with a current balance of \$34,563.87.

**“Allowed ASD Secured Claim”** means the Allowed Secured Claim held by ASD Specialty Healthcare, Inc., d/b/a Oncology Supply, Inc., with a current balance of \$1,183.95.

**“Allowed Cardinal Health Secured Claim”** means the Allowed Secured Claim held by Cardinal Health, Inc. in the amount of \$201,355.78, subject to reconciliation by the Debtor.

**“Disallowed EPCPG General Unsecured Claim”** means the Claim of El Paso Children’s Physicians’ Group (“EPCPG”) in the amount of \$2,065,570.53, which is Disallowed.

**“Allowed HHSC Secured Claim”** means the allowed claim of HHSC.

**“Allowed Texas Tech Unsecured Claim”** means the Allowed Claim of Texas Tech related to the Debtor’s cure of pre-petition amounts owed under the Texas Tech Agreements in the total amount of \$9,861,809.49.

**“Allowed UMC Secured Claim”** means the Allowed Secured Claim of UMC in the amount of \$15 million secured by a perfected lien on the UMC Collateral.

**“Allowed UMC Unsecured Claim”** means the Allowed General Unsecured Claim of UMC on account of the Debtor’s remaining outstanding obligations under the UMC Documents and Transactions not secured by the UMC Collateral which Claim shall be Allowed as a general, unsecured claim in the amount of \$33 million.

**“Allowed Patient Credit Balance Claim”** refers to an Allowed Claim arising from amounts owed by the Debtor to former or current patients that have not already been reconciled and may be subject to offset or other claims by an applicable insurance provider upon adjustment.

**“Allowed Patient Refund Claim”** refers to an Allowed Claim arising from amounts owed by the Debtor to former or current patients that have already been reconciled with any insurance provider or otherwise.

**“Assets”** means all assets (and any proceeds thereof) as of the Effective Date of the Debtor, of any nature whatsoever, including, without limitation, all property of the Estate under and pursuant to section 541 of the Bankruptcy Code, Cash, Causes of Action, Insurance Policies and all of the Debtor’s rights, interests and property, real and personal, tangible and intangible.

**“Avoidance Actions”** means any and all rights, claims and Causes of Action arising under any provision of chapter 5 of the Bankruptcy Code or under applicable non-bankruptcy laws to the extent made applicable under chapter 5 of the Bankruptcy Code, including without limitation claims for payments made to creditors within ninety (90) days of the Petition Date that may be avoidable under 11 U.S.C. § 547.

**“Ballot”** means the ballot form distributed to Holders of Impaired Claims entitled to vote on which such Holders are to cast their votes to accept or reject the Plan.

**“Bankruptcy Case”** means Case No. 15-30784 commenced by the Debtor under Chapter 11 of the Bankruptcy Code on the Petition Date.

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as amended and codified at title 11 of the United States Code.

**“Bankruptcy Court”** means the Bankruptcy Court unit of the United States District Court for the Western District of Texas, El Paso Division, or such other court having jurisdiction over this Chapter 11 Case.

**“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure, as prescribed by the United States Supreme Court pursuant to § 2075 of title 28 of the United States Code, and the Local Rules of the Bankruptcy Court.

**“Bar Date”** means the final date for the filing of proofs of Claims set by the Bankruptcy Court or such other date as may apply to a particular Claim pursuant to a duly entered order of the Bankruptcy Court, which may be the Confirmation Order.

**“Business Day”** means any day on which commercial banks and federal courts are open for business in El Paso, Texas.



“**Cash**” means legal tender of the United States of America or Cash equivalents.

“**Causes of Action**” means, without limitation, any and all Claims, actions, adversary proceedings, causes of action (including causes of action arising under any section of the Bankruptcy Code, state, federal or other non-bankruptcy law), counterclaims, cross-claims, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments and demands of the Debtor or of its Estate whatsoever, whether pending or not pending, known or unknown, direct, indirect or derivative, whether or not scheduled as an asset of the Debtor, disputed or undisputed, legal or equitable, absolute or contingent, including, specifically, but without limitation, Causes of Action against Insiders and all other Avoidance Actions; and including without limitation, all Claims, actions, adversary proceedings, causes of action (including causes of action arising under any section of the Bankruptcy Code, state, federal, or other non-bankruptcy law) as against Navigant Healthcare Cymetrix Corporation f/k/a Cymetrix Corporation (“Navigant”).

“**CCC**” means the El Paso County Commissioners Court.

“**Claim**” shall have the meaning set out in § 101 of the Bankruptcy Code.

“**Claim Objection Deadline**” means the deadline for the Debtor to file objections to Claims other than Administrative Claims established herein.

“**Claim Register**” shall mean the Claim Register maintained by the Court for the Debtor.

“**Claimant**” or “**Creditor**” means the Holder of a Claim.

“**Class**” means a group of Claims classified in the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code.

“**CMS**” means the Centers for Medicare & Medicaid Services.

“**Collateral**” means any property of the Debtor subject to a valid and enforceable Lien or right of setoff permissible under 11 U.S.C. § 553 to secure the payment of a Claim.

“**Committee**” means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee in the Bankruptcy Case.

“**Confirmation Date**” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

“**Confirmation Hearing**” means the hearing(s) held by the Bankruptcy Court pursuant to § 1128 of the Bankruptcy Code, as it may be continued from time to time, on confirmation of the Plan.

“**Confirmation Order**” means the order of the Bankruptcy Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code, which shall be in form and substance acceptable to the Debtor.

“**Consummation**” shall mean the payment of any Allowed Unsecured Creditors as provided herein.

“**Court**” means the Bankruptcy Court.

“**Cure Costs**” means any and all amounts necessary to cure defaults, if any, pursuant to § 365 of the Bankruptcy Code related to the assumption of an agreement to which the Debtor is a party as provided herein.

“**Debtor**” means El Paso Children’s Hospital Corporation.

“**Disallowed**” means, with reference to a Claim, any Claim, or any portion thereof, that (i) has been Disallowed by a Final Order; (ii) is (x) not Scheduled or is Scheduled as zero or as contingent, disputed or unliquidated, and (y) as to which no Proof of Claim has been timely filed or deemed timely filed by the Bankruptcy Court; (iii) has been withdrawn by agreement of the Debtor and the Holder thereof; (iv) has been withdrawn by the Holder thereof; or (v) any Claim that is not Allowed as of the Final Distribution Date.

“**Disclosure Statement**” means the disclosure statement filed by the Debtor relating to the Plan, including the schedules and exhibits thereto, as the same may be amended from time to time by either of the Proponents.

“**Disputed**” when used with respect to a Claim, means a Claim against the Debtor (i) that is listed in the Debtor’s Schedules as disputed, contingent or unliquidated regardless of whether a proof of claim has been filed or not; (ii) that is listed in the Debtor’s Schedules as undisputed, liquidated and not contingent and as to which a proof of Claim has been filed with the Bankruptcy Court, to the extent the proof of Claim amount exceeds the scheduled amount; (iii) that is not listed in the Debtor’s Schedules, but as to which a proof of Claim has been filed with the Bankruptcy Court; or (iv) as to which an objection has been or may be filed. Notwithstanding the foregoing, after the Claim Objection Deadline, including any extensions thereto, only Claims to which an Objection has been filed shall be deemed Disputed Claims with respect to Claims for which a proof of Claim has been filed.

“**Distribution**” means a payment and/or distribution of Cash or other consideration to be made to Holders of Allowed Claims in accordance with the terms and conditions of the Plan.

“**D&O Claims**” means a claim, if any, against any of the Debtor’s prior or current directors or officers, which claims are being released pursuant to the Plan.

“**D&O Policy**” means that certain insurance policy issued to the Debtor in the amount of \$5,000,000 purchased by the Debtor to provide insurance for certain claims against the Debtor’s directors and officers.

“**Effective Date**” means a Business Day as soon as practicable after the Confirmation Date, as specified by the Debtor, on which (i) no stay of the Confirmation Order is in effect, and (ii) the conditions to the effectiveness of the Plan specified in Article 4 hereof have been satisfied or waived.

“**Estate**” means the Debtor’s estate created pursuant to § 541 of the Bankruptcy Code upon the commencement of the Bankruptcy Case.

“**Exculpated Parties**” means the Proponents’ Professionals, the Committee’s Professionals, and the Ombudsman and her Professionals.

“**Executory Contracts**” means all unexpired leases and executory contracts as such terms are used within § 365 of the Bankruptcy Code to which the Debtor was a party as of the Petition Date unless otherwise defined herein.

“**EPCPG**” means El Paso Children’s Physicians Group.

“**EPF Litigation**” refers to Adversary Proceeding No. 15-03006, styled *El Paso Children’s Hospital Corp. v. El Paso First Health Plans, Inc. (In re El Paso Children’s Hospital Corp.)*, presently pending before the Bankruptcy Court.

“**Face Amount**” means, with reference to any Claim: (a) if the Holder of such Claim has not filed a Proof of Claim by the applicable Bar Date, and there is no Final Order fixing the Allowed amount of such Claim, (i) the amount of such Claim that is listed in the Schedules as undisputed, non-contingent and liquidated, or (ii) if no amount is listed in the Schedules, zero (\$0) dollars; (b) if the Holder of such Claim has filed a Proof of Claim by the applicable Bar Date, (i) the liquidated amount as stated in such Proof of Claim, or (ii) if no liquidated amount is listed in such Proof of Claim then zero (\$0) dollars; (c) an amount fixed or estimated by order of the Bankruptcy Court; or (d) in all other cases, zero (\$0) dollars.

“**Fee Application**” means an application of a Professional Person under §§ 328, 330, 331, 363, and/or 503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in the Chapter 11 Cases.

“**Fee Claim**” means a Claim under §§ 328, 330, 331, 363, or 503 of the Bankruptcy Code or pursuant to any order of this Court for allowance of compensation and reimbursement of expenses in the Chapter 11 Cases.

