

ATTORNEY GENERAL OF THE STATE OF NEW YORK

COUNTY OF BRONX

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In the Matter of the Application of :

AFFINITY HEALTH PLAN, INC. :

VERIFIED PETITION

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

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

Petitioner, Affinity Health Plan, Inc. (“Petitioner”), by Michael Murphy, Chief Executive Officer of Petitioner, makes this Petition pursuant to Sections 510 and 511-a of the New York Not-for-Profit Corporation Law and respectfully sets forth as follows:

**INTRODUCTION**

1. On September 28, 2020, Petitioner, a New York not-for-profit corporation, entered into an Asset Purchase Agreement providing for the sale of substantially all of Petitioner’s assets to Molina Healthcare, Inc. (“Molina”), a Delaware corporation, or its designee, subject to regulatory approval (the “Transaction”). A copy of the Asset Purchase Agreement is attached hereto as Exhibit A.

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

3. First, the consideration and the terms of the Transaction are fair and reasonable to Petitioner, consisting of the purchase price of \$500,000,000 paid by Molina, as well as Molina's assumption of certain liabilities.

4. Second, the Transaction will substantially promote the purposes and primary care-centric mission of Petitioner. Petitioner's stated mission "is to improve the health and well-being of its Members, their families, and their communities in collaboration with primary care providers." Indeed, since its founding, Petitioner has continued to strive to ensure access to high quality, cost-effective care while maintaining a patient-centered health care system.

5. In recent years, Petitioner has been challenged to meet the financial requirements of the New York State Department of Health ("DOH"). As part of a Plan of Corrective Action, DOH required Petitioner to cure the deficiency in its statutory reserve position. Under the Transaction, Molina, a financially strong company with a longstanding commitment to primary care, will continue to promote Petitioner's mission, arrange affordable care for Petitioner's enrollees and New York residents, and retain 600 jobs in the Bronx. In addition, the Transaction will provide Petitioner resources to distribute funds to certain Federally Qualified Health Centers ("FQHCs") to enable them to advance Petitioner's primary care mission, as well as to other community-based organizations ("CBOs") that work at the local level to meet the health care needs of New York's underserved populations, including addressing social determinants of health.

#### **DESCRIPTION OF PETITIONER**

6. Petitioner was founded by a group of FQHCs and community leaders and, on September 9, 1985, incorporated as a Type-B not-for-profit corporation as defined in Section 201 of the New York Not-for-Profit Corporation Law. On January 8, 1987, the Internal Revenue Service determined that Petitioner was a tax-exempt, public charity within the meaning of Section 501(c)(3)

of the Internal Revenue Code. Petitioner's Internal Revenue Service 501(c)(3) Determination Letter is attached hereto as Exhibit B.

7. Petitioner initially operated as the "The Bronx Health Plan" based in the Bronx. In 1999, The Bronx Health Plan purchased Genesis Health Plan, and, in 2002, The Bronx Health Plan was renamed "Affinity Health Plan."

8. Petitioner has always been headquartered in the Bronx, and it will remain so under this Transaction. Petitioner's office is located at 1776 Eastchester Road, Bronx, New York, 10461.

9. Petitioner was formed to expand health insurance coverage for vital health care services and to improve access for the vulnerable and underserved populations who often suffer from poor health. Petitioner's formation was based on the recognition that community health centers – and specifically FQHCs – were the principal providers of care to these vulnerable communities and needed consistent reimbursement to enable them to plan and care for the health and well-being of these groups and communities. Petitioner was initially formed as a health plan reliant on FQHCs located in the Bronx. It was the first prepaid health service plan in New York and, since its formation, has had a long and productive relationship with stakeholders serving vulnerable populations.

10. From its inception, Petitioner's primary mission has been to address a significant need in the marketplace and strengthen primary care delivery and its place in the overall continuum and management of care. In fulfilling this mission, Petitioner has valued and relied upon close partnerships with FQHCs and CBOs.

11. Petitioner currently has approximately 300,000 members enrolled in the following managed care products:

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

- **Health and Recovery Plans (HARP)** – a managed care product providing physical health, mental health and substance use services in an integrated way for adults with significant behavioral health needs;

- **Child Health Plus** – a New York State-sponsored program, which provides free or low-cost comprehensive coverage to children under the age of 19; and

- **Essential Plan** – a New York State-sponsored program for lower-income people who either do not qualify for Medicaid or are low-income legal immigrants.

12. Petitioner provides its enrollees access to an extensive network of approximately 79 hospitals, 6,200 primary care providers, 43 FQHCs, 32,000 specialists and 66,000 pharmacy providers.

13. Petitioner also operates fifteen community service centers that offer a convenient location to individuals from the community to learn about their health care options in a welcoming environment. In addition to getting answers on health care benefit questions, enrollees receive assistance on addressing social determinants of health such as housing, employment, and food services. A service center allows visitors to explore their health care options and review their existing coverage with the immediate, face-to-face support of Petitioner’s representatives.

14. Petitioner currently has approximately 600 employees, servicing all five boroughs in New York City and Nassau, Suffolk, Westchester, Orange, and Rockland Counties.

15. A copy of Petitioner’s original Certificate of Incorporation dated September 9, 1985 and its amendments is attached as Exhibit C. A copy of Petitioner’s By-Laws is attached hereto as Exhibit D.

16. Petitioner is a membership organization and its Organizational Members are:

- Cornerstone Family Healthcare;
- The Institute for Family Health;
- Morris Heights Health Center, Inc.;
- Charles B. Wang Community Health Center, Inc.;

- William F. Ryan Community Health Center, Inc.; and
- Urban Health Plan, Inc.

17. Petitioner's Board consists of a diverse group of individuals committed to Petitioner's mission of serving New York's under-served populations. The Board includes physicians, health care professionals with strong finance experience, a lawyer, a college professor, several managed care senior executives, and other community leaders. The Board includes directors who currently are or were in executive positions of FQHCs, as well as independent directors with no association to FQHCs. The Board is chaired by Paloma Hernandez, the CEO of Urban Health Plan, Inc., and includes Verona Greenland, who has served on Petitioner's Board since its inception and is the founder and former CEO of Morris Heights Health Center, Inc. (a founding FQHC of Petitioner). Collectively, the Board has hundreds of years of service to New York's underserved populations. A list of the individuals serving as directors and principal officers and their home addresses is set forth in Exhibit E.

18. A copy of Petitioner's audited consolidated financial statements for the years ended December 31, 2020 and 2019 and independent auditor's report is attached hereto as Exhibit F. The consolidated financial statements include a description of Petitioner's debts and liabilities.

### **OVERVIEW OF MOLINA**

19. Molina has been providing health benefits to low-income individuals and families for over 25 years and, through its 15 health plans, serves approximately 3.3 million enrollees, of which approximately 3 million are Medicaid beneficiaries.

20. Molina Healthcare of New York, Inc. ("Molina-NY") is a New York corporation. Molina-NY is certified by the New York State Commissioner of Health to operate as a health maintenance organization pursuant to Article 44 of the Public Health Law. Molina-NY participates in all the managed care products offered by Petitioner.

21. Molina, through Molina-NY, has sought to expand its presence in New York. Molina-NY currently serves approximately 76,000 enrollees in upstate New York and recently acquired Senior Whole Health of New York, Inc. (“Senior Whole Health”). Senior Whole Health participates in managed long-term care and dual eligible programs, programs in which Petitioner does not participate. The Transaction will expand Molina-NY’s presence in the downstate region and allow Molina-NY to offer a broad array of programs throughout New York State.

**DETERMINATION OF THE NEED FOR SALE AND  
SELECTION OF MOLINA AS PURCHASER**

22. Petitioner experienced financial challenges during the period 2015 through 2018. In March 2018, DOH issued a Statement of Deficiency and required that Petitioner submit a Plan of Corrective Action (“PCA”). Among other things, Petitioner agreed to take steps to cure the deficiency related to its statutory capital requirement. DOH approved the PCA, and the terms and deadlines contained therein have been extended several times.

23. Petitioner has pursued various options to improve its financial condition. For example, Petitioner established a robust primary care initiative with the goal of increasing membership and bolstering its financials. Petitioner also sold its Medicare Advantage line of business in order to strengthen its balance sheet and focus on Medicaid beneficiaries. Although partly successful, these initiatives did not produce sufficiently strong financial results.

24. Petitioner’s Board had been working with retained consultants to assist it in exploring various options under which Petitioner could correct its statutory capital deficiencies. In order to inform its discussions with DOH, in July 2018, the Board secured an independent appraisal by Cain Brothers, a division of KeyBanc Capital Markets, Inc. (“Cain Brothers”), which provided the Board with a range of value of Petitioner based on various methods of valuation.

25. For several reasons, the various recapitalization options explored would likely not have immediately cured Petitioner's statutory capital deficiency and therefore Petitioner could not be certain of obtaining regulatory approval. Moreover, the Board was not certain that such options would have been consistent with Petitioner's core mission.

26. In order to comply with the PCA, the Board ultimately determined that a sale of Petitioner's assets and liabilities would be in the best interest of Petitioner.

27. Accordingly, Petitioner retained Cain Brothers to prepare a Confidential Information Presentation to gauge interest from qualified prospects in a possible purchase of Petitioner's assets.

28. Many companies expressed interest, with ten conducting due diligence. Ultimately, Petitioner invited several companies, including Molina, to submit proposals. Six companies, all qualified, submitted proposals.

29. The Board selected Molina's proposal because, in addition to its superior purchase price, Molina demonstrated a strong commitment to maintaining Petitioner's network, its employees, and its headquarters in the Bronx, and Molina demonstrated alignment with Petitioner's core mission. Other bidders either were not willing or not able to make the same commitments.

### **THE ASSET PURCHASE AGREEMENT**

30. The Transaction is structured to ensure a seamless transition for Petitioner's enrollees, providers, and employees, ensuring that Petitioner's products, services, and provider network remain intact. The Board determined that the best approach to accommodate this was for Petitioner to sell all its assets, except for limited excluded assets, and for Molina to assume all of Petitioner's liabilities, also with limited exclusions, whether arising before or after the Transaction.

31. Accordingly, the Asset Purchase Agreement provides for the sale of substantially all of Petitioner's assets for the purchase price of \$500,000,000 (the "Purchase Price"). The Purchase

Price is subject to various adjustments, including the following reductions: (1) \$133,770,000, which is the amount required in order for Petitioner to meet 150% of its statutory capital requirements; (2) approximately \$25,460,000 to reflect certain accounting principle adjustments; (3) \$37,500,000, which will be placed in escrow to satisfy certain indemnification obligation of Petitioner under the Asset Purchase Agreement; (4) approximately \$33,510,000 to pay for certain Transaction expenses, including retention of Petitioner's employees; and (5) approximately \$82,470,000, which includes the amount of Petitioner's regulatory escrow account required by the Department of Health for the protection of Petitioner's members (collectively "Net Proceeds").

32. Similarly, Molina is assuming all of Petitioner's liabilities, except for limited excluded liabilities as set forth in the Asset Purchase Agreement. As part of its assumption of liabilities, Molina will be responsible for paying provider claims that have not yet been adjudicated and paid by Petitioner or have not been submitted to Petitioner by the closing date.

