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8 THOMAS A. SEAMAN

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 MEDICAL CAPITAL HOLDINGS,  
16 INC.; MEDICAL CAPITAL  
CORPORATION; MEDICAL  
17 PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
18 FIELD; and JOSEPH J.  
LAMPARIELLO,

19 Defendants.  
20

Case No. SA CV09-0818 DOC (RNBx)

**EX PARTE APPLICATION FOR  
APPROVAL OF OVERBID  
PROCEDURES AND NOTICE OF  
SALE OF ASSETS OF NATIONAL  
HEALTH BENEFITS  
CORPORATION**

1 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for  
2 Medical Capital Holdings, Inc., Medical Capital Corporation, Medical Provider  
3 Funding Corporation VI, and their subsidiaries and affiliates (collectively, the  
4 "Receivership Entities"), applies for an order approving (a) overbid procedures to be  
5 used in connection with the proposed sale of assets of National Health Benefits  
6 Corporation ("NHBC") and (b) notice of the sale provided by the Receiver  
7 ("Application").

8 Pursuant to Local Rule 7-19.1, the Receiver's counsel circulated this  
9 Application via e-mail to counsel for the Securities and Exchange Commission  
10 ("Commission") and counsel for Defendants Field and Lampariello and asked if  
11 they have any opposition. Counsel for the Commission advised that the  
12 Commission has no opposition. Counsel for Defendants Field and Lampariello, at  
13 the time of this filing, had not responded.

#### 14 I. INTRODUCTION

15 Concurrently herewith, the Receiver has filed his Motion for Approval of  
16 (A) Sale of Assets of National Health Benefits Corporation, and (B) Payment of  
17 Broker's Commission ("Motion"). The Motion seeks approval of a proposed sale of  
18 substantially all of the assets of NHBC ("Assets"). NHBC is a wholly owned  
19 subsidiary of Medical Capital Holdings, Inc., located in Scottsdale, Arizona.  
20 NHBC's business and the Assets included in the proposed sale ("Assets") are  
21 discussed in the Motion. This Application seeks approval of overbid procedures to  
22 be used in connection with the sale, as well as the notice of sale.

23 The Motion and the Receiver's supporting declaration ("Seaman Declaration")  
24 describe in detail, among other things, (a) the acquisition of NHBC by Medical  
25 Capital Holdings, Inc., (b) the pre-receivership operations of NHBC, and  
26 (c) NHBC's operations since the Receiver's appointment. The Motion, Seaman  
27 Declaration (including the Asset Purchase Agreement as Exhibit A), and  
28

1 Declaration of broker Andy Peters ("Peters Declaration") are attached hereto as  
2 Exhibit 1.

3 **II. THE PROPOSED SALE TERMS<sup>1</sup>**

4 The highest and best offer for the Assets was from Premier Healthcare  
5 Exchange, Inc. ("Purchaser"). The Receiver negotiated and executed an Asset  
6 Purchase Agreement with Purchaser, a copy of which is attached to the Seaman  
7 Declaration as Exhibit A ("Agreement"). The basic terms of the Agreement are  
8 summarized as follows:

9 **Court approval.** All aspects of the Agreement and the sale are subject to  
10 approval by the Court.

11 **Purchase Price.** \$3,200,000. The Assets include contracts with NHBC  
12 clients and networks that cannot be assigned without client/network consent. The  
13 proposed purchase price is subject to adjustment depending on (a) which contracts  
14 are assigned with client/network consent and the historic revenue/accrued fees from  
15 those contracts and (b) the value of NHBC's net assets as reflected on its closing  
16 date balance sheet. If contracts that represent at least eighty (80%) percent of  
17 NHBC's net revenue/accrued fees between January 1, 2011, and April 30, 2012, are  
18 not assigned, Purchaser can terminate the Agreement.

19 **Closing Date.** The Receiver has 30 days from entry of the sale approval  
20 order to obtain sufficient client/network consents to the assignment of their  
21 contracts. Closing shall occur within 10 days of the Receiver's transmittal to  
22 Purchaser of unredacted copies of all assigned contracts.

23 **Break-Up Fee.** Purchaser's actual costs in connection with the sale, up to a  
24 maximum of \$125,000, will be reimbursed to Purchaser if it is not the successful  
25 bidder.

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28 <sup>1</sup> The proposed sale terms are summarized herein for ease of reference only. In the event of any conflicts between the summary herein and the Agreement, the Agreement governs and controls.

1                                   **III.     PROPOSED OVERBID PROCEDURES**

2           The proposed overbid procedures, which are provided in Section 2.7 of the  
3 Agreement, are summarized as follows:

4           **Minimum Initial Overbid.** \$3,450,000.

5           **Subsequent Overbid Increments.** \$50,000.

6           **Bidder Qualifications.** In order to qualify, bidders must (a) deliver an  
7 executed Asset Purchase Agreement in form substantially similar to the Agreement,  
8 (b) provide evidence to the Receiver's satisfaction of their ability to pay at least the  
9 minimum overbid amount, and (c) deliver a deposit in immediately available funds  
10 of \$175,000.

11           **Overbid Deadline.** The executed Asset Purchase Agreement, evidence of  
12 ability to pay, and deposit must be delivered to the Receiver no later than August 31,  
13 2012 -- five business days prior to the sale hearing (September 10, 2012).

14                                   **IV.     NOTICE OF THE SALE**

15           The Motion is served electronically on all persons registered to receive ECF  
16 notice in the case, including the Securities and Exchange Commission, Defendants  
17 Field and Lampariello, and Wells Fargo Bank. The Receiver also served the Motion  
18 on Bank of New York Mellon, Purchaser, all interested parties who executed a  
19 Non-Disclosure Agreement, and all investors and other creditors who have  
20 requested service by mail. The Motion is posted on the Receiver's website  
21 ([www.medicalcapitalreceivership.com](http://www.medicalcapitalreceivership.com)), which causes notice to be sent  
22 electronically to all investors and other creditors who have registered to receive such  
23 notices. Furthermore, as required by 28 U.S.C. § 2004, the Receiver will cause the  
24 following notice of the sale and the opportunity to overbid to be published in the  
25 New York Times (National Edition) on four occasions prior to the overbid deadline:

26                                   In the action pending in U.S. District Court, Central  
27                                   District of California, Southern Division, Case  
28                                   No. SA CV09-0818 DOC (RNBx), Securities and  
                                      Exchange Commission v. Medical Capital Holdings,

1 Inc. *et al.*, notice is hereby given pursuant to 28 U.S.C.  
2 § 2004 that the Court-appointed Receiver has contracted  
3 to sell certain assets of National Health Benefits  
4 Corporation for \$3.2 million. Sale subject to overbid and  
5 Court confirmation. Hearing set for September 10, 2012,  
6 at 8:30 a.m., courtroom of the Honorable David O. Carter,  
7 United States Courthouse, 411 West Fourth Street,  
8 Santa Ana, California. Minimum overbid is \$3,450,000.  
9 In order to be considered, overbids, deposits and evidence  
10 reasonably satisfactory to the Receiver that the qualified  
11 bidder has the ability to pay at least the minimum overbid,  
12 must be received by 5:00 p.m. Pacific Standard Time,  
13 5 business days prior to the hearing date, by the Receiver  
14 at 3 Park Plaza, Suite 550, Irvine, California. If interested  
15 in submitting an overbid, please contact Andy Peters at  
16 (888) 891-0097 or [apeters@indepencegroup.com](mailto:apeters@indepencegroup.com) for  
17 the form of Asset Purchase Agreement and other  
18 information.

## 14 V. ARGUMENT

15 "The power of a district court to impose a receivership or grant other forms of  
16 ancillary relief does not in the first instance depend on a statutory grant of power  
17 from the securities laws. Rather, the authority derives from the inherent power of a  
18 court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369  
19 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
20 and efficient administration of the estate by the district court for the benefit of  
21 creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
22 of a receiver is authorized by the broad equitable powers of the court, any  
23 distribution of assets must also be done equitably and fairly. See S.E.C. v. Elliot,  
24 953 F.2d 1560, 1569 (11th Cir. 1992).

25 District courts have the broad power of a court of equity to determine the  
26 appropriate action in the administration and supervision of an equity receivership.

1 See SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
2 Circuit explained:

3 A district court's power to supervise an equity receivership and  
4 to determine the appropriate action to be taken in the  
5 administration of the receivership is extremely broad. The  
6 district court has broad powers and wide discretion to determine  
7 the appropriate relief in an equity receivership. The basis for  
8 this broad deference to the district court's supervisory role in  
9 equity receiverships arises out of the fact that most  
10 receiverships involve multiple parties and complex transactions.  
11 A district court's decision concerning the supervision of an  
12 equitable receivership is reviewed for abuse of discretion.

13 Id. (citations omitted); see also Commodities Futures Trading Comm'n. v. Topworth  
14 Int'l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference'  
15 to the court's supervisory role, and 'we generally uphold reasonable procedures  
16 instituted by the district court that serve th[e] purpose' of orderly and efficient  
17 administration of the receivership for the benefit of creditors."). Accordingly, this  
18 Court has broad equitable powers and discretion in formulating procedures,  
19 schedules and guidelines for administration of the receivership estate.

20 The Ninth Circuit has confirmed a district court's broad authority to approve a  
21 sale of assets under the control of an equity receiver. SEC v. American Capital  
22 Investments, Inc., 98 F.3d 1133, 1143-1145 (9th Cir. 1996) abrogated on other  
23 grounds by Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998);  
24 Gockstetter v. Williams, 9 F.2d 354, 357 (9th Cir. 1925) ("In authorizing the sale of  
25 property by receivers, courts of equity are vested with a broad discretion as to price  
26 and terms."); see also Mellen v. Moline Malleable Iron Works, 131 U.S. 352 (1889)  
27 (under its general equity authority, the court has the power to order a sale of  
28 property); Broadway Trust v. Dill, 17 F.2d 486 (3d Cir. 1927) (in a receivership  
proceeding, the court has both the power and jurisdiction to order a sale of the  
property).

1           **A. The Proposed Overbid Procedures Should Be Approved**

2           The proposed overbid procedures are designed to (a) induce Purchaser to act  
3 as the initial "stalking horse" bidder, (b) allow qualified bidders to overbid,  
4 (c) ensure that the sale closes in a timely manner, and (d) generate the highest and  
5 best price for the Assets. The minimum initial overbid - \$3,450,000, or \$250,000  
6 over the proposed purchase price - is less than eight (8%) percent of the proposed  
7 purchase price, and the subsequent overbid increments - \$50,000 - are less than two  
8 (2%) percent of the proposed purchase price, which will promote overbidding by  
9 qualified bidders. Accordingly, the Receiver requests that the overbid procedures be  
10 approved.

11           **B. The Notice of Sale Should Be Approved**

12           The notice provided by the Receiver by mail and publication is reasonable  
13 and should be approved. The Assets have been broadly and extensively marketed  
14 for sale. Peters Declaration, ¶¶ 2-3. Notice will be published in the New York  
15 Times (National Edition) on four occasions leading up to the hearing. All persons  
16 who signed a Non-Disclosure Agreement in order to obtain information about the  
17 sale have been given notice. Further mailing of notice imposes significant costs on  
18 the receivership estate with little or no corresponding benefit to noteholders and  
19 other claimants.

20           As noted above, pursuant to Local Rule 7-19.1, the Receiver's counsel  
21 circulated this Application via e-mail to counsel for the Commission and counsel for  
22 Defendants Field and Lampariello and asked if they have any opposition. Counsel  
23 for the Commission advised that the Commission has no opposition. Counsel for  
24 Defendants Field and Lampariello, at the time of this filing, had not responded.

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**VI. CONCLUSION**

WHEREFORE, the Receiver requests entry of an order approving the overbid procedures described herein, and approving the notice of sale provided by the Receiver.

Dated: August 3, 2012

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By: /s/ Ted Fates

\_\_\_\_\_  
TED FATES  
Attorneys for Receiver  
Thomas A. Seaman



# **EXHIBIT 1**

1 DAVID R. ZARO (BAR NO. 124334)  
MICHAEL R. FARRELL (BAR NO. 173831)  
2 TED FATES (BAR NO. 227809)  
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7 Attorneys for Receiver  
8 THOMAS A. SEAMAN

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 MEDICAL CAPITAL HOLDINGS,  
16 INC.; MEDICAL CAPITAL  
CORPORATION; MEDICAL  
17 PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
18 FIELD; and JOSEPH J.  
LAMPARIELLO,

19 Defendants.  
20

Case No. SA CV09-0818 DOC (RNBx)

**NOTICE OF MOTION AND MOTION  
FOR ORDER APPROVING (1) SALE  
OF ASSETS OF NATIONAL HEALTH  
BENEFITS CORPORATION AND  
(2) PAYMENT OF BROKER'S  
COMMISSION; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: September 10, 2012  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1           **TO ALL INTERESTED PARTIES:**

2           **PLEASE TAKE NOTICE** that on September 10, 2012, at 8:30 a.m., in  
3 Courtroom 9D of the above-entitled Court located at 411 West Fourth Street,  
4 Santa Ana, California 92701, a hearing will be held on the motion of Thomas A.  
5 Seaman ("Receiver"), Court-appointed permanent receiver for Medical Capital  
6 Holdings, Inc., Medical Capital Corporation, Medical Provider Funding  
7 Corporation VI, and their subsidiaries and affiliates (collectively, the "Receivership  
8 Entities"), for approval of (1) sale of assets of National Health Benefits Corporation  
9 and (2) payment of broker's commission ("Motion").

10           The Motion is based on the Memorandum of Points and Authorities below,  
11 and the Declarations of Thomas A. Seaman and Andy Peters filed herewith. The  
12 Motion and supporting papers are available at the Receiver's website,  
13 <http://www.medicalcapitalreceivership.com> or may be reviewed at the Clerk's  
14 Office during normal business hours at 411 West Fourth Street, Santa Ana,  
15 California 92701.

16           Procedural Requirements: If you oppose this Motion, you are required to file  
17 your written opposition with the Office of the Clerk, United States District Court,  
18 411 West Fourth Street, Santa Ana, California 92701 and serve the same on the  
19 undersigned not later than twenty-one (21) calendar days prior to the hearing.

20           **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the  
21 above date, the Court may grant the requested relief without further notice. This  
22 Motion is made following the conference of counsel pursuant to L.R. 7-3.

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1           WHEREFORE, the Receiver requests that the Court grant the relief requested  
2 herein and such other relief as may be appropriate under the circumstances.

3  
4 Dated: August 3, 2012

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

5  
6 By:           /s/ Ted Fates          

7           TED FATES  
8           Attorneys for Receiver  
9           THOMAS A. SEAMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 National Health Benefits Corporation ("NHBC") is a wholly owned  
4 subsidiary of Medical Capital Holdings, Inc. ("MCH") located in Scottsdale,  
5 Arizona. NHBC is known as a healthcare cost containment company. It helps  
6 self-insured employers, third-party administrators ("TPAs"), and other healthcare  
7 payors reduce healthcare costs and increase operational efficiency. NHBC contracts  
8 with self-insured employers, TPAs, and insurers to give them access to preferred  
9 provider organization ("PPO") networks and receives a percentage of the healthcare  
10 savings received by its clients. NHBC also contracts with PPO networks and pays  
11 fees to access the networks for their clients. NHBC owns proprietary claims  
12 processing software which it uses to process hundreds of thousands of healthcare  
13 claims per month for its clients.

14 During the months leading up to the Receiver's appointment, MCH had been  
15 seizing NHBC's revenues without paying its operating expenses. As a result, at the  
16 time of the Receiver's appointment, NHBC was experiencing a liquidity crisis. The  
17 Receiver promptly evaluated and stabilized the business, which has significant  
18 revenues, but has large debts arising from litigation with a competitor in the  
19 industry. The Receiver resolved issues relating to the litigation, is operating and  
20 managing NHBC, and has marketed its assets for sale. The Receiver now seeks  
21 Court approval of a sale of substantially all of NHBC's assets, including its contracts  
22 with clients and networks, and its proprietary software ("Assets").

23 **II. BACKGROUND FACTS**

24 **A. Formation and Acquisition of NHBC**

25 The Receivership Entities' books and records reflect the following regarding  
26 the formation and acquisition of NHBC:

27 Before it was acquired by MCH, the company was called Carlmont Capital  
28 Group, Inc. ("CCG") and was owned by Blaine Pollock. In March 2000, MCH

1 purchased CCG from Pollock for \$1.832 million, \$1.5 million of which represented  
2 assumption of CCG debt. MCH formed NHBC in May 2001 as a Nevada  
3 corporation. The assets and operations of CCG were then transferred to NHBC.  
4 Declaration of Thomas Seaman filed herewith ("Seaman Declaration"), ¶ 2.

5 **B. Pre-Receivership Operations of NHBC**

6 Between May 2001 and the end of 2008, MCH and MCC had to advance  
7 funds to NHBC in order for NHBC to meet its operational cash needs. As of the  
8 Receiver's appointment, NHBC owed MCH and MCC just over \$6.1 million. The  
9 amount NHBC owed MCH and MCC had been even greater, but in 2009, MCH  
10 began taking large sums out of NHBC without advancing further funds. Between  
11 January 2009 and August 2009, MCH took approximately \$725,000 more from  
12 NHBC than it transferred to NHBC. As noted above, the resulting lack of funding  
13 put NHBC in a liquidity crisis. Seaman Declaration, ¶ 3.

14 **C. Litigation with Stratose**

15 In 2001, Scott Arlotta began working for NHBC (at that time, CCG).  
16 In 2003, John Morris and Melitta Hauser joined NHBC. In 2003, a company then  
17 called Coalition America, Inc., now called Stratose, Inc. ("Stratose"), sued NHBC,  
18 Morris, Hauser, and Arlotta in Georgia state court alleging, among other things, that  
19 the defendants misappropriated Stratose's trade secrets. The action was removed to  
20 the United States District Court for the Northern District of Georgia (Atlanta  
21 Division). Morris, Hauser and Arlotta were subsequently dismissed from the case.  
22 Seaman Declaration, ¶ 4.

23 In May 2009, a jury trial was held on Stratose's misappropriation of trade  
24 secrets claims against NHBC. On June 1, 2009, a jury verdict was entered awarding  
25 Stratose \$2,192,169 in compensatory damages. On July 29, 2009, the court awarded  
26 Stratose an additional \$500,000 in punitive damages. Seaman Declaration, ¶ 5.

27 The Receiver was appointed on August 3, 2009. His counsel immediately  
28 advised the District Court in Atlanta of his appointment over NHBC and the

1 injunction prohibiting actions by creditors against the Receivership Entities. On  
2 August 5, 2009, the District Court in Atlanta issued an order stating that the  
3 receivership injunction did not apply to its own acts. It then entered the judgment  
4 against NHBC in the amount of \$2,692,169.00 ("Judgment"). Counsel for Stratose  
5 and counsel for the Receiver entered into stipulations extending (a) Stratose's  
6 deadline to bring a post-trial motion for attorneys' fees and costs, and (b) NHBC's  
7 deadline to appeal the Judgment. Seaman Declaration, ¶ 6.