“**Final Decree**” means the decree contemplated under Bankruptcy Rule 3022.

“**Final Distribution Date**” means the date the final Distribution is made.

“**Final Order**” means (i) an order as to which the time to appeal, petition for certiorari or motion for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment has expired and as to which no appeal, petition for certiorari or other proceedings for re-argument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment shall then be pending, or (ii) in the event that an appeal, writ of certiorari, re-argument, rehearing, reconsideration, new trial, or motion to alter or amend findings or judgment thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied or from which reargument, rehearing, reconsideration, new trial, or motion to alter or amend findings or judgment was sought, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment shall have expired;

provided, however, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule, may be filed with respect to such order.

**“General Unsecured Claim”** means any Claim against the Debtor that is not a Priority Tax Claim, Secured Claim, or an Administrative Expense.

**“Governmental Unit”** means a governmental unit as defined in section 101(27) of the Bankruptcy Code.

**“HHSC”** means Health and Human Services Commission of Texas.

**“HHSC Provider Agreement”** refers to the prevailing provider agreement(s) between the Debtor and HHSC.

**“Holder”** means the beneficial owner of any Claim, Administrative Expense, or other interest or right to receive a Distribution under the Plan.

**“Impaired”** has the meaning ascribed to such term in section 1124 of the Bankruptcy Code.

**“Insider”** means an insider as defined in section 101(31) of the Bankruptcy Code.

**“Initial Distribution Date”** means the date the first Distribution is made, provided however that the first Distribution shall be made on or before thirty (30) days after the Effective Date.

**“Insurance Policy”** means any policy of insurance and any agreements relating thereto covering the Debtor or its respective Assets, directors, officers, members, managers, employees and fiduciaries, or that may be available to provide coverage for Claims against the Debtor or any of the foregoing, including, without limitation, any general liability, property, casualty, umbrella or excess liability policy(ies), errors and omissions, director and officer or similar executive, fiduciary and organization liability policy(ies) (A, B or C coverage), and any tail with respect thereto.

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

**“Lease”** means the Facility Lease Agreement dated February 24, 2012 by and between the Debtor and UMC.

**“Lien”** has the meaning ascribed to such term in section 101(37) of the Bankruptcy Code (but a lien that has been avoided under Chapter 5 of the Bankruptcy Code shall not constitute a Lien).

**“Ombudsman”** means Suzanne Koenig, the patient care ombudsman appointed by the Bankruptcy Court in the Bankruptcy Case.

“**Person**” means any individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint venture, trust, estate, unincorporated organization, or a Governmental Unit or any agency or political subdivision thereof.

“**Petition Date**” means May 19, 2015.

“**Plan**” means this Joint Plan of Reorganization, either in the present form, or as may hereafter be altered, amended or modified from time to time.

“**Plan Supplement**” means the supplemental appendix to the Plan, to be filed with the Bankruptcy Court seven (7) days prior to the Confirmation Hearing, that will contain, among other things, any other agreements as may be necessary or appropriate to implement or effectuate the Plan.

“**Priority Non-Tax Claim**” means any Claim accorded priority in right of payment under §507(a) of the Bankruptcy Code, other than an Administrative Expense or Priority Tax Claim, to the extent such Claim is entitled to priority in payment under § 507(a).

“**Priority Tax Claim**” means any Claim of a Governmental Unit of the kind specified in §§ 502(i) or 507(a)(8) of the Bankruptcy Code.

“**Professional**” means a person retained or to be compensated pursuant to §§ 327, 328, 330, 363, 503(b) or 1103 of the Bankruptcy Code, the attorneys and financial consultants employed by UMC in connection with the Bankruptcy Case and the attorneys, professionals and representatives for the Ombudsman (including, without limitation, any employees or contractors of SAK Management Services, LLC).

“**Proof of Claim**” means a proof of Claim filed in the Bankruptcy Case pursuant to section 501 of the Bankruptcy Code and/or any order of the Bankruptcy Court, together with supporting documents.

“**Pro Rata**” means the proportion that the amount of an Allowed Claim in a particular Class of Claims bears to the aggregate amount of all Claims in such Class of Claims, including Disputed Claims, but not including Disallowed Claims.

“**Released Parties**” means Professionals employed by the Debtor, including Mark Herbers (“Herbers”), appointed as the Debtor’s Chief Executive and Restructuring Officer (“CERO”), pursuant to the Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) (i) Authorizing the Employment and Retention of AP Services, LLC and (ii) Designating Mark Herbers as Chief Executive and Restructuring Officer Nunc Pro Tunc to May 19, 2015 [Dckt. No. 219], all Professionals retained by UMC in connection with this Bankruptcy Case, all professionals retained by the Committee, and all Professionals retained by the Ombudsman in connection with this Bankruptcy Case.

“**Reorganized Debtor**” means the Debtor on and after the Effective Date.

**“Reorganized Debtor’s Board”** means the newly-constituted board of directors of the Reorganized Debtor as set forth in Section 6.2.2 of the Plan and the Amended EPCH Governing Documents.

**“Representatives”** means any officer, director, financial advisor, attorney, law firm, accounting firm, financial advising firm, and other Professional Person.

**“Scheduled”** with respect to any Claim, means listed on the Schedules.

**“Schedules”** means the Schedules of Assets and Liabilities and the Statements of Financial Affairs filed by the Debtor as required by § 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such Schedules and Statements have been or may be supplemented or amended.

**“Secured Claim”** means a Claim secured by a Lien or right of setoff allowable under 11 U.S.C. § 553 on property of a Debtor, which Lien is valid, perfected and enforceable under applicable law, is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law and which is duly established in the Chapter 11 cases, but only to the extent of the value of the Collateral that secures payment of such Claim.

**“Solicitation Procedures Order”** means that certain order entered by the Court on [ ], 2015, approving solicitation procedures, and other materials with respect to the Plan.

**“Texas Tech”** means Texas Tech University Health Science Center Lubbock and Texas Tech University Health Science Center El Paso.

**“Texas Tech Agreements”** means the Laboratory Services Agreement between the Debtor and Texas Tech dated October 2011; the Research Cooperation Agreement between Texas Tech and the Debtor dated February 2015; the Affiliation Agreement between the Debtor and Texas Tech dated July 2013; the Texas Tech Institutional Review Board Agreement between the Debtor and Texas Tech dated March 2012; the Education, Research, & Affiliation Agreement dated May 2012; the Program Letter of Agreement between Texas Tech, OBGYN Program and the Debtor, dated February 2012; the Program Letter of Agreement between Texas Tech (Department of Psychiatry, Child and Adolescent Psychiatry) dated February 2012; the Program Letter Agreement between Texas Tech (Medical Toxicology Fellowship) and the Debtor dated February 2012; any and all Program Letter Agreements between Texas Tech (General Surgery Residency Program) and the Debtor dated February 2012; the Program Letter Agreement between Texas Tech; the Program Letter Agreement between Texas Tech (Internal Medicine Residency Program) and the Debtor dated February 2012; the Program Letter Agreement between Texas Tech (Radiology Residency/Fellowship Program) and the Debtor dated February 2012; the Program Letter Agreement between Texas Tech (Anesthesiology Residency Program) and the Debtor dated February 2012; the Program Letter Agreement between Texas Tech (Family Medicine Residency Program (FMRP) and the Debtor dated February 2012; the Program Letter Agreement between Texas Tech (Pediatric Residency Program) and the Debtor dated February 2012; the Program Letter Agreement between Texas Tech (Emergency Medicine Residency Program) and the Debtor dated February 2012; the Pediatric Specialty Medical Services Agreement dated December 2009 and all amendments

thereto; the Medical Services Agreement between Texas Tech and the Debtor dated October 30, 2008, and all amendments thereto; the Administrative Services Agreement between Texas Tech and the Debtor dated August 22, 2011 relating to the appointment of Bradley P. Fuhrman, M.D. as Physician-in-Chief of the Debtor, the Pediatric Specialty Medical Services Agreement between Texas Tech and the Debtor dated February 1, 2014, and all amendments thereto; the Crime Victims Medical Services Agreement between the Debtor and Texas Tech (Department of Obstetrics-Gynecology) dated July 2013; the Pediatric Hospitalist Services Agreement between the Debtor and Texas Tech (Department of Pediatrics) dated March 2015; the Pediatric Neurology Services Agreement between Texas Tech (Department of Neurology) and the Debtor dated July 2013, and all amendments thereto; the Pediatric Specialty Medical Services Agreement between Texas Tech and the Debtor dated February 14, 2012, and all amendments thereto; the Ophthalmology Services Agreement between Texas Tech (Department of Surgery) and the Debtor dated June 2012; the Research Cooperation Agreement between Texas Tech and the Debtor dated February 2015; the Lease Agreement between Texas Tech and the Debtor dated August 16, 2012; the Education Program Services Contract between Texas Tech (on behalf of Health.edu) dated May 23, 2013; the Affiliation Agreement between Texas Tech and the Debtor dated February 28, 2012; the Administrative Services Agreement between Texas Tech and the Debtor dated August 22, 2011 (pertaining to Lynn J. Hernan, M.D.) and all amendments thereto; the Research Cooperation Agreement between Texas Tech and the Debtor dated February 2015; the Institutional Review Board Agreement between Texas Tech and the Debtor dated March 2012; and any and all amendments to any and all of the foregoing.

**“Texas Tech Initial Cure Payment”** means, unless otherwise agreed to by Texas Tech, the payment to be made by the Reorganized Debtor on the Initial Distribution Date in the amount of \$2,000,000 as a partial cure of Debtor’s pre-Petition Date defaults under its executory contracts with Texas Tech as more particularly described in Article 6.04 of the Plan.