33. From the outset of negotiations, Petitioner focused on ensuring uninterrupted access to Petitioner's primary care products and services. To that end, Molina's product offerings will mirror the product offerings that enrollees now experience. Molina will continue to offer Medicaid, the Essential Plan, Child Health Plus, and Health and Recovery Plans throughout New York, including Petitioner's current presence in the five New York City boroughs and the five surrounding counties.

34. Petitioner's existing provider network will remain largely intact and Petitioner's current network will transition to Molina with very limited exceptions.

35. Molina has committed to maintain a corporate presence in New York no less significant than Petitioner, including keeping its headquarters in the Bronx.

36. Further, Molina has committed to make offers of continued employment to all of Petitioner's current employees. Severance obligations, if any, will be the obligation of Molina.

37. Molina also agreed to permit Petitioner to designate an individual to serve on the board of Molina-NY.

### **PROPOSED DISTRIBUTION OF CHARITABLE ASSETS**

38. Petitioner's Board considered various alternatives for the distribution of Petitioner's charitable assets. The Board engaged special counsel to assist in the process. After an extensive review, the Board approved the following approach.

39. The distribution of Petitioner's Charitable Assets – defined as Net Proceeds together with other assets of Petitioner – has three components.

40. First, Petitioner will distribute a substantial portion of the Charitable Assets to the six FQHCs that serve as Petitioner's Organizational Members, in proportion to each FQHC's length of continuous board service by its representative. This distribution reflects the commitment of these FQHCs to the delivery of primary care to New York's underserved populations and will enable the FQHCs to expand this commitment by providing funding for future operational and capital needs. It also reflects these FQHCs' longstanding and consistent collaboration with Petitioner in providing comprehensive health care coverage to individuals who are often underserved by New York's health care system. The actual amount of this distribution will depend on the financial performance of Petitioner prior to closing but is estimated to be approximately \$127,500,000. The FQHCs will use the funds they receive to support their delivery of primary care health services to underserved communities, including but not limited to serving the uninsured, investing in health care innovations, increasing the availability of primary care providers, addressing social determinants of health in marginalized communities, making capital investments in their facilities, improving workforce recruiting and training, and responding to health care inequities. Some FQHCs may contribute some or all of the funds to foundations that also support the work of the FQHC. FQHCs will not distribute

any of the funds to any for-profit entity. The FQHCs' use of the funds furthers Petitioner's mission to strengthen the delivery of primary care services to vulnerable populations. The FQHCs will report on the use of the funds in their annual submissions to the Attorney General.

41. Second, a portion of the remaining Charitable Assets will be distributed through one-time grants to non-profit CBOs that provide services to New York's underserved communities. Petitioner's Board formed a Community Workgroup comprised of board members that met on numerous occasions to consider the appropriate distribution of these funds. As a threshold matter, to be eligible, a CBO must be a 501(c)(3) organization, be registered and in good standing with the New York Attorney General's Charities Bureau, and possess the organizational and financial capability to use the potential funding by Petitioner in a manner that aligns with Petitioner's mission. The Community Workgroup shall select from a diverse group of CBOs, including health care providers, social service organizations, and community groups that provide a range of services, such as primary care, family planning, health education, and addressing food insecurity.

42. Eligible CBOs interested in applying for grants will be required to submit a proposal, which will be subject to a review by a committee of the board. Eligibility criteria, proposal requirements, review process, and deadlines for submission will be set forth in a document made available to the public. All Board review of applicants will be conducted pursuant to Petitioner's Conflict of Interest policy and conflict of interest standards as set forth in Section 715-a of the N-PCL. Prior to the distribution of grant funds to any CBO, Petitioner shall report to the Attorney General on the CBOs selected, and for each CBO: (i) the grant amount to be distributed; and (ii) the proposed use of the grant. The Attorney General shall have thirty (30) days to review and comment on the proposed distribution. If the Attorney General does not provide comments within the thirty-day period, then the proposed distribution shall be deemed approved. The actual amount of this

distribution will depend on the financial performance of Petitioner prior to closing but is estimated to be approximately \$30,000,000.

43. Third, Petitioner will make a contribution of \$110,000,000 to the State of New York's Health Care Transformation Fund (the "Transformation Fund"), which is administered by the State and has a stated purpose of supporting health care delivery across the State. As such it is consistent with the Petitioner's mission of improving the health and well-being of its enrollees, their families, and their communities in collaboration with primary care providers. No additional amounts are being contributed by Molina as a condition to approval of the Transaction by the State.

44. The majority of the Charitable Assets will be distributed by Petitioner following the closing, including distributions to CBOs and the Transformation Fund, and an initial distribution to the six FQHCs. Certain other assets will be distributed by Petitioner as they become available for distribution. These assets primarily consist of funds in an escrow account available to pay potential future liabilities. These funds will be paid to the six FQHCs over a six-year period if post-closing liabilities do not materialize and will be distributed pursuant to the proportional methodology described in Paragraph 40. A small amount of funds will be retained by Petitioner to pay for post-closing obligations. In all events, Petitioner expects that all funds will be distributed no later than six years after the closing.

45. Following the closing and distribution of Charitable Assets as set forth above, Petitioner will continue for a period of no less than six years in order to manage post-closing obligations and distribution of the remainder of Charitable Assets, primarily escrow account funds.

#### **REGULATORY APPROVAL PROCESS**

46. In addition to the Attorney General's approval, certain other State regulatory approvals are required for aspects of the Transaction. Petitioner will provide a copy of this Verified Petition to

DOH, the New York State Department of Financial Services, and such other agencies as directed by the Attorney General.

47. On October 14, 2020, Petitioner and Molina filed a “change of control” application with DOH pursuant to Article 44 of the New York Public Health Law.

48. DOH approved the application subject to the conditions set forth therein.

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

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

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

50. The terms of the Transaction were negotiated at arm’s length with the assistance of independent legal counsel and financial advisors and are set forth in detail in the Asset Purchase Agreement.

51. In evaluating whether the consideration and the terms of the Transaction are fair and reasonable, the Board looked at the totality of the terms of the other offers received and decided that Molina’s offer was most favorable. As a threshold matter, Molina’s offer was consistent with the business enterprise valuation prepared by Cain Brothers. Further, as noted, Molina’s offer – consisting of the purchase price, assumption of liabilities, and willingness to make commitments to Petitioner’s employees, providers and an ongoing presence in the Bronx – was superior to the other various recapitalization options considered by Petitioner’s Board.

52. Consequently, Petitioner hereby respectfully submits that the consideration and terms of the Transaction are fair and reasonable.

**The Sale Promotes the Purposes of Petitioner and the Interests of its Enrollees**

53. With respect to the second prong of Section 511-a(c), the proposed Transaction promotes the mission and purposes of the Petitioner by ensuring continuity of enrollee access to a patient-centric health care system under Molina and an investment in primary care and community based providers

54. Further, in accordance with Section 511-a(c), the Transaction will further carry out Petitioner's founding mission to strengthen primary care delivery through its close partnerships with FQHCs and CBOs. Molina's genuine commitment to retain all of Petitioner's employees and permit Petitioner to designate an individual to serve on the board of Molina-NY reflects a commitment to continuing Petitioner's mission.

**APPROVAL OF TRANSACTION**

55. Petitioner convened a Special Meeting of the Board of Directors on August 14, 2020 for the purpose of whether to approve the proposed Transaction and the distribution of the charitable assets and to make a recommendation to the Organizational Members.

56. The August 14, 2020 meeting took place at a meeting duly called. All eleven directors participated and there was a quorum.

57. Ten voting directors voted to approve the Transaction and the distribution of the charitable assets. One voting director abstained. A copy of the August 14, 2020 resolutions approving the Transaction and recommending approval of the same to the Organizational Members, as certified by the Secretary, is attached hereto as Exhibit G.

58. The Board submitted their recommendation to the Petitioner's Organizational Members for approval. The Organizational Members met on August 31, 2020 at a meeting duly called. All six Organizational Members participated and there was a quorum. Five of the six

Organizational Members voted to approve the Transaction and the distribution of the charitable assets. A certified copy of the minutes is attached hereto as Exhibit H.

### **ADDITIONAL PROVISIONS**

59. The Transaction is arms-length and, other than the offers of continued employment to be made by Molina as part of the Transaction, no director, officer or key employees of the Petitioner will benefit financially or otherwise, either directly or indirectly, as a result of the Transaction, other than retention payments typically paid to employees as part of such transactions.

60. Further, while the distribution to the six FQHCs that serve as Petitioner's Organizational Members constitute related party transactions, the Transaction has been determined by Petitioner's Board to be fair, reasonable, and in Petitioner's best interest. The six FQHC Organizational Members are appropriate recipients of a portion of Petitioner's Charitable Assets because of their close and historic relationship with Petitioner. Indeed, thirty-five years ago, the impetus for Petitioner's formation was to assist FQHCs by providing them a consistent reimbursement stream so that they could care for New York's underserved population. Today, a distribution to these FQHCs will further their ongoing commitment to Petitioner's core mission.

61. No prior application for similar approval has been made by the Petitioner to the Attorney General or a court.

62. The Petitioner is not insolvent, nor will it become insolvent as a result of the proposed Transaction.

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

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

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

66. Petitioner acknowledges that the Attorney General's office plans to submit the Verified Petition for public comment for a two-week period prior to the Attorney General Approval of the Transaction.

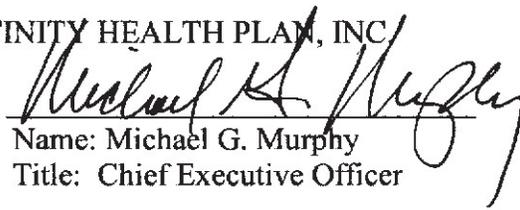
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WHEREFORE, Petitioner requests that the Attorney General approve the Asset Purchase Agreement and the Transaction contemplated thereunder, including the sale of all or substantially all of the Petitioner's assets by Affinity Health Plan, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Sections 510 and 511-a.