8         The law firm of Alston & Bird had represented NHBC in the litigation with  
9 Stratose. Alston & Bird had unpaid bills in excess of \$1.2 million. On July 8, 2009,  
10 Alston & Bird moved to withdraw as counsel for NHBC. The motion was granted  
11 on August 6, 2009. The Receiver retained counsel at the Atlanta office of Kilpatrick  
12 Townsend & Stockton LLP ("Kilpatrick") to review the litigation files and evaluate  
13 NHBC's likelihood of success on appeal. After reviewing the files, Kilpatrick  
14 discovered that, during the period in which NHBC did not have counsel in the case,  
15 it failed to timely renew certain motions for Judgment as a Matter of Law  
16 ("JMOL"), and, therefore, the issues raised in those motions had not been preserved  
17 for appeal. Without the issues raised in the JMOL motions, an appeal was unlikely  
18 to succeed. However, with the issues raised in the JMOL motions, there was a  
19 legitimate chance the Judgment would either be reversed or reduced on appeal.  
20 Accordingly, the Receiver sought relief from the deadline to renew the JMOL  
21 motions from the District Court in Atlanta. The motion was denied. At that point,  
22 the Receiver determined that the anticipated costs outweighed the likely benefits of  
23 pursuing the appeal further. Seaman Declaration, ¶ 7.

24         Stratose provided the Receiver with its bills from the trial court litigation.  
25 After reviewing the bills, the Receiver and Stratose stipulated that Stratose's  
26 recoverable fees were \$1,300,000 and recoverable costs were \$50,000. The  
27 stipulation was approved by this Court on February 9, 2011, and a judgment  
28 awarding Stratose \$1,350,000 in attorneys' fees and costs was entered by the District



1 Court in Atlanta on March 1, 2011. This brought Stratose's total claim arising from  
2 the litigation to \$4,042,169. Alston & Bird also has an allowed claim in the amount  
3 of \$1,206,238.82. Seaman Declaration, ¶ 8.

4 **D. The Receiver's Operation of NHBC**

5 As noted above, at the time of the Receiver's appointment, NHBC had  
6 significant revenues, but was experiencing a liquidity crisis because MCH had been  
7 taking its revenues without paying its operating expenses. NHBC's July 31, 2009,  
8 payroll had not been paid, nor had a significant portion of its July 15, 2009 payroll.  
9 None of the July 15, 2009, payroll taxes had been paid. Health insurance premiums  
10 and 401(k) contributions were not paid even though the Receivership Entities had  
11 taken such deductions from employees' paychecks. Certain key outside contractors  
12 had not been paid since May 2009. Seaman Declaration, ¶ 9.

13 Several key provider networks had terminated NHBC's services due to its  
14 failure to pay certain fees for extended periods of time. The deterioration of its  
15 provider network relationships made it difficult for NHBC to sell its services.  
16 NHBC also owed client fees and refunds of approximately \$200,000. The client  
17 fees represent revenue sharing which is an essential component of attaining and  
18 retaining clients. Seaman Declaration, ¶ 10.

19 After evaluating NHBC, the Receiver determined that it could be a profitable  
20 business if certain issues were addressed. The Receiver paid the unpaid payroll and  
21 payroll taxes, procured a new health insurance policy for employees, paid essential  
22 accounts payable, and negotiated discounts and installment payment plans with PPO  
23 networks. The Receiver has also paid current operating expenses, negotiated  
24 discounts of past due bills, and resolved numerous issues related to NHBC's  
25 non-payment of bills prior to his appointment. These actions have stabilized the  
26 financial condition of the company. Seaman Declaration, ¶ 11.

27 In addition, in order to increase efficiency, reduce costs, and enhance the  
28 value of the Assets, the Receiver (a) supervised the continued development of

1 NHBC's proprietary software, (b) worked with NHBC to establish and enhance its  
2 HIPAA compliance program, (c) worked with NHBC to improve its information  
3 technology security and disaster recovery program, (d) improved its human  
4 resources department, including reducing payroll and worker's compensation costs,  
5 revising the employee handbook, completing personnel files on all employees, and  
6 having all employees execute a Confidentiality and Inventions Assignment  
7 Agreement, (e) purchased Errors & Omissions and Cyber Liability coverage,  
8 (f) negotiated and executed a new employment agreement with the company's  
9 President, including a bonus upon completion of the sale to ensure his assistance in  
10 completing the sale process, (g) established an employee bonus program to retain  
11 and incentivize employees, and (h) established systems and procedures such that  
12 NHBC can perform its own accounting (all accounting functions were previously  
13 performed by Medical Capital). Seaman Declaration, ¶ 12.

14 **E. Marketing NHBC's Assets for Sale**

15 The industry in which NHBC operates is fairly small in terms of the number  
16 of competitors who provide the same services. Word spread quickly that NHBC  
17 was in receivership, and the Receiver was contacted by several parties interested in  
18 acquiring the company or its assets. Due to NHBC's large debts, the Receiver  
19 determined that a sale of the Assets, the most valuable of which are its contracts  
20 with clients and networks, and its proprietary claims processing software, would  
21 produce the best recovery for the receivership estate. By the time the Receiver was  
22 in a position to negotiate terms, twelve (12) interested parties had contacted the  
23 Receiver. The Receiver provided them with financial information about the  
24 company and instructed them to submit an offer no later than October 24, 2011.  
25 The Receiver reviewed the offers, the highest and best of which came from Premier  
26 Healthcare Exchange, Inc. ("Purchaser"). Purchaser conducted extensive due  
27 diligence and then negotiated terms with the Receiver. Seaman Declaration, ¶ 13.

28

1 The Receiver also engaged The Independence Group, Inc. ("Broker") to  
2 market the Assets to potential overbidders. Seaman Declaration, ¶ 14. Broker  
3 created a targeted list of potential buyers, which included (1) interested parties who  
4 previously contacted the Receiver; (2) strategic acquirers in the healthcare industry;  
5 (3) private equity groups with platform companies or an expressed interest in  
6 healthcare services; and (4) private equity groups interested in businesses of  
7 NHBC's size. In total, over 200 entities were targeted and contacted via e-mail and  
8 direct phone contact. Those who expressed interest were instructed to sign a  
9 Non-Disclosure Agreement. Twenty-four (24) Non-Disclosure Agreements were  
10 signed, fifteen (15) of which came from parties determined to be financially  
11 qualified. Each of the financially qualified potential overbidders have been given  
12 access to the same due diligence materials provided to Purchaser. Peters  
13 Declaration, ¶ 2-3.

14 **F. Appraisals**

15 The Receiver had two licensed appraisers review NHBC's financial  
16 statements and other key documents, interview NHBC's President, and provide a  
17 valuation of the company. Although the valuations are of the company as opposed  
18 to the Assets, the assumptions built into them (*i.e.*, that the buyer would not have to  
19 assume NHBC's largest debts) make them analogous to valuations of the Assets.  
20 Under these assumptions, one appraiser valued the company at \$1.9 million, and the  
21 other valued it at \$3.4 million. Seaman Declaration, ¶ 15.

22 **III. THE PROPOSED SALE<sup>1</sup>**

23 The Receiver executed an Asset Purchase Agreement with Purchaser, a copy  
24 of which is attached to the Seaman Declaration as Exhibit A ("Agreement"). The  
25 basic terms of the Agreement are summarized as follows:

26  
27 \_\_\_\_\_  
28 <sup>1</sup> The proposed sale terms are summarized herein for ease of reference only. In the event of a conflict between the summary herein and the Agreement, the Agreement governs and controls.



1 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
2 and efficient administration of the estate by the district court for the benefit of  
3 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
4 of a receiver is authorized by the broad equitable powers of the court, any  
5 distribution of assets must also be done equitably and fairly. *See S.E.C. v. Elliot*,  
6 953 F.2d 1560, 1569 (11th Cir. 1992).

7 District courts have the broad power of a court of equity to determine the  
8 appropriate action in the administration and supervision of an equity receivership.  
9 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth  
10 Circuit explained:

11 A district court's power to supervise an equity receivership  
12 and to determine the appropriate action to be taken in the  
13 administration of the receivership is extremely broad. The  
14 district court has broad powers and wide discretion to  
15 determine the appropriate relief in an equity receivership.  
16 The basis for this broad deference to the district court's  
17 supervisory role in equity receiverships arises out of the  
18 fact that most receiverships involve multiple parties and  
19 complex transactions. A district court's decision  
20 concerning the supervision of an equitable receivership is  
21 reviewed for abuse of discretion.

22 *Id.* (citations omitted); *see also Commodities Futures Trading Comm'n. v.*  
23 *Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad  
24 deference' to the court's supervisory role, and 'we generally uphold reasonable  
25 procedures instituted by the district court that serve th[e] purpose' of orderly and  
26 efficient administration of the receivership for the benefit of creditors.").  
27 Accordingly, the Court has broad equitable powers and discretion in the  
28 administration of the receivership estate and disposition of receivership assets.

29 **B. The Sale**

30 It is generally conceded that a court of equity having custody and control of  
31 property has power to order a sale of the same in its discretion. *See, e.g., S.E.C. v.*  
32 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers  
33 and wide discretion to determine relief in an equity receivership). "The power of

1 sale necessarily follows the power to take possession and control of and to preserve  
2 property." *See S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
3 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*  
4 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
5 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity  
6 orders property in its custody to be sold, the court itself as vendor confirms the title  
7 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of  
8 Receivers § 487.

9 "A court of equity, under proper circumstances, has the power to order a  
10 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*  
11 *Wilkes Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). See also, 2 Ralph Ewing  
12 Clark, Treatise on Law & Practice of Receivers § 500 (3rd ed. 1992). To that end, a  
13 federal court is not limited or deprived of any of its equity powers by state statute.  
14 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)  
15 (state statute allowing time to redeem property after a foreclosure sale not applicable  
16 in a receivership sale).

17 Generally, when a court appointed receiver is involved, the receiver, as agent  
18 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
19 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
20 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
21 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
22 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491  
23 (3d ed. 1992)))))). "In authorizing the sale of property by receivers, courts of equity  
24 are vested with broad discretion as to price and terms." *Gockstetter v. Williams*,  
25 9 F.2d 354, 357 (9th Cir. 1925).

26 Here, the proposed sale will maximize the recovery from the Assets.  
27 Licensed appraisers valued the company at \$1.9 million and \$3.4 million,  
28 respectively. The proposed purchase price of \$3.2 million is at the high end of this



1 spectrum. Furthermore, the Assets have been broadly marketed and the sale is  
2 subject to overbid to ensure that the highest and best price is obtained. Because of  
3 NHBC's large debts, the value the Receiver could obtain through a sale of the  
4 company would be vastly less than the proposed purchase price for the Assets.  
5 Accordingly, the proposed sale is in the best interests of the receivership estate and  
6 should be approved.

7 **C. Broker's Commission**

8 Subject to Court approval, the Receiver and Broker agreed that Broker would  
9 be paid a consulting fee of \$30,000, plus, in the event of a qualified overbid, twenty  
10 (20%) percent of the delta between the proposed purchase price and the successful  
11 bid. Prior to engaging Broker, the Receiver contacted four (4) licensed brokers with  
12 experience selling businesses and business assets. One turned down the  
13 opportunity. Of the three proposals received, Broker's proposal was on the most  
14 favorable terms. Broker has put in substantial time and effort in identifying  
15 potential overbidders, contacting them, and providing them with information.  
16 Seaman Declaration, ¶ 14. Accordingly, the Receiver requests authority to pay  
17 Broker the commission described above.

18 **V. CONCLUSION**

19 WHEREFORE, the Receiver requests entry of an order granting the Motion,  
20 approving the Agreement, and authorizing the Receiver to pay Broker the  
21 commission described above.

22  
23 Dated: August 3, 2012

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

24  
25 By:           /s/ Ted Fates          

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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 MEDICAL CAPITAL HOLDINGS,  
16 INC.; MEDICAL CAPITAL  
CORPORATION; MEDICAL  
17 PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
18 FIELD; and JOSEPH J.  
LAMPARIELLO,

19 Defendants.  
20

Case No. SA CV09-0818 DOC (RNBx)

**DECLARATION OF THOMAS A.  
SEAMAN IN SUPPORT OF MOTION  
FOR ORDER APPROVING (1) SALE  
OF ASSETS OF NATIONAL HEALTH  
BENEFITS CORPORATION AND  
(2) PAYMENT OF BROKER'S  
COMMISSION**

Date: September 10, 2012  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1 I, Thomas A. Seaman, declare as follows:

2 1. I am the Court-appointed permanent receiver for Medical Capital  
3 Holdings, Inc., Medical Capital Corporation, and Medical Provider Funding  
4 Corporation VI, and their subsidiaries and affiliates (collectively, the "Receivership  
5 Entities"). The following facts are within my knowledge and if called as a witness I  
6 would testify to them under oath.

7 **Formation and Acquisition of NHBC**

8 2. The Receivership Entities' books and records reflect the following  
9 regarding the formation and acquisition of NHBC: Before it was acquired by MCH,  
10 the company was called Carlmont Capital Group, Inc. ("CCG") and was owned by  
11 Blaine Pollock. In March 2000, MCH purchased CCG from Pollock for  
12 \$1.832 million, \$1.5 million of which represented assumption of CCG debt. MCH  
13 formed NHBC in May 2001 as a Nevada corporation. The assets and operations of  
14 CCG were then transferred to NHBC.

15 3. Between May 2001 and the end of 2008, MCH and MCC had to  
16 advance funds to NHBC in order for NHBC to meet its operational cash needs. As  
17 of the Receiver's appointment, NHBC owed MCH and MCC just over \$6.1 million.  
18 The amount NHBC owed MCH and MCC had been even greater, but in 2009, MCH  
19 began taking large sums out of NHBC without advancing further funds. Between  
20 January 2009 and August 2009, MCH took approximately \$725,000 more from  
21 NHBC than it transferred to NHBC. As noted above, the resulting lack of funding  
22 put NHBC in a liquidity crisis.

23 **The Litigation with Stratose**

24 4. In 2001, Scott Arlotta began working for NHBC (at that time, CCG).  
25 In 2003, John Morris and Melitta Hauser joined NHBC. In 2003, a company then  
26 called Coalition America, Inc., now called Stratose, Inc. ("Stratose"), sued NHBC,  
27 Morris, Hauser, and Arlotta in Georgia state court alleging, among other things, that  
28 the defendants misappropriated Stratose's trade secrets. The action was removed to

1 the United States District Court for the Northern District of Georgia (Atlanta  
2 Division). Morris, Hauser and Arlotta were subsequently dismissed from the case.

3 5. In May 2009, a jury trial was held on Stratose's misappropriation of  
4 trade secrets claims against NHBC. On June 1, 2009, a jury verdict was entered  
5 awarding Stratose \$2,192,169 in compensatory damages. On July 29, 2009, the  
6 court awarded Stratose an additional \$500,000 in punitive damages.

7 6. I was appointed on August 3, 2009. My counsel immediately advised  
8 the District Court in Atlanta of my appointment over NHBC and the injunction  
9 prohibiting actions by creditors against the Receivership Entities. On August 5,  
10 2009, the District Court in Atlanta issued an order stating that the receivership  
11 injunction did not apply to its own acts. It then entered the judgment against NHBC  
12 in the amount of \$2,692,169.00 ("Judgment"). Counsel for Stratose and my counsel  
13 (with my approval) entered into stipulations extending (a) Stratose's deadline to  
14 bring a post-trial motion for attorneys' fees and costs, and (b) NHBC's deadline to  
15 appeal the Judgment.

16 7. The law firm of Alston & Bird had represented NHBC in the litigation  
17 with Stratose. Alston & Bird had unpaid bills in excess of \$1.2 million. On July 8,  
18 2009, Alston & Bird moved to withdraw as counsel for NHBC. The motion was  
19 granted on August 6, 2009. I retained counsel at the Atlanta office of Kilpatrick  
20 Townsend & Stockton LLP ("Kilpatrick") to review the litigation files and evaluate  
21 NHBC's likelihood of success on appeal. After reviewing the files, Kilpatrick  
22 discovered that, during the period in which NHBC did not have counsel in the case,  
23 it failed to timely renew certain motions for Judgment as a Matter of Law  
24 ("JMOL"), and, therefore, the issues raised in those motions had not been preserved  
25 for appeal. Without the issues raised in the JMOL motions, an appeal was unlikely  
26 to succeed. However, with the issues raised in the JMOL motions, there was a  
27 legitimate chance the Judgment would either be reversed or reduced on appeal.  
28 Accordingly, I sought relief from the deadline to renew the JMOL motions from the

1 District Court in Atlanta. The motion was denied. At that point, I determined that  
2 the anticipated costs outweighed the likely benefits of pursuing the appeal further.

3 8. Stratose provided me with its bills from the trial court litigation. After  
4 reviewing the bills, Stratose and I stipulated that Stratose's recoverable fees were  
5 \$1,300,000 and recoverable costs were \$50,000. The stipulation was approved by  
6 this Court on February 9, 2011, and a judgment awarding Stratose \$1,350,000 in  
7 attorneys' fees and costs was entered by the District Court in Atlanta on March 1,  
8 2011. This brought Stratose's total claim arising from the litigation to \$4,042,169.  
9 Alston & Bird also has an allowed claim in the amount of \$1,206,238.82.

10 **Post-Receivership Operations of NHBC**

11 9. As noted above, at the time of my appointment, NHBC had significant  
12 revenues, but was experiencing a liquidity crisis because MCH had been taking its  
13 revenues without paying its operating expenses. NHBC's July 31, 2009, payroll had  
14 not been paid, nor had a significant portion of its July 15, 2009, payroll. None of  
15 the July 15, 2009, payroll taxes had been paid. Health insurance premiums and  
16 401(k) contributions were not paid even though the Receivership Entities had taken  
17 such deductions from employees' paychecks. Certain key outside contractors had  
18 not been paid since May 2009.

19 10. Several key provider networks had terminated NHBC's services due to  
20 its failure to pay certain fees for extended periods of time. The deterioration of its  
21 provider network relationships made it difficult for NHBC to sell its services.  
22 NHBC also owed client fees and refunds of approximately \$200,000. The client  
23 fees represent revenue sharing which is an essential component of attaining and  
24 retaining clients.

25 11. After evaluating NHBC, I determined that it could be a profitable  
26 business if certain issues were addressed. I paid the unpaid payroll and payroll  
27 taxes, procured a new health insurance policy for employees, paid essential accounts  
28 payable, and negotiated discounts and installment payment plans with PPO

1 networks. I also paid current operating expenses, negotiated discounts of past due  
2 bills, and resolved numerous issues related to NHBC's non-payment of bills prior to  
3 my appointment. These actions have stabilized the financial condition of the  
4 company.

5 12. In addition, in order to increase efficiency, reduce costs, and enhance  
6 the value of the Assets, I (a) supervised the continued development of NHBC's  
7 proprietary software, (b) worked with NHBC to establish and enhance its HIPAA  
8 compliance program, (c) worked with NHBC to improve its information technology  
9 security and disaster recovery program, (d) improved its human resources  
10 department, including reducing payroll and worker's compensation costs, revising  
11 the employee handbook, completing personnel files on all employees, and having all  
12 employees execute a Confidentiality and Inventions Assignment Agreement,  
13 (e) purchased Errors & Omissions and Cyber Liability coverage, (f) negotiated and  
14 executed a new employment agreement with the company's President, including a  
15 bonus upon completion of the sale to ensure his assistance in completing the sale  
16 process, (g) established an employee bonus program to retain and incentivize  
17 employees, and (h) established systems and procedures such that NHBC can  
18 perform its own accounting (all accounting functions were previously performed by  
19 Medical Capital).