**“Transitional Board Members”** means two members of the Debtor’s board of directors who will remain on the Reorganized Debtor’s Board for ninety (90) days following the Effective Date as set forth in Section 6.2.2 of the Plan.

**“Unclaimed Distribution Date”** means 120 days after the actual date that a Distribution, or request for information under Section 9.4 of the Plan is made.

**“Untimely Claim”** means a Claim that was tardily filed after the applicable Bar Date.

**“UMC”** shall refer to the El Paso County Hospital District d/b/a University Medical Center of El Paso.

**“UMC Agreements”** means the Master Agreement between UMC and the Debtor dated February 1, 2012, the Labor Services Agreement between UMC and the Debtor dated February 2012, the Laboratory Services Independent Contractor Agreement between UMC and the Debtor dated February 10, 2012, the Diagnostic Imaging Services Agreement between UMC and the Debtor dated February 10, 2012, the Interim Equipment Agreement between UMC and the Debtor, the Administrative Services Agreement between UMC and the Debtor dated February 1, 2012, and the Amended and Restated Development Services Agreement between UMC and the Debtor dated February 10, 2012, and any and all amendments to the foregoing.

“**UMC Litigation**” shall mean the lawsuit commenced by the Debtor against UMC on the Petition Date, styled as *El Paso Children’s Hospital Corporation v. El Paso County Hospital District d/b/a University Medical Center of El Paso, Adversary Proceeding No. 15-03005*, presently pending before the Bankruptcy Court.

“**U.S. Trustee**” means the Office of the United States Trustee for the Western District of Texas.

“**Vested Property**” means all property vested in the Reorganized Debtor pursuant to Article 5.2 of the Plan.

“**Voting Record Date**” means that date set by the Bankruptcy Court for determining the holders of claims and interests entitled to vote to accept or reject the Plan.

## **1.2 Interpretation**

Unless otherwise specified, all section, article, and exhibit references in the Plan are to the respective section in, article of or exhibit to the Plan, as the same may be amended, waived, or modified from time to time. The headings and table of contents in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender. All exhibits and schedules attached to the Plan are incorporated herein by such attachment.

## **1.3 Application of Definitions and Rules of Construction Contained in the Bankruptcy Code**

Words and terms defined in § 101 of the Bankruptcy Code shall have the same meaning when used in the Plan, unless a different definition is given in the Plan. The rules of construction contained in § 102 of the Bankruptcy Code shall apply to the construction of the Plan.

## **1.4 Other Terms**

The words “herein,” “hereof,” “hereto,” “hereunder” and others of similar import refer to the Plan as a whole and not to any particular section, subsection or clause contained in the Plan. Any reference to a person or Holder of a Claim or Interest includes that person or Holder’s successors and assigns.

## **1.5 Integration Clause**

This Plan is a complete, whole, and integrated statement of the binding agreement between the Debtor, creditors, and the parties-in-interest upon the matters herein. Parol evidence shall not be admissible in an action regarding this Plan, or any of its provisions.

## **1.6 Computation of Time**

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.



**ARTICLE 2**  
**CLASSIFICATION AND IMPAIRMENT OF CLAIMS**

**2.1 Classification**

As provided in 11 U.S.C. § 1123(a), Administrative Expense Claims shall not be classified for purposes of voting or receiving distributions under the Plan. The Allowed Claims against the Debtor are classified as set forth in this Article 3. A Claim is in a particular Class only to the extent that such Claim fits within the description of such Class, and is in such other and different Class or Classes to the extent that the remainder of such Claim fits within the description of such other Class or Classes. Any dispute with respect to classification of Claims or impairment shall be resolved by the Bankruptcy Court upon motion of the Claimant affected thereby, with notice to the Debtor. For purposes of voting, subclasses are each treated as a separate class. This Plan shall only provide distributions to Allowed Claims; except for UMC, nothing within this Plan shall provide for the Allowance of any Claim. The Allowed Claims are classified as follows:

- Administrative Claims (unclassified)**
- Class 1: Allowed Priority Non-Tax Claims**
- Class 2: Allowed Secured Claims**
- Class 2(a): Allowed AmerisourceBergen Secured Claim**
- Class 2(b): Allowed ASD Secured Claims**
- Class 2(c): Allowed Cardinal Health Secured Claim**
- Class 2(d): Allowed HHSC Secured Claim**
- Class 2(e): Allowed UMC Secured Claim**
- Class 3: Allowed Patient Claims**
- Class 3(a): Allowed Patient Refund Claims**
- Class 3(b): Allowed Patient Credit Balance Claims**
- Class 4: Allowed Texas Tech Unsecured Claims**
- Class 5: Allowed General Unsecured Claims**
- Class 6: Disallowed EPCPG General Unsecured Claim**
- Class 7: Allowed General Unsecured Claim of UMC**

Claims in Classes 2, 3, 4, 5, and 7, are impaired under the Plan and entitled to receive Distributions. Holders of Claims in Classes 2, 3, 4, 5, and 7 are entitled to vote to accept or reject the Plan. Claims in Class 6 are Disallowed and Class 6 is not entitled to vote to accept or reject the Plan. Claims in Class 1 are unimpaired, and therefore, shall not be entitled to vote to accept or reject this Plan. For purposes of voting and Distribution, subclasses are each treated as a separate class.

**2.2 Impairment and Classification of Controversies**

If a controversy arises as to whether any Claim or any Class of Claims is Impaired under the Plan or is classified incorrectly, the Bankruptcy Court shall, upon notice and a hearing, determine such controversy on or before the Voting Deadline.

### **2.3 Class Acceptance Requirement**

A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds in amount and more than one-half in number of the holders of Allowed Claims in such Class that have voted on the Plan.

### **2.4 Cramdown**

If any Class of Claims shall fail to accept the Plan in accordance with § 1126(c) of the Bankruptcy Code, the Bankruptcy Court may still confirm the Plan in accordance with § 1129(b) of the Bankruptcy Code. The Debtor will seek confirmation of the Plan pursuant to § 1129(b) with respect to any non-accepting Class.

### **2.5 Elimination of Classes**

Any Impaired Class that is not occupied as of the date of the Confirmation Hearing by an Allowed Claim or a Claim temporarily Allowed pursuant to Bankruptcy Rule 3018 shall be deemed deleted from the Plan for purposes of voting on acceptance or rejection of the Plan and determining whether the Plan has been accepted by such class pursuant to 11 U.S.C. § 1129.

## **ARTICLE 3**

### **PROVISIONS FOR TREATMENT OF CLAIMS UNDER THE PLAN**

Claims against the Debtor shall be treated under the Plan as follows:

### **3.1 Unclassified Claims**

#### **3.1.1 Administrative Claims**

**General:** Except to the extent that any entity entitled to payment of any Allowed Administrative Claim agrees to a different treatment or unless paid in the ordinary course of the Reorganized Debtor's business, each holder of an Allowed Administrative Claim shall receive Cash in an amount equal to such Allowed Administrative Claim on the later of the Effective Date or the date such Administrative Claim becomes an Allowed Administrative Claim, or as soon thereafter as practicable.

**Funding:** On the Effective Date, with cash on hand the Debtor will fund the Administrative Cash Reserve in an amount sufficient to pay all Allowed Administrative Claims, in full, on the Effective Date.

**Bar Date for Administrative Claims:** Except as otherwise provided in this Article 3, requests for payment of Administrative Claims must be included within a motion or application and filed by a deadline to be set by the Court, which shall be thirty (30) days after the Confirmation Date ("Administrative Claims Bar Date"). Except for Professionals approved by the Bankruptcy Court under 11 U.S.C. § 327, any holder of a claim under 11 U.S.C. §§ 503 and/or 507 that fails to file their claim(s) by the Administrative Claims Bar Date shall be forever barred from asserting the claim(s) against the Debtor or its estate, and the Debtor, its estate, and its property shall be forever discharged from any and all indebtedness or liability with respect to

the claim, other than claims arising in the ordinary course of the Debtor's business. Requests for payments of Administrative Claims included within a proof of claim are of no force and effect, and are disallowed in their entirety as of the Confirmation Date unless such Administrative Claim is subsequently filed in a timely fashion as provided herein, and allowed. Except for Professional Persons approved by the Bankruptcy Court under 11 U.S.C. §§ 363 and 327, any holder of a claim under 11 U.S.C. §§ 503 and/or 507 that fails to file their claim(s) by the Administrative Claims Bar Date shall be forever barred from asserting the claim(s) against the Debtor or its estate, and the Debtor and its estate will be forever discharged from any and all indebtedness or liability with respect to the claim. Administrative claims for Professional Persons must be filed no later than sixty (60) days after the Confirmation Date.

**Impairment & Voting:** Administrative claims are not a true class and are neither impaired nor unimpaired. Acceptance of the Plan from such Claimants will not be solicited.

**Payment of Statutory Fees:** All fees payable pursuant to 28 U.S.C. § 1930 shall be Allowed and shall be paid in Cash when due.

### **3.1.2 Priority Tax Claims:**

Each holder of an Allowed Priority Tax Claim shall be paid in full, through monthly cash payments commencing on the Effective Date, its Allowed Priority Tax Claims, together with interest at the rate required by 11 U.S.C. § 511, or as otherwise agreed, over a period through the fifth anniversary of the Petition Date.

The Reorganized Debtor shall pay the Priority Tax Claims from funds available from the operations of the Reorganized Debtor.

At the Reorganized Debtor's option, Holders of Allowed Priority Tax Claims shall receive (i) 100% of the Allowed amount of such Claim on or as soon as reasonably practicable after the later of the Effective Date and the date the Claim becomes Allowed; (ii) 100% of the unpaid Allowed amount plus interest to be paid in Cash over a period not later than five (5) years from the Petition Date; or (iii) such alternative treatment as leaves unaltered the legal, equitable, and contractual rights of the Holders of such Claims.