IN WITNESS WHEREFORE, the Petitioner has caused this Petition to be executed this 7<sup>th</sup> day of July, 2021 by

AFFINITY HEALTH PLAN, INC

By:



Name: Michael G. Murphy

Title: Chief Executive Officer

Filed and Submitted By:

Harold Iselin  
Greenberg Traurig, LLP  
54 State Street  
Albany, New York 12207  
[IselinH@gtlaw.com](mailto:IselinH@gtlaw.com)

Verification

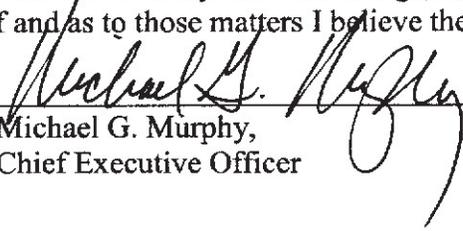
STATE OF MISSOURI

ss:

COUNTY OF ST. LOUIS

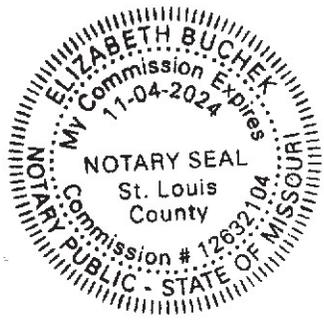
Michael M. Murphy, being duly sworn, deposes and says:

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

  
\_\_\_\_\_  
Michael G. Murphy,  
Chief Executive Officer

Sworn to before me this  
7<sup>th</sup> day of July 2021

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



List of Exhibits

Exhibit A	Asset Purchase Agreement
Exhibit B	Affinity Health Plan IRS Determination Letter
Exhibit C	Affinity Health Plan Certificate of Incorporation
Exhibit D	Affinity Health Plan Bylaws
Exhibit E	Affinity Health Plan Directors and Officers
Exhibit F	Affinity Health Plan Financial Reports
Exhibit G	Affinity Health Plan Board Approval
Exhibit H	Affinity Health Plan Organizational Member Approval

# EXHIBIT A

## **Asset Purchase Agreement**

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**ASSET PURCHASE AGREEMENT**

by and between

**AFFINITY HEALTH PLAN, INC.**

and

**MOLINA HEALTHCARE, INC.**

Dated as of

September 28, 2020

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- EXHIBIT E REQUIRED THIRD PARTY CONSENTS
- EXHIBIT F APPLICABLE ACCOUNTING PRINCIPLES AND SAMPLE CALCULATION
- EXHIBIT G FORM OF FQHC NON-COMPETE AGREEMENT

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “*Agreement*”), dated as of September 28, 2020, is entered into by and between AFFINITY HEALTH PLAN, INC., a New York not-for-profit corporation (“*Affinity*”), and MOLINA HEALTHCARE, INC., a Delaware corporation (“*Buyer*”). Affinity and Buyer are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

WHEREAS, Affinity is a prepaid health services plan pursuant to Section 4403-a of the New York Public Health Law and provides health care coverage under the New York State Medicaid Managed Care, Health and Recovery Plan, Child Health Plus, and Essential Plan programs (collectively, the “*Business*”);

WHEREAS, subject to the terms and conditions set forth in this Agreement, Affinity desires to sell to Buyer, and Buyer desires to purchase from Affinity, substantially all of the assets owned or leased by Affinity that are used or held for use in the operation of the Business; and

WHEREAS, pursuant to the terms and conditions hereof, the Parties desire to work cooperatively to obtain the requisite approvals, licenses, certificates, authorizations and permits to effect the sale, transfer, conveyance, assignment and delivery by Affinity to Buyer of the aforesaid assets so that all of Affinity’s members enrolled under the Payor Contracts (as defined herein) relating to the Business (“*Enrollees*”) at the time of transfer would be enrolled in a health plan operated by Buyer providing or arranging for health services to such Enrollees (except to the extent such Enrollees elect not to be so enrolled).

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

### ARTICLE I DEFINITIONS

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

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

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

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

“*AEP Schedule*” has the meaning set forth in **Section 2.06(b)**.

“*Affiliate*” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “*control*” (including the terms “*controlled by*” and “*under common control with*”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of any doubt, the Parties acknowledge and agree that the FQHC Members shall not be deemed to be Affiliates of Affinity for purposes of this Agreement.

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

“*Affinity Employee Payables*” means, solely to the extent set forth and itemized on the AEP Schedule, each of the following:

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

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

(c) all accrued but unpaid salaries, wages, commissions, severance (solely with respect to any employees of Affinity terminated by Affinity on or prior to the Closing Date), vacation or sick pay, personal leave, incentive compensation or other compensation or payroll items earned by, or accrued in respect of, any current employee of Affinity for any period through and including the Closing Date; and

(d) with respect to the payments described in each of the foregoing clauses (i)-(iii), all employer related payroll Tax Liabilities.

“*Affinity Employee Plan*” means each “employee benefit plan” within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA) and each other employment, consulting, deferred compensation, incentive, change in control, retention, severance, vacation, paid time off, health, medical, fringe-benefit and other compensatory agreement, plan, policy, practice, program or arrangement which is or has been adopted, entered into, maintained, sponsored, contributed to, or required to be contributed to by Affinity with or for the benefit of any current or former employee, officer, or director of Affinity or the Business (or with or for the benefit of their respective spouses or dependents) or with respect to which Affinity otherwise has any Liabilities.

“*Affinity Fundamental Representations*” means the representations and warranties of Affinity set forth in **Section 4.01** (Organization and Qualification), **Section 4.02** (Authority) and **Section 4.15** (Brokers).

“*Affinity Indemnites*” has the meaning set forth in **Section 8.03**.

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

“*Affinity Representative*” has the meaning set forth in **Section 6.17(e)**.

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

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

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

“*Applicable Accounting Principles*” means the following: (a) the accounting principles, judgments, methodologies, practices, classifications, estimation techniques and assumptions, including as to the establishment of premiums receivable accruals, reserves and determination of contingencies, set forth in **Exhibit F**, (b) to the extent not addressed in (a), the accounting principles, judgments, methodologies, practices and classifications used in the preparation of the Audited Financial Statements for the year ended December 31, 2019, and (c) to the extent not addressed in (a) or (b), SAP. For the avoidance of doubt (a) takes precedence over (b) and (c), and (b) takes precedence over (c).

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

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

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

“*Audited Financial Statements*” has the meaning set forth in **Section 4.04(a)**.

“*Balance Sheet*” has the meaning set forth in **Section 4.04(a)**.

“*Balance Sheet Date*” has the meaning set forth in **Section 4.04(a)**.

“*Basket Amount*” has the meaning set forth in **Section 8.04(a)**.

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

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

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

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

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

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

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

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

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

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

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

“**Cap**” has the meaning set forth in **Section 8.04(a)**.

“**Cash**” means, as of any date of determination, cash, cash equivalents, marketable securities, security entitlements, and short-term investments of Affinity, checks and funds received by Affinity, less the amount of checks written by Affinity but not yet cleared, in each case calculated as of such date in accordance with SAP applied on a consistent basis with the Audited Financial Statements. For the avoidance of doubt, “Cash” shall not include the Statutory Escrow Account, Retained Cash and Investments and any petty cash, and shall include all balances held in the operating accounts.

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

“**Cause**” shall mean (a) poor performance or any misconduct identified as a ground for termination in Buyer’s human resources policies, code of business conduct, or other written policies, practices or procedures, (b) commission of any criminal, fraudulent, or dishonest act in connection with the individual’s employment, or (c) conviction of any felony or crime of moral turpitude.

“**Change in Health Care Law**” means any adoption, implementation, promulgation, repeal, modification, amendment, reinterpretation, or change of any applicable New York state Law relating to Medicaid or otherwise relating to the health care, health insurance or managed care industry.

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

“*Claims*” has the meaning set forth in **Section 10.16**.

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

“*Closing Affinity Employee Payables*” has the meaning set forth in **Section 2.06(b)**.

“*Closing Cash*” means Cash as of the Measurement Time.

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

“*Closing Date Indebtedness*” means all Indebtedness incurred by Affinity and outstanding as of immediately prior to the Closing.

“*Closing Statement*” has the meaning set forth in **Section 2.07(c)**.

“*Closing Statement Disputed Items*” has the meaning set forth in **Section 2.07(e)**.

“*Closing Statement Objection Notice*” has the meaning set forth in **Section 2.07(d)**.

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

“*COBRA*” has the meaning set forth in **Section 2.04(c)**.

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

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

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

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

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

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

“*DOH*” means the New York State Department of Health.

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

“*DSRIP EIP*” means the New York State Delivery System Reform Incentive Payment program’s Equity Infrastructure Program.

“**DSRIP EIP Liabilities**” means any payable by Affinity (or for which Affinity may have any liability) in connection with DSRIP EIP represented by the line item “Payable for NYSDOH Equity Program” on the Balance Sheet.

“**DSRIP EIP Receivables**” means any and all proceeds due and payable to Affinity in connection with DSRIP EIP represented by the line item “Restricted Funds, NYSDOH DSRIP Equity Program” on the Balance Sheet.

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

“**Emblem Claim**” means any and all proceeds due and payable to Affinity pursuant to or otherwise arising from Affinity’s rights under that certain Asset Purchase Agreement by and between Affinity and Greater Health Plan of New York dated as of October 27, 2018.

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

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

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

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

“**Escrow Agent**” means Citibank, National Association.

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

“**Escrow Amount**” means Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000), as it may be increased or decreased from time to time as provided herein.

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

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

“**Estimated Net Asset Value**” has the meaning set forth in **Section 2.07(a)**.

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

“**Excluded Contracts**” has the meaning set forth in **Section 2.02(e)**.

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

**“Excluded Matter”** means any one or more of the following: (i) any change in the United States or foreign economies or securities or financial markets; (ii) any change that generally affects the Medicaid managed care industry (other than as a result of any Change in Health Care Law); (iii) any changes or proposed changes in applicable Laws or accounting rules (other than any Change in Health Care Law); (iv) taking of any action that is required by the terms of this Agreement or the consummation of the transactions contemplated by this Agreement; (v) any failure, in and of itself, by Affinity to meet internal forecasts or projections (it being understood and agreed that the underlying facts and circumstances that cause such failure that are not otherwise excluded from the definition of a Material Adverse Effect may be taken into account in determining whether there has been a Material Adverse Effect); and (vi) any outbreak of hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof; *provided, however*, that any event, occurrence, fact, condition, change or effect referred to in clauses (i), (ii), (iii), and (vi) shall be taken into account for purposes of determining whether a Material Adverse Effect has occurred solely to the extent that such occurrence, fact, condition, change or effect has a disproportionate adverse effect on Affinity or the Business, in each case, taken as a whole, relative to the adverse effect such events or changes have on other companies that participate in the geographic markets and industries in which Affinity operates.

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

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

**“Final Closing Adjustment”** has the meaning set forth in **Section 2.07(g)**.

**“Final Net Asset Value”** means the Net Asset Value of Affinity as finally determined in accordance with **Section 2.07**.

**“Financial Statements”** has the meaning set forth in **Section 4.04(a)**.

**“FQHC Members”** means Charles B. Wang Community Health Center, Inc., Cornerstone Family Health Care, The Institute for Family Health, Morris Heights Health Center, Inc., William F. Ryan Community Health Center, Inc., and Urban Health Plan, Inc.

**“FQHC Non-Compete Agreement”** means the Non-Compete Agreements, in substantially the form attached hereto as **Exhibit G**, to be entered into among Buyer, Affinity and each FQHC Member.

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

“**Governmental Authority**” means any federal, state, local, municipal or foreign government or political subdivision thereof, or any authority, commission, department, board, official or other instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any Court of competent jurisdiction.

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

“**Health Plans**” has the meaning set forth in **Section 2.01(a)(xvii)**.

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

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

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

“**Inactive Employee**” means an employee of the Business who is on a leave of absence as a result of (a) accident, sickness, family, pregnancy, parental or medical leave, (b) disability or salary continuation under the terms of an Affinity Employee Plan, (c) workers’ compensation leave, (d) any leave required by applicable Law, or (e) military service.