20 **Marketing NHBC's Assets for Sale**

21 13. The industry in which NHBC operates is fairly small. Word spread  
22 quickly that NHBC was in receivership, and I was contacted by several parties  
23 interested in acquiring the company or its assets. Due to NHBC's large debts, I  
24 determined that a sale of its assets, the most valuable of which are contracts with  
25 clients and networks, and proprietary software, would produce the best recovery.  
26 By the time I was in a position to negotiate terms, twelve (12) interested parties had  
27 contacted me. I provided them with financial information about NHBC and  
28 instructed them to submit an offer no later than October 24, 2011. I reviewed the


1 offers, the highest and best of which came from Premier Healthcare Exchange, Inc.  
2 ("Purchaser"). Purchaser conducted extensive due diligence and then negotiated  
3 terms with me. Purchaser and I executed an Asset Purchase Agreement, a true and  
4 correct copy of which is attached hereto as Exhibit A.

5 14. I also engaged The Independence Group, Inc. ("Broker") to market  
6 NHBC's assets to potential overbidders. Subject to Court approval, Broker and I  
7 agreed that Broker would be paid a consulting fee of \$30,000, plus, in the event a  
8 qualified overbid is received, twenty (20%) percent of the delta between the  
9 proposed purchase price and the successful overbid. Prior to engaging Broker, I  
10 contacted four (4) licensed brokers with experience selling businesses and business  
11 assets. One turned down the opportunity. Of the three proposals received, Broker's  
12 proposal was on the most favorable terms. Broker has put in substantial time and  
13 effort in identifying potential overbidders, contacting them, and providing them with  
14 due diligence information.

15 15. I had two licensed appraisers review NHBC's financial statements and  
16 other key documents, interview NHBC's President, and provide a valuation of the  
17 company. Although the valuations are of the company as opposed to the assets, the  
18 assumptions built into them (*i.e.*, that the buyer would not have to assume NHBC's  
19 largest debts) make them analogous to valuations of the assets. Under these  
20 assumptions, one appraiser valued the company at \$1.9 million, and the other valued  
21 it at \$3.4 million.

22 I declare under penalty of perjury under the laws of the State of California  
23 that the foregoing is true and correct.

24 Executed this 3rd day of August, 2012, at Irvine, California.

25  
26   
27 THOMAS A. SEAMAN  
28

# **EXHIBIT A**



**ASSET PURCHASE AGREEMENT**

**By and Between**

**NATIONAL HEALTH BENEFITS CORPORATION**

**and**

**PREMIER HEALTHCARE EXCHANGE, INC.**

**JULY 25, 2012**

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## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (as the same shall be amended, modified or supplemented, this "Agreement") is dated July 25, 2012, by and between Premier Healthcare Exchange, Inc., a Delaware corporation (together with its permitted successors and assigns, "Purchaser"), and National Health Benefits Corporation, a Nevada corporation (together with its permitted successors and assigns, "Seller").

### W I T N E S S E T H:

WHEREAS, Medical Capital Holdings, Inc., a Nevada corporation and the sole stockholder of the Seller ("MCH" or the "Shareholder"), is the defendant in an enforcement action brought by the Securities and Exchange Commission;

WHEREAS, all of MCH's property, including the property of any of its subsidiaries, including, without limitation, all property of the Seller, is currently in receivership in the case styled "SEC v. Medical Capital Holdings, Inc., et al., United States District Court, Central District of California, Southern Division, Case No. SA CV09-0818 DOC (RNBx) (the "Receivership Action)");

WHEREAS, the parties hereto desire to enter into this Agreement pursuant to which Purchaser will acquire from Seller and Seller shall sell to Purchaser certain of Seller's assets and business operations, and Seller shall provide certain representations, warranties and indemnities, upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual promises, representations, warranties and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE 1

### DEFINITIONS

As used herein, the following terms shall have the following meanings unless the context otherwise requires:

"Accounting Firm" shall have the meaning set forth in Section 2.4(b).

"Accounts Receivable" shall have the meaning set forth in Section 2.1(d) hereto.

"Agreement" shall have the meaning set forth in the first paragraph hereof.

"Assets" shall have the meaning set forth in Section 2.1 hereof.

"Assigned Contracts" shall have the meaning set forth in Section 2.1(f) hereof.

“Assigned Contracts Shortfall” shall have the meaning set forth in Section 2.3(d) hereof.

“Assignment and Assumption Agreement” shall have the meaning set forth in Section 9.2(a)(iii) hereof.

“Assumed Liabilities” shall have the meaning set forth in Section 2.5(a) hereof.

“Auction” shall have the meaning set forth in Section 2.7 hereof.

“Auction Confirmation Order” shall have the meaning set forth in Section 2.7(h).

“Balance Sheet” shall have the meaning set forth in Section 3.4(a) hereof.

“Bill of Sale” shall have the meaning set forth in Section 9.2(a)(ii) hereof.

“Business” shall mean, the repricing of claims for large employer groups, including the negotiation of discounts from healthcare providers.

“Buyer Warranty Breach” shall have the meaning set forth in Section 10.3.

“Cash Payment” shall have the meaning set forth in Section 2.3(a) hereof.

“Closing” shall have the meaning set forth in Section 9.1 hereof.

“Closing Date” shall mean the date on which the Closing occurs pursuant to Section 9.1 hereof.

“Closing Date Balance Sheet” shall have the meaning set forth in Section 2.4(a) hereof.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commonly Controlled Entity” shall have the meaning set forth in Section 3.16(a) hereof.

“Contracts” shall have the meaning set forth in Section 3.12.

“Court Approval” shall mean the entry by the Receivership Court in the Receivership Action of a final order, in form and substance satisfactory to the Purchaser, approving this Agreement and the transactions contemplated hereby.

“Data Warehouse” shall have the meaning set forth in Section 3.13(b) hereof.

“Delivery Date” shall have the meaning set forth in Section 2.3(e) hereof.

“Direct Competitor(s)” shall have the meaning set forth in Section 5.2 hereof.

“Disclosure Letter” shall mean the disclosure letter delivered by Seller to Purchaser concurrently with the execution and delivery of this Agreement.



“Due Diligence Information” shall have the meaning set forth in Section 2.7(b) hereof.

“Effective Time” shall mean the time at which Closing is consummated.

“Employment Agreement” shall have the meaning set forth in Section 9.2(a)(v) hereof.

“Encumbrance” shall mean any lien, charge, claim, option, forfeiture, right of seizure, community or other marital property interest, condition, equitable interest, pledge, security interest, mortgage, right of way, easement, covenant, encroachment, servitude, right of first option, or right of first refusal or any other encumbrance.

“Environmental Laws” shall have the meaning set forth in Section 3.22 hereof.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” shall mean each entity which is treated as a single employer with Seller for purposes of Code § 414(b), (c), (m), (n), or (o).

“Escrow Agent” shall mean Comerica Bank, a Texas banking association.

“Escrow Agreement” shall have the meaning set forth in Section 2.3(c) hereof.

“Escrowed Amount” shall have the meaning set forth in Section 2.3(c) hereof.

“Excluded Assets” shall have the meaning set forth in Section 2.2 hereof.

“Evidence of Funds” shall have the meaning set forth in Section 2.7(d) hereof.

“Financial Statements” shall have the meaning set forth in Section 3.4(a) hereof.

“GAAP” shall have the meaning set forth in Section 2.4(a) hereof.

“Hazardous Materials” shall have the meaning set forth in Section 3.22 hereof.

“Hearing Date” shall have the meanings set forth in Section 2.7(d) hereof.

“High Bidder” shall have the meaning set forth in Section 2.7(d) hereof.

“Hired Employees” shall have the meaning set forth in Section 5.9(a) hereof.

“Income Statement” shall have the meaning set forth in Section 3.4(a) hereof.

“Indebtedness” shall mean any debt for borrowed money owed by Seller that is being set forth on Schedule 2.3(b) of the Disclosure Letter which is being assumed by Purchaser.

“Indemnified Party” shall have the meaning set forth in Section 10.4 hereof.

“Indemnifying Party” shall have the meaning set forth in Section 10.4 hereof.

“Intellectual Property” shall have the meaning set forth in Section 3.14 hereof.

“Interim Balance Sheet shall have the meaning set forth in Section 3.4(a).

“Interim Financial Statement” shall have the meaning set forth in Section 3.4(b).

“Interim Income Statement shall have the meaning set forth in Section 3.4(b).

“IP Assignment Agreement” shall have the meaning set forth in Section 9.2(a)(vi) hereof.

“Laws” shall have the meaning set forth in Section 3.10 hereof.

“Liability” shall mean, with respect to any Person, any indebtedness, obligations or liabilities of such Person of any kind, character, description, type or nature whatsoever, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“License” shall have the meaning set forth in Section 3.13(f)

“Losses” shall have the meaning set forth in Section 10.2 hereof.

“Material Contracts” shall have the meaning set forth in Section 3.12 hereof.

“Material Customers” shall have the meaning set forth in Section 3.17(a) hereof.

“Material Vendors” shall have the meaning set forth in Section 3.17(b).

“Minimum Overbid Amount” shall have the meaning set forth in Section 2.7(a).

“Net Assets” shall have the meaning set forth in Section 2.4(a) hereof.

“Net Revenue” shall mean the Seller’s revenue net of any cancelled claims (e.g., claims cancelled due to the patient’s ineligibility (either because the patient is no longer covered or has exceeded plan limits), duplicate claims, out-of-network claims and unpaid claims older than twelve (12) months).

“Non-Competition Period” shall have the meaning set forth in Section 5.10(b).

“Non-Solicitation Period” shall have the meaning set forth in Section 5.11.

“Overbid Deposit” shall have the meaning set forth in Section 2.7(d) hereof.

“Permitted Encumbrance” shall have the meaning set forth in Section 3.6(a) hereof.

“Person” shall mean an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or governmental body.

“Plan” shall have the meaning set forth in Section 3.16(a) hereof.

“Post-Closing Assigned Contracts List” shall have the meaning set forth in Section 2.3(e) hereof.

“Pre-Closing Assigned Contracts List” shall have the meaning set forth in Section 2.3(d) hereof.

“Proprietary Applications” shall have the meaning set forth in Section 3.13(b) hereof.

“Prospective Bidders” shall have the meaning set forth in Section 2.7(b) hereof.

“Purchase Price” shall have the meaning set forth in Section 2.3(a) hereof.

“Purchaser” shall have the meaning set forth in the first paragraph of this Agreement.

“Purchaser Indemnitee” shall have the meaning set forth in Section 10.2 hereof.

“Qualified Bid PSA” shall have the meaning set forth in Section 2.7(d) hereof.

“Qualified Bidder” shall have the meaning set forth in Section 2.7(d) hereof.

“Receiver” shall mean Thomas A. Seaman, as permanent receiver for Seller pursuant to the Preliminary Injunction and Order entered on August 18, 2009 in the matter styled Securities and Exchange Commission v. Medical Capital Holdings, Inc., Case No. SA CV09-0818 DOC (RNBx).

“Receivership Action” shall have the meaning set forth in the recitals of this Agreement.

“Receivership Court” shall mean the United States District Court, Central District of California, Southern Division.

“Revenue Threshold” shall have the meaning set forth in Section 2.3(d) hereof.

“Seller” shall have the meaning set forth in the first paragraph of this Agreement.

“Seller Indemnitee” shall have the meaning set forth in Section 10.3 hereof.

“Software” shall have the meaning set forth in Section 3.13(a) hereof.

“System” shall have the meaning set forth in Section 3.13(b) hereof.

“Transaction Documents” shall mean this Agreement, the Assignment and Assumption Agreement, the Escrow Agreement, and the other documents, instruments and agreements to be

entered into pursuant hereto and thereto.

## ARTICLE 2

### SALE AND TRANSFER OF ASSETS

Section 2.1 Sale and Transfer of Assets. Upon the terms and subject to the conditions set forth in this Agreement, Seller shall at the Closing, sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase and acquire, free and clear of all Encumbrances other than Permitted Encumbrances, from Seller for the Purchase Price, all of Seller's right, title and interest in and to all of Seller's properties and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located and whether or not carried or reflected on the books and records of Seller, and whether or not carried in the name of Seller or any affiliates of Seller, that are now, or at the time of Closing will be, used or held for use in or otherwise related to, useful in or necessary for the conduct of, the Business (collectively, the "Assets"). Subject to Section 2.2, the Assets purchased hereunder shall include, but shall not be limited to, the following:

- (a) All cash, cash equivalents and other liquid assets, including all related accounts;
- (b) All products and supplies;
- (c) All tangible personal property, including all items of machinery, equipment, vehicles, furniture and fixtures;
- (d) All accounts receivable of Seller attributable to the Business and all rights to invoice customers of the Business for work performed or transactions occurring through, but not invoiced as of the Closing Date (the "Accounts Receivable");
- (e) All rights of Seller relating to deposits, prepaid expenses or claims for refunds;
- (f) All of the contracts, leases, instruments, licenses and other agreements identified in Schedule 2.1(f) of the Disclosure Letter as being assigned to Purchaser (collectively, the "Assigned Contracts");
- (g) All files related to the Business, including, without limitation, all reports and records regarding customer processing activity and account status, and all customer files, data and information maintained by Seller pursuant to any of the Assigned Contracts or otherwise, in any case, wherever located, whether in the form of hard copies, electronic media, or otherwise;
- (h) All licenses, authorizations and permits issued by any governmental agency relating to the Business or the Assets to the extent the same may be assigned consistent with their terms;

(i) All intangible property rights related to the Business (including, without limitation, the name “National Health Benefits Corporation” or any derivation thereof, goodwill, trade names, the System, the Proprietary Applications, the Software and the Intellectual Property); and

(j) All trade secrets, customer lists, prospective customer lists, Data Warehouses, and supplier lists with respect to the Business owned by Seller (including, without limitation, (i) the procedural and operational manuals utilized by Seller in the operation of the Business, (ii) all proprietary information, technical information, “know how” and like information utilized by Seller in the Business, and (iii) all advertising materials, source documents, materials, supplies and forms, in any case, whether in the form of hard copies, electronic media, computer tape or otherwise, and all other rights and documents owned by Seller and all books and records incident to the Business).

Notwithstanding the foregoing, the transfer of Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Assets unless Purchaser expressly assumes that Liability pursuant to Section 2.5.

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the Assets purchased hereunder shall not include the assets of Seller set forth in Schedule 2.2 of the Disclosure Letter, none of which are part of the sale and purchase contemplated hereunder, and which are excluded from the Assets, and shall remain the property of Seller after Closing (collectively, the “Excluded Assets”).

### Section 2.3 Purchase Price.

(a) Cash Payment and Assumption of Liabilities. In consideration of the sale, assignment, transfer, conveyance, and delivery of the Assets, Purchaser shall, in full payment for the foregoing, (i) subject to this Section 2.3 and Section 2.4 hereof, pay an amount equal to the amount of Three Million Two Hundred Thousand Dollars (\$3,200,000) (the “Cash Payment”) (as the Cash Payment may be adjusted as hereinafter provided, the “Purchase Price”) and (ii) assume the liabilities specifically described in Section 2.5 as being assumed herein.

(b) Manner of Payment. At Closing, Purchaser shall pay Seller an amount equal to (i) Three Million Two Hundred Thousand Dollars (\$3,200,000) *minus* (ii) the Escrowed Amount (as set forth in Section 2.3(c)) and the amount of any Indebtedness, which Indebtedness shall be set forth on Schedule 2.3(b) of the Disclosure Letter attached hereto, *minus* (iii) the Assigned Contracts Shortfall, if any (the sum of the foregoing the “Cash Payment”), which Cash Payment shall be made at Closing in immediately available funds.

(c) Escrow. At the Closing, the Seller shall enter into the Escrow Agreement as set forth in Exhibit 2.3(c) (the “Escrow Agreement”) and concurrently therewith Purchaser shall deliver to the Escrow Agent the aggregate amount of Three Hundred Twenty Thousand Dollars (\$320,000) of the Cash Payment (the “Escrowed Amount”) to be applied and disbursed in accordance with the Escrow Agreement and this Section 2.3(c). Purchaser shall be entitled, in addition to any other rights or remedies that it may have, to receive payment, in

accordance with the terms of the Escrow Agreement, from the Escrowed Amount for the amount of any and all Losses which Purchaser has sustained for which it is entitled to indemnification from the Seller pursuant to Article 10 hereof.

(d) **Assigned Contracts Shortfall.** On the business day immediately preceding the Closing Date, Seller shall prepare and deliver to Purchaser a list of all of the Assigned Contracts dated as of the Closing Date (the “Pre-Closing Assigned Contracts List”). The Pre-Closing Assigned Contracts List shall include all of the Assigned Contracts that will be assigned to the Purchaser in accordance with the terms of such contracts at the Closing. Seller shall deliver the Pre-Closing Assigned Contracts List to Purchaser within the foregoing period, together with consents to the extent required. In the event that the Assigned Contracts with the Seller’s clients as of the Closing as set forth on the Pre-Closing Assigned Contracts List represent less than ninety percent (90%) of the Net Revenue recognized by the Seller during the sixteen month period commencing on January 1, 2011 and ending on April 30, 2012 (the “Revenue Threshold”), then the Purchase Price shall be reduced Sixty Cents (\$0.60) for every dollar by which the revenue attributable to the Assigned Contracts with Clients is less than the Revenue Threshold but in no case shall such reduction reduce the Purchase Price below the amount to which Seller would be entitled if the revenue attributable to the Assigned Contracts with Clients represented at least eighty percent (80%) of the Net Revenue recognized by the Seller during the sixteen month period commencing on January 1, 2011 and ending on April 30, 2012 (the aggregate amount of the purchase price reduction being referred to herein as the “Assigned Contracts Shortfall”); it being acknowledged that pursuant to Section 7.10, Purchaser may elect not to consummate the transactions contemplated hereunder if the Assigned Contracts set forth on the Pre-Closing Assigned Contracts List represent less than eighty percent (80%) of the Net Revenue recognized by the Seller during the sixteen month period commencing on January 1, 2011 and ending on April 30, 2012.

(e) **Assigned Contracts Recovery.** Seller and Purchaser shall cooperate after the Closing to obtain consents to any of the Contracts for which consents to their assignment is required to the extent such consents were not obtained prior to the Closing. If and only if there exists an Assigned Contracts Shortfall as of the Closing, then within thirty (30) days after the Closing Date (the “Delivery Date”), Seller and Purchaser shall prepare an updated list of the Assigned Contracts that have been assigned to the Purchaser in accordance with the terms of such contracts at or subsequent to the Closing (the “Post-Closing Assigned Contracts List”). In the event that the Post-Closing Assigned Contracts List includes Contracts that were not included on the Pre-Closing Assigned Contracts List as a result of the receipt of the consent to the assignment of certain Contracts subsequent to the Closing Date, then, within forty-five (45) days following the Closing, the Purchaser shall pay to the Seller an aggregate amount equal to Sixty Cents (\$0.60) for every dollar of revenue attributable to the Assigned Contracts with Clients whose consents to the assignment are obtained subsequent to the Closing Date and prior to Delivery Date, but only to the extent such revenue does not exceed the Revenue Threshold.