As of the date of this Plan, the Claim Register reflects aggregate asserted Priority Tax Claims of \$0. In the event that any Priority Tax Claim is filed against the Debtor, the Reorganized Debtor will review, reconcile and file objections to Priority Tax Claims. The Debtor does not anticipate the filing of any Priority Tax Claim.

### **3.1.3 Impairment & Voting**

Administrative Claims (including Professional Fee Claims) and Priority Tax Claims are not subject to classification under the Bankruptcy Code, and Holders of Administrative Claims and Priority Tax Claims are not entitled to vote to accept or reject the Plan.

**3.2 Class 1: Allowed Priority Non-Tax Claims**

*Classification:* This class shall consist of Allowed Priority Non-Tax Claims arising under sections 507(a)(4),(5), or (7) of the Bankruptcy Code.

*Treatment:* Each holder of an Allowed Priority Non-Tax Claim shall be paid in full, through quarterly cash payments commencing on the Effective Date, its Allowed Priority Non-Tax Claim, together with 5% interest, or as otherwise agreed, over a period through the fifth anniversary of the Effective Date.

*Total Claims:* As of the date of the filing of this Plan, the Bar Date applicable to governmental units has not yet passed. For information purposes, the estimated total of Class 1 Claims is \$183,750.07 as of the date hereof. Subsequent to confirmation of the Plan, the Reorganized Debtor anticipates filing objections to certain of the Class 1 Claims and that the total amount paid to holders of Allowed Priority Non-Tax Claims will be less than \$183,750.07.

*Voting:* Class 1 is unimpaired. Acceptance of this Plan from holders of Class 1 Claims will not be solicited.

**3.3 Class 2: Allowed Secured Claims**

**Class 2(a): Allowed AmerisourceBergen Secured Claim**

*Classification:* This class shall consist of the Allowed AmerisourceBergen Secured Claim.

*Treatment:* Unless otherwise agreed, the Holder of the Allowed AmerisourceBergen Secured Claim shall be paid in full, to the extent not paid previously, in Cash in the amount of the Allowed AmerisourceBergen Secured Claim, to be paid in three equal monthly installments beginning on the Initial Distribution Date.

*Total Claims:* The estimated total of the Class 2(a) Claim is \$34,563.87 as of the date hereof.

*Voting:* Class 2(a) is impaired. Acceptance of this Plan from the Holder of the Class 2(a) Claim will be solicited.

**Class 2(b): Allowed ASD Secured Claim**

*Classification:* This class shall consist of the Allowed ASD Secured Claim.

*Treatment:* Unless otherwise agreed, the Holder of the Allowed ASD Secured Claim shall be paid in full, to the extent not paid previously, in Cash in the amount of the Allowed ASD Secured Claim to be paid in three equal monthly installments beginning on the Initial Distribution Date. The Holder of the Allowed ASD Secured Claim shall retain its liens on collateral securing the Allowed ASD Secured Claim.

*Total Claims:* The estimated total of the Class 2(b) Claim is \$1,183.95 as of the date hereof.

*Voting:* Class 2(b) is impaired. Acceptance of this Plan from the Holder of the Class 2(b) Claim will be solicited.

**Class 2(c): Allowed Cardinal Health Secured Claim**

*Classification:* This class shall consist of the Allowed Cardinal Health Secured Claim.

*Treatment:* Unless otherwise agreed, the Holder of the Allowed Cardinal Health Secured Claim shall be paid in full, to the extent not paid previously, in Cash in the amount of the Allowed Cardinal Health Secured Claim to be paid in three equal monthly installments beginning on the Initial Distribution Date. The Holder of the Allowed Cardinal Health Secured Claim shall retain its liens on collateral securing the Allowed Cardinal Health Secured Claim.

*Total Claims:* The estimated total of the Class 2(c) Claim is \$201,355.78, subject to reconciliation, as of the date hereof.

*Voting:* Class 2(c) is impaired. Acceptance of this Plan from the Holder of the Class 2(c) Claim will be solicited.

**Class 2(d): Allowed HHSC Secured Claim**

*Classification:* This class shall consist of the Allowed HHSC Secured Claim.

*Treatment:* All rights of the HHSC and CMS, if any, to exercise their rights of recoupment with respect to Medicaid and Medicare payments are preserved, including but not limited to, fines and penalties. Before assessing any fines or penalties against the Debtor, HHSC agrees that it will take into careful consideration the following factors: (i) whether any of the wrongdoing that would give rise to fines and penalties occurred prior to the assumption of the HHSC Provider Agreement, (ii) the fact that the Reorganized Debtor is, under applicable bankruptcy law, a new and distinct legal entity from the pre-confirmation Debtor, and (iii) that the Reorganized Debtor is a non-profit entity. HHSC and the Office of the Inspector General agree to comply with all applicable restrictions on the imposition of potential sanctions and penalties against the Reorganized Debtor. The Reorganized Debtor and UMC, as appropriate, shall retain their rights to exhaust administrative remedies to both contest such recoupment rights and the dollar amount of any such recoupment(s) that may be effectuated and to contest the propriety of fines and penalties being assessed against the Reorganized Debtor for any misstatements made to HHSC and/or CMS by the pre-confirmation Debtor. Further, to the extent that it is determined that the HHSC and CMS have any recoupment rights, the HHSC and CMS shall negotiate, in good faith, with the Reorganized Debtor and UMC to ensure that the exercise of any recoupment rights does not adversely impact the Reorganized Debtor's financial and operational viability. The HHSC's and CMS's recoupment rights as provided herein are in full satisfaction of any and all claims HHSC and CMS may have

against the Reorganized Debtor or UMC with respect to any pre-Effective Date claims they may otherwise have against the Debtor.

*Voting:* Class 2(d) is impaired. Acceptance of this Plan from the Holder of the Class 2(d) Claim will be solicited.

**Class 2(e): Allowed UMC Secured Claim**

*Classification:* This class shall consist of the Allowed UMC Secured Claim.

*Treatment:* The Allowed UMC Secured Claim shall be in the amount of Fifteen Million Dollars (\$15,000,000). The Allowed UMC Secured Claim shall be subordinated to payment of all other Claims. Upon payment of all Claims in full, the Allowed UMC Secured Claim shall be paid from the proceeds of any recoveries involving the Causes of Action and future operations as determined by the Reorganized Debtor's board of directors consistent with the duties of such directors to preserve the financial viability of the Reorganized Debtor and fulfillment of its mission.

*Voting:* Class 2(e) is impaired. Acceptance of this Plan from the Holder of the Class 2(e) Claim will be solicited.

**3.4 Class 3: Allowed Patient Claims**

**Class 3(a): Allowed Patient Refund Claims**

*Classification:* This class shall consist of Allowed Patient Refund Claims.

*Treatment:* Each Holder of an Allowed Patient Refund Claim shall receive payment in equal quarterly payments for six months until paid in full, with such first quarterly payment beginning on the Initial Distribution Date. The Debtor, and/or the Reorganized Debtor, may in its discretion, apply an Allowed Patient Refund Claim against any amounts owed to the Debtor.

*Voting:* Class 3(a) is impaired. Acceptance of this Plan from Holders of Class 3(a) Claims will be solicited.

*Total Claims:* As of the date of the filing of this Plan, the Bar Date has not yet passed. For information purposes, the estimated total of Class 3(a) Claims is \$74,551.87 as of the date hereof.

**Class 3(b): Allowed Patient Credit Balance Claims**

*Classification:* This class shall consist of Allowed Patient Claims, including Patient Credit Balance Claims and Patient Refund Claims.

*Treatment:* Each Holder of an Allowed Patient Credit Balance Claim shall receive payment in full, in equal quarterly payments for six months until paid in full, with such first quarterly payment beginning on the Initial Distribution Date, or will receive a credit

against future services, in the ordinary course of the Debtor's business. The Debtor, and/or the Reorganized Debtor, may in its discretion, apply an Allowed Patient Credit Balance against any amounts owed to the Debtor.

*Voting:* Class 3(b) is impaired. Acceptance of this Plan from Holders of Class 3(b) Claims will be solicited.

*Total Claims:* As of the date of the filing of this Plan, the Bar Date has passed. For information purposes, the estimated total of Class 3(b) Claims is \$74,760.13 as of the date hereof.

### **3.5 Class 4: Allowed Texas Tech Unsecured Claim**

*Classification:* This class shall consist of the Allowed Texas Tech Unsecured Claim.

*Treatment:* Unless otherwise agreed, the Holder of the Allowed Texas Tech Unsecured Claim (i) will receive an initial payment of \$2,000,000 on the Initial Distribution Date or within thirty (30) days of the Effective Date and (ii) will receive payment of the remaining balance of the Allowed Texas Tech Unsecured Claim over a three (3) year period, with interest at the annual rate of 4.5%, in equal monthly payments beginning on or before sixty (60) days from the Effective Date and each month thereafter until paid in full.

*Voting:* Class 4 is impaired. Acceptance of this Plan from the Holder of the Class 4 Claim will be solicited.

*Total Claims:* As of the date of the filing of this Plan, the Bar Date has not yet passed. For information purposes, the estimated total of the Class 4 Claim is \$9,861,809.49 as of the date hereof.

### **3.6 Class 5: Allowed General Unsecured Claims**

*Classification:* Class 5 consists of General Unsecured Claims.

*Treatment:* Each Holder of an Allowed Class 5 Claim shall receive payment in full of its Allowed Claim payable in cash without interest on or before forty-five (45) days after the Effective Date.

*Voting:* Class 5 is impaired. Acceptance of this Plan from the Holders of Class 5 Claims will be solicited.

*Total Claims:* For information purposes, the estimated total of Class 5 Claims is \$4,357,789.17 as of the date hereof.

### **3.7 Class 6: Disallowed EPCPG General Unsecured Claim**

*Classification:* Class 6 consists of the Allowed EPCPG General Unsecured Claim.