“**Indebtedness**” means, as of any date without duplication, all obligations (including any principal, accrued and unpaid interest, premium, penalty, breakage costs, termination fees or other payment) of Affinity (i) for indebtedness for borrowed money, including with respect to deposits or advances of any kind, (ii) evidenced by notes, bonds, debentures or other similar instruments, (iii) with respect to any interest rate hedging, swap agreements, foreign currency exchange agreements or similar arrangements and related break-up fees, (iv) for any liability for all or any part of the deferred purchase price of property, assets, securities, goods or services (other than trade payables incurred in the ordinary course of business to the extent not included in Net Asset Value), at the maximum value, whether contingent or not, including any “earn-out”, purchase price adjustment, release of “holdback” or similar payment or any non-compete payments, (v) for any liability under any reimbursement obligation relating to a surety bond, letter of credit, bankers’ acceptance, note purchase facility or similar credit transactions, (vi) under leases required in accordance with GAAP to be recorded as capital leases or leases classified as a capital/finance lease in the Financial Statements and excluding operating leases, (vii) for indebtedness secured by an Encumbrance, except for Permitted Encumbrances, (viii) under conditional sale or other title retention agreements relating to any property purchased, (ix) for all negative balances in bank accounts and all overdrafts, (x) for deferred rent Liabilities recorded in accordance with GAAP, (xi) for any accounts payable or loans of any kind or nature between Affinity, on the one hand,

and any officers, directors, employees or agents of Affinity, on the other hand, (xii) escheat Liabilities, (xiii) audit settlement Liabilities, (xiv) bankruptcy reserves, and (xv) any guarantee of the payment or performance of, or any contingent obligation in respect of, any Indebtedness of any other Person. “Indebtedness” shall not include any item included in the definition of Net Asset Value.

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

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

“**Independent Accountants**” means a nationally or regionally recognized firm of independent accountants as to which Buyer and Affinity mutually agree.

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

“**Information Privacy and Security Laws**” means all Laws concerning the privacy or security of Personal Information, and all regulations promulgated and guidance issued by any Governmental Authority thereunder, including, but not limited to, HIPAA, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Telephone Consumer Protection Act, Section 5 of the Federal Trade Commission Act as it applies to the receipt, access, use, disclosure, and security of Personal Information, the CAN-SPAM Act, Children’s Online Privacy Protection Act, PCI DSS, Part 500 of Title 23 of the New York Codes, Rules and Regulations, Article 27-F of the New York Public Health Law, state data breach notification Laws, state data security Laws, state social security number protection Laws, state consumer protection Laws, any health care Laws pertaining to privacy or data security and any applicable Laws concerning requirements for website and mobile application privacy policies and practices, or any outbound communications (including e-mail marketing, telemarketing and text messaging), tracking and marketing.

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

“**Intellectual Property**” means all intellectual property, intangible property and proprietary rights, title, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world, including: (i) all United States, foreign and international patents, patent applications and statutory invention registrations, utility models, reissues, divisionals, continuations, continuations-in-part, extensions and reexaminations thereof; (ii) all trademarks, service marks, trade dress, logos, trade names and corporate names, uniform resource locator addresses, symbols, slogans, and other indicia of source or origin, including the goodwill of the business symbolized thereby or associated therewith, common law rights, registrations and applications therefor throughout the world; (iii) internet domain names, website content, social media handles, tags, hashtags, social media accounts, or any other online indicia of source; (iv) original works of authorship in any medium of expression, whether or not published, all copyrights and copyrightable works, all registrations and applications for registration of such copyrights, and

all issuances, extensions and renewals of such registrations and applications; (v) trade secrets, formulas, designs, devices, technical data, technology, know-how, research and development, advertising and promotional materials, inventions and invention disclosures, methods or processes, and other confidential or proprietary technical, business and other information; (vi) computer software (including source and object code) and computer programs and databases in any form, including firmware, development tools, algorithms, data, data files, records, database management code, utilities, graphical user interfaces, internet web sites, all versions, updates, corrections, enhancements and modifications of any of the foregoing, and all related documentation (collectively, “*Software*”); (vii) all rights to sue and recover and retain damages, costs and attorneys’ fees for past, present and future infringement and any other rights relating to any of the foregoing; and (viii) all tangible embodiments of any of the foregoing.

“*Interim Financial Statements*” has the meaning set forth in **Section 4.04(a)**.

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

“*IRS*” means the Internal Revenue Service.

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

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

“*Knowledge of Affinity*” or “*Affinity’s Knowledge*” or any other similar knowledge qualification, means the actual knowledge of Michael Murphy, Clara Hansen, Rachel Amalfitano, Lisa Mingione, Scott Breidbart and Jason Robinson after reasonable due inquiry and investigation.

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

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

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

“*Licensed Intellectual Property*” means Intellectual Property licensed to or held for use by Affinity, but excluding the Purchased Intellectual Property.

“**Losses**” means losses, damages, Liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable fees of accountants, attorneys and other similar professionals, the cost of enforcing any right to indemnification hereunder, the cost of pursuing any insurance providers, lost profits, multiples of earnings, diminution in value and consequential damages, excluding, any other indirect, special or punitive damages (other than damages awarded as part of a Third Party Claim). For the avoidance of doubt, consequential damages means Losses that were reasonably foreseeable but were not a direct result of the related breach or alleged breach of this Agreement.

“**Material Adverse Effect**” means any event, occurrence, fact, condition, change or effect that (a) has had, or could reasonably be expected to have, individually or in the aggregate, a material adverse effect on (1) the business, results of operations, or financial condition of the Business, or (2) the Purchased Assets and Assumed Liabilities, taken as a whole, or (b) has materially impaired, or could reasonably be expected to materially impair or delay, individually or in the aggregate, the ability of Affinity to perform its obligations under this Agreement or consummate the transactions contemplated hereby; *provided, however*, that, in determining whether there has been a Material Adverse Effect, any event, occurrence, fact, condition, change, effect, development or circumstance to the extent resulting from or attributable or relating to an Excluded Matter shall be disregarded and no Excluded Matter shall be deemed to constitute a Material Adverse Effect.

“**Material Contracts**” means (i) the Provider Contracts; (ii) the Payor Contracts; (iii) Contracts related to the provision of management services or functions to Affinity and that have required the approval of DOH under 10 N.Y.C.R.R. § 98-1.11 during the past three (3) years; (iv) Contracts containing a provision or covenant that purports to (A) materially restrict the business activity of Affinity as it relates to the Business as it is currently conducted, (B) materially limit the freedom of Affinity to engage in the Business or compete with any Person in the Business, (C) provide “most favored nation” or similar status to any customer or Provider, (D) require the purchase of any product or service exclusively from a single party or grant exclusive rights to marketing or distribution or (E) grant to any Person (other than Affinity) an option or a first refusal, first-offer or similar preferential right to purchase or acquire any assets which are material to Affinity or the Business; (v) Contracts for joint venture agreements or similar partnerships entered into within the last three (3) years; (vi) Contracts with any licensed producer or broker relating to the sale of Affinity’s health plans providing for annual payments by Affinity in excess of Ten Thousand Dollars (\$10,000); (vii) Contracts relating to the settlement of any Actions, other than (A) settlements immaterial in nature or amount to Affinity and the Business, taken as a whole, entered into with former employees or current or former independent contractors in the ordinary course of business, and (B) settlement agreements under which Affinity does not have any continuing obligations or Liabilities equal to or greater than Seventy-Five Thousand Dollars (\$75,000) or rights (excluding releases); (viii) any other Contract with a Governmental Authority; (ix) Contracts with vendors providing for payments by or to Affinity in excess of One Hundred Thousand Dollars (\$100,000) during the fiscal year ended December 31, 2019; (x) any Contracts for the sale or purchase of any assets or business (whether by merger, sale of stock, sale of assets or otherwise) within the last three (3) years with a value in excess of One Million Dollars (\$1,000,000) or pursuant to which there are continuing indemnification, “earn-out” or other contingent payment Liabilities, including Contracts providing for indemnification to or from any Person with respect to Liabilities relating to any current or former business of Affinity; (xi)

Contracts or agreements relating to or evidencing Indebtedness of Affinity or any mortgage, pledge, indenture or security agreement or similar arrangement constituting an Encumbrance that is material to the Purchased Assets, taken as a whole; (xii) Contracts that relate to any off-balance sheet arrangements, loss sharing, or loss guarantee and contingent purchase transactions, special purpose entity transactions or other similar transactions of Affinity, and any hedging, derivatives or similar Contracts or arrangements; (xiii) Contracts that require additional capital expenditures in excess of One Million Dollars (\$1,000,000) that are not reflected on the Balance Sheet; and (xiv) all other Contracts involving annual payments of more than One Million Dollars (\$1,000,000).

**“Measurement Time”** means 12:01 a.m., Eastern Time, on the Closing Date.

**“Medical Claims”** means, with respect to any measurement period, the aggregate dollar amount of claims incurred by Affinity with respect to covered medical services provided.

**“Medical Claims Reserve”** means, with respect to Affinity, the amount accrued or reserved by Affinity for Liabilities for Medical Claims incurred but not reported, and incurred but pending or otherwise unpaid, in each case, calculated as of the Measurement Time in accordance with the Applicable Accounting Principles.

**“MHNY”** has the meaning set forth in **Section 6.17(e)**.

**“Minimum Network Requirements”** means a sufficient number of Provider Contracts required to have been successfully assigned to Buyer as set forth in the DOH’s approval for the transactions contemplated hereby, in each case with reimbursement rates that do not exceed Affinity’s reimbursement rates immediately prior to Closing.

**“MMCOR”** means Medicaid Managed Care Operating Report statements required to be filed with DOH.

**“Montefiore Claim”** means any and all proceeds due and payable to Affinity pursuant to or otherwise arising from Affinity’s rights under various agreements with Montefiore Medical Center, including but not limited to that certain Agreement for Hospital Services by and between Affinity and Montefiore Medical Center dated as of July 16, 2002, as amended from time to time and as extended by those certain letter agreements dated March 26, 2019 and November 8, 2019.

**“Murphy Executive Employment Contract”** means that certain executive employment agreement by and between Affinity and Michael Murphy dated as of January 1, 2019.

**“Net Asset Value”** means an amount equal to Affinity’s capital and surplus calculated by *subtracting* (i) the sum of all Assumed Liabilities from (ii) the sum of all Purchased Assets, in each case as determined as of the Measurement Time on a basis consistent with and in accordance with the Applicable Accounting Principles. Net Asset Value shall account for the Medical Claims Reserve and the Premiums Receivable Accrual.

**“Network Failure”** has the meaning set forth in **Section 6.19**.

**“Non-Recourse Party”** means, with respect to a particular Person, any of such Person’s past, present or future equity holders, controlling Persons, incorporators, directors, officers, employees, agents, attorneys, advisors, representatives, financing sources, Affiliates, members, managers, general or limited partners or assignees or successors (or any past, present or future equity holders, controlling Persons, incorporators, directors, officers, employees, agents, attorneys, advisors, representatives, financing sources, Affiliates, members, managers, general or limited partners or assignees or successors of any of the foregoing).

**“NPI”** has the meaning set forth in **Section 4.20**.

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

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

**“Payor Contracts”** means all Contracts between Affinity and Payor and any renewal or replacement of the foregoing Contracts.