For purposes of clarity, if the Pre-Closing Assigned Contracts List includes Assigned Contracts representing eighty-five percent (85%) of the Net Revenue recognized by the Seller during the sixteen month period commencing on January 1, 2011 and ending on April 30, 2012 and assuming for purposes of the example aggregate total revenue for such period of



\$1,000,000, with the Assigned Contracts representing revenues of \$850,000, then the Revenue Threshold was not satisfied and the Assigned Contracts Shortfall is equal to Thirty Thousand Dollars (\$30,000) (calculated as \$50,000 times \$0.60). If, however, the Post-Closing Assigned Contracts List includes Contracts representing an additional Ten Thousand Dollars (\$10,000) in revenue attributable to the Revenue Threshold, then the Purchaser shall pay to the Seller Six Thousand Dollars (\$6,000) in accordance with the terms and conditions set forth above.

Section 2.4 Adjustment to Purchase Price.

(a) Within sixty (60) days after the Closing Date, Purchaser shall prepare and deliver to Seller an unaudited balance sheet of Seller, dated as of the Closing Date (the "Closing Date Balance Sheet"). The Closing Date Balance Sheet shall be prepared in accordance with the provisions of this Section 2.4 as further explained on Schedule 2.4 and shall reflect only the liabilities being assumed by Purchaser as described in Section 2.5 hereof and the Assets, and shall specifically exclude the Excluded Assets and liabilities that are not expressly assumed by Purchaser hereunder. Purchaser shall deliver the Closing Date Balance Sheet to Seller within the foregoing period, together with all supporting statements and its certification of the aggregate net assets (which for purposes hereof shall be current assets of Seller included in the Assets as of that date less current liabilities of Seller included in the Assumed Liabilities as of that date (excluding funded indebtedness) as shown on the Closing Date Balance Sheet ("Net Assets"). In the event that the Net Assets, as shown on the Closing Date Balance Sheet, are valued at less than Two hundred ninety four thousand three hundred seventeen Dollars (\$294,317), the Purchase Price shall be reduced dollar-for-dollar by the amount by which the Net Assets are valued at less than Two hundred ninety four thousand three hundred seventeen Dollars (\$294,317) and Seller shall pay to Purchaser the amount of such shortfall within thirty (30) days after the date Purchaser delivers the Closing Date Balance Sheet (together with all supporting statements related thereto) to Seller or such later time as hereinafter provided in the event that Seller disputes the Closing Date Balance Sheet pursuant to this Section 2.4(a).

(b) In the event that Seller wishes to dispute Purchaser's determination of the Net Assets as set forth on the Closing Date Balance Sheet, Seller or its counsel shall, within thirty (30) days after receipt of the Closing Date Balance Sheet, give written notice to Purchaser of such dispute and the reasons therefor. Seller and Purchaser shall attempt to resolve such dispute within fifteen (15) days after receipt by Purchaser of such notice, and in the event that the parties are unable to resolve such dispute within said period, the parties agree that a recognized independent certified public accounting firm that shall be mutually agreed upon by Seller and Purchaser, in the exercise of their reasonable discretion (the "Accounting Firm"), shall be employed to resolve such dispute as soon as reasonably practicable.

(c) The parties shall direct the Accounting Firm to review the books and records of Seller in order to verify the accuracy of the Closing Date Balance Sheet. The determination of the Accounting Firm shall be final and binding upon the parties. The Seller shall pay any amount determined to be due and owing to the Purchaser, whether by the agreement of the parties or the determination of the Accounting Firm, all as described above, within ten (10) days after the date of the parties' agreement or the determination of such Accounting Firm. The fees for any such accounting shall be paid equally by the parties.

Section 2.5 Assumed Liabilities.

(a) Purchaser and Seller agree that, Purchaser, by entering into this Agreement and consummating the transactions contemplated hereby, is not assuming or agreeing to pay, perform or discharge or otherwise become liable for any Liability of Seller, other than the following obligations and liabilities of Seller: (i) any Liability of Seller arising under any Assigned Contract included in the Assets (other than any Liability arising out of a breach that occurred prior to the Effective Time), whether or not delinquent; (ii) any trade account payable incurred in the ordinary course of business reflected on the Interim Balance Sheet that remains unpaid at the Effective Time (a trade payable being deemed to include the contingent commissions shown on the Interim Balance Sheet, whether owed to employees or independent contractors, and any current liability listed on the Interim Balance Sheet other than “210102.10 Accrued Payroll”, “210103.10 401K Payable-employee”, “210103.20 Accrued Vacation Pay”, “210103.30 Payroll Tax Liab” and “210104.10 “Accrued Expenses”); (iii) any trade account payable incurred by Seller in the ordinary course of business between the date of the Interim Balance Sheet and the Effective Time that remains unpaid at the Effective Time; and (iv) any Liability to Seller’s customers incurred by Seller in the ordinary course of business outstanding as of the Effective Time reflected on Seller’s books whether or not delinquent (other than any Liability arising out of a breach that occurred prior to the Effective Time) (the “Assumed Liabilities”). Except as set forth above, Purchaser shall not assume any such Liabilities nor shall Purchaser become liable for any Liabilities relating to the operation of the Business prior to the Effective Time. Without limiting the generality of the foregoing, except as expressly provided herein, Purchaser shall not assume (i) any Liability for any litigation matter arising from the conduct of the Business prior to the Effective Time, regardless of whether such matter is disclosed on Schedule 3.9 of the Disclosure Letter; (ii) any Liability for any legal fees or expenses of Seller or Shareholder incurred for any reason whatsoever, including, without limitation, the legal fees and costs owed to Alston & Bird, LLP and any legal fees incurred in connection with the negotiation of this Agreement and the transactions contemplated hereby; (iii) any Liability for any claims by employees or former employees of Seller or Shareholder concerning acts or omissions of Seller or Shareholder occurring prior to the Effective Time; (iv) any Liability for any insurance premium adjustments (including retroactive adjustments) that may arise from insurance policies in force any time before the Effective Time; or (v) any Liabilities of Seller or Shareholder for any income or other tax obligations or for any employee benefit obligations for Seller’s employees or former employees or both; (vi) any Liability under any employment, severance, retention, or termination agreement with any employee of Seller; (vii) the indebtedness of the Seller or the Shareholder to Medical Capital Corporation, a Nevada corporation, (viii) Coalition America Inc.’s claim in the Receivership Action for \$4,042,169.00, as evidenced by the Judgment entered against the Seller on August 5, 2009 and the Judgment Taxing Costs and Awarding Attorneys’ Fees entered against the Seller on March 1, 2011 in the case styled Coalition America, Inc. v. National Health Benefits Corporation, Case No. 1:03-CV-4012-CC in the United States District Court for the Northern District of Georgia, Atlanta Division; (ix) Coalition America, Inc.’s allowed claim in the Receivership Action in the amount of \$75,927.76, relating to unpaid network access fees owed by the Seller; or (x) indebtedness or fees due to the Receiver.

(b) Seller shall pay all stamp, use, employment, property, ad valorem,



income, realty transfer, franchise, net worth, intangible, excise, license or other taxes, additions to tax, penalties and interest, whether federal, state, local, foreign or other, in respect of any and all transfers pursuant to the terms of this Agreement excepting any sales or use tax, which shall be the responsibility of the Purchaser. All property and ad valorem taxes, leasehold rentals and other customarily proratable items relating to the Assets, payable on or after the Effective Time and relating to a period of time both prior to and on or after the Effective Time. shall be the responsibility of the Purchaser.

Section 2.6 Allocation. The aggregate purchase price for the Assets shall be allocated by Purchaser and Seller within five (5) business days prior to the Closing Date, as required by Section 1060 of the Code. Purchaser and Seller shall file Form 8594, Asset Acquisition Statement under Section 1060, with their respective income tax returns for the taxable year that includes the Closing Date. Purchaser and Seller agree to satisfy any and all reporting requirements of Section 1060 of the Code and the Treasury regulations thereunder. Purchaser and Seller shall file Form 8594 in a manner consistent with the allocation of the purchase price as agreed to by the parties. If, in subsequent taxable years, Purchaser or Seller makes an allocation of any increase or decrease in the purchase price for any asset, the party making such increase or decrease agrees to file a supplemental Form 8594 as required.

Section 2.7 The Auction. The parties acknowledge it is a condition precedent to the Closing that the Receiver obtain the Court Approval, and the Receiver shall seek such Court Approval from the Receivership Court. Seller shall cause the Receiver to use good faith efforts to file documents with the Court within ten (10) days after the date this Agreement is executed and delivered by Seller and Purchaser requesting a hearing date from the Receivership Court for the application for Court Approval within sixty-five (65) calendar days after the date this Agreement is executed and delivered by Seller and Purchaser. Receiver will propose to the Receivership Court that the overbid procedure for the sale of the Business (the "Auction") be conducted under the Receivership Court's supervision in accordance with the following terms and provisions:

(a) Overbids and Bid Increments. The minimum overbid shall be Three Million Four Hundred Fifty Thousand Dollars (\$3,450,000) (the "Minimum Overbid Amount"). Only Qualified Bidders (as defined below) may make bids at the Auction. All bids are subject to overbids in increments of Fifty Thousand Dollars (\$50,000). The Receivership Court may reject any and all bids following conclusion of the Auction. If no Qualified Bidder submits a bid in the amount of the Minimum Overbid Amount or higher, this Agreement will be submitted to the Receivership Court for Court Approval.

(b) Due Diligence Information. All prospective bidders ("Prospective Bidders") shall have had the opportunity to inspect any and all documentation regarding the Business which had been provided to the Purchaser prior to the Auction ("Due Diligence Information") and obtain a form purchase and sale agreement, after executing a nondisclosure agreement in form acceptable to Seller. Such limited access agreement shall include confidentiality and disclaimer provisions as determined necessary or appropriate by the Receiver.

(c) No Representations and Warranties for Due Diligence Information. Any

Due Diligence Information provided to Prospective Bidders is for informational purposes only and provided without any warranty, guaranty or representation by Receiver, express or implied. All Prospective Bidders shall conduct their own independent investigation and analysis regarding the Business and whether or not to proceed with the purchase of the Business. Receiver has not and will not be deemed to have made any representations, express or implied, regarding the completeness or accuracy of the Due Diligence Information.

(d) Qualified Bidder. To be determined a qualified bidder (the “Qualified Bidder”), one must: (i) provide a fully executed purchase and sale agreement for the Business in form substantially similar to this Agreement (the “Qualified Bid PSA”), acceptable to the Receiver (provided, that, such Qualified Bid PSA shall be revised to (A) reflect any changes in this Agreement that are personal in nature to the Qualified Bidder, as purchaser), (ii) concurrently with the execution and delivery of the Qualified Bid PSA, provide evidence, in the form of a cashier’s check, a deposit of immediately available funds or an irrevocable letter of credit in favor of the Receiver, or such other evidence acceptable to the Receiver, in his sole and absolute discretion that the Qualified Bidder has the ability to pay at least the Minimum Overbid Amount set forth above (“Evidence of Funds”), (iii) concurrently with the execution and delivery of the Qualified Bid PSA, provide an earnest money deposit (the “Overbid Deposit”) in Immediately Available Funds in the amount of One Hundred Seventy Five Thousand Dollars (\$175,000) payable to the Receiver, which amount shall be *non-refundable* to the Qualified Bidder with the highest bid at the Auction (the “High Bidder”) except as expressly set forth in the Qualified Bid PSA. Purchaser is a Qualified Bidder, and to the extent there are overbids and Purchaser is the successful bidder, this Agreement shall be deemed amended to reflect the purchase price approved by the Court. Each Qualified Bidder (other than the Purchaser) must provide the Qualified Bid PSA executed by such Qualified Bidder, the Overbid Deposit and the Evidence of Funds to the Receiver no later than five (5) Business Days’ prior to the date set for the hearing with the Receivership Court of the application seeking Court Approval (“Hearing Date”). Prior to the Hearing Date, subsequent overbids may be submitted to Receiver in writing. At the hearing with the Receivership Court, subsequent overbids may be submitted verbally on the Receivership Court record or as directed by the Receivership Court. The Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative. The High Bidder’s Overbid Deposit shall be applied to the purchase price under the Qualified Bid PSA, if the sale is approved by the Receivership Court.

(e) Consent to Receivership Court Jurisdiction and Waiver of Jury Trial. All Qualified Bidders appearing at the Auction shall have deemed to have consented to the Receivership Court’s jurisdiction and waived any right to jury trial in connection with any disputes related to the Auction, or the closing of the sale. The Receivership Court shall be the exclusive forum for any such disputes.

(f) No Contingencies for Qualified Bidder. The sale to any Qualified Bidder of the Business shall not be subject to any contingencies, including without limitation, contingencies for financing, due diligence or inspection.

(g) No Conditions Precedent for Qualified Bidder. The sale to any Qualified Bidder of the Business shall not be subject to any additional conditions precedent (not

reflected in this Agreement) to the Qualified Bidder's obligation to timely consummate the sale transaction, and to pay the remainder of the purchase price.

(h) Auction Confirmation Order. The sale to any Qualified Bidder of the Business shall not be subject to any additional conditions subsequent to the Auction other than entry of a Receivership Court order confirming the sale to the Qualified Bidder (the "Auction Confirmation Order") and as otherwise reflected in this Agreement.

(i) Receiver's Right to Determine Conduct of Auction. The Receiver reserves the right to deny any person (other than Purchaser) admittance to the Auction, to postpone or cancel the Auction, to withdraw the Business from the Auction, and to change any terms or procedures of the Auction or the particular conditions of sale, as necessary, upon notice to Purchaser, and any Qualified Bidders, prior to or at the Auction, without further Receivership Court order.

(j) Breakup Fee; Purchaser's Rights upon Overbid. If Purchaser is outbid by a Qualified Bidder at the Auction and the sale of the Business to such Qualified Bidder is consummated, (i) Purchaser shall be entitled to a break-up fee equal to Purchaser's documented out-of-pocket legal and due diligence expenses up to a maximum of One Hundred Twenty Five Thousand Dollars (\$125,000); and (ii) this Agreement shall be terminated and, except as specifically set forth in this Agreement, neither party shall have any further obligation or liability to the other.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller represents and warrants to Purchaser as of the date hereof and as of the Closing Date as follows:

Section 3.1 Organization and Standing. Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of each jurisdiction where such qualification is required. Seller has all requisite power and authority (corporate and otherwise) to carry on its business in the places and as it is now being conducted and to own and lease the properties and assets which it now owns or leases, and is qualified to do business as a foreign corporation in every jurisdiction in which such qualification is required.

Section 3.2 Authority. Seller has the capacity and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to perform hereunder and thereunder, and, upon approval of the Receivership Court, to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents have been duly authorized and approved by the Shareholder and the Board of Directors of Seller. This Agreement and the other Transaction Documents to be executed, delivered and performed by Seller constitute or will, when executed and delivered, constitute the valid, legal and binding obligation of Seller, enforceable against the Seller in accordance with their respective terms, except as

enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws from time to time in effect affecting the enforcement of creditors' rights generally, and except as enforcement of remedies may be limited by general equitable principles. Seller has delivered to Purchaser copies of its Articles of Incorporation, as amended, and Bylaws, as amended, certified to be true, correct and complete by an executive officer of Seller and there have been no changes in such Articles of Incorporation or Bylaws since the date of such certificate.

Section 3.3 Reserved.

Section 3.4 Financial Statements.

(a) Included as Schedule 3.4(a) of the Disclosure Letter are true, correct and complete copies of the Seller's unaudited (i) balance sheets as of December 31, 2011, and December 31, 2010 (the "Balance Sheet") and (ii) income statements for the years ended December 31, 2011, and December 31, 2010 (the "Income Statement," and collectively with the Balance Sheet and any accompanying notes, the "Financial Statements"), all of which were previously provided to the Purchaser. The Financial Statements are complete and fairly present the financial condition and results of operations, charges in shareholder's equity and cash flows of Seller as of and for the periods then ended, subject to the qualifications set forth in Schedule 3.4(a) of the Disclosure Letter. The Financial Statements accurately reflect all costs of any type or nature incurred by Seller in the operation of the Business. The Financial Statements reflect, subject to the changes described on Schedule 3.4(a) of the Disclosure Letter, the consistent application of accounting principles throughout the periods involved and have been prepared from and in accordance with the accounting records of Seller.

(b) Included as Schedule 3.4(b) of the Disclosure Letter are true, correct and complete copies of the Seller's unaudited (i) balance sheet as of April 30, 2012 (the "Interim Balance Sheet"), and (ii) income statement for the four month period ended April 30, 2012 (the "Interim Income Statement," and collectively with the Interim Balance Sheet and any accompanying notes, the "Interim Financial Statements"). Except as disclosed in the Interim Financial Statements or on Schedule 3.4(b) of the Disclosure Letter, using the same assumptions and methodology as the Financial Statements, and except for the absence of normal year-end audit adjustments, (i) the Interim Balance Sheet fairly presents in all material respects on an unaudited basis the financial position of the Seller as of the date thereof and (ii) the Interim Income Statement is a fair representation in all material respects on an unaudited basis of the results of operations, charges in shareholder's equity and cash flows of the Business for the period indicated. Subject to the changes described on Schedule 3.4(b), the Interim Financial Statements reflect the consistent application of accounting principles throughout the periods involved and have been prepared from and in accordance with the accounting records of Seller.

Section 3.5 Taxes. Seller has paid or will pay all taxes, additions to tax, penalties and interest, if any, required to be paid by it with respect to the operation of the Business. There is not and there will not be, any Liability for federal, state, foreign, local or other income, sales, stamp, use, excise, employment, property, franchise, ad valorem, license or other taxes, assessments, fees, charges, additions to tax, penalties or interest arising out of (including any

Liability for failure to withhold any such amount), or attributable to, or affecting the Assets or the conduct of the Business through the Closing Date, or attributable to the conduct of the operations of Seller at any time, for which Purchaser will have any liability for payment or otherwise or which will become an Encumbrance or will attach to the Assets or the operations of the Business. Except as set forth in Schedule 3.5 of the Disclosure Letter, there does not exist and will not exist by virtue of the transactions contemplated by this Agreement any liability for taxes, assessments, fees, charges or other amounts which may be asserted by any taxing authority against the Purchaser, the Assets or the operations of the Business, and no Encumbrance for taxes, assessments, fees, charges or other amounts has or will attach to the Assets or the operations of the Business. Seller shall, promptly upon receipt of the Cash Payment, pay or cause to be paid the taxes, assessments, fees, charges, and the amounts listed in Schedule 3.5 of the Disclosure Letter.

Section 3.6 Ownership of Assets and Leases; Accounts Receivable.