*Treatment:* The Class 6 EPCPG General Unsecured Claim is Disallowed.

*Voting:* Class 6 is not entitled to vote on the Plan.

**3.8 Class 7(a): Allowed General Unsecured Claim of UMC**

*Classification:* Class 7 consists of the Allowed General Unsecured Claim of UMC.

*Treatment:* The Allowed UMC Unsecured Claim shall be allowed in the amount of Thirty-Three Million Dollars (\$33,000,000), and shall be subordinated in its entirety to the Allowed Claims of all other creditors. Upon payment of all other Allowed Claims in full, the Allowed UMC Unsecured Claim shall be paid from the proceeds of any recoveries from the Causes of Action and future operations as determined by Debtor's board of directors consistent with the duties of such directors to preserve the financial viability of the Debtor and fulfillment of its mission.

*Voting:* Class 7 is impaired. Acceptance of this Plan from the Holder of Allowed Class 7 Claims will be solicited.

**ARTICLE 4**  
**CONDITIONS PRECEDENT TO CONFIRMATION**  
**AND EFFECTIVENESS OF THE PLAN**

**4.1 Conditions Precedent to Confirmation of the Plan**

Confirmation of the Plan is subject, in addition to the requirements provided in § 1129 of the Bankruptcy Code, to satisfaction of the following conditions precedent, unless such conditions precedent are waived by the Debtor:

- a. A Final Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered by the Bankruptcy Court;
- b. The Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to the Plan Proponents;
- c. All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed;
- d. The Plan Proponents shall have received all authorizations, consents, regulatory approvals, rulings, letters, no action letters, opinions, or documents that are determined by them to be necessary to implement the Plan; and
- e. The Cure Costs are within the tolerances established in the Plan Proponents' projections.



## **4.2 Vesting of Property of the Estate in the Reorganized Debtor**

- 4.2.1** On the Effective Date of the Plan, title to all assets and properties dealt with by the Plan shall vest in the Reorganized Debtor, free and clear of liens, claims, and encumbrances, except as otherwise provided in the Plan (the “Vested Property”), on the condition that the Reorganized Debtor complies with the terms of the Plan, including the making of all payments to creditors provided for in such Plan. If the Reorganized Debtor defaults in performing under the provisions of this Plan and this case is converted to a case under chapter 7, all property vested in the Reorganized Debtor and all subsequently acquired property owned as of or after the conversion date shall re-vest and constitute property of the bankruptcy estate in the converted case.
- 4.2.2** From and after the Effective Date, the Reorganized Debtor may operate the Debtor’s business pursuant to the terms of the Plan and may use, acquire, and dispose of property free and clear of any restrictions imposed by or under the Bankruptcy Code.
- 4.2.3** The Confirmation Order shall provide the Reorganized Debtor with express authority to convey, transfer, and assign any and all Vested Property and to take all actions to effectuate same.
- 4.2.4** The Reorganized Debtor will be responsible for paying any quarterly U.S. Trustee fees that accrue after the Effective Date.
- 4.2.5** The Reorganized Debtor shall make all Distributions as and when provided for under this Plan.
- 4.2.6** From and after the Effective Date, and until all payments and distributions to holders of Allowed Claims have been made under the Plan, the Reorganized Debtor shall remain constituted and in existence. The Reorganized Debtor shall be authorized, without any supervision or approval of the Bankruptcy Court or the Office of the United States Trustee, as the case may be, to employ and compensate such persons, including counsel and accountants, as may be deemed necessary to enable it to perform its functions hereunder, and the fees and costs of such employment and other expenditures shall be paid by the Reorganized Debtor. Any fees and expenses of professionals incurred during the period between the Confirmation Date and the Effective Date shall remain subject to the jurisdiction of the Court and approved in accordance with the Plan.
- 4.2.7** After the Effective Date, the affairs of the Reorganized Debtor and all of the assets held or controlled by the Reorganized Debtor shall be managed under the direction of the Reorganized Debtor, as provided by the terms of the Plan. In the performance of its duties hereunder, the Reorganized Debtor shall have the rights and duties incident of a debtor in possession under 11 U.S.C. § 1107, and such other rights, powers, and duties incident to causing performance of the obligations

under the Plan or as otherwise may be reasonably necessary, including, without limitation, filing any necessary tax returns.

- 4.2.8** Pursuant to 11 U.S.C. § 1123(b)(3)(B), except as otherwise provided in the Plan, as of the Effective Date, any Causes of Action that are already pending, or that are accruing to the Debtor, shall become assets of the Reorganized Debtor. The Reorganized Debtor shall have the authority to prosecute, in the exercise of its sole discretion, such Causes of Action on behalf of and for the benefit of the Debtor's estate and its creditors. The Reorganized Debtor shall have the authority to compromise and settle, otherwise resolve, discontinue, abandon or dismiss all such Causes of Action without approval of the Bankruptcy Court. All cash received by the Reorganized Debtor as a result of the prosecution or settlement of any Cause of Action shall be the property of the Reorganized Debtor to be distributed in accordance with the terms of the Plan. Any cash received from the proceeds of any Cause of Action in excess of Distributions made to Classes 1 through 7 shall be retained by the Debtor in furtherance of its nonprofit mission in accordance with applicable state law.
- 4.2.9** Except for the released Causes of Action, no Cause of Action is released by confirmation of this Plan, and confirmation of this Plan shall not have any *res judicata* or collateral estoppel effect on the Reorganized Debtor's prosecution of any Cause of Action.
- 4.2.10** The Reorganized Debtor shall not be subject to any counterclaims with respect to any Causes of Action constituting Vested Property; provided, however, that Causes of Action constituting Vested Property will be subject to any set-off rights and/or defenses to the same extent as if the Debtor itself had pursued the Causes of Action constituting Vested Property.
- 4.2.11** The Reorganized Debtor may present such orders as may be necessary to require third parties to accept and acknowledge such conveyance to the Reorganized Debtor. Such orders may be presented without further notice other than as has been given in this Plan.

### **4.3 Conditions Precedent to the Effective Date of the Plan**

The occurrence of the Effective Date of the Plan is subject to satisfaction of the following conditions precedent, unless such conditions precedent are waived by the Debtor:

- a. Confirmation shall have occurred and the Confirmation Order shall have been entered and become a Final Order;
- b. There shall not be in effect on the Effective Date any (i) Order entered by a U.S. court, (ii) order, opinion, ruling or other decision entered by any other court or governmental entity or (iii) U.S. or other applicable law staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan;

- c. All other actions, documents and agreements necessary to implement the Plan shall have been effected or executed; and
- d. Fixing of Cure Amounts at levels consistent with the Plan Proponents' projections.

#### **4.4 Effect of Non-Occurrence of Confirmation or the Effective Date**

If the Plan is not confirmed, or if the conditions listed in this Article 5 are not satisfied or waived, this Plan shall be null and void in all respects, the funds deposited into the Registry of the Bankruptcy Court by UMC earmarked for payments to a Holder of an Allowed Claim shall be promptly returned to UMC except as provided in the Agreed Order Abating Adversary Proceeding and Authorizing Deposit of Funds Into Registry of the Court [Dckt. No. 386], and nothing contained in this Plan or the Disclosure Statement shall (i) constitute a waiver or release of any Claims by or against the Debtor's Estate, (ii) prejudice in any manner the rights of the Plan Proponents or any other Person or (iii) constitute an admission, acknowledgment, offer or undertaking by the Plan Proponents or any other Person.

### **ARTICLE 5** **MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **5.1 Source of Funds**

The source of Funds to implement the Plan include funds held by the Debtor, property to be vested in the Reorganized Debtor, funds advanced by UMC that are on deposit with the Registry of the Bankruptcy Court ("Plan Deposit"), and future operating revenues of the Reorganized Debtor. The Debtor and UMC shall cooperate to file a joint motion between the Confirmation Date and the Effective Date to seek to have the Plan Deposit disbursed to the Reorganized Debtor for payment of Claims under the Plan.

#### **5.2 Preservation of Certain Causes of Action**

On the Effective Date, all rights and Causes of Action, including claims under §§ 502, 542, 544, 545, 546, 548, 550, and 553 of the Bankruptcy Code, preference claims under § 547 of the Bankruptcy Code, fraudulent transfer claims under § 548 of the Bankruptcy Code, and all other claims and causes of action of the Debtor's estate against any Person as of the Confirmation Date shall be preserved and transferred and assigned to the Reorganized Debtor, including without limitation, all Claims, actions, adversary proceedings, causes of action (including causes of action arising under any section of the Bankruptcy Code, state, federal, or other nonbankruptcy law) as against Navigant Healthcare Cymetrix Corporation f/k/a Cymetrix Corporation ("Navigant"). Notwithstanding anything herein to the contrary, the D&O Claims shall be released as of the Effective Date, except with respect to the Office of the Texas Attorney General ("OAG") on behalf of the public interest in charity, any agency of the State of Texas, including but not limited to, HHSC, Office of Inspector General ("OIG"), CMS, and the OAG on behalf of the public interest in charities, all such claims being expressly preserved.

### **5.3 Professional Fees**

All Allowed Professional Fee Claims shall be paid in accordance with Article 3.1.1 of this Plan.