**“Payor”** shall mean the New York State Department of Health.

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

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

**“Permitted Encumbrances”** means (a) liens for Taxes that are not yet due and payable or that may hereafter be paid without material penalty or that are being contested in good faith by appropriate proceedings and for which adequate reserves have been established if and as may be required by and in accordance with SAP, (b) statutory or contractual liens of landlords with respect to real property and incurred in the ordinary course of business consistent with past practice and which are not, individually or in the aggregate, material to Affinity and the Business taken as a whole, (c) liens of carriers, warehousemen, mechanics, materialmen, repairmen and similar liens incurred in the ordinary course of business, (d) liens incurred in connection with workers’ compensation, unemployment compensation and other types of social security or in connection with obligations for sums which are not yet delinquent or which are being contested in good faith and which are not, individually or in the aggregate, material to Affinity and the Business taken as a whole, (e) in the case of real property, in addition to items (a), (b), (c) and (d), zoning, building or other restrictions, variances, use permits, use restrictions, covenants, rights of way, encumbrances, easements and other exceptions to title, none of which, individually or in the aggregate, interfere in any material respect with the present use of or occupancy of the affected parcel by Affinity, (f) liens securing the Indebtedness that is being repaid prior to or at Closing, (g) in the case of Business Intellectual Property, third-party license agreements entered into in the ordinary course of business, (h) liens incurred in connection with capital lease obligations of the Business, (i) liens that constitute purchase money security interests on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring such property, (j) liens

with respect to the properties or assets of the Business that do not singly or in the aggregate materially detract from the value of the property or materially detract from or interfere with the use of property in the ordinary course of Affinity's operation of the Business, (k) the replacement, extension or renewal of any of the foregoing, (l) liens set forth on **Schedule 1.1(a)**, and (m) liens created by or through Buyer.

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

**"Personal Information"** means any information that (a) identifies or relates to a natural person including information that alone or in combination with other information held by Affinity can be used to identify, contact or precisely locate a natural person or can be linked to a natural person; (b) any information that is governed, regulated or protected by one or more Information Privacy and Security Laws, including Protected Health Information as defined by HIPAA; (c) any information that Affinity receives from or on behalf of an Enrollee; or (d) any information that is covered by the PCI DSS.

**"Pre-Closing Tax Period"** means any Tax period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

**"Premiums Receivable Accrual"** means the aggregate dollar amount attributable to the premium capitation receivables for services performed by or on behalf of Affinity with respect to the period of time prior to the Measurement Time, calculated in accordance with the Applicable Accounting Principles.

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

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

**"Provider Contract"** means any Contract between Affinity and any Provider.

**"Provider Contract Termination"** has the meaning set forth in **Section 6.19**.

**"Provider Network"** means all Providers that are contracted directly with Affinity's provider network.

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

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

**"Purchased Intellectual Property"** means all Intellectual Property owned or controlled by Affinity or used or held for use in or related to the Business.

**"Real Property Leases"** has the meaning set forth in **Section 4.08(b)**.

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

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

**“Regulatory Material Adverse Effect”** has the meaning set forth in **Section 6.08(c)**.

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

**“Released Claims”** has the meaning set forth in **Section 10.16**.

**“Released Parties”** has the meaning set forth in **Section 10.16**.

**“Releasing Parties”** has the meaning set forth in **Section 10.16**.

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

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

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

**“Restricted Business”** means operating any health care insurance related business, including (a) any Medicaid plan, (b) any health maintenance organization, any preferred provider organization, or (c) any management services or care management administrative services to any of the businesses listed in the foregoing items (a) through (b).

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

**“Retained Cash and Investment Amount”** has the meaning set forth in **Section 2.02(g)**.

**“Retained Cash and Investments”** has the meaning set forth in **Section 2.02(g)**.

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

**“Risk Corridor Claim”** means the Action brought by Affinity under Section 1342 of the Affordable Care Act seeking damages against the United States for its failure to fully pay risk-corridor payments promised by the Affordable Care Act.

**“Routine Reconciliations”** has the meaning set forth in **Section 4.16(e)**.

**“SAP”** means the statutory accounting procedures prescribed or permitted by DOH in consultation with the New York Department of Financial Services.

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

“**Special DOH Indemnity**” means any Losses incurred by the Buyer Indemnitees in connection with (a) any audit by the New York State Medicaid Inspector General or its agents of Affinity’s compliance with requirements under the Medicaid managed care program, (b) Liabilities due to DOH or any other Governmental Authority in connection with the matters set forth on **Schedule 1.1(b)**, including Liabilities represented by the line item “Due to NYSDOH” on the Balance Sheet, and (c) Liabilities due to CMS or any other Governmental Authority in connection with the matters set forth on **Schedule 1.1(c)**, including Liabilities represented by the line item “Due to Centers for Medicare and Medicaid Services” on the Balance Sheet.

“**Special DOH Payables**” means all Liabilities set forth on **Schedule 1.1(d)**.

“**Special HCRA Indemnity**” means any Losses incurred by the Buyer Indemnitees in connection with any audit by DOH or its designee of (i) assessments paid by Affinity pursuant to §2807-j or §2807-t of the New York Public Health Law or (ii) obligations otherwise required by Affinity under the New York Health Care Reform Act.

“**Statutory Escrow Account**” means the escrow account maintained by Affinity in accordance with the requirements of Section 98-1.11 of Part 98, Title 10, New York Codes, Rules and Regulations.

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

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

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

“**Tangible Personal Property**” has the meaning set forth in **Section 2.01(a)(viii)**.

“**Target NAV Amount**” means One Hundred Thirty-Three Million Seven Hundred Seventy Thousand Dollars (\$133,770,000).

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

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

“**Terminating Provider**” has the meaning set forth in **Section 6.19**.

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

“**Territory**” means the counties of Bronx, Kings (Brooklyn), Nassau, New York (Manhattan), Orange, Queens, Richmond (Staten Island), Rockland, Suffolk, and Westchester in the State of New York and any other location in which the Business is conducted on the date hereof and as of the Closing.

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

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

“**Transaction Documents**” means this Agreement, the Escrow Agreement, the Bill of Sale, the Assignment and Assumption Agreement, the IP Assignment Agreement, the FQHC Non-Compete Agreements, and the other agreements, instruments and documents required to be delivered at the Closing.

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

“**Updated Net Asset Value**” has the meaning set forth in **Section 2.07(c)**.

“**Wind-Up Period**” has the meaning set forth in **Section 6.20**.

## ARTICLE II PURCHASE AND SALE

### Section 2.01 Purchase and Sale of Assets

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

(i) the Closing Cash and the bank accounts of Affinity set forth on **Section 2.01(a)(i) of the Disclosure Schedules**;

(ii) all right, title and interests in and to the “AFFINITY” name and derivations thereof;

(iii) all premiums, accounts or notes receivable of the Business, including premium capitation receivables for services performed by or on behalf of Affinity;

(iv) all prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees of the Business set forth on **Section 2.01(a)(iv) of the Disclosure Schedules**;

(v) all of Affinity’s rights, title and interests in and to any of Affinity’s Business Intellectual Property;

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

(vii) the Murphy Executive Employment Contract, the Provider Contracts, the Payor Contracts and all other Contracts, other than the Excluded Contracts, relating to the Business (the “**Assigned Contracts**”);

(viii) all furniture, fixtures, equipment, supplies and other tangible personal property of the Business or Affinity used or held for use in the Business (the “**Tangible Personal Property**”);

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

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

(xi) all of Affinity’s rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(xii) originals, or where not available, copies, of all books and records and all other data and information in the possession or control of Affinity, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, personnel records, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records, strategic plans, and internal financial statements that relate to the Business, the Purchased Assets or the Assumed Liabilities, other than (A) books and records set forth in **Section 2.01(a)(xii) of the Disclosure Schedules** and (B) Tax Returns and any other Tax books and records not related to the operation

of the Business, copies of which, for the avoidance of doubt will be retained by Affinity (“**Books and Records**”);

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

(xiv) (A) any and all occurrence-based third party liability insurance policies of Affinity or its Affiliates and any workers’ compensation insurance policies or comparable workers’ compensation self-insurance programs sponsored by Affinity or its Affiliates and that apply to the locations at which the Business operates, and (B) the insurance policies of Affinity or its Affiliates relating to losses or damages relating to the Business, the Purchased Assets or the Assumed Liabilities prior to the Closing;

(xv) all of Affinity’s rights, title and interests in and to Personal Information;

(xvi) all of Affinity’s rights, title and interests in and to the DSRIP EIP Receivables;

(xvii) all of Affinity’s rights, title and interests in and to the portion of the Montefiore Claim that is treated as an admitted asset under SAP as of the Measurement Time, calculated in accordance with the Applicable Accounting Principles; and

(xviii) all of Affinity’s right, title and interest in, to and under any other assets, properties, rights and claims of Affinity (other than the Excluded Assets), whether real or personal, tangible or intangible, vested or unvested, contingent or otherwise, wherever located, which are used or held for use by Affinity in connection with Affinity’s operation and maintenance of the health plans comprising the Business (such health plans, Affinity’s “**Health Plans**”), including:

(A) Rights with Respect to Enrollees. Any and all rights of Affinity to provide services to Enrollees in any of Affinity’s Health Plans and any other individuals who would be default-assigned to Affinity’s Health Plans from and after the Closing Date if Affinity retained the right to serve Enrollees after the Closing, and the corresponding right to receive revenues (and bonuses) payable by Payors with respect to such Enrollees (and other individuals); and

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

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

(a) all communications involving attorney-client confidences between Affinity and counsel;

(b) all rights and obligations relating to, and any and all proceeds due to Affinity in connection with, the Risk Corridor Claim;

(c) all books and records of Affinity to the extent not listed in **Section 2.01(a)(xii)**;

(d) Affinity's rights and claims under this Agreement (including, for the avoidance of any doubt, Affinity's right to the Cash Purchase Price);

(e) Affinity's rights and claims under the Contracts on **Section 2.02(e) of the Disclosure Schedules** (the "***Excluded Contracts***");

(f) the Emblem Claim (to the extent not fully and finally resolved prior to the Closing);

(g) the Statutory Escrow Account and all investment accounts (including accrued interest receivable) of Affinity set forth on **Section 2.02(g) of the Disclosure Schedules** (the "***Retained Cash and Investments***", and the dollar amount of the cash and investments held in such accounts as of the Measurement Time, the "***Retained Cash and Investment Amount***"); and

(h) Affinity's rights and claims to the assets set forth on **Section 2.02(h) of the Disclosure Schedules**.

**Section 2.03 Assumed Liabilities.** Subject to the terms and conditions set forth herein, at the Closing, Buyer shall assume and shall pay, perform and discharge all Liabilities of Affinity (whether arising before or after the Closing), other than Excluded Liabilities (collectively, the "***Assumed Liabilities***"), including the following:

(a) all trade accounts payable of Affinity to third parties in connection with the Business and all claims under any Provider Contracts or the Health Plans that remain unpaid as of the Closing Date;

(b) all Liabilities under the Assigned Contracts, including any regulatory liabilities;

(c) solely to the extent set forth and itemized on the AEP Schedule, any Liabilities of Affinity to or with respect to any present or former employee, officer, or director who provided or provides services to the Business (or with or for the benefit of their respective spouses or dependents);

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

(e) the DSRIP EIP Liabilities.