(a) Seller has, and at Closing will have, good, marketable and exclusive title to all of the Assets, in each case free and clear of all Encumbrances, except as specifically disclosed on Schedule 3.6(a) of the Disclosure Letter (to the extent and in the amounts so disclosed) and for encumbrances arising from current taxes not yet past due (collectively, “Permitted Encumbrances”). Except as set forth on Schedule 3.6(a), each of the leases and other agreements included in the Assets is in full force and effect and constitutes a legal, valid and binding obligation of the respective parties thereto, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws from time to time in effect affecting the enforcement of creditors’ rights generally, and except as enforcement of remedies may be limited by general equitable principles, and there is not under any of such leases or agreements existing any default by Seller, any of the other parties thereto, or any event or condition which, with notice or lapse of time, or both, would constitute a default.

(b) All of the Assets are in good operating condition and state of repair, subject only to ordinary wear and tear which is not such as to affect adversely the operation of the Business or the Assets in the ordinary course, and are suitable for the purposes for which they are used by Seller in connection with the Business. The present use and location of the Assets conform with all applicable Laws. Seller has not received notice of any breach or violation of any such Laws with respect to the Assets.

(c) Except as set forth on Schedule 3.6(c), all of the Accounts Receivable of Seller shown on the Financial Statements and Interim Financial Statements or thereafter acquired, as offset by the “AR% Savgs Allow Doub” which is calculated in accordance with the methodology described in Schedule 3.6(c) of the Disclosure Letter, represent in the aggregate an estimate of income based upon historical claims processed, arising from claims actually submitted to Seller for processing in the ordinary course of business. Except as set forth on Schedule 3.6(c), Seller reasonably believes that the Accounts Receivable as so offset by the “AR% Savgs Allow Doub” will be collectible and will be collected (without recourse to any judicial proceeding). There is no contest, claim, defense or right of offset with any account debtor of any Accounts Receivable relating to the amount or validity of such Accounts



Receivable other than the ordinary course of business subsequent determinations such as eligibility of the patient, eligibility of the claim, duplicate claims, out-of-network claims, et. which are reflected in the "AR% Savgs Allow Doub". Schedule 3.6(c) of the Disclosure Letter contains a complete and accurate list of all Accounts Receivable as of the date of the Interim Balance Sheet, which list sets forth the aging of each such Accounts Receivable.

(d) Except pursuant to this Agreement, the Seller is not a party to any contract or obligation whereby an absolute or contingent right to purchase, obtain or acquire any rights in any of the Assets or any of the Business has been granted to anyone. There does not exist and will not exist by virtue of the transactions contemplated by this Agreement any claim or right of any third person by virtue of applicable Laws, including bulk sales laws or otherwise which may be asserted against the Purchaser or any of the Assets.

Section 3.7 Compliance with other Instruments. The execution and delivery of this Agreement and the other Transaction Documents to be entered into pursuant hereto by Seller do not, and the consummation of the transactions contemplated hereby and thereby will not, (a) violate any provision of the Articles of Incorporation, as amended, or Bylaws, as amended, of Seller, (b) violate or constitute an occurrence of default under any provision of, or conflict with, or result in acceleration of any obligation under, or give rise to a right by any party to terminate its obligations under: (i) any mortgage, deed of trust, conveyance to secure debt, note, bond, debenture, loan, or lien; (ii) except as set forth in Schedule 3.7 of the Disclosure Schedule, any lease, license, agreement or instrument; or (iii) any order, judgment, decree or other arrangement, to which Seller is a party or by which either such party is bound or the Assets or the Business are affected, (c) result in the creation of any Encumbrance upon any of the Assets, or (d) require the authorization, approval, consent or order of, or filing with, or other action by any court, regulatory agency or other governmental body other than the Receivership Court.

Section 3.8 Absence of Change. Since the Interim Balance Sheet date Seller has not taken any action, or permitted any action to be taken, or agreed, whether in writing or otherwise, to take any action, (a) outside the ordinary course of business and consistent with past practice, or (b) whether or not outside the ordinary course of business and consistent with past practice, actions that in the aggregate may have a material adverse effect on the Assets, the Business, the value of the Business as a going concern or the ability of Seller to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, since that date Seller:

(a) has not sold, leased, transferred or assigned any of its assets, tangible or intangible, other than for a fair consideration in the ordinary course of business;

(b) other than client and network contracts has not entered into any contract, lease, agreement or license either involving more than \$50,000 not outside the ordinary course of business;

(c) has not accelerated, terminated or cancelled any contract, lease, agreement or license involving more than \$50,000 to which Seller is a party or by which it is

bound or modified any contract, lease, agreement or license involving more than \$50,000 which would negatively affect Seller;

(d) has not imposed or suffered any Encumbrances upon any of its assets, tangible or intangible;

(e) has not made any capital expenditure (or series of related capital expenditures) either involving more than \$30,000 or outside the ordinary course of business;

(f) has not made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person either involving more than \$10,000 or outside the ordinary course of business;

(g) has not cancelled, compromised, waived or released any right or claim (or series of related rights and claims) involving more than \$25,000;

(h) has not issued, sold or otherwise disposed of any of its capital stock or other equity interests, or granted any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock or other equity interests;

(i) has not experienced any damage, destruction or loss (whether or not covered by insurance) to its property exceeding \$25,000 in the aggregate;

(j) has not made any loan to, or entered into any other transaction with, any of its directors, officers, employees or affiliates outside the ordinary course of business;

(k) has not entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement;

(l) has not granted any increase in the base compensation of any of its directors, officers or employees except in the ordinary course of business consistent with past practice;

(m) has not adopted, amended, modified or terminated any Plan (or taken any such action with respect to any other employee benefit plan); or

(n) has not made any other change in employment terms for any of its officers or employees;

Section 3.9 Litigation. Except as otherwise set forth on Schedule 3.9 of the Disclosure Letter, there is no suit, action, proceeding (legal, administrative or otherwise), claim or investigation, informal objection or complaint pending or to Seller's knowledge threatened against, or affecting Seller or any subsidiary or that affects or may affect the transactions contemplated herein, the Assets or the Business (including, without limitation, any suits, actions, proceedings, claims or investigations under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act of 1990, as amended, or any state laws

analogous to any of the foregoing). To Seller's knowledge, there exists no basis or grounds for any other such suit, action, proceeding, claim or investigation. None of the items described in Schedule 3.9 of the Disclosure Letter, singly or in the aggregate, if pursued and/or resulting in a judgment against Seller, shall have an adverse effect on the Assets, the Business, this Agreement or the right of the Seller to consummate the transactions contemplated hereby.

Section 3.10 Compliance With Law. Seller holds all licenses, certificates, permits, franchises and rights from all appropriate federal, state, county, municipal or other public authorities necessary for the conduct of the Business and the use of the Assets. All such licenses, certificates, permits, franchises and rights are listed on Schedule 3.10 of the Disclosure Letter. Except as noted on Schedule 3.10 of the Disclosure Letter, Seller is presently conducting its business so as to comply with all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, orders, judgments or decrees of any governmental authority (collectively, "Laws"). The Seller (a) has not received any notice of violation or have knowledge of violation of any applicable zoning Law relating to Seller's operations or properties, whether owned or leased; (b) is not presently charged with or under governmental investigation with respect to any actual or alleged violation of any Law or (c) is not presently the subject of any pending or, to its knowledge, threatened adverse proceeding by any regulatory authority having jurisdiction over the Assets or the Business and the Seller does not have any knowledge of any grounds or basis for any of the foregoing matters in clause (a), (b) or (c). Except as noted on Schedule 3.10 of the Disclosure Letter, neither the execution nor delivery of this Agreement and the other Transaction Documents, instruments and agreements to be entered into pursuant hereto, nor the consummation of the transactions contemplated hereby and thereby will result in the termination of any license, certificate, permit, franchise or right held by Seller which is to be assigned pursuant to this Agreement, and all such assigned licenses, certificates, permits, franchises and rights will remain vested in and inure to the benefit of Purchaser after the consummation of the transactions contemplated by this Agreement. For the avoidance of doubt, each reference in this Section 3.10 and this Agreement to any Laws, licenses, certificates, permits, franchises or rights of any government authority shall be deemed to include all Laws, licenses, certificates, permits, franchises or other rights relating to public health and safety, worker health and safety and pollution or the protection of the environment.

Section 3.11 Disclosure. No representation or warranty of Seller nor any Transaction Document, exhibit, document, statement, certificate, or schedule furnished to Purchaser pursuant hereto or in connection with the transactions contemplated hereby, contains any untrue statement of a material fact or omits to state a material fact necessary to make statements or facts contained herein or therein not misleading in light of the circumstances under which they were made.

Section 3.12 Material Contracts. Except as listed or described on Schedule 3.12 of the Disclosure Letter, as of the date hereof, Seller is not a party to or bound by any written or oral leases, agreements, instruments, or other contracts or legally binding contractual commitments ("Contracts") that are of a type described below (collectively, the "Material Contracts"):

- (a) any collective bargaining arrangement with any labor union;



(b) any contract for capital expenditures or the acquisition or construction of fixed assets in excess of \$15,000 in the aggregate;

(c) any contract for the purchase or sale of inventory, materials, supplies, merchandise, machinery, equipment, parts or other property, assets, or services requiring aggregate future payments in excess of \$15,000;

(d) any contract relating to the borrowing of money or the guaranty of another Person's borrowing of money other than a loan from the Receiver from the receivership assets;

(e) any contract granting any Person an Encumbrance on all or any part of the Assets;

(f) any contract relating to (i) the purchase, sale, lease or disposal of any equity interest or other securities of the Seller or (ii) the purchase, sale, lease or disposal of any assets of the Seller other than in the ordinary and usual course of business consistent with past custom and practice (including any contract granting to any Person a first refusal, first offer or similar preferential right to purchase or acquire any of the Assets);

(g) any contract under which the Seller is (i) a lessee or sublessee of any machinery, equipment, vehicle or other tangible personal property, or (ii) a lessor of any property, in either case having an original value in excess of \$15,000;

(h) any contract limiting, restricting or prohibiting seller from conducting the Business anywhere in the United States or elsewhere in the world or any contract limiting the freedom of the Seller to engage in any line of business or to compete with any other Person or to solicit any Person for employment;

(i) any joint venture or partnership contract;

(j) any employment contract with any employee with annual total compensation in excess of \$100,000;

(k) any management service, consulting, maintenance or any other similar contracts (including any employee lease or outsourcing arrangement) providing for annual aggregate payments of more than \$100,000;

(l) any license (including inbound and outbound licenses) or other agreements (including, without limitation, royalty agreements and maintenance agreements) relating in whole or in part to any Intellectual Property (excluding, however, licenses of off-the-shelf desktop computer application software having a license fee per user of less than \$15,000);

(m) any contract (including, without limitation, network provider, broker, distributor, vendor, customer or maintenance agreements) or series of such contracts which involve aggregate payments of \$100,000 or more or which is not cancelable without penalty within ninety (90) days;

(n) any contract that provides any customer of the Seller or the Business with pricing, discounts or benefits that change based on the pricing, discounts or benefits offered to other customers of the Seller or the Business, including, without limitation, contracts containing what are generally referred to as “most favored nation” provisions;

(o) any warranty agreement with any supplier to the Business with respect to products sold or indemnity agreement with any supplier to the Business under which the Seller is obligated to indemnify such supplier against product warranty or infringement or similar claims;

(p) any contract with any affiliate, equityholder or employee of the Seller (including any officer, manager, member, partner, director, agent or consultant);

(q) any contract or other arrangement regarding nondisclosure or confidentiality not in the ordinary course of business; and

(r) any power of attorney executed by or on behalf of the Seller.

The Seller has made available to the Purchaser a true and complete copy of each written Material Contract, including all amendments or other modifications thereto. Except as set forth on Schedule 3.12 of the Disclosure Letter, each Material Contract is a valid and binding obligation of the Seller and, to the Seller’s knowledge, of each other party thereto, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws from time to time in effect affecting the enforcement of creditors’ rights generally, and except as enforcement of remedies may be limited by general equitable principles, in full force and effect and not subject to any claims, charges, setoffs or defenses. Each Material Contract was effected on market terms in arm’s-length negotiations. Except as set forth on Schedule 3.12 of the Disclosure Letter, the Seller has performed all obligations required to be performed by it prior to the date hereof under the Material Contracts and is not in breach or default thereunder nor has any event occurred which, with the giving of notice or the passage of time or both, would constitute a breach or default. The Seller has not received a notice of termination or threat of termination of a Material Contract.

### Section 3.13 Computer Programs and Software.

(a) For purposes of this Agreement, “Software” means (i) any and all computer programs owned or licensed by the Seller and used in the operation of the Business, consisting of sets of statements or instructions to be used directly or indirectly in computer software and firmware, including, without limitation all versions thereof, all screen displays and designs therefor, and all component modules of source code or object code or natural language code therefor, and whether recorded on paper, magnetic media or other electronic or non-electronic device, (ii) all descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, and (iii) all documentation, including without limitation user manuals and training materials, relating to any of the foregoing.

(b) For purposes of this Agreement, “System” means, collectively, the Seller’s database management and analysis computer system and the voice response interface system, including the Data Warehouse, Proprietary Applications and other Software, used by the Seller in the operation of the Business. “Proprietary Applications” means the Software owned by the Seller and used in the operation of the Business, which Proprietary Applications are identified as such on Schedule 3.13 of the Disclosure Letter. “Data Warehouse” means the database(s) and other information and data compilations owned and maintained by the Seller on its servers and used or useful in the Business.

(c) Schedule 3.13 of the Disclosure Letter lists all of the Software incorporated into the System or otherwise used in the Business, including the Proprietary Applications. The Software is all of the computer software used, licensed or sublicensed by the Seller in the conduct of the Business and no other Software is necessary for the Seller to conduct the Business. The System performs in accordance with the applicable specifications therefor to an extent sufficient to permit the Business to be operated as it is currently conducted and to Seller’s knowledge is free of defects in programming and operation, which, individually or in the aggregate, could have an adverse effect on the utility or functionality of the System (or any component thereof). To Seller’s knowledge, the System does not contain any viruses, “trojan horses,” “time bombs” or back door accesses.

(d) No employee or consultant of the Seller is, or is now expected to be, in default under any term of any employment or consulting contract, agreement or arrangement, whether written or verbal, relating to the System or any noncompetition arrangement, or any other contract or any restrictive covenant relating to the System or its development or exploitation. The Proprietary Applications were developed entirely by the employees and independent contractors of the Seller during the time they were employees or independent contractors only of the Seller, and the Proprietary Applications do not include any inventions of the employees or independent contractors made prior to the time such employees or independent contractors became employees or independent contractors of the Seller nor any intellectual property of any previous employer of such Person, except for commonly used types of commercial software. The Seller has (i) validly and effectively obtained the right and title or license to use, copy, modify and distribute the third-party Software and other third party materials contained in and material to the System and (ii) caused all employees and independent contractors to validly and effectively assign all of their rights and title to all Software, inventions, and rights created by such Persons in the scope of performing services for the Seller, which would not, by operation of law be owned by the Seller.

(e) Except as disclosed on Schedule 3.13 of the Disclosure Letter, all right, title and interest in and to the Proprietary Applications is owned by the Seller, free and clear of Encumbrances. As to Software shown on Schedule 3.13 of the Disclosure Letter as being licensed to the Seller, such Software has been licensed pursuant to valid license agreements and, except as set forth on Schedule 3.13 of the Disclosure Letter, all royalties, license or other fees due and payable thereunder have been paid or adequate provision therefore has been made and accrued on the books of the Seller. The Seller has all rights to assign, license, sublicense or otherwise transfer, use, disclose and distribute the Proprietary Applications and the data contained in the Data Warehouse and, in addition, necessary or required for use of the System in

the normal and ordinary course of the Business as currently conducted. The Data Warehouse has been compiled, used and maintained in compliance with all applicable Laws (including, but not limited to, privacy laws) and any applicable contract provisions. No royalties, license fees, service charges or other fees shall become due and payable with respect to any Software licensed to the Seller as a result of the consummation of the transactions contemplated hereby.

(f) The Seller's development, use, licensing, sublicensing, modification, derivation from or exploitation of the Proprietary Applications does not violate any rights of any other Person and the Seller has not received any communication alleging such a violation. The Seller does not have any obligation to compensate any Person for the development, use, sale or exploitation of the Proprietary Applications or any other Software developed by or for the Seller. The Seller has not granted, transferred or assigned any right (including, but not limited to, any licenses) or interest in the Proprietary Applications to any Person, except pursuant to the license agreements identified as such on Schedule 3.13 of the Disclosure Letter (each such agreement is hereinafter referred to as a "License"). Schedule 3.13 of the Disclosure Letter sets forth, with respect to each License, the Proprietary Applications licensed thereunder. Except as set forth on Schedule 3.13 of the Disclosure Letter, each License constitutes only an end-user agreement, each of which grants the end-user thereunder solely the nonexclusive right and license to use the identified Proprietary Applications and related user documentation for internal purposes only with no right to sublicense.

(g) To its knowledge, the Seller's development, use or exploitation of the System does not violate any rights of any other Person and the Seller has not received any communication alleging such a violation. To its knowledge, Software developed by the Seller on a work-for-hire basis for its customers does not violate any rights of any other Person when used by the customer as delivered and the Seller has not received any communication alleging such a violation. Except as set forth in Schedule 3.13 of the Disclosure Letter, there have been no patents applied for and no copyrights registered for any part of the System owned by the Seller.

(h) The Seller has taken measures customary to protect the confidential and proprietary nature of the System, including the use of confidentiality agreements with all of its employees and independent contractors having access to the source and object code of the Proprietary Applications and the Software. Schedule 3.13 of the Disclosure Letter lists all confidentiality or non-disclosure agreements to which the Seller or any of the Seller's employees is a party relating to the Proprietary Applications.

(i) Schedule 3.13(i) of the Disclosure Letter lists all of third-party Software installed or used by the Hired Employees on each personal computer used primarily by such Hired Employee.

Section 3.14 Intellectual Property Matters. Schedule 3.14 of the Disclosure Letter contains a true, correct and complete list of all domestic and foreign (i) registered trademarks and service marks, applications for trademark and service mark registrations, and all unregistered trademarks and service marks, (ii) registered copyrights and applications for copyright registration (including, but not limited to, any in the System, excluding any documentation therefor), and (iii) patents and patent applications, owned by the Seller. Unless

otherwise indicated on Schedule 3.13 or Schedule 3.14 of the Disclosure Letter, the Seller owns or has the right to use, in the normal and ordinary course of the Business as currently conducted, all Intellectual Property used in or necessary for the operations of the Business as currently conducted, free and clear of any Encumbrances other than obligations under licenses and other arrangements identified on Schedule 3.13 and Schedule 3.14 of the Disclosure Letter. All royalties, license and other fees due and payable by the Seller under such licenses and agreements have been paid or adequate provision therefor has been made and accrued on the books of the Seller. No additional royalties, license or other fees shall become due and payable with respect to any Intellectual Property used by the Seller in the operation of its business as a result of the consummation of the transactions contemplated hereby. With respect to Intellectual Property owned by the Seller, such Intellectual Property and the Seller's use thereof do not, to Seller's knowledge, infringe upon any patent, trademark, trade name, service mark, copyright or trade secret owned or claimed by another. The Intellectual Property licensed to Seller, or which it has rights to sublicense or distribute, does not, to Seller's knowledge, infringe upon or unlawfully or wrongfully use any patent, trademark, trade name, service mark, copyright or trade secret owned or claimed by another. The Seller has not received any notice of any claim of infringement or any other claim or proceeding relating to any patent, trademark, trade name, service mark, copyright or trade secret. Except as disclosed in Schedule 3.13 or Schedule 3.14 of the Disclosure Letter and the rights under the licenses and other agreements identified thereon, no present or former employee of the Seller and no other Person owns or has any proprietary, financial or other interest, direct or indirect, in whole or in part, in any patent, trademark, trade name, service mark or copyright, or in any application therefore, or in any trade secret, which the Seller owns, possesses or uses in its operations as now or heretofore conducted. For purposes of this Agreement, "Intellectual Property" means and includes all patents, designs, art work, designs-in-progress, formulations, know-how, prototypes, inventions, trademarks, trade names, trade styles, service marks, and copyrights, whether registered or unregistered; all registrations and applications therefor, foreign and domestic; trade secrets or processes; Software; the Proprietary Applications and the Data Warehouse, and confidential or proprietary information that is either (i) owned by the Seller or (ii) as to which the Seller has rights as a licensee, distributor or sublicensor.