### **5.4 Continuation of Anti-Discrimination Provisions of Bankruptcy Code.**

A Governmental Unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, contract or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Debtor, the Reorganized Debtor, or another Person with whom the Debtor has been or are associated or affiliated, solely because of the commencement, continuation, or termination of the case or because of any provision of the plan or the Confirmation Order, the insolvency of the Debtor, or the nonpayment of any debt that is dischargeable under 11 U.S.C. § 523, or the legal effect of the Plan of the Confirmation Order. The Confirmation Order will constitute an express injunction against any such discriminatory treatment by a Governmental Unit. Moreover, a Governmental Unit may not deny, revoke, suspend or refuse to renew a license, permit charter, franchise, or other similar grant to the Debtor or the Reorganized Debtor based upon any requirement that the Debtor or the Reorganized Debtor place a bond or other surety obligation with such Governmental Unit as a condition of receipt of such a license, permit, charter, franchise, or other similar grant to the Debtor or the Reorganized Debtor. All licenses, permits, charters, franchises, or other similar grants to the Debtor is hereby transferred and assigned on the Effective Date (which transfer and assignment is without the assumption of any liabilities arising prior to the Effective Date which liabilities arise out of such license, permit, charter, franchise or similar grant) to the Reorganized Debtor without the need for further application or approval by any Governmental Unit.

### **5.5 Default**

A failure by the Reorganized Debtor to make a payment to a Taxing Authority in accordance with the terms of the Plan shall be an Event of Default. If the Reorganized Debtor fails to cure an Event of Default as to such payments within thirty (30) days after service of written notice of default served on the Reorganized Debtor with a copy to counsel for the Reorganized Debtor, then such tax creditor may (a) enforce the entire amount of its claim, (b) exercise any and all rights and remedies under applicable non-bankruptcy law, and (c) seek such relief as may be appropriate in this Court.

A failure by the Reorganized Debtor to make a payment to a Holder of an Allowed Claim in accordance with the terms of the Plan shall be an Event of Default. If the Reorganized Debtor fails to cure an Event of Default as to such payments within thirty (30) days after service of written notice of default served on the Reorganized Debtor with a copy to counsel for the Reorganized Debtor, then such creditor may seek such relief as may be appropriate in this Court.

**ARTICLE 6**  
**PROVISIONS FOR MANAGEMENT**

**6.1 Corporate Authority**

All actions and transactions contemplated under the Plan shall be authorized upon Confirmation of the Plan. The Confirmation Order shall include provisions directing the Debtor to execute such documents necessary to effectuate the Plan, which documents shall be binding on the Debtor, the Estate, UMC, CCC, the Debtor's creditors and all Holders of Claims.

**6.2 Transfer of Powers**

**6.2.1 Amendment of the Reorganized Debtor's Governing Documents.** After the Effective Date, the Reorganized Debtor shall continue to maintain its corporate existence. On the Effective Date, the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws set forth in Exhibit A (collectively referred to as the "Amended EPCH Governing Documents") will take effect.

**6.2.2 Debtor's Board of Directors on the Effective Date.** Upon the Effective Date, current members of the Debtor's board of directors shall be replaced, and the new EPCH board of directors, including the Transitional Board Members, shall take office pursuant to the Amended EPCH Governing Documents.

Within ten (10) days of the Effective Date, the Transitional Board Members shall each nominate at least one person to serve a full term as a member of the Reorganized Debtor's Board. The Reorganized Debtor's Board shall approve or reject such nominations within twenty (20) days. If rejected, within ten (10) days of such rejection the Transitional Board Members shall nominate two additional persons for consideration by the Reorganized Debtor's Board. The Reorganized Debtor's Board shall approve or reject one of such subsequent nominations within twenty (20) days. If each of these subsequent nominees is rejected by the Reorganized Debtor's Board, all three sets of nominees of the Transitional Board Members shall be placed before the CCC for consideration, and the CCC shall accept one of such nominees, or reject each of them, within twenty (20) days. If each of such nominees is rejected, the Transitional Board Members shall nominate an additional candidate within ten (10) days, and the CCC shall approve or reject such candidate within ten (10) days. The nominations by the Transitional Board Members shall continue until a candidate is approved by CCC. The Transitional Board Members shall serve until the ninetieth (90th) day after the Effective Date or until three (3) days after approval of the succeeding board member by the Reorganized Debtor's Board or the CCC, whichever is later. The Transitional Board Members shall be Rosemary Castillo and Sadhana Chheda. None of the current or former members of the Debtor's board of directors shall be nominated to succeed a Transitional Board Member to serve a full term of board service. Neither the Debtor, UMC, nor CCC shall nominate or

approve Andrew Krafsur as a member of the Reorganized Debtor's Board of Directors.

- 6.2.3 Proponents' Professionals.** Upon the Effective Date, the Proponents' Professionals and agents shall be released from any further duties and responsibilities in the Bankruptcy Cases and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Bankruptcy Cases, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to their Fee Claims; and (iii) motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order. The Professionals retained by the Debtor shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with fee applications pending on the Effective Date or filed after the Effective Date as permitted by applicable law.
- 6.2.4 Reorganized Debtor's Interim Management.** On the Effective Date, the Debtor shall retain Deloitte CRG to act as interim chief executive officer until such time a new CEO is retained. UMC and Debtor will conduct concurrent searches for their respective permanent CEOs. UMC's current CEO will have no role in selecting the new permanent CEO for either the Debtor or UMC. The selection of the new permanent CEO for the Debtor shall be made with input from those individuals serving as members of the Debtor's board of directors as of October 9, 2015. Final selection of the Reorganized Debtor's new CEO shall be a joint decision of the UMC and EPCH board.
- 6.2.5** Changes in services for a minimum period of two (2) years following the Effective Date, any increases or decreases in the Reorganized Debtor's services shall be implemented only with the prior approval of CCC.

**ARTICLE 7**  
**CERTIFICATES OF INCORPORATION AND BY-LAWS OF THE**  
**DEBTOR/RESTRICTION ON TRANSFER OF SHARES**

**7.1 Amendments to Certificates of Incorporation and By-Laws**

The Confirmation Order shall provide authorization pursuant to applicable nonprofit corporate law for the filing by the Debtor of amended governing documents to provide that the mission of the Debtor shall continue as it existed prior to the Petition Date; and any changes as necessary to effectuate other provisions of the Plan and § 1123(a)(6) of the Bankruptcy Code.

**ARTICLE 8**  
**PROVISIONS GOVERNING DISTRIBUTIONS**

**8.1 Withholding and Reporting Requirements**

In connection with the Distributions made under the Plan, the Reorganized Debtor shall comply with all withholding and reporting requirements imposed by any federal, state or local taxing authority. As a condition to the Holder of an Allowed Claim (if applicable) receiving any Distribution under this Plan, the Reorganized Debtor may require that the Holder provide such Holder's taxpayer identification number and such other information and certification as the Reorganized Debtor may deem necessary to comply with applicable tax reporting and withholding laws. The failure of a Holder of a Claim to respond timely to a request by the Reorganized Debtor for tax withholding or reporting information will result in the Holder being treated in the same manner as the Holder of a Claim for which a Distribution is undeliverable or unclaimed, as described in Sections 8.3 and 8.4 of this Plan.

**8.2 Delivery of Distributions**

Subject to Bankruptcy Rule 9010 and the provisions of the Plan, Distributions to Holders of Allowed Claims shall be made at the address of each of such Holder as set forth in the Schedules filed with the Bankruptcy Court, unless superseded by the address set forth on such Holder's Proof of Claim, or in a written notice delivered to the Reorganized Debtor and its counsel, to the extent that such notice is provided at least ten (10) Business Days before the applicable Distribution Date, by such Holder (or at the last known address of such Holder if no Proof of Claim is filed and there is no address in the Schedules, and the Reorganized Debtor has not been notified in writing of the address). If any Distribution to any Holder is returned as undeliverable, the Reorganized Debtor may, but shall not be required to, use reasonable efforts to determine the current address of such Holder, but no subsequent Distribution to any such Holder shall be made unless and until the Reorganized Debtor has determined the then current address of such Holder, at which time such Distribution shall be made to such Holder without interest. The Reorganized Debtor shall retain all amounts in respect of any undeliverable Distributions made by the Reorganized Debtor until such Distributions are claimed, subject to Section 8.4 herein.

**8.3 Unclaimed Distributions**

If any Distribution is not claimed, or remains undeliverable under Section 8.3 of the Plan, by the Unclaimed Distribution Date applicable to such Distribution, such Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, and such unclaimed Distribution(s) shall be available for Distribution to other Holders of Allowed Claims as part of the next Distribution, in accordance with the terms of this Plan. The Holder of any Claim for which a Distribution is deemed unclaimed property hereunder shall not be entitled to receive any future Distributions and shall be deemed to have relinquished all rights to any future Distributions and all such future Distributions shall be available for Distribution to other Holders of Allowed Claims under the Plan.

#### **8.4 Time Bar to Cash Payments**

Checks issued by the Reorganized Debtor in respect of Allowed Claims shall be null and void if not negotiated within six (6) months after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the Reorganized Debtor by the holder of the Allowed Claim with respect to which such check originally was issued. Any claim in respect of such a voided check shall be made on or before the later of (a) the first anniversary of the Effective Date, or (b) ninety (90) days after the date of reissuance of such check. After such date, all Claims in respect of void checks shall be discharged and forever barred.

#### **8.5 De Minimis Distributions**

The Reorganized Debtor shall have no obligation to make a Distribution if the amount to be distributed to a Holder of an Allowed Claim would be less than \$50.00 in the aggregate.

#### **8.6 No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to (a) any Claim to the extent it is a Contested Claim unless and until such Contested Claim becomes an Allowed Claim, (b) Claimants who are defendants in Avoidance Actions and other parties subject to the application of § 502(d) of the Bankruptcy Code, and (c) reclamation claims pursuant to § 546(c)(2)(A) of the Bankruptcy Code, which are not Allowed Claims.

### **ARTICLE 9**

#### **PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS**

#### **9.1 Claim Objection Deadline**

As soon as practicable, but in no event later than one year after the Effective Date, unless extended by order of the Bankruptcy Court, objections to Claims shall be filed with the Bankruptcy Court and served upon holders of each of the Claims to which objections are made.

#### **9.2 Prosecution of Objections**

On and after the Effective Date, except as the Bankruptcy Court may otherwise order, the filing, litigation, settlement, or withdrawal of all objections to claims may be made by the Reorganized Debtor.