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

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

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

(c) except to the extent specifically set forth and itemized on the AEP Schedule, all Liabilities in connection with, relating to or arising from any current or former (i) employee of Affinity or the Business and (ii) employee benefit or compensation plan, program, agreement, policy, practice, agreement or arrangement (including all Affinity Employee Plans), in each case including any related compensation, Tax and other Liabilities, and including any claims or Liabilities in connection with any related disputes, grievances, administrative actions or lawsuits, in each case, relating to or arising at any time prior to and including the Closing, other than as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“**COBRA**”) with respect to individuals that are “M&A qualified beneficiaries” as such term is defined in Treasury Regulation Section 54.4980B-9 with respect to the transactions contemplated by this Agreement;

(d) all Liabilities relating to any payable to any broker or finder engaged by or on behalf of Affinity in connection with the transactions contemplated by this Agreement or the Transaction Documents;

(e) any Liability for Taxes (i) attributable to, incurred in connection with or arising out of the operation of the Business or the ownership of the Purchased Assets for any Pre-Closing Tax Period or (ii) of or attributable to Affinity or its Affiliates;

(f) the Special DOH Payables; and

(g) Liabilities due to CMS or any other Governmental Authority in connection with the matters set forth on **Schedule 1.1(c)**; *provided*, for the avoidance of doubt, that any indemnification for Losses arising from the Special DOH Indemnity shall only be payable pursuant to **Section 8.02(d)**, subject in all respects to the limitations set forth in **Section 8.04** hereof.

#### Section 2.05 **Purchase Price.**

(a) The aggregate purchase price for the Purchased Assets and the assumption of the Assumed Liabilities shall be Five Hundred Million Dollars (\$500,000,000) (the “**Purchase Price**”). The portion of the Purchase Price payable to Affinity in cash at the Closing (the “**Cash Purchase Price**”) shall equal (i) the Purchase Price, minus (ii) the Closing Affinity Employee Payables (which remain outstanding as of the Closing Date), minus (iii) the Affinity Transaction Expenses, minus (iv) the amount (if any) by which the Target NAV Amount is greater than Estimated Net Asset Value in terms of absolute value, plus (v) the amount (if any) by which Estimated Net Asset Value is greater than the Target NAV Amount in terms of absolute value, minus (vi) Closing Date Indebtedness (if any), and minus (vii) the Escrow Amount.

## Section 2.06 **Payment.**

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

(b) Payment of Affinity Employee Payables. At least five (5) Business Days prior to the Closing Date, Affinity shall deliver to Buyer a complete and accurate list, and the estimated value thereof as of the Closing Date, assuming for purposes thereof that the transactions contemplated hereby will be consummated (the "***AEP Schedule***"), of (i) Affinity Employee Payables (itemized individually) that will become Purchased Assets and/or Assumed Liabilities, and (ii) Affinity Employee Payables (itemized individually) that Affinity shall pay immediately prior to Closing, or cause to be paid from the Cash Purchase Price at Closing (the "***Closing Affinity Employee Payables***").

(c) Payment of Closing Date Indebtedness. At least five (5) Business Days prior to the Closing Date, Affinity shall deliver to Buyer a complete and accurate list, and the estimated value thereof as of the Closing Date, of Affinity's Closing Date Indebtedness (if any) as of the date hereof. At the Closing, Buyer, on behalf of Affinity (as applicable), shall pay the Closing Date Indebtedness (if any) in accordance with debt payoff letters, in form and substance reasonably acceptable to Buyer, to each counterparty or holder of Closing Date Indebtedness in order to fully discharge such Closing Date Indebtedness and terminate all applicable obligations and Liabilities of Affinity related thereto, in each case, by wire transfer of immediately available funds to the account or accounts designated in the debt payoff letters.

(d) Payment of Affinity Transaction Expenses. At least five (5) Business Days prior to the Closing Date, Affinity shall deliver to Buyer a complete and accurate list, and the estimated value thereof as of the Closing Date, of the outstanding Affinity Transaction Expenses (if any) as of the date hereof. At the Closing, Buyer, on behalf of Affinity, shall pay the Affinity Transaction Expenses (if any) in order to fully discharge such Affinity Transaction Expenses and terminate all applicable obligations and Liabilities of Affinity related thereto, in each case, by wire transfer of immediately available funds to the account or accounts designated by Affinity.

(e) Payment to Escrow Agent. At the Closing, Buyer shall deliver the Escrow Amount (such amount, including any interest or other amounts earned thereon or added thereto and less any disbursements therefrom in accordance with the Escrow Agreement, the "***Escrow Fund***") to the Escrow Agent for deposit into an escrow fund under the Escrow Agreement.

(f) Payment of Special DOH Payables. At the Closing, Affinity shall pay, or cause to be paid, from the Cash Purchase Price, the outstanding Special DOH Payables (if any) to Governmental Authorities in order to fully discharge such Special DOH Payables and terminate all applicable obligations and Liabilities of Affinity related thereto, in each case, by wire transfer of immediately available funds to the account or accounts designated by such Governmental Authorities.

## Section 2.07 **Determination of Net Asset Value Purchase Price Adjustment.**

(a) At least five (5) Business Days prior to the Closing Date, Affinity shall deliver to Buyer a written statement (as revised in accordance with this **Section 2.07**, the “**Estimated Closing Statement**”) setting forth Affinity’s good faith estimate of the Net Asset Value of Affinity (the “**Estimated Net Asset Value**”) along with reasonable supporting detail to evidence the calculation thereof. The Estimated Closing Statement shall be accompanied by a written certification by Affinity’s chief actuary attesting that the Estimated Net Asset Value (including the Medical Claims Reserve and the Premiums Receivable Accrual included therein) were determined in accordance with the Applicable Accounting Principles. The Estimated Net Asset Value shall be prepared in accordance with the Applicable Accounting Principles; *provided, however*, that the Estimated Net Asset Value (1) shall not include any changes in assets or Liabilities of Affinity as a result of purchase accounting adjustments arising from or resulting as a consequence of the transactions contemplated by this Agreement and (2) shall be based solely on facts and circumstances as they are reasonably expected to exist as of the Measurement Time and shall exclude the effect of any event, change, circumstance, development, occurrence, condition, effect or state of facts occurring after the Measurement Time, except as specifically set forth in the Applicable Accounting Principles or otherwise in accordance with this Agreement.

(b) In connection with Buyer’s review of the Estimated Closing Statement, Affinity shall, prior to the Closing, cooperate with Buyer in good faith to resolve any disagreements between the Parties over the amount of any items set forth in the Estimated Closing Statement, and the items set forth in the Estimated Closing Statement shall for all purposes in this Agreement be equal to the amounts initially proposed by Affinity together with any revisions thereto that are mutually agreed by Affinity and Buyer, each acting reasonably, prior to the Closing. To facilitate Buyer’s review of the Estimated Closing Statement, and upon Buyer’s reasonable written request, Affinity will use commercially reasonable efforts to (i) provide Buyer with supporting data reasonably necessary to allow Buyer to verify the amounts set forth in the Estimated Closing Statement, and (ii) subject to applicable Law and other obligations to which Affinity may be bound, provide to Buyer reasonable access (that shall be during normal business hours and shall not interfere with Affinity’s normal business operations) to all relevant books and records of Affinity and make appropriate personnel reasonably available to discuss Buyer’s reasonable inquiries regarding the Estimated Closing Statement.

(c) As soon as reasonably practicable but in no event later than the ten (10) month anniversary of the Closing Date, Buyer shall prepare and deliver to Affinity a statement (the “**Closing Statement**”) setting forth Buyer’s calculation of the Net Asset Value of Affinity (the “**Updated Net Asset Value**”), along with reasonable supporting detail as part of the Closing Statement to evidence the calculation thereof. The Updated Net Asset Value shall be prepared in accordance with the Applicable Accounting Principles; *provided, however*, that the Updated Net Asset Value (1) shall not include any changes in assets or Liabilities of Affinity as a result of purchase accounting adjustments arising from or resulting as a consequence of the transactions contemplated by this Agreement and (2) shall be based solely on facts and circumstances as they existed as of the Measurement Time and shall exclude the effect of any event, change, circumstance, development, occurrence, condition, effect or state of facts occurring after the Measurement Time, except as specifically set forth in the Applicable Accounting Principles.

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

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

Items that are determined by the Independent Accountants will be final, conclusive and binding on the Parties hereto and may be entered in any Court of competent jurisdiction, and each of the Parties hereto agrees that it shall not have any right to, and shall not, institute any Action of any kind challenging such determination or with respect to the matters that are the subject of this **Section 2.07**. The other Party's only defense to such a request for enforcement shall be fraud by or upon the Independent Accountant or manifest error. Absent such fraud or manifest error, such other party shall reimburse the Party seeking enforcement for all of its expenses related to the enforcement of the Independent Accountant's determination. The fees and costs of the Independent Accountants, if one is required, shall be borne by Buyer, on the one hand, and Affinity, on the other hand, in inverse proportion as they may prevail on the matters resolved by the Independent Accountants, which proportionate allocation will also be determined by the Independent Accountants. For example, if Affinity claims that the appropriate adjustments are One Thousand Dollars (\$1,000) greater than the amount determined by Buyer and if the Independent Accountants ultimately resolve such items by awarding to Affinity Three Hundred Dollars (\$300) of the One Thousand Dollars (\$1,000) contested, then the fees, costs and expenses of the Independent Accountants will be allocated 30% (i.e.,  $300 \div 1,000$ ) to Buyer and 70% (i.e.,  $700 \div 1,000$ ) to Affinity. Affinity and Buyer shall enter into an engagement letter with the Independent Accountants, including customary indemnity, confidentiality and other provisions.

(f) **Determinations; Adjustments.** If the Final Net Asset Value as finally determined pursuant to this **Section 2.07** is greater than the Estimated Net Asset Value, Buyer shall pay to Affinity the full amount by which the Final Net Asset Value exceeds the Estimated Net Asset Value in accordance with **Section 2.07(g)**. If the Final Net Asset Value as finally determined pursuant to this **Section 2.07** is less than the Estimated Net Asset Value, Affinity shall pay to Buyer the full amount by which Estimated Net Asset Value exceeds the Final Net Asset Value in accordance with **Section 2.07(g)**.

(g) **Final Payments.** The amount (if any) owed to Affinity, on the one hand, or to Buyer, on the other hand, pursuant to **Section 2.07(f)** shall be referred to as the "**Final Closing Adjustment.**" If Buyer is obligated to pay the Final Closing Adjustment, it shall make the payment in cash by wire transfer of immediately available funds to the Escrow Agent for deposit into the Escrow Fund. If Affinity is obligated to pay the Final Closing Adjustment, Buyer shall proceed against the Escrow Amount in order to recover such amounts, and Affinity shall, at Buyer's request, execute and deliver a joint written direction to the Escrow Agent to authorize such disbursement. Any payment required under this **Section 2.07(g)** shall be made within five (5) Business Days of the final determination of the Final Closing Adjustment.

**Section 2.08 Third Party Consents.** To the extent that Affinity's rights under any Contract constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained prior to the Closing, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Affinity and Buyer shall cooperate in good faith and shall use their respective reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Affinity shall cooperate with Buyer in order to obtain for Buyer the benefits thereunder and in any other reasonable arrangement

designed to provide such benefits to Buyer. Notwithstanding any provision in this **Section 2.08** to the contrary, (a) Buyer shall not be deemed to have waived its rights under **Section 7.02(b)** hereof unless and until Buyer either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at the Closing, and (b) any Provider Contract requiring consent of the Provider to transfer or assign it shall be addressed in and governed by **Section 6.09** below.