Section 3.15 Labor Matters. Except as set forth on Schedule 3.15 of the Disclosure Letter, Seller has not been the subject of any union activity or labor dispute, nor has it experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes. Except as set forth on Schedule 3.15 of the Disclosure Letter, Seller has no reason to believe that it has violated any Law relating to labor or labor practices with regard to the Business, and Seller is not a party to any collective bargaining agreement affecting the Business. None of the directors and officers (and employees with responsibility for employment matters) of Seller has any knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of Seller.

Section 3.16 Employee Benefit Plans and Arrangements.

(a) Seller has made available to the Purchaser summaries of each pension, profit-sharing, bonus, incentive, deferred compensation, severance pay, retirement or other employee benefit plan, agreement or arrangement within the meaning of § 3(3) of ERISA and

any stock option, stock bonus, or other stock-based compensation, deferred compensation, bonus, severance pay, welfare, or other plan, agreement or arrangement, currently maintained or contributed to by the Seller or any subsidiary for the benefit of any of its directors, employees or contractors or former directors, employees or contractors or as to which the Seller or any subsidiary may otherwise have any Liability (collectively, the “Plans”), all of which are set forth on Schedule 3.16 of the Disclosure Letter.

(b) With respect to each such Plan, Seller has made available to the Purchaser, as applicable, copies or written descriptions of each of the following documents that Seller has prepared or has been required to prepare:

- (i) the Plans and any amendments thereto (or a written description thereof); and
- (ii) the most recent summary plan descriptions and summary of material modifications thereto.

(c) The Seller (i) does not have any actual or potential withdrawal liability with respect to any multiemployer pension plan as defined in Section 414(f) of the Code or Sections 3(37) or 4001(a)(31) of ERISA, (ii) does not have any obligation to provide any welfare benefits to retired or former employees other than continuation of insurance coverage required by applicable Law, and (iii) has not incurred any Liability under Title IV of ERISA.

(d) No Plan is a multiemployer plan as defined in Section 414(f) of the Code or Sections 3(37) or 4001(a)(31) of ERISA. No Plan is a multiple employer plan within the meaning of Section 413(c) of the Code or Sections 4063, 4064 or 4066 of ERISA. No Plan that is a “welfare benefit plan” within the meaning of Section 3(1) of ERISA is a multiple employer welfare arrangement as defined in Section 3(40) of ERISA.

(e) Each Plan has been operated at all times in material compliance with applicable law.

(f) Except as disclosed on Schedule 3.16 of the Disclosure Letter, no employee or former employee of the Seller will be entitled to any additional compensation, severance pay or benefits or any acceleration of the time of payment or vesting of any compensation, severance pay or benefits under any Plan or agreement as a result of the transactions contemplated by this Agreement.

(g) No Plan has terms requiring assumption thereof by Purchaser or any of its ERISA Affiliates. There are no liabilities, breaches, violations or defaults under or with respect to any Plan (or any other employee benefit plan maintained or contributed to or required to be contributed to by any ERISA Affiliate) or other facts or circumstances that could subject the Assets, Purchaser or any of Purchaser’s employee benefit plans to any encumbrance, lien, tax, penalty or other Liability.

### Section 3.17 Customers and Suppliers.



(a) Schedule 3.17(a) of the Disclosure Letter is a complete and correct list of the twenty (20) largest customers “Material Customers”) (as measured by Net Revenue realized from their contracts) of Seller (with customer names redacted) for the sixteen (16) month period ending April 30, 2012. Except as set forth in Schedule 3.17(a) of the Disclosure Letter, in the last sixteen (16) months, no such Material Customer has cancelled or otherwise terminated, or threatened to cancel or terminate, its relationship with the Seller. The Seller has not received any notice, and has no knowledge that any such Material Customer intends to cancel or otherwise modify its relationship with the Seller. Except as set forth on Schedule 3.15(a), there are no claims, disputes or re-negotiations between the Seller and any Material Customer, and, to the Seller’s Knowledge, there is no basis for any such claim, dispute or re-negotiation.

(b) Schedule 3.17(b) of the Disclosure Letter is a complete and correct list of the twenty (20) largest vendors, suppliers, service providers and other similar business relations of the Seller based on (with such vendor, supplier and other service provider names redacted) (the “Material Vendors”) for the sixteen (16) month period ending April 30, 2012 and sets forth the accrued network fees for each vendor during such period. Except as set forth in Schedule 3.17(b) of the Disclosure Letter, in the last sixteen (16) months, no Material Vendor has cancelled or otherwise terminated, or threatened to cancel or terminate, its relationship with the Seller. Seller has not received any notice, and has no knowledge that any Material Vendor intends to cancel or otherwise modify (including, without limitation, price increases) its relationship with the Seller.

Section 3.18 Insurance. Schedule 3.18 of the Disclosure Letter sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers’ compensation coverage and bond and surety arrangements) to which Seller has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past three (3) years:

- (a) the name, address, and telephone number of the agent;
- (b) the name of the insurer, the name of the policyholder, and the name of each covered insured;
- (c) the policy number and the period of coverage;
- (d) a general description of the scope (including an indication of whether the coverage was on a claim made, occurrence, or other basis) and amount (including a description of how deductibles and ceilings are calculated and operate) of coverage; and
- (e) a description of any retroactive premium adjustments or other loss-sharing arrangements.

With respect to each such insurance policy, except as set forth on Schedule 3.18, (i) the policy is legal, valid, binding, enforceable, and in full force and effect; (ii) the policy will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby, (iii) neither Seller nor any

other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy; and (iv) no party to the policy has repudiated any provision thereof.

Section 3.19 Employees. Schedule 3.19 of the Disclosure Letter discloses all cash compensation (including wages, salaries, severance, commissions, advances, loans and actual or anticipated bonuses) paid or provided to each of the Seller's employees, consultants, agents, representatives or independent contractors for the year ended December 31, 2011 and the four (4) month period ended April 30, 2012. Except as set forth on Schedule 3.19, no unpaid compensation, other than recurring salary or compensation pursuant to the Seller's existing employment agreements or bonus arrangements, commissions, incentive compensation, or severance compensation, is payable to any current or former officers, directors, or employees. Except as set forth on Schedule 3.19 of the Disclosure Letter, no vacation or sick leave is accrued or payable for any employee. Except as set forth on Schedule 3.19 of the Disclosure Letter, no employee of Seller is subject to any non-competition or non-solicitation agreement which would prevent Purchaser from hiring such employee.

Section 3.20 Consents and Approvals. Other than Court Approval and except to the extent set forth on Schedule 3.20 of the Disclosure Letter, no filing or registration with, and no consent, approval, authorization, license, permit, certificate or order of any governmental authority or Person is required, including without limitation by any applicable Law, to permit Seller to execute, deliver or perform this Agreement or any of the other Transaction Documents required hereby or thereby to be executed by such party at the Closing.

Section 3.21 Schedules. All disclosure schedules included in the Disclosure Letter are true, correct and complete as of the date of this Agreement, and will be updated by Seller to be true, correct and complete as of the Closing Date. A matter disclosed on one schedule of the Disclosure Letter shall not be deemed to be constructively listed or disclosed on another schedule of the Disclosure Letter except as specifically referenced therein.

Section 3.22 Environmental Matters. Except as set forth on Schedule 3.22 of the Disclosure Letter: to Seller's knowledge, (i) the Seller is and, without exception, has been in compliance with all applicable Environmental Laws (as defined below) and all permits, licenses and authorizations required thereunder for (a) the occupation of any properties currently or formerly owned or leased by the Seller or any subsidiary, and (b) the conduct of the Business, (ii) no spill, release, disposal, burial or placement of any material regulated under Environmental Laws (hereinafter "Hazardous Materials") has occurred on, in, at, under or about any of the Seller's past or present property or facilities, and (iii) no other event has occurred or is pending or likely to occur which could result in a material liability under Environmental Laws for the Seller or its predecessor(s) in interest. A complete list of all material permits, licenses or other authorizations held by the Seller pursuant to Environmental Laws for the operation of the owned and leased properties and the conduct of the businesses of the Seller, and the expiration date of each, is set forth on Schedule 3.22 of the Disclosure Letter. The Seller has made available to the Purchaser or its advisors or consultants true,



complete and correct copies of all environmental reports, analyses, tests or monitoring in the possession of or known and available to the Seller pertaining to any properties currently or formerly owned or leased by the Seller. As used in this Agreement, "Environmental Laws" shall mean all federal, state, local or foreign laws, rules, regulations, ordinances or other similar standards relating to protection of the environment and worker health and safety.

Section 3.23 Real Property.

- (a) The Seller does not own any real property.
- (b) Schedule 3.23(b) of the Disclosure Letter lists and describes briefly all real property leased or subleased to Seller. With respect to each lease and sublease listed in Schedule 3.23(b) of the Disclosure Letter:
  - (i) the lease or sublease is legal, valid, binding, enforceable (except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws from time to time in effect affecting the enforcement of creditors' rights generally, and except as enforcement of remedies may be limited by general equitable principles), and in full force and effect;
  - (ii) upon the consent of the landlord to the assignment thereof, the lease or sublease will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;
  - (iii) to Seller's actual knowledge, no party to the lease or sublease is in breach or default, and no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration thereunder;
  - (iv) no party to the lease or sublease has repudiated any provision thereof;
  - (v) there are no disputes, oral agreements, or forbearance programs in effect as to the lease or sublease;
  - (vi) Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold;
  - (vii) to Seller's actual knowledge, all facilities leased or subleased thereunder have received all approvals of governmental authorities (including licenses and permits) required in connection with the operation thereof and have been operated and maintained in accordance with applicable Laws; and
  - (viii) all facilities leased or subleased thereunder are supplied with utilities and other services necessary for the operation of said facilities. Sufficiency of Assets. The Assets of Seller to be transferred to Purchaser constitute all of

the assets, properties, contract rights and licenses that are used to operate the Business in substantially the same manner as such operations are presently conducted and are reasonably sufficient to operate the Business as a going concern and include all of the operating assets of Seller.

Section 3.24 Absence of Unlawful Payments. None of (a) the Seller (b) any Subsidiary of the Seller, or (c) any director, officer, employee, agent or other Person authorized to act and acting on behalf of the Seller or any Subsidiary thereof: (i) has used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, other than unlawful distributions or other payments that may have been made to MCH prior to the date the Receiver was appointed; (ii) made any unlawful expenditures relating to political activity to government officials or others; (iii) made any unlawful payment to any foreign or domestic government official or employee from corporate funds; or violated any provision of the Foreign Corrupt Practices of 1977; or (iv) has accepted or received any unlawful contributions, payments, gifts or expenditures, in each case that relate to or could affect the Assets, the Business or the Purchaser.

Section 3.25 Subsidiaries. Seller has no subsidiaries.

Section 3.26 Undisclosed Liabilities. To the Seller's knowledge, Seller has no Liability (and there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against Seller giving rise to any Liability), except for (i) Liabilities set forth on the face of the Financial Statements and Interim Financial Statements (rather than in any notes thereto) to the extent and in the amounts so disclosed or reserved against, and (ii) Liabilities which have arisen after the date of the Interim Balance Sheets in the ordinary course of business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law, or individually or in the aggregate, have an adverse effect on the Business or the Assets). There exists no Indebtedness other than the Indebtedness set forth on Schedule 2.3(b) of the Disclosure Letter.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Seller as follows:

Section 4.1 Organization and Standing. Purchaser is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware and is qualified to do business and in good standing in all jurisdictions in which such qualification is required and where failure to be so qualified or in good standing would have a material adverse effect on Purchaser's financial condition.

Section 4.2 Corporate Power and Authority. Purchaser has the full corporate power and authority to execute and deliver this Agreement and the other Transaction Documents to be entered into pursuant hereto, to perform hereunder and thereunder, and to consummate the

transactions contemplated hereby and thereby. This Agreement and the other Transaction Documents to which it is a party have been approved by all requisite corporate action of Purchaser and constitute or will, when executed and delivered, constitute the valid, legal and binding obligation of Purchaser enforceable against it in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws from time to time in effect affecting the enforcement of creditors' rights generally, and except as enforcement of remedies may be limited by general equitable principles.

Section 4.3 Compliance with Other Instruments. The execution and delivery of this Agreement and the other Transaction Documents to be entered into pursuant hereto by Purchaser do not, and the consummation of the transactions contemplated hereby and thereby will not, (a) violate any provision of the Amended and Restated Certificate of Incorporation, or Bylaws, as amended, of Purchaser, or (b) violate or constitute an occurrence of default under any provision of, or conflict with, or result in acceleration of any obligation under, or give rise to a right by any party to terminate its obligations under: (i) any mortgage, deed of trust, conveyance to secure debt, note, bond, debenture, loan, or lien; (ii) any lease, license, agreement or instrument; or (iii) any order, judgment, decree or other arrangement, to which Purchaser is a party or by which it is bound or its assets are affected.

Section 4.4 Consents and Approvals. Other than Court Approval and except to the extent set forth on Schedule 4.4 of the Disclosure Letter, no filing or registration with, and no consent, approval, authorization, license, permit, certificate or order of any governmental authority or Person is required, including without limitation by any applicable Law, to permit Purchaser to execute, deliver or perform this Agreement or any of the other Transaction Documents required hereby or thereby to be executed by such party at the Closing.

## ARTICLE 5

### COVENANTS OF SELLER

Section 5.1 Conduct of the Business of Seller Prior to Closing. The Seller covenants, between the date of this Agreement and the Closing Date, that Seller will conduct the Business in the ordinary course and that it will, except as otherwise provided in this Agreement, (a) use its commercially reasonable efforts to preserve the organization of Seller intact and to preserve the goodwill of customers and others having business relations with Seller, which efforts shall include, but not be limited to, the continuation of Seller's usual and customary levels and standards of service; (b) maintain the Assets in the same working order and condition as such Assets are in as of the date of this Agreement, normal wear and tear excepted; (c) keep in force at no less than their present limits all existing bonds and policies of insurance insuring the Assets or the Business; (d) not take any action or permit any action to be taken (including, but not limited to, the incurrence of any material liabilities) that would adversely affect any of the Assets or the Business as a going concern, or that could reasonably be expected to impair the ability of Seller to consummate the transactions contemplated by this Agreement; (e) promptly deliver to Purchaser all regularly prepared unaudited financial statements of the Seller, in format utilized internally since the beginning of the year, as soon as available; (f) not enter into

any contract, commitment, arrangement or transaction of the type described in Section 3.12 hereof, not amend or modify any customer service agreement or any other Assigned Contract or Plan or waive any of the terms or provisions thereof except in the ordinary course of business, nor suffer, permit or incur any of the transactions or events described in Section 3.8 hereof; (g) not make, declare or pay any dividend or distribution to any holder of capital stock of Seller or redeem or repurchase, or agree to redeem or repurchase, any capital stock of Seller; (h) not make any changes in employee cash compensation, cash bonus or long-term non-cash incentives such as vacation policy or benefits without the consent of Purchaser, which shall not be unreasonably withheld or delayed; (i) not offer any employee severance pay; (j) timely file and pay all taxes, additions to taxes, penalties and interest, if any, required to be paid with respect to the operation of the Business; and (k) promptly advise Purchaser, in writing, of any matters arising or discovered after the date of this Agreement which, if existing or known at the date hereof, would be required to be set forth or described in this Agreement or the Disclosure Letter.

Section 5.2 Examination of Records. Purchaser has had the opportunity to conduct certain due diligence, to review records and documents and to ask questions of certain employees, subject to the Nondisclosure Agreement by and between Seller and Purchaser dated October 10, 2011 (the "Nondisclosure Agreement"), provided that customer pricing and other client names and the related services have not been and will not be disclosed to Purchaser until after approval of the Receivership Court has been obtained and all other conditions to Closing have been satisfied or waived. Purchaser acknowledges that it has been provided the names of certain of the Seller's clients who are among its top twenty clients based on Net Revenue who are direct competitors of Purchaser by virtue of the fact that they perform claims editing, bill review and audit, and/or claims negotiations ("Direct Competitors" and each a "Direct Competitor"), and confirms its agreement that it will not enter into any agreement with any of the Direct Competitors for the services provided by the Seller for a period of one (1) year after the Seller's disclosure of their names to Purchaser if the parties do not consummate the transactions contemplated herein; provided, however, that the Purchaser shall not be subject to any restrictions and shall be permitted to enter into agreements with any Direct Competitor if the transactions contemplated herein are not consummated as a result of a material breach of any covenant hereunder by Seller.

Section 5.3 Consents and Approvals. Seller shall make all filings required to be made by it to consummate the contemplated transactions. Seller shall apply for or otherwise use reasonable best efforts to obtain the waiver, consent and approval including but not limited to, all consents identified in Section 3.20, of all Persons whose waiver, consent or approval is (a) required in order to consummate the transactions contemplated by this Agreement and other Transaction Documents, or (b) required by any material agreement, lease, instrument, arrangement, judgment, decree, order or license to which Seller is a party or subject on the Closing Date (including, without limitation, the consent of any customer, licensor or supplier of Seller, if required), and which (i) could require the waiver, consent or approval of any Person to such transaction or (ii) without such waiver, consent or approval, such transaction could reasonably be expected to constitute an occurrence of default under the provisions thereof, result in the acceleration of any obligation thereunder or give rise to a right of any

party thereto to terminate its obligations thereunder. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of Seller hereunder so that Purchaser would not in fact receive all such rights, and the transactions contemplated by this Agreement are consummated, Seller and Purchaser will cooperate in a mutually agreeable arrangement pursuant to which Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including sub contracting, sub licensing or sub leasing to Purchaser, or under which Seller would enforce for the benefit of Purchaser, with Purchaser assuming Seller's obligations, any and all rights of Seller against a third party thereto. Seller will promptly pay to Purchaser when received all monies received by Seller under any Asset or any claim or right or any benefit arising thereunder, and Seller and Purchaser shall continue to cooperate and use all commercially reasonable efforts to obtain such consent and to provide Purchaser with all such rights.