#### **9.3 Distributions Upon Allowance of Contested Claims Entitled to Payment in Full in One Payment**

The Holder of a Claim entitled to payment in full on one specific payment date, which Claim is a Contested Claim on such payment date, but which Claim subsequently becomes an Allowed Claim, shall receive payment of its Allowed Claim within thirty (30) Business Days following the date on which such Claim becomes a Allowed Claim pursuant to a Final Order.



**9.4 Distributions Upon Allowance of Disputed Claims Entitled to Payment in Full in Installment Payments**

The Holder of a Claim entitled to payment in installments, which Claim is a Contested Claim on the initial or any later date the installment would otherwise be made, but which Claim subsequently becomes an Allowed Claim, shall receive the amount of any missed installments on the first date payments to other Holders of Claims in the same Class are scheduled to be made that arises after the date on which such Claim becomes an Allowed Claim by Final Order. If such Claim does not become an Allowed Claim until after all the other Claims in the Class have received their total Distributions as authorized under the Plan, then the holder thereof shall receive payment of its Allowed Claim within ten (10) Business Days following the date on which such Claim becomes an Allowed Claim pursuant to a Final Order.

**9.5 Objections to and Resolution of Disputed Administrative Claims and Disputed Claims**

The Administrative Bar Date applies to all Administrative Claims except claims for § 327 professionals. After the Confirmation Date, the Reorganized Debtor shall have the right to maintain, make, and file objections to Administrative Claims and objections to Claims. All objections shall be litigated to Final Order; provided, however, that the Reorganized Debtor shall have the authority to compromise, settle, otherwise resolve or withdraw all objections, other than applications for allowance of compensation and reimbursement of expenses under §§ 330 and 503 of the Bankruptcy Code, without approval of the Bankruptcy Court.

**ARTICLE 10**

**PROVISIONS GOVERNING EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES; REJECTION CLAIMS BAR DATE**

**10.1 Executory Contracts and Unexpired Leases**

The Plan constitutes a motion by the Debtor to assume the Texas Tech Agreements. The Debtor's proposed treatment of the Allowed Texas Tech Unsecured Claim represents its payment of the total Cure Cost payment owed to permit its assumption of the Texas Tech Agreements.

The Plan also constitutes a motion by the Debtor to assume, as of the Confirmation Date, the UMC Agreements and the Lease. By agreement of UMC and the Debtor, the Lease will be assumed with the following modification: the Base Rent (as defined in the Lease) shall be reduced to \$500,000 per month. The Reorganized Debtor and UMC may both agree to further modification of the Base Rent, with the approval of the CCC in accordance with the Texas Health and Safety Code, or other applicable statute.

The Plan constitutes a motion by the Debtor to assume, as of the Confirmation Date, all Executory Contracts, which were not rejected prior to the Effective Date and/or that are not expressly rejected herein. Provided, however, that all insurance policies and indemnity agreements in which the Debtor or the Debtor's property are insured and/or indemnified against loss (whether for potential liability or the costs of defense) which were not assigned, are hereby assumed and assigned to the Reorganized Debtor.

With respect to any assumption of any Executory Contract, at least twenty-one (21) days before the Confirmation Hearing, the Debtor shall cause notice of proposed assumption and proposed Cure Costs to be sent to the Executory Contract counter-party. Any objection by the Executory Contract counter-party must be filed, served, and actually received by the Debtor within fourteen (14) days after service of such notice. If no objection is timely filed, served, and actually received by the Debtor, the Executory Contract counter-party will be deemed to have assented to such assumption and Cure Cost.

## **10.2 Bar to Rejection Damages**

If the rejection of an Executory Contract results in damages to the other party or parties to such Executory Contract, a Claim for such damages, if not heretofore evidenced by a filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtor, the Estate, its respective properties or their agents, successors or assigns, unless a Proof of Claim is filed with the Bankruptcy Court and served upon the Reorganized Debtor (as applicable) and its counsel on or before thirty (30) days after the Confirmation Date or such later date as may be ordered by the Bankruptcy Court with respect to such Claim.

## **ARTICLE 11** **RETENTION OF JURISDICTION**

### **11.1 Scope of Jurisdiction**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, and to the extent permitted by applicable law, pursuant to §§ 1334 and 157 of title 28 of the United States Code, the Bankruptcy Court shall retain and have jurisdiction over all matters arising in, arising under and related to the Bankruptcy Cases or the Plan after Confirmation including, without limitation, jurisdiction to:

- a. hear and determine pending applications for the assumption or rejection of Executory Contracts and the allowance of Claims resulting therefrom;
- b. hear and determine any and all adversary proceedings, applications and contested matters, including any remands of appeals;
- c. ensure that Distributions to Holders of Allowed Claims are accomplished as provided herein;
- d. hear and determine any timely objections to or applications concerning Claims or the allowance, classification, priority, estimation or payment of any Claim;
- e. enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed or vacated;
- f. enter and implement such orders as may be necessary or appropriate to execute, interpret, implement, consummate or enforce the Plan and the transactions contemplated thereunder including for avoidance of doubt, entry of an order

withdrawing the Plan Deposit from the Registry of the court and transferring the Plan Deposit to the Reorganized Debtor;

- g. consider any modification of the Plan pursuant to § 1127 of the Bankruptcy Code, to cure any defect or omission or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- h. hear and determine all Fee Applications and Fee Claims;
- i. hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation or enforcement of the Plan;
- j. enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with the consummation or implementation of the Plan, including, without limitation, to issue, administer and enforce injunctions provided for in the Plan and the Confirmation Order;
- k. recover all assets of the Debtor and property of the Estate, wherever located;
- l. hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505 and 1146 of the Bankruptcy Code;
- m. hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Plan;
- n. hear and determine all Causes of Action;
- o. hear and determine all actions to enforce the releases, exculpation and injunctive provisions in the Plan; and
- p. enter a Final Decree closing the Chapter 11 case.

## **11.2 Failure of the Bankruptcy Court to Exercise Jurisdiction**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under or related to the Chapter 11 case, including the matters set forth in Section 12.1 of the Plan, this Article 12 shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **ARTICLE 12** **EFFECT OF CONFIRMATION OF THE PLAN**

### **12.1 Discharge of the Debtor**

The rights afforded in the Plan and the treatment of all Claims shall be in exchange for and in complete satisfaction, discharge and release of all Claims of any nature whatsoever

against the Debtor and any of its property, including the Reorganized Debtor's Vested Property; and, except as otherwise provided herein, upon the Effective Date, the Debtor shall be deemed discharged and released to the extent permitted by § 1141 of the Bankruptcy Code from any and all Claims, including but not limited to demands and liabilities that arose before the Effective Date, and all debts of the kind specified in §§ 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (a) a Proof of Claim based upon such debt is filed or deemed filed under § 501 of the Bankruptcy Code; (b) a Claim based upon such debt is allowed under Section 502 of the Bankruptcy Code; or (c) the holder of a Claim based upon such debt has accepted the Plan. Except as provided herein, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor. As provided in § 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtor at any time obtained to the extent it relates to a claim discharged, and operates as an injunction against the prosecution of any action against the Debtor, or its property, including the Vested Property, to the extent it relates to a Claim discharged.

## **12.2 Binding Effect**

On and after the Effective Date, the provisions of this Plan shall bind all present and former Holders of Claims against the Debtor and such Holders' successors and assigns, whether the Claim of such Holder is Impaired under the Plan and whether such Holder has filed a Proof of Claim or has accepted the Plan. The Confirmation Order shall survive and remain effective after entry of any order converting the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code, and the terms and provisions of this Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

## **12.3 Certain Activities Enjoined**

Except as expressly provided herein, at all times on and after the Effective Date, all Persons who have been, are, or may be holders of Claims in the Debtor arising prior to the Effective Date, shall be enjoined from taking any of the following actions against or affecting the Debtor, its estate, or its property, including the Vested Property, with respect to such Claims (other than actions brought to enforce any rights or obligations under the Plan):

- a. commencing, conducting or continuing in any manner, directly or indirectly any suit, action, or other proceeding of any kind against the Debtor, its estate, or its property, including the Vested Property (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date which shall be deemed to be withdrawn or dismissed with prejudice);
- b. enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or order against the Debtor, its estate, or its property, including the Vested Property;
- c. creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Debtor, its estate, or its property, including the Vested Property;

- d. asserting any right of subrogation, or recoupment of any kind, directly or indirectly against any obligation due the Debtor, its estate, or its property, including the Vested Property; and
- e. proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan.

**ARTICLE 13**  
**RELEASE, EXCULPATION, AND INJUNCTIONS**

**13.1 Releases by the Debtor**

Pursuant to § 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided herein, for good and valuable consideration, including the contributions of the Released Parties to facilitate the implementation of the Plan, the Released Parties and each of them shall be deemed released and discharged by the Debtor and its Estate from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising in law, equity or otherwise, that the Debtor or the Estate would have been legally entitled to assert in its own right (whether individually or collectively) on or behalf of the Holder of any Claims or other Person, based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Bankruptcy Case, the Plan or the Disclosure Statement, or any related agreements, instruments or other documents, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, fraud, or willful misconduct, as determined by a Final Order.