### **ARTICLE III CLOSING**

**Section 3.01 Closing.** Subject to the terms and conditions of this Agreement, the consummation of the sale, assignment, transfer, conveyance and delivery of the Purchased Assets, the assumption of the Assumed Liabilities, and the payment of the Cash Purchase Price (the “**Closing**”) shall take place remotely via the exchange of executed documents and other deliverables on the first Business Day of the month following the month in which all of the conditions to Closing set forth in **ARTICLE VII** are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Affinity and Buyer may mutually agree upon in writing. The date on which the Closing actually occurs is herein referred to as the “**Closing Date**”. The Closing shall be deemed to have occurred and to be effective as of 12:01 a.m. New York time on the Closing Date (the “**Effective Time**”); *provided*, that if the Closing occurs on a day other than the first calendar day of the month, the Effective Time shall be deemed to be 12:01 a.m. New York time on the first calendar day of the month in which the Closing Date occurs. For example, if the Closing Date is Monday, November 2, 2020, the Effective Time would be 12:01 a.m. on Sunday, November 1, 2020.

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

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF AFFINITY**

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

**Section 4.01 Organization and Qualification.** Affinity is a New York not-for-profit corporation duly organized, validly existing and in good standing under the Laws of the State of New York and has full corporate power and authority to own, operate or lease the properties and

assets now owned, operated or leased by it and to carry on the Business as currently conducted. Except as set forth on **Section 4.01 of the Disclosure Schedules**, Affinity does not control, directly or indirectly, or have any direct or indirect equity participation or direct or indirect membership interest in any corporation, partnership, limited liability company, trust or other business association.

**Section 4.02 Authority.** Affinity has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Affinity of this Agreement and any other Transaction Document to which Affinity is or will be a party, the performance by Affinity of its obligations hereunder and thereunder and the consummation by Affinity of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Affinity, and no other proceedings on the part of Affinity are requisite to authorize the execution, delivery and performance thereof by Affinity. This Agreement has been duly executed and delivered by Affinity, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Affinity, enforceable against Affinity in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Affinity is or will be a party has been duly executed and delivered by Affinity (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Affinity, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). Each member of Affinity is set forth on **Section 4.02 of the Disclosure Schedules**.

**Section 4.03 No Conflicts; Consents.** Except as set forth on **Section 4.03 of the Disclosure Schedules**, the execution and delivery by Affinity of this Agreement and the other Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated hereby and thereby, and performance by Affinity of the obligations hereunder and thereunder, do not and will not:

(a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, bylaws, operating agreement or other organizational documents of Affinity;

(b) conflict with or result in a violation or breach of any provision of any Law or Order applicable to Affinity, the Business or the Purchased Assets;

(c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the termination or acceleration of or create in any party a right of termination, cancellation, acceleration, modification, purchase

or sale under, any Material Contract or Permit to which Affinity is a party or by which Affinity or the Purchased Assets are bound or affected;

(d) result in the creation or imposition of any Encumbrance on the Purchased Assets; or

(e) require the consent, approval, Permit, Order, declaration or filing with, or notice to, any Governmental Authority by or with respect to Affinity.

#### Section 4.04 **Financial Statements.**

(a) Affinity has provided Buyer with complete and correct copies of the audited consolidated financial statements consisting of the balance sheet of Affinity as at December 31st in each of the 2019, 2018 and 2017 fiscal years and the related statements of income and cash flow, including the notes thereto, and schedules thereto, accompanied by the reports thereon of Affinity's independent auditors for the years then ended (the "***Audited Financial Statements***"), and unaudited consolidated financial statements consisting of the balance sheet of Affinity as at May 31, 2020 and the related statements of income and cash flow for the five-month period then ended (the "***Interim Financial Statements***" and together with the Audited Financial Statements, the "***Financial Statements***"). The Financial Statements have been prepared from the books and records of Affinity and have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (none of which year-end adjustments would, alone or in the aggregate, be material) and the absence of notes. The Financial Statements fairly and accurately present in all material respects the consolidated financial condition of Affinity as of the respective dates they were prepared and the results of the operations and cash flows of Affinity for the periods indicated. The balance sheet of Affinity as of May 31, 2020 is referred to herein as the "***Balance Sheet***" and the date thereof as the "***Balance Sheet Date***". Affinity has also delivered to Buyer copies of Affinity's 2018 and 2019 quarterly and annual MMCORs, as filed with DOH, which have been prepared in accordance with SAP consistently applied and fairly present the financial position of Affinity as of such dates and the results of operations for such periods to the extent required by SAP.

(b) Except as set forth in **Section 4.04(b) of the Disclosure Schedules**, Affinity does not have any Liabilities, except for (i) Liabilities specifically disclosed, and adequately reflected in or reserved against in the Balance Sheet, (ii) Liabilities arising from executory obligations under Contracts to which Affinity or any of its assets may be bound that were entered into in the ordinary course of business, other than any such Liabilities resulting from a breach of such Contracts, (iii) Liabilities which have arisen in the ordinary course of business and consistent with past practice since the Balance Sheet Date, none of which is a material Liability arising from a breach of contract, breach of warranty, tort, infringement, action or a violation of Law, and (iv) Liabilities under this Agreement.

(c) Affinity maintains, and during the last three (3) years has maintained, systems of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with SAP in all material respects, including but not limited to internal accounting

controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit the preparation of financial statements of Affinity in conformity with SAP and maintain accountability for assets; and (iii) the recorded accountability for assets is maintained at reasonable intervals and appropriate action is taken with respect to any differences. During the last three (3) years, (A) no written or, to Affinity's Knowledge, verbal complaints from any source outside Affinity regarding accounting, internal accounting controls or auditing matters relating to Affinity, and (B) no concerns, charges, or complaints from any employees of Affinity regarding questionable accounting or auditing matters relating to Affinity, have been received by Affinity or members of the management of Affinity.

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

(e) Other than the Indebtedness as set forth in **Section 4.04(e) of the Disclosure Schedules**, Affinity has no other outstanding Indebtedness.

**Section 4.05 Absence of Certain Changes, Events and Conditions.** Except as set forth in **Section 4.05 of the Disclosure Schedules**, or otherwise contemplated by this Agreement, during the period since the Balance Sheet Date, Affinity has operated the Business in the ordinary course of business consistent with past practice and there has not been, with respect to the Business or the Purchased Assets, any:

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

(b) incurrence of any Indebtedness or the making of any loans, advances or guarantees, in each case, having an aggregate principal amount outstanding any time greater than Ten Thousand Dollars (\$10,000), except in the ordinary course of business consistent with past practice;

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

(d) material increase in the compensation payable by Affinity (or for which Affinity may have any liability) to any Provider except as set forth in writing in a Provider Contract;

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

(f) purchase or other acquisition (by merger, exchange, consolidation, acquisition of stock or assets or otherwise), or sale, lease or disposal, of any property, material asset, corporation, partnership, joint venture, limited liability company or other business organization or division, or assets thereof, in each case, as would be material to Affinity and the Business, taken as a whole, other than in the ordinary course of business consistent with past practice;

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

(h) receipt of any communications or reports or any notifications from a Payor regarding an adverse change to any material Payor Contract except for changes applicable to all similarly situated plans, and except for renewal or extension negotiations with Payor in the ordinary course of business consistent with its past practice;

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

(j) material increase in the compensation or benefits of any employee of Affinity or the Business, or adoption, implementation, termination, modification, or amendment of any Affinity Employee Plan, in each case other than in the ordinary course of business consistent with past practice;

(k) lapse of any existing policy of insurance material to the Business or the Purchased Assets, taken as a whole;

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

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

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

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

#### Section 4.06 **Material Contracts.**

(a) **Section 4.06(a) of the Disclosure Schedules** contains a true and complete list and description of all Material Contracts, excluding the Provider Contracts (disclosure of which shall be governed solely by **Section 4.07** below) and Payor Contracts (disclosure of which shall be governed solely by **Section 4.06(b)** below), that includes the name of the contracting parties, the name of the Material Contract and the date of the Material Contract and all amendments or modifications to it, except for immaterial schedules, exhibits or modifications that do not have, individually or in the aggregate, a material impact on such Material Contract. Affinity has delivered or made available to Buyer accurate and complete copies of all Material Contracts and other Contracts, including all amendments, waivers or changes thereto. Except as set forth on **Section 4.06(a) of the Disclosure Schedules**, all such Material Contracts are in full force and effect and are the valid and binding obligations of Affinity, enforceable in accordance with their respective terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, affecting creditors' rights generally, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought. Affinity is not in default of or breach under (or is alleged in writing to be in breach of or default under) the observance or the performance of any term or obligation to be performed by it under any Material Contract if such breach would result in a Material Adverse Effect. To Affinity's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would result in a breach of or constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder, in each case, that is, individually or in the aggregate, material to Affinity and the Business.

(b) All of Affinity's Contracts with Payor are listed and described on **Section 4.06(b) of the Disclosure Schedules** and accurate and complete copies of such have been made available to Buyer.

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

(a) **Section 4.07(a) of the Disclosure Schedules** contains a true and complete list of the top forty (40) Providers for Affinity based on aggregate payments made by Affinity to such Providers for the period January 1, 2019 to December 31, 2019 (the "**Key Providers**"). Affinity has in place a written Provider Contract with each such Provider that is currently in effect. Except as set forth on **Section 4.07(a) of the Disclosure Schedules**, Affinity has delivered or made available to Buyer complete copies of all Provider Contracts with the Key Providers, including all amendments, waivers or changes thereto.

(b) Except as set forth on **Section 4.07(b) of the Disclosure Schedules**, since December 31, 2019 no Provider reflected on **Section 4.07(a) of the Disclosure Schedules** has given written notice to Affinity of a termination of its relationship with Affinity, no Provider

Contract with a Key Provider has changed in its essential commercial terms, no Key Provider has materially altered the aggregate amount of provider claims it submits to Affinity except in the ordinary course of business, and no Key Provider has otherwise notified Affinity that it intends to terminate its business relationship with Affinity.

(c) During the current term of each applicable Provider Contract, Affinity has compensated and currently compensates each Provider for services to Enrollees in accordance with the rates and fees set forth in the applicable Provider Contract. Except as set forth on **Section 4.07(c)(i) of the Disclosure Schedules**, Affinity has in place a written Provider Contract with each Provider that is currently in effect. Except as set forth on **Section 4.07(c)(i)(ii) of the Disclosure Schedules**, there are no renegotiations, attempts to renegotiate or outstanding rights to negotiate any material amount to be paid or payable to or by Affinity under any Provider Contract other than in the ordinary course of business consistent with the past practices of Affinity.

#### Section 4.08 **Title to and Sufficiency of Purchased Assets; Leased Real Property.**

(a) Affinity has good and marketable title to, a valid leasehold interest in, or a valid license to use all of the Purchased Assets (whether tangible or intangible), free and clear of all Encumbrances except for Permitted Encumbrances. After giving effect to the transactions contemplated by this Agreement and the other Transaction Documents, except as set forth on **Section 4.08(a) of the Disclosure Schedules**, the Purchased Assets constitute all assets, services, properties, goodwill and rights (including intellectual property rights) that (i) were used in the Business immediately prior to the Closing and (ii) are sufficient to operate the Business following the Closing in the same manner as the Business is operated as of the date hereof and immediately prior to the Closing.

(b) **Section 4.08(b) of the Disclosure Schedules** sets forth all real property leased, licensed or occupied by Affinity and used in connection with the Business (collectively, the "**Leased Real Property**"), and a list, as of the date of this Agreement, of all leases, licenses and occupancy agreements for each Leased Real Property (collectively, the "**Real Property Leases**"). The Real Property Leases constitute valid leasehold interests, are valid and binding on Affinity, and are in full force and effect. To Affinity's Knowledge, there are no contractual or legal restrictions that preclude or restrict the ability of Affinity to use the Leased Real Property for the purposes for which they are currently being used. Affinity hereby represents and warrants Affinity does not own a fee interest in any real property. The Leased Real Property is adequate and suitable for the purposes for which it is presently being used and Affinity has adequate rights of ingress and egress into and from each Leased Real Property as is necessary for the operation of the Business as it is currently conducted by Affinity in the ordinary course of business. Affinity has not subleased, licensed or otherwise granted to any Person the right to use or occupy any portion of the Leased Real Property.

#### Section 4.09 **Intellectual Property; Claims.**

(a) Affinity owns (or has the right to use pursuant to an Assigned Contract) all Business Intellectual Property free and clear of any Encumbrances other than Permitted Encumbrances. As of the date of this Agreement, the Registered Intellectual Property (i) is owned by Affinity, (ii) is subsisting, in full force and effect, and to Affinity's Knowledge valid and (iii)

has not expired, or, to Affinity's Knowledge been cancelled, or abandoned, as applicable. The Business Intellectual Property constitutes all of the Intellectual Property necessary for the conduct of the Business as currently conducted.

(b) To the Knowledge of Affinity, the conduct of the Business as currently conducted and as has been conducted for the past three (3) years does not and has not infringe(d), misappropriate(d) or otherwise violate(d) the Intellectual Property rights of any Person, nor does the Purchased Intellectual Property owned by Affinity nor Affinity's products or services, infringe, misappropriate or violate any Intellectual Property rights of any Person. Affinity has not received any written or, to Affinity's Knowledge, oral offer of a license or complaint, claim, demand or notice (i) alleging or implying that it has infringed or misappropriated any Intellectual Property rights of any third party or, with the giving of notice or lapse of time or both, would be infringing or misappropriating any such rights (including any claim that Affinity must license or refrain from using any Intellectual Property rights of any third party), or (ii) contesting or seeking to deny or restrict or otherwise concerning the validity, use, ownership, registrability or enforceability of any Business Intellectual Property. To Affinity's Knowledge, no Person is infringing, misappropriating or otherwise violating or has infringed, misappropriated or otherwise violated any Purchased Intellectual Property, and no such claims have been made by Affinity.

(c) **Section 4.09(c) of the Disclosure Schedules** sets forth a complete and accurate list of all Registered Intellectual Property, indicating for each such item the registration or application number and the applicable filing jurisdiction, and the date of expiration. Except as set forth on **Section 4.09(c) of the Disclosure Schedules**, there are no deadlines falling within ninety (90) days of the Closing Date related to (i) registration, maintenance or renewal fees with respect to the Registered Intellectual Property or (ii) the filing of any documents, applications or certificates (including responses to office actions) or payment of fees that are required to maintain any of the Registered Intellectual Property.

(d) **Section 4.09(d) of the Disclosure Schedules** identifies each item of Licensed Intellectual Property, other than commercially available "off the shelf" Software that has not been modified or customized for use by Affinity, and lists all Contracts pertaining to Licensed Intellectual Property. Affinity has made available to Buyer correct and complete copies of all Contracts pursuant to which Affinity has received the right to use such Licensed Intellectual Property (as amended to date).

(e) **Section 4.09(e) of the Disclosure Schedules** lists all Contracts pursuant to which Affinity has granted any license or option to any third party with respect to any Business Intellectual Property. With respect to each Contract listed on **Section 4.09(d)** or **Section 4.09(e) of the Disclosure Schedules**, neither Affinity nor any other party thereto is in material breach or default of, or has repudiated, any provision of the Contract. All such Contracts shall be deemed "**Assigned Contracts**" for purposes of this Agreement.

(f) Affinity has taken commercially reasonable actions consistent at least with industry-standard practice to protect (i) the confidentiality, integrity and security of all trade secrets and confidential information stored or contained in the Business Intellectual Property or transmitted thereby from any unauthorized use, access, destruction or modification, and to

Affinity's Knowledge no such use, access, destruction or modification has occurred, and (ii) its rights in the Purchased Intellectual Property owned by Affinity.

(g) Affinity has sufficient rights to use all Software, middleware and systems, information technology equipment, and associated documentation used or held for use in connection with the operation of the Business (the "***Business IT Assets***"). The Business IT Assets have not malfunctioned or failed in the past three (3) years, except for malfunctions or failures that would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. Affinity has taken commercially reasonable steps to provide for the backup and recovery of data and information and has taken commercially reasonable steps to implement such plans and procedures. During the last 12 months, (A) there has not been any failure, breakdown or continued substandard performance, introduction of any malware, viruses, ransomware, bugs or other malicious codes affecting any of the Business IT Assets of Affinity that have caused any disruption or interruption in any of such Business IT Assets, except, in each case, as would not reasonably be expected to be material to Affinity and the Business; (B) there have been no privacy or data security breaches (including ransomware or a cyber-attack) resulting in the unauthorized access, acquisition, exfiltration, manipulation, erasure, use, intrusion, or disclosure of any sensitive data or that triggered any reporting requirement under any breach notification Law or Contract provision, except, in each case, as would not reasonably be expected to be material to Affinity and the Business, and (C) to the Knowledge of Affinity, no service provider (in the course of providing services for or on behalf of Affinity) has suffered any privacy or data security breach that resulted in the unauthorized access, acquisition, exfiltration, manipulation, erasure, use, or disclosure of Affinity's sensitive data, except, in each case, as would not reasonably be expected to be material to Affinity and the Business. Affinity has established, implemented, and maintains cybersecurity policies, programs and procedures that are in compliance with any applicable Law, applicable industry requirements, and Affinity's obligations under any Contracts, including reasonable and appropriate administrative, technical and physical safeguards, and disaster recovery, business continuity, and incident response plans, designed to protect the confidentiality, integrity, availability and security of sensitive data in its possession, custody or control against unauthorized access, use, disclosure or other misuse, and to safeguard the Business IT Assets against the risk of business disruption, except, in each case, as would not reasonably be expected to be material to Affinity and the Business.

(h) Except as set forth on **Section 4.09(h) of the Disclosure Schedules**, each item of Business Intellectual Property will be owned, licensed and available for use by Buyer on similar terms following the consummation of the transactions contemplated hereby as such items were owned, licensed and available for use to Affinity for the operation of the Business as operated prior to the consummation of the transactions contemplated hereby.

#### **Section 4.10 Legal Proceedings; Orders.**

(a) Other than as set forth in **Section 4.10(a) of the Disclosure Schedules**, there are no material Actions pending or, to Affinity's Knowledge, threatened against (including by any Governmental Authority) or by Affinity (i) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin, restrain, prohibit or otherwise delay the execution and delivery by Affinity of this Agreement or the consummation of the transactions contemplated hereby.

(b) Other than as set forth in **Section 4.10(b) of the Disclosure Schedules**, there are no outstanding Orders or consent decrees or other similar agreements, and no such Order or consent decree or other similar agreement is, to Affinity's Knowledge, threatened, and there are no unsatisfied judgments, penalties or awards against, relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities. Affinity is not subject to any outstanding Order which would reasonably be expected to have a material adverse effect on the ability of Affinity to consummate the transactions contemplated hereby. Other than as set forth in **Section 4.10(b) of the Disclosure Schedules** Affinity has not received written notice of, and for the past six (6) years Affinity has not received written notice of any Claim pending (or, to Affinity's Knowledge, threatened) related to Affinity that would be material to the Business and the Purchased Assets, taken as a whole, or that would reasonably be expected to prevent, impair or hinder Affinity from complying with its obligations hereunder.

#### Section 4.11 **Compliance With Laws.**

(a) Nothing in this Section shall apply to Affinity's compliance with HIPAA or any other Information Privacy and Security Laws, which shall be exclusively addressed in and governed by **Section 4.12** below. Other than as set forth in **Section 4.11(a) of the Disclosure Schedules**, Affinity is, and for the past six (6) years has been, in compliance in all material respects with all Laws and Orders applicable to the conduct of the Business or the ownership and use of the Purchased Assets. Neither Affinity, nor any of its officers or directors has, within the past six (6) years, received any written notice, Order, complaint, claim, investigation or other written communication from any Governmental Authority or any other Person regarding any actual or alleged material violation of any Law or Order applicable to Affinity. No Governmental Authority has instituted, implemented, taken or threatened in writing to take, and to the Knowledge of Affinity, no Governmental Authority intends to take, any other action the effect of which, individually or in the aggregate, would be reasonably expected to have a Material Adverse Effect.

(b) All Permits required for Affinity to conduct the Business or for the ownership and use of the Purchased Assets have been duly obtained by Affinity and are valid and in full force and effect. **Section 4.11(b) of the Disclosure Schedules** sets forth a complete and correct list of all material Permits that are necessary for Affinity to conduct the Business or for the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. Affinity is and has been in compliance in all material respects with such Permits and no event has occurred or circumstances exist that (with or without the lapse of time or the giving of notice, including as a result of the transactions contemplated by this Agreement) would reasonably be expected to constitute or result in Affinity's material failure, default or violation under any of their respective Permits, or that could reasonably be expected to result in any material loss, expiration, or termination of any such Permit, and there are no Actions pending or, to the Knowledge of Affinity, threatened in writing relating to the suspension, failure to renew, revocation, withdrawal, penalty, payment, fine or modification of any of the Permits. All such Permits are in full force and effect and have not been revoked. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not adversely affect, in any material respect, any such Permits or result in the revocation, cancellation, suspension or modification, in any material respect, of any such Permits. Except as otherwise disclosed in **Section 4.11(b) of the Disclosure Schedules**, all such Permits shall be available for

use by Buyer immediately after the Closing, in each case, to the same extent such Permits were available for use by Affinity immediately prior to the Closing.

(c) Neither Affinity, any officer of Affinity nor, to the Knowledge of Affinity, any director, employee or agent of Affinity, in each case acting in their capacity thereof, have (i) offered, authorized, promised, made or agreed to make gifts of money, other property or similar benefits or contributions (other than incidental gifts or articles of nominal value) to any actual or potential customer, provider, supplier, governmental employee, Governmental Authority or other Person in a position to assist or hinder Affinity in connection with any actual or proposed transaction or to any political party, political party official or candidate for federal, state or local public office in violation of any Law or (ii) maintained any unrecorded fund or asset of Affinity for any improper purpose or made any intentional false entries on its books and records for any reason. No person while serving as an officer or director of Affinity has ever been debarred, suspended, or otherwise excluded from participating in any state or federally funded health care program.

#### Section 4.12 **HIPAA and Privacy.**

(a) Affinity operates, and for the past six (6) years has operated, the Business in compliance with the applicable privacy, security, transaction standards, breach notification, and other provisions and requirements of HIPAA except where any violation or failure to comply would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, Affinity has executed business associate agreements meeting all requirements set forth in the HIPAA privacy, security and breach notification regulations with all contractors that meet the definition of a business associate under HIPAA. Affinity has established and implemented such policies, programs, procedures, contracts and systems as are necessary to comply in all respects with Information Privacy and Security Laws, except where any violation or failure to comply with such Information Privacy and Security Laws has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Affinity