Section 5.4 Use and Title to Name. The Seller agrees to take all actions necessary to cause the Seller (i) to cease all use of the name "National Health Benefits Corporation," on or after the Closing and to change its name prior to the Closing to one which is not confusingly similar to such name and the Seller shall furnish to the Purchaser a true, correct and complete copy, certified by the State of Nevada, of a duly filed amendment to its Articles of Incorporation evidencing such name change; and (ii) to grant Purchaser physical possession of all unused printed materials bearing such name.

Section 5.5 Commercially Reasonable Efforts. Seller shall use commercially reasonable efforts to take, or cause to be taken, all actions, including but not limited to, causing the conditions in Article 7 hereof to be satisfied, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement.

Section 5.6 Litigation Assistance. In the event and for so long as Purchaser actively is contesting or defending against any third party action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand (including any such proceeding before a governmental authority) in connection with (i) any transaction contemplated under this Agreement or any of the transactions contemplated hereby or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Business and its operations, Seller will, to the extent not prohibited by any privilege, cooperate with Purchaser, and its counsel in the contest or defense, make reasonably available their personnel, and provide such testimony and access to their books and records as shall be reasonably necessary in connection with the contest or defense. The party requesting such cooperation shall bear the cost and expense of such cooperation.

Section 5.7 Insurance. Seller will, through the Closing Date, maintain in full force and effect all of the Seller's existing casualty, liability and other insurance policies relating to or affecting the Business, as set forth in Schedule 3.18 of the Disclosure Letter, on identical terms as those in effect on the date hereof. Purchaser acknowledges that excepting for the ThinkRisk Converging Risk Liability Policy, none of Seller's insurance policies are assignable to Purchaser.

Section 5.8 Communications with Customers and Suppliers. Seller and Purchaser will cooperate with each other in communication with suppliers and customers concerning the transfer of the Assets to Purchaser on the Closing Date.

Section 5.9 Seller's Employees

(a) No less than ten days prior to Closing, Purchaser shall provide to Seller a list of those employees of Seller operating within the Business to whom Purchaser intends to extend offers of employment ("Hired Employees"). Purchaser will not assume and will have no obligation with respect to any employee bonus, retirement, pension, profit sharing, incentive, deferred compensation, medical, retiree medical, retiree life, other insurance plan, employee severance, vacation or sick leave plan or policy or other employee benefit plan of Seller of any kind. Purchaser will not be required to establish or adopt any employee benefit plan or policy to accommodate the Hired Employees.

(b) Seller shall pay for (and otherwise be responsible for) all costs and expenses relating to its employees (including, but not limited to, the Hired Employees) arising or accruing on or before the Closing Date, including but not limited to salaries, commissions and other compensation, severance payments, accrued vacation pay, unused sick leave, bonuses that are payable for or relate to the period to and including the Closing Date, fringe benefits, pension, health and other amounts. With respect to the Hired Employees, Seller and its affiliates shall make whatever distributions to participants in Seller's 401(k) Plan as are permitted by law and shall provide notices concerning eligibility for continuation health coverage under all applicable health plans pursuant to Internal Revenue Code 4980B to eligible employees and family members and provide such individuals with the opportunity to elect to continue their health coverage under the applicable Seller or affiliate health and cafeteria plans to the extent required by law.

Section 5.10 Non-Competition.

(a) The Seller is familiar with the trade secrets related to the Business and with other Confidential Information concerning the Business, including all (A) inventions, technology and research and development related to the Business, (B) customers and clients and customer and client lists related to the Business, (C) products (including products under development) and services related to the Business and related costs and pricing structures, (D) accounting and business methods and practices related to the Business and (E) similar and related confidential information and trade secrets related to the Business. The Seller acknowledges and agrees that the Business would be irreparably damaged if the Seller was to directly or indirectly provide services to any Person competing with the Business or engaging in a similar business and that such direct or indirect competition by the Seller would result in a significant loss of goodwill by the Business.

(b) In further consideration for the Purchaser's payment of the Purchase Price under this Agreement (in respect of which payment the Seller expressly acknowledges that it derives a substantial and direct benefit), and in order to protect the value of the Business acquired by the Purchaser hereunder (including the goodwill inherent in the Business as of the



date hereof), the Seller hereby agrees that during the period commencing on the Closing Date and ending on the fifth (5<sup>th</sup>) anniversary of the Closing Date (the "Non-Competition Period"), such party shall not acquire or hold any economic or financial interest in, act as a partner, member, stockholder, or representative of, render any services to, or otherwise operate or hold an interest in any Person (other than the Seller) having any location in any country in which the Business currently operates which entity, enterprise or other Person primarily engages in, or engages in the management or operation of any Person that primarily engages in any business that competes with the Business; provided, however, that nothing contained herein shall be construed to prohibit the Seller from purchasing up to an aggregate of two percent (2%) of any class of the outstanding voting securities of any other Person whose securities are listed on a national securities exchange (but only if such investment is held on a purely passive basis).

Section 5.11 Non-Solicitation; Non-Disparagement. During the period commencing on the Closing Date and ending on the fifth (5<sup>th</sup>) anniversary of the Closing Date (the "Non-Solicitation Period"), the Seller shall not, directly or indirectly, either individually or acting in concert with another Person or Persons:

(a) request, induce or attempt to influence any distributor, supplier or customer of goods or services of the Business to curtail, cancel or refrain from maintaining or increasing the amount or type of business such distributor, supplier or customer of goods or services is currently transacting, or may be transacting during the Non-Solicitation Period, with the Business or modify its pricing or other terms of sale with the Business;

(b) solicit for employment or retention or hire, employ or retain any person who is an employee of the Business during the Non-Solicitation Period;

(c) influence or attempt to influence any Person who is an employee of the Business during the Non-Solicitation Period to terminate his or her employment with the Purchaser; or

(d) make any negative, derogatory or disparaging statements or communications regarding the Purchaser, the Business, or the affiliates or representatives of the Purchaser.

Section 5.12 Severability. Notwithstanding anything to the contrary in this Agreement, if at any time, in any judicial or arbitration proceeding, any of the restrictions stated in Section 5.10 or Section 5.11 are found by a final order of a court of competent jurisdiction or arbitrator to be unreasonable or otherwise unenforceable under circumstances then existing, the parties each agree that the period, scope or geographical area, as the case may be, shall be reduced to the extent necessary to enable the court to enforce the restrictions to the extent such provisions are allowable under applicable law, giving effect to the agreement and intent of the parties that the restrictions contained herein shall be effective to the fullest extent permissible. In the event of a breach or violation by the Seller of any of the provisions of Section 5.10 or Section 5.11, the Non-Competition Period or Non-Solicitation Period, as the case may be, will be tolled for so long as the Seller was in violation of such provision. The Seller agrees that the restrictions contained in this Agreement are reasonable in all respects and necessary to protect the

Purchaser's interest in, and the value of, the Business.

Section 5.13 Specific Performance; Injunctive Relief. The Seller acknowledges and agrees that in the event of a breach by the Seller of any of the provisions of Section 5.10 or Section 5.11, the Purchaser would suffer irreparable harm, no adequate remedy at law would exist for the Purchaser, and damages would be difficult to determine. Consequently, in the event of any such breach, the Purchaser or its successors or assigns may, in addition to other rights and remedies existing in their favor, apply to any court of law or equity of competent jurisdiction for specific performance or injunctive or other relief in order to enforce or prevent any violations of the provisions hereof, in each case without the requirement of posting a bond or proving actual damages.

Section 5.14 Receiver. The provisions of this Article 5 apply to the Seller, and do not extend to the Receiver.

## **ARTICLE 6 COVENANTS OF PURCHASER**

Section 6.1 Required Approvals. Purchaser shall make, or cause to be made, all filings required to be made by it to consummate the contemplated transactions. Purchaser shall cooperate with Seller (a) with respect to all filings Seller shall be required to make and (b) in obtaining all consents identified in Section 5.3; provided, however, that Purchaser shall not be required to dispose of or make any change to its business, expend any material funds or incur any other burden in order to comply with this Section 6.1.

Section 6.2 Best Efforts. Purchaser shall use its best efforts to take, or cause to be taken, all actions, including but not limited to, causing the conditions in Article 8 hereof to be satisfied, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement.

## **ARTICLE 7 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PURCHASER**

The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, all or any of which may be waived to the extent permitted by Law, in whole or in part, by Purchaser for purposes of consummating such transactions, but without prejudice to any other right or remedy which Purchaser may have hereunder as a result of any misrepresentation by, or breach of any covenant or warranty of Seller contained in this Agreement, the other Transaction Documents or any other certificate or instrument furnished by Seller hereunder:

Section 7.1 Representations True at Closing. All of the representations and warranties



made by Seller in this Agreement, the Disclosure Letter or any other Transaction Document shall be true and correct on the Closing Date hereunder with the same force and effect as though such representations and warranties had been made on and as of such time, other than immaterial deviations which arise in the ordinary course of business and not in violation of any covenant contained herein.

Section 7.2 Covenants of Seller. Seller shall have duly performed and complied in all material respects with all of the covenants, acts, agreements and undertakings required to be performed by it under this Agreement on or prior to the Closing.

Section 7.3 No Proceedings. No suit, action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain, prohibit, or obtain damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby, or which is related to or arises out of the Business or the Assets, if such suit, action, proceeding, investigation, regulation or legislation, in the reasonable judgment of Purchaser, would make it inadvisable to consummate such transactions.

Section 7.4 Opinion of Counsel. A favorable opinion of Allen Matkins Leck Gamble Mallory & Natsis LLP, counsel for the Seller shall have been delivered to Purchaser dated as of the Closing Date, as described in Section 9.2(a)(vii).

Section 7.5 Consents and Approvals. All governmental and third party authorizations, including, without limitation, those set forth on Schedule 3.20 of the Disclosure Letter, consents, permits and approvals necessary to consummate the transactions contemplated herein shall have been obtained by Purchaser and shall be in full force and effect.

Section 7.6 Absence of Adverse Changes. Since the Interim Balance Sheet date, Seller shall not have suffered (a) any change in its financial condition, working capital, Business, prospects, properties, Assets, Liabilities, or operations which singly or in the aggregate materially adversely affects the Assets or the conduct of the Business, or (b) any transaction or event described in Section 3.8 hereof which is not described in Schedule 3.8 of the Disclosure Letter, and shall have operated the Business solely in the ordinary course of business.

Section 7.7 Release of Encumbrances. At Closing, the Assets shall not be subject to any Encumbrances, other than the Permitted Encumbrances.

Section 7.8 Reserved.

Section 7.9 Deliveries. Seller shall have made all of the deliveries to the Purchaser set forth in Section 9.2(a) hereof and all agreements required to be delivered pursuant to Section 9.2(a) shall be in full force and effect as of the Closing.

Section 7.10 Assignment of Contracts. Seller shall have delivered consents to the assignment of (a) Contracts with clients representing at least eighty percent (80%) of the Net

Revenue recognized by the Seller during 16 months ended April 30, 2012, and (b) Contracts with vendors, suppliers and other service providers representing at least eighty percent (80%) of the aggregate dollar amount of accrued network fees for each vendor during the 16 months ended April 30, 2012.

Section 7.11 Receivership Court Approval. The Purchaser shall have received evidence of Court Approval, in form and substance satisfactory to the Purchaser in its sole discretion.

Section 7.12 Disclosure of Customer Names. Subsequent to Court Approval, as soon as the Seller has been able to obtain the Threshold Consents required under Section 7.10, and upon the confirmation of satisfaction or the waiver by Purchaser in writing of all other of its conditions to Closing, other than the conditions contained herein in this Section 7.12, Seller shall provide to the Purchaser un-redacted copies of all customer and vendor contracts which had previously been provided to Purchaser with names and pricing redacted, along with copies of the consents obtained in satisfaction of Section 7.10. The Closing shall occur within ten (10) business days thereafter on a date mutually agreeable to Seller and Purchaser, unless Purchaser can demonstrate, in its reasonable good faith business judgment, that there exists in the information which had previously been redacted (i) a discrepancy with the disclosures, representations and warranties of the Seller that would negatively and materially impact the operation or valuation of the Business subsequent to the Closing, (ii) terms which are inconsistent with (A) the revenues or expenses disclosed to Purchaser, or (B) the projections dated January 20, 2012 provided to Purchaser (taking into account any subsequent actual monthly results disclosed to the Purchaser for periods after January 1, 2012), and (in the case of either (A) or (B)) any such inconsistencies would in the aggregate negatively and materially impact the operation or valuation of the Business subsequent to the Closing, or (iii) the identification of a Material Customer, through the disclosures of the previously redacted names, that is a Direct Competitor of the Purchaser not previously disclosed by Seller, or that is for any reason outside the control of Purchaser not a continuing client or vendor of the business, and the loss of which could negatively and materially impact the operation or valuation of the Business subsequent to the Closing.

## ARTICLE 8

### CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER

The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, all or any of which may be waived to the extent permitted by Law, in whole or in part, by Seller but without prejudice to any other right or remedy which Seller may have hereunder as a result of any misrepresentation by, or breach of any covenant or warranty of Purchaser contained in this Agreement, or any certificate or instrument furnished by it hereunder:

Section 8.1 Representations True at Closing. All of the representations and warranties made by Purchaser in this Agreement, the Disclosure Letter or any other Transaction Document shall be true and correct on the Closing Date hereunder with the same force and

effect as though such representations and warranties had been made on and as of such time.

Section 8.2 Covenants of Purchaser. Purchaser shall have duly performed and complied in all material respects with all of the covenants, acts, agreements and undertakings required to be performed by it under this Agreement on or prior to the Closing.

Section 8.3 No Proceedings. No suit, action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain, prohibit, or obtain damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby, or which is related to or arises out of the Business or the Assets, if such suit, action, proceeding, investigation, regulation or legislation, in the reasonable judgment of Seller, would make it inadvisable to consummate such transactions.

Section 8.4 Deliveries. Purchaser shall have made all of the deliveries to the Seller set forth in Section 9.2(b) hereof and all agreements required to be delivered pursuant to Section 9.2(b) shall be in full force and effect as of the Closing.

Section 8.5 Receivership Court Approval. The Seller shall have received evidence of Court Approval.

## ARTICLE 9

### CLOSING

Section 9.1 Time and Place of Closing. The consummation of the transaction provided for in this Agreement (the "Closing") shall take place remotely via the exchange of documents within ten (10) days after Seller has provided to the Purchaser un-redacted copies of all customer and vendor contracts which had previously been provided to Purchaser with names and pricing redacted, along with copies of the consents obtained in satisfaction of Section 7.9, in accordance with Section 7.12, unless another place or date is agreed to in writing by Seller and Purchaser (the "Closing Date"). The Closing shall be effective as of 12:01 a.m. on the Closing Date.

Section 9.2 Transactions at Closing. At the Closing, each of the following transactions shall occur:

(a) Seller's Performance. At the Closing, Seller shall deliver to Purchaser the following:

- (i) a bill of sale substantially in the form set forth as Exhibit 9.2(a)(i) (the "Bill of Sale") for all of the Assets that are tangible personal property duly executed by Seller, and such other good and sufficient instruments of conveyance, transfer and assignment (in form and substance reasonably acceptable to Purchaser) as shall be necessary to vest Purchaser good and valid title to the Assets free and clear of all Encumbrances;

- (ii) an assignment of all of the Assets that are intangible personal property substantially in the form set forth as Exhibit 9.2(a)(ii), which assignment shall also contain the Purchaser's undertaking and assumption of the Assumed Liabilities, duly executed by Seller (the "Assignment and Assumption Agreement");
- (iii) the Escrow Agreement executed by Seller;
- (iv) an assignment agreement substantially in the form set forth as Exhibit 9.2(a)(iv) assigning all of the Intellectual Property to the Purchaser (the "IP Assignment Agreement");
- (v) a certificate executed by Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 7.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 7.2;
- (vi) a certificate of the Secretary of Seller (a) certifying, as complete and accurate as of the Closing, attached copies of the governing documents of Seller, (b) certifying and attaching all requisite resolutions or actions of Seller's board of directors and sole shareholder approving the execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the change of name contemplated by Section 5.4, and (c) certifying to the incumbency and signatures of the officers of Seller executing this Agreement and the other Transaction Documents;
- (vii) the opinion of Allen Matkins Leck Gamble Mallory & Natsis LLP, as counsel to Seller, in substantially the form set forth as Exhibit 9.2(a)(vii);
- (viii) physical possession of the Assets where located; and
- (ix) such other evidence of the performance of all covenants and satisfaction of all conditions required of Seller by this Agreement, at or prior to the Closing, as Purchaser or its counsel may reasonably require.

(b) Performance by Purchaser. At the Closing, Purchaser shall deliver to Seller the following:

- (i) cash, by wire transfer, payable to Seller for an amount equal to the Cash Payment less the Escrowed Amount and the amount of any Indebtedness and subject to the purchase price adjustment described in Section 2.3(a);
- (ii) the Escrow Agreement, executed by Purchaser and the Escrow Agent, together with delivery of the Escrowed Amount to the Escrow Agent thereunder, by wire transfer to an account specified by the Escrow Agent;

- (iii) the Assignment and Assumption Agreement executed by Purchaser;
- (iv) the IP Assignment Agreement executed by Purchaser; and
- (v) such other evidence of the performance all covenants and satisfaction of all conditions required of Purchaser by this Agreement, at or prior to the Closing, as Seller or their counsel may reasonably require.

## ARTICLE 10

### SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND INDEMNIFICATION

#### Section 10.1 Survival of Representations and Warranties

(a) All representations, warranties, covenants and obligations made or undertaken by Seller in this Agreement or the Transaction Documents or in any document, instrument or agreement executed and delivered pursuant hereto shall survive the Closing hereunder for a period of twelve (12) months and shall not merge in the performance of any obligation by any party hereto. Any examination, inspection or audit of the Assets, financial condition or other matters of Seller or the Business conducted by Purchaser or on its behalf on or prior to Closing shall in no way limit, affect or impair the ability of Purchaser to rely upon the representations, warranties, covenants and obligations of Seller set forth herein. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of damages, or other remedy based on such representations, warranties, covenants and obligations.

(b) All representations, warranties, covenants and obligations made or undertaken by Purchaser in this Agreement or the Transaction Documents or in any document, instrument or agreement executed and delivered pursuant hereto shall survive the Closing hereunder for a period of twelve (12) months and shall not merge in the performance of any obligation by any party hereto.