**13.2 Termination and Discharge of the Ombudsman.**

As of the Effective Date, the Ombudsman shall be discharged from her duties as patient care ombudsman in the Bankruptcy Case. Neither the Ombudsman nor the Ombudsman's Professionals shall have any liability with respect to any act or omission, statement or representation arising out of, relating to, or involving in any way, the Ombudsman's evaluations, her reports or any pleadings or other writings filed by the Ombudsman in connection with the Bankruptcy Case other than acts or omissions involving or arising out of gross negligence or willful misconduct. Prior to issuing or serving upon the Ombudsman or the Ombudsman's Professionals any formal or informal discovery request, including, but not limited to, any subpoena, requests for production of documents, requests for admission, interrogatories, subpoena duces tecum, requests for testimony, or any other discovery of any kind whatsoever in any way related to the Debtor, the Bankruptcy Case, the Ombudsman's evaluations or the Ombudsman's reports (the "Discovery"), any creditor or party in interest to these Bankruptcy Case must first file an appropriate pleading with the Bankruptcy Court to request permission to initiate the Discovery. The Ombudsman and the Ombudsman's Professionals are authorized to retain, dispose of or destroy any documents provided by the Debtor or any third parties to the Ombudsman, if any, in the course of her evaluation, in accordance with their respective document retention policies or applicable law, if any.

### **13.3 SAFE HARBOR PROVISIONS**

**THE EXCULPATED PARTIES SHALL BE ENTITLED TO AND GRANTED THE FULL PROTECTIONS OF SECTION 1125(E) OF THE BANKRUPTCY CODE WITHOUT ANY EXCEPTION, AND NOTHING HEREIN SHALL LIMIT THE APPLICABILITY OF SECTION 1125(E) OF THE BANKRUPTCY CODE TO ANY OTHER PERSON.**

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

### **14.1 Compromise and Settlement of Claims and Controversies**

In conjunction with the Plan, the Debtor and UMC reached a compromise and settlement of claims and controversies (“Plan Settlement”). As set forth herein, the Debtor initiated the UMC Litigation and the EPF Litigation, pursuing a variety of causes of action against UMC and its wholly owned subsidiary, El Paso Health Plans, Inc. (“EPF”). In consideration of the making by UMC of the Plan Deposit, the Debtor’s releases in the Plan, including the releases of any claims against any person who serve or served as the Debtor’s officers or directors, and in consideration for the Distributions, and other benefits pursuant to the Plan, the provisions of the Plan constitute a good faith compromise of all Claims and controversies between UMC, including EPF, and the Debtor, and its officers and directors.

The Proponents believe that the Plan Settlement meets the standards for approval of settlements under 9019 of the Federal Rules of Bankruptcy Procedure. *See Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). The Plan Settlement is in the best interest of the Debtor’s creditors and its estate. The Plan Settlement is truly the product of arms-length bargaining and not of fraud or collusion. *See id.* at 198. In agreeing to enter into the Plan Settlement, the Debtor has weighed the cost of pursuing the UMC Litigation and the EPF Litigation to judgment and the likelihood of ultimate recovery. Furthermore, the Plan Deposit, and the material agreements made by UMC under the Plan result in payment in full as set forth herein of the Debtor’s creditors holding Allowed Claims. Accordingly, for all of these reasons, the Debtor believes that approval of the Plan Settlement is in the best interest of the Debtor’s estate and its creditors.

The entry of the Confirmation Order shall constitute the Bankruptcy Court’s approval of the Plan Settlement. In addition, the entry of the Confirmation Order shall constitute a finding by the Bankruptcy Court that the Plan Settlement is in the best interests of the Debtor, the Estate, and Holders of Claims, and is fair, equitable, and reasonable.

### **14.2 Setoff, Recoupment and Other Rights**

In the event that the Reorganized Debtor has a claim of any nature whatsoever against the Holder of a Claim, the Reorganized Debtor, may, but is not required to, setoff against the Claim (any payments or other distributions to be made in respect of such Claim hereunder), subject to the provisions of § 553 of the Bankruptcy Code. Neither the failure to setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor of any claim that the Debtor has against the holder of a Claim. Except as otherwise provided in the Plan, no Holder of

a Claim may, on account of a pre-Effective Date Claim against the Debtor, setoff, offset, suspend, freeze, or recoup any amount from funds or other payments that such claimant may owe to the Debtor or Reorganized Debtor under any circumstances notwithstanding any applicable law or agreement. The Confirmation Order shall include an injunction prohibiting any such setoff, offset, suspension, freeze, or recoupment.

### **14.3 Injunctions**

The Confirmation Order shall contain such injunctions as may be necessary and helpful to effectuate the discharge of the Debtor provided herein. Without limiting the generality of the foregoing, such injunction shall include an absolute prohibition from collecting Claims in any manner other than as provided for in the Plan.

### **14.4 Lawsuits**

On the Effective Date, all lawsuits, litigations, administrative actions or other proceedings, juridical or administrative, in connection with the assertion of a Claim against the Debtor, shall be dismissed as to the Debtor and the Reorganized Debtor, except proof of claims and/or objections thereto pending in the Bankruptcy Court. All parties to any such action shall be enjoined by the Bankruptcy Court in the Confirmation Order from taking any action to impede the immediate and unconditional dismissal of such actions. Within three (3) days of the Effective Date, UMC and the Debtor shall cooperate to file necessary motions with the Bankruptcy Court to dismiss each of the UMC Litigation and the EPF Litigation with prejudice. Except as otherwise provided in the Plan, all lawsuits, litigations, administrative actions or other proceedings, judicial or administrative, in connection with the assertion(s) of a claim by the Debtor or any entity proceeding in the name of or for the benefit of the Debtor against a person shall remain in place only with respect to the claim(s) asserted by the Debtor or such other entity, and shall become property of the Reorganized Debtor to prosecute, settle, or dismiss as the Reorganized Debtor sees fit. For the avoidance of doubt, as set forth in section 5.2 herein, all rights and Causes of Action, including claims under §§ 502, 542, 544, 545, 546, 548, 550, and 553 of the Bankruptcy Code, preference claims under § 547 of the Bankruptcy Code, fraudulent transfer claims under § 548 of the Bankruptcy Code, and all other claims and causes of action of the Debtor's estate against any Person as of the Confirmation Date shall be preserved and transferred and assigned to the Reorganized Debtor.

### **14.5 Insurance**

Confirmation and consummation of the Plan shall have no effect on Insurance Policies of the Debtor in which the Debtor or any of the Debtor's Representatives are or were the insured party. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to the Debtor's bankruptcy, the Plan or any provision within the Plan.

### **14.6 Payment of Statutory Fees/U.S. Trustee Reports**

All fees payable pursuant to § 1930 of title 28 of the United States Code shall be paid through the entry of a Final Decree in the applicable Bankruptcy Case. The Reorganized Debtor shall be responsible for paying any quarterly fees under § 1930 that accrue after the Effective

Date. The Reorganized Debtor shall also file such quarterly reports for the Debtor that is still required to submit such a report in the applicable quarter to the U.S. Trustee, setting forth all receipts and disbursements of the Reorganized Debtor, as required by its guidelines.

#### **14.7 Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or the law of the jurisdiction of organization of any entity, the internal laws of the State of Texas shall govern the construction and implementation of the Plan and any agreements, documents and instruments executed in connection with the Plan or the Chapter 11 case, including the documents executed pursuant to the Plan.

#### **14.8 Modification of the Plan**

The Plan Proponents may propose modifications of the Plan in writing at any time before the Confirmation Date, provided that (a) the Plan, as modified, meets the requirements of §§ 1122 and 1123 of the Bankruptcy Code and (b) the Debtor shall have complied with § 1125 of the Bankruptcy Code. The Plan may be modified at any time after the Confirmation Date and before substantial consummation by the Plan Proponents, provided that (i) the Plan, as modified, meets the requirements of §§ 1122 and 1123 of the Bankruptcy Code, (ii) the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified, under § 1129 of the Bankruptcy Code and (iii) the circumstances warrant such modifications. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the modification does not materially and adversely change the treatment of the Claim of such Holder.

#### **14.9 Creditor Default**

An act or omission by a creditor in contravention of a provision within this Plan shall be deemed an event of default under this Plan. Upon an event of default, the Reorganized Debtor may seek to hold the defaulting party in contempt of the Confirmation Order, if ordered by the Bankruptcy Court. If such creditor is found to be in default under the Plan, such party shall pay the reasonable attorneys' fees and costs of the Reorganized Debtor in pursuing such matter if ordered by the Bankruptcy Court. Furthermore, upon the finding of such a default by a creditor, the Bankruptcy Court may (a) designate a party to appear, sign and/or accept the documents required under the Plan on behalf of the defaulting party, in accordance with Rule 70 of the Federal Rules of Civil Procedure, (b) may enforce the Plan by order of specific performance, (c) may award judgment against such defaulting creditor in favor of the Reorganized debtor in an amount, including interest, to compensate the Reorganized Debtor for the damages caused by such default; and (d) make such other order as may be equitable that does not materially alter the terms of the Plan as confirmed.

#### **14.10 Controlling Documents**

To the extent the Plan is inconsistent with the Disclosure Statement, the terms of the Plan shall control. To the extent that the Plan is inconsistent with the Plan Supplement, the Plan shall control. To the extent the Plan is inconsistent with the Confirmation Order, the Confirmation Order shall control.



#### **14.11 Severability**

Should the Bankruptcy Court determine that any provision of the Plan is unenforceable either on its face or as applied to any Claim or transaction, the Debtor may modify the Plan in accordance with § 14.7 of the Plan so that such provision shall not be applicable to the Holder of any Claim. Such a determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of the Plan, or (b) require the resolicitation of any acceptance or rejection of the Plan.

#### **14.12 Notices**

All notices, requests, and demands to or upon the Debtor to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

##### **To the Debtor:**

Patricia B. Tomasco  
Jennifer F. Wertz  
Jackson Walker LLP  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
[ptomasco@jw.com](mailto:ptomasco@jw.com)  
[jwertz@jw.com](mailto:jwertz@jw.com)

##### **To UMC:**

Louis R. Strubeck, Jr.  
Liz Boydston  
Norton Rose Fulbright US LLP  
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##### **To the US Trustee:**

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JACKSON WALKER L.L.P.  
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/s/ Patricia B. Tomasco  
Patricia B. Tomasco  
State Bar No. 01797600  
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