Section 10.2 Indemnification of Purchaser. Seller agrees to defend, indemnify and hold Purchaser, its affiliates, and the respective officers, directors, employees, agents and representatives (each a "Purchaser Indemnitee") of Purchaser and its affiliates harmless from and against any and all claims, demands, suits, losses, liabilities, damages, assessments, judgments, costs and expenses, including reasonable attorneys' fees (both those incurred in connection with the defense or prosecution of the indemnifiable claim and those incurred in connection with the enforcement of this provision) (collectively, "Losses"), caused by, resulting from or arising out of:

(a) any breach of any representations and warranties made by Seller in or pursuant to this Agreement or any of the Transaction Documents or in any certificate delivered to Purchaser pursuant to this Agreement, or the failure of such representations and warranties to be true and correct as of the Closing Date (except for any representation and warranty of the

Seller that is expressly made as of or in reference to a specific date) (provided, that for any representation or warranty that is limited by knowledge, materiality, Material Adverse Effect or similar terms, a misrepresentation or breach of such representation or warranty shall be determined as if “to the Seller’s knowledge,” “material,” “materiality,” “Material Adverse Effect” or similar terms were not included therein);

(b) any breach or failure by Seller to carry out, perform, satisfy, discharge or otherwise fulfill any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the Transaction Documents delivered by Seller pursuant to this Agreement (which covenants, agreements, undertakings, liabilities or obligations are to be performed prior to Closing), or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished by the Seller hereunder or thereunder (provided, that for any covenant or agreement that is limited by knowledge, materiality, Material Adverse Effect or similar terms, a default under such covenant or agreement shall be determined as if “to the Seller’s knowledge,” “material,” “materiality,” “Material Adverse Effect” or similar terms were not included therein);

(c) except as expressly assumed under the terms of this Agreement, any Liability arising out of the ownership or operation of the Assets prior to the Effective Time other than the Assumed Liabilities;

(d) any suit, action, proceeding, claim or investigation pending or threatened against or affecting the Assets or the Business, regardless of whether it is disclosed in Schedule 3.9 of the Disclosure Letter, resulting from any condition existing, event occurring or business conducted prior to the Effective Time;

(e) any claim for a debt, obligation or Liability which is not specifically assumed by Purchaser pursuant to this Agreement;

(f) the assertion by any taxing authority against the Assets or the Business of any liability for taxes, assessments, fees, charges, additions to tax, interest or penalties, federal, state, local, foreign or other relating to a period or event prior to and through the Effective Time, or the imposition of any Encumbrance arising therefrom against the Assets or the Business or which attach thereto;

(g) any claim against Purchaser for continuation of coverage benefits under Section 601 et seq. of the Employee Retirement Income Security Act of 1974, as amended, brought by any person who was an employee of the Seller at any time prior to the Closing Date and not an employee of Purchaser after said date, or any qualified beneficiary of such a person;

(h) any infringement of any patent, trademark, copyright and/or unfair competition rights arising out of Seller’s or its subsidiaries’ or affiliates’ or customers’ use of any Intellectual Property, or the manufacture, use, or sale by Seller or its subsidiaries or affiliates or customers of any products or services incorporating or reflecting any Intellectual Property;

(i) any failure by Seller or its subsidiaries to comply with or have complied



with any environmental laws, or any contamination either resulting from Seller's operation of Business or its subsidiaries, or being present at, threatening or emanating from any property which Seller or its subsidiaries has owned, leased or operated and attributable in any way to actions occurring or conditions existing prior to the Closing Date;

(j) any liability for professional errors or omissions and any product liabilities; and

(k) the liability to provide retiree medical and life insurance benefits to the persons currently receiving such benefits from Seller or any of its subsidiaries.

Section 10.3 Indemnification of Seller. Purchaser agrees to defend, indemnify and hold Seller (each a "Seller Indemnitee") harmless from and against all Losses suffered or incurred by Seller arising from; (a) any breach of any representation, warranty or covenant of Purchaser made by Purchaser in or pursuant to this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished by the Purchaser hereunder as of the Closing Date (except for any representation and warranty of the Buyer that is expressly made as of or in reference to a specific date) (provided, that for any representation or warranty that is limited by materiality, Material Adverse Effect or similar terms, a misrepresentation or breach of such representation or warranty shall be determined as if "material," "materiality," "Material Adverse Effect" or similar terms were not included therein) (a "Buyer Warranty Breach"); or (b) Purchaser's failure to duly and properly perform any of the liabilities and obligations assumed by it hereunder (except to the extent that Purchaser's failure to do so is attributable to any action or inaction on the part of Seller or any of its agents or affiliates) (provided, that for any covenant that is limited by materiality, Material Adverse Effect or similar terms, a default under such covenant or agreement shall be determined as if "material," "materiality," "Material Adverse Effect" or similar terms were not included therein).

Section 10.4 Mechanism. The party seeking indemnification hereunder ("Indemnified Party") shall give written notice to the indemnifying party ("Indemnifying Party") of its indemnification claims hereunder, specifying the amount and nature of the claim, and giving the Indemnifying Party the right to contest any such claim represented by counsel of its choice. If any such claim is made hereunder by the Indemnified Party and such claim arises from the claims of a third party against the Indemnified Party and the Indemnifying Party does not elect to undertake the defense thereof by written notice within ten (10) days after receipt of the original notice from the Indemnified Party, the Indemnified Party shall be entitled to indemnity pursuant to the terms of this Agreement to the extent of its Losses in respect of such claim. To the extent that the Indemnifying Party undertakes the defense of such claim in good faith by proceeding diligently at its expense, and without materially impairing the financial conditions or operations of the Indemnified Party, the Indemnified Party shall be entitled to indemnity hereunder only if, and to the extent that, such defense is unsuccessful, as determined by a final judgment of a court of competent jurisdiction or is settled with the consent of the Indemnifying Party. The party defending a third-party claim shall have the right to choose its own counsel. In the event an Indemnifying Party fails to meet its indemnification obligations hereunder, the Indemnified Party shall have the option to recover damages from the Indemnifying Party.



Section 10.5 Limitation on Liability. From and after the Effective Time, the right of a Purchaser Indemnitee to be indemnified from the Escrow Account shall be the sole and exclusive remedy with respect to any breach of any representation, warranty covenant or agreement of the Seller contained in, or any other claims based upon, arising out of, or otherwise in respect of, this Agreement; *provided, however*, that such limitation shall not apply to any claims of a Purchaser Indemnitee based on a finding of actual fraud involving a knowing and intentional misrepresentation of a fact material to the transactions contemplated by this Agreement made with the intent of inducing any other party hereto to enter into this Agreement and upon which such other party has relied (as opposed to any fraud claim based on constructive knowledge, negligent misrepresentation or a similar theory) under applicable tort laws in which case Purchaser's remedy and Seller's obligations to indemnify shall be limited to the Purchase Price.

Section 10.6 No Liability to Receiver. WITHOUT LIMITING THE FOREGOING, AS AN ESSENTIAL INDUCEMENT TO RECEIVER TO EXECUTE THIS AGREEMENT, AND AS PART OF THE CONSIDERATION GIVEN HEREUNDER, PURCHASER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

(a) THAT RECEIVER IS EXECUTING THIS AGREEMENT SOLELY IN CONNECTION WITH HIS DUTIES AS RECEIVER PURSUANT TO THE ORDER. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL AND WILLFUL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER PURSUANT TO THE ORDER.

(b) NO PROVISION OF THIS AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF PROPERTY OF THE BUSINESS UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE BUSINESS BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF PROPERTY OF THE BUSINESS, OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF PROPERTY OF THE BUSINESS RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

(c) THAT IT WILL NOT FILE ANY COMPLAINT, PROCEEDING, LAWSUIT, OR OTHER LEGAL OR EQUITABLE ACTION AGAINST THE RECEIVER OTHER THAN FOR REASON OF RECEIVER'S GROSS NEGLIGENCE, INTENTIONAL AND WILLFUL MISCONDUCT OR VIOLATION OF LAW.

## ARTICLE 11

### TERMINATION; RISK OF LOSS

Section 11.1 Method of Termination. This Agreement may be terminated at any time prior to Closing:

- (a) By the mutual written consent of Seller and Purchaser;
- (b) By Purchaser if a breach of any representation, warranty, covenant, agreement or provision of this Agreement has been committed by Seller and such breach has not been waived by Purchaser which has a material adverse effect on the Business or the Assets;
- (c) By Purchaser if Court Approval has not occurred prior to September 28, 2012;
- (d) By Seller if a material breach of any representation, warranty, covenant, agreement or provision of this Agreement has been committed by Purchaser and such breach has not been waived by Seller.
- (e) By the Purchaser on or after November 1, 2012, if any of the conditions set forth in Article 7 hereof, to which the obligations of Purchaser are subject, have not been fulfilled, or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement), and Purchaser has not waived such condition on or before such date; or
- (f) By the Seller on or after November 1, 2012, if any of the conditions set forth in Article 8 hereof, to which the obligations of Seller are subject, have not been fulfilled, or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement), and Seller has not waived such condition on or before such date.

Section 11.2 Effect of Termination. In the event of a termination of this Agreement pursuant to Section 11.1(b) hereof, Purchaser shall be entitled to a break-up fee equal to Purchaser's documented out-of-pocket legal and due diligence expenses up to a maximum of One Hundred Twenty Five Thousand Dollars (\$125,000); provided, however, that if such Agreement is terminated by (i) the mutual written consent of the Seller and the Purchaser in accordance with Section 11.1(a), (ii) Purchaser in accordance with Section 11.1(c) because Court Approval has not occurred prior to September 28, 2012, (iii) by Purchaser in accordance with Section 11.1(e), or (iv) by Seller in accordance with Section 11.1(f), then each party shall pay the costs and expenses incurred by it in connection with this Agreement, and no party (or any of its officers, directors, employees, agents, representatives or shareholders) shall be liable to any other party for any costs, expenses, damage or loss of anticipated profits hereunder, except that nothing herein shall relieve any party from liability for any breach of this Agreement prior to such termination.

## ARTICLE 12

### GENERAL PROVISIONS

Section 12.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be delivered by hand or mailed by registered or certified mail, return receipt requested, first class postage prepaid, addressed as follows:

If to Seller:	Thomas A. Seaman CFA Judicial Receiver For National Health Benefits Corporation Thomas Seaman Company 3 Park Plaza, Suite 550 Irvine, CA 92614 Fax: (949) 222-0661
with a copy to (which shall not constitute notice):	Allen Matkins Leck Gamble Mallory & Natsis LLP Attn: Debra Dison Hall 515 S. Figueroa St. 9 <sup>th</sup> Floor Los Angeles, CA 90071
If to Purchaser:	Premier Healthcare Exchange, Inc. 2 Crossroads Drive Bedminster, New Jersey 07921 Attention: Chief Financial Officer Fax: (908) 658-3525
with a copy to (which shall not constitute notice):	DLA Piper LLP (US) 300 Campus Drive, Suite 100 Florham Park, New Jersey 07932-1039 Attention: Andrew P. Gilbert, Esq. Fax: (973) 520-2553

(a) If delivered personally, the date on which a notice, request, instruction or document is delivered shall be the date on which such delivery is made and, if delivered by mail, fax or overnight courier, the date on which such notice, request, instruction or document is received shall be the date of delivery.

(b) Any party hereto may change its address specified for notices herein by designating a new address by notice in accordance with this Section 12.1.

Section 12.2 Brokers. Except as set forth on Schedule 12.2 of the Disclosure Letter, Purchaser, on the one hand, and Seller, on the other hand, jointly and severally represent and warrant to each other that no broker or finder has acted for them or any entity controlling,

controlled by or under common control with them in connection with this Agreement (other than the broker employed by the Receiver with respect to potential overbidders), and agree to indemnify and hold harmless the other against any fee, commission, loss or expense arising out of any claim by any broker or finder employed or alleged to have been employed by them or such entity.

Section 12.3 Further Assurances. At any time, and from time to time, after the Closing Date, each party will execute such additional instruments and take such actions as may be reasonably requested by the other parties to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.

Section 12.4 Waiver. Any failure on the part of any party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by any other party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

Section 12.5 Expenses. Other than as set forth in Section 2.7(j), all expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the Closing of the transactions contemplated hereby, including, without limitation of the generality of the foregoing, all fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred the same.

Section 12.6 Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 12.7 Headings. The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and are not a part of this Agreement.

Section 12.8 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, among the parties hereto relating to the transactions contemplated hereby or the subject matter herein. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an agreement in writing signed by the party against whom or which the enforcement of such change, waiver, discharge or termination is sought.

Section 12.9 Governing Law; Venue. This Agreement (and any and all disputes, controversies, and other Losses, whether in tort, contract or otherwise, among the parties arising out of, or in connection with, the transactions contemplated hereby) shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. Each of the Purchaser, Seller irrevocably submits to the exclusive jurisdiction of

the Receivership Court and, if necessary, the corresponding appellate courts, for the purpose of any suit, action or other proceeding arising out of or based on this Agreement or any other agreement contemplated hereby or any subject matter hereof, whether in tort, contract or otherwise, and agrees that process may be served upon it if it cannot otherwise be served in such state by registered or certified mail addressed as provided in Section 12.1.

Section 12.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12.11 General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) the use of the singular form includes the plural, and the use of the plural form includes the singular; (b) the use of any gender herein shall be deemed to include the other gender; (c) the captions used in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope or content of this Agreement or any provision hereof; (d) the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; (e) the term "include" or "including" shall mean without limitation by reason of enumeration; (f) each reference to an "Article" of this Agreement shall include all Sections of such Article, and similarly, each reference to a Section shall include all subsections of such Section; (g) any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder; (h) references to a statute shall refer to the statute and any successor statute, and to all regulations promulgated under or implementing the statute or successor, as in effect at the relevant time; (i) any reference to a document or set of documents in this Agreement, and the rights and obligations of the parties under any such documents, shall mean such document or documents as amended from time to time, and any and all modifications, extensions, renewals, substitutions or replacements thereof; and (j) all references to dollars (\$) shall mean United States currency.

Section 12.12 Confidentiality; Public Announcements.

(a) (a) In the event the Closing does not occur, Purchaser will as soon as practicable return all material of or concerning Seller and the Nondisclosure Agreement shall remain in full force and effect.

(b) Except as otherwise provided in this Agreement or in any other agreement entered into by the parties pursuant to this Agreement, no party hereto shall, without the approval of the other parties hereto, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any such party shall be so obligated by Law, in which case the other parties shall be so advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued; provided, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement or to comply with the disclosure obligations under applicable securities laws. Notwithstanding the foregoing, Purchaser understands and agrees that Seller shall be permitted to make such disclosures regarding this

Agreement and the transactions contemplated herein as are necessary to obtain the approval of the Receivership Court and to market the assets of Seller to potential over bidders.

Section 12.13 Access to Records After Closing. For a period of three (3) years after the Closing Date, (a) Seller shall provide reasonable access to the Purchaser and its representatives to all of the books and records of the Seller with regard to the Business and the Assets which the Seller may retain after the Closing Date, and (b) the Purchaser shall provide such books and records as the Seller may reasonably request with regard to the Business and the Assets which are reasonably required for the Seller to complete tax returns and other regulatory filings, to defend any claims and for any other valid business reason. If either shall desire to dispose of any such books or records prior to the expiration of such three (3) year period, it shall, prior to such disposition, give the other a reasonable opportunity to segregate and remove such books and records as it may select.

Section 12.14 Assignment. Neither the rights nor the obligations of any party to this Agreement may be transferred or assigned, provided that the Purchaser may assign its rights under this Agreement to any affiliate or any purchaser of all or substantially all of the assets or capital stock of Purchaser or any of its affiliates.

IN WITNESS WHEREOF, each party hereto has executed or caused this Agreement to be executed on its behalf, all on the day and year first above written. The parties hereby acknowledge that the Receiver is executing this Agreement on behalf of the Seller pursuant to and in accordance with the authority granted to him by the Receivership Court.

**PURCHASER:**

PREMIER HEALTHCARE EXCHANGE, INC.

By: \_\_\_\_\_  
Name:  
Title:

**SELLER:**

NATIONAL HEALTH BENEFITS  
CORPORATION

By: Thomas A. Seaman  
Name: Thomas A. Seaman, as permanent receiver for National Health Benefits Corporation pursuant to the Preliminary Injunction and Order entered on August 18, 2009 in the matter styled Securities and Exchange Commission v. Medical Capital Holdings, Inc., Case No. SA CV09-0818 DOC (RNBx)



IN WITNESS WHEREOF, each party hereto has executed or caused this Agreement to be executed on its behalf, all on the day and year first above written. The parties hereby acknowledge that the Receiver is executing this Agreement on behalf of the Seller pursuant to and in accordance with the authority granted to him by the Receivership Court.

**PURCHASER:**

PREMIER HEALTHCARE EXCHANGE, INC.

By: 

Name: ROBERT M. HEMMER

Title: CFO

**SELLER:**

NATIONAL HEALTH BENEFITS  
CORPORATION

By: \_\_\_\_\_

Name: Thomas A. Seaman, as permanent receiver for National Health Benefits Corporation pursuant to the Preliminary Injunction and Order entered on August 18, 2009 in the matter styled Securities and Exchange Commission v. Medical Capital Holdings, Inc., Case No. SA CV09-0818 DOC (RNBx)

1 DAVID R. ZARO (BAR NO. 124334)  
MICHAEL R. FARRELL (BAR NO. 173831)  
2 TED FATES (BAR NO. 227809)  
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6 mfarrell@allenmatkins.com  
tfates@allenmatkins.com

7 Attorneys for Receiver  
8 THOMAS A. SEAMAN

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 SOUTHERN DIVISION

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

15 MEDICAL CAPITAL HOLDINGS,  
16 INC.; MEDICAL CAPITAL  
CORPORATION; MEDICAL  
17 PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
18 FIELD; and JOSEPH J.  
LAMPARIELLO,

19 Defendants.  
20

Case No. SA CV09-0818 DOC (RNBx)

**DECLARATION OF ANDY PETERS  
IN SUPPORT OF MOTION FOR  
ORDER APPROVING (1) SALE OF  
ASSETS OF NATIONAL HEALTH  
BENEFITS CORPORATION AND  
(2) PAYMENT OF BROKER'S  
COMMISSION**

Date: September 10, 2012  
Time: 8:30 a.m.  
Ctm: 9D  
Judge: Hon. David O. Carter

1 I, Andy Peters, declare as follows:

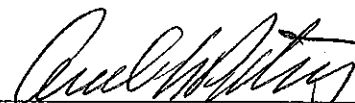
2 1. I am a Consultant with The Independence Group, Inc. ("IG"). IG is a  
3 licensed broker in both California and Arizona. I am the lead agent for IG with  
4 respect to the sale of assets of National Health Benefits Corporation ("NHBC").  
5 The following facts are within my knowledge and if called as a witness I would  
6 testify to them under oath.

7 2. IG was engaged by Thomas Seaman in his capacity as receiver  
8 ("Receiver") to market the assets of NHBC to potential overbidders. IG created a  
9 targeted list of potential buyers, which included (1) interested parties who  
10 previously contacted the Receiver; (2) strategic acquirers in the healthcare industry;  
11 (3) private equity groups with platform companies or an expressed interest in  
12 healthcare services; and (4) private equity groups interested in businesses of  
13 NHBC's size. In total, over 200 entities were targeted and contacted via e-mail and  
14 direct phone contact.

15 3. Those who expressed interest were instructed to sign a Non-Disclosure  
16 Agreement. Twenty-four (24) Non-Disclosure Agreements were signed, fifteen (15)  
17 of which came from parties determined to be financially qualified. Each of the  
18 financially qualified potential overbidders have been given access to the same due  
19 diligence provided to Premier Healthcare Exchange, Inc., the proposed purchaser.  
20

21 I declare under penalty of perjury under the laws of the United States that the  
22 foregoing is true and correct.

23 Executed this 1 day of August, 2012, at ORANGE, CALIFORNIA.

24  
25 

26 ANDY PETERS

27  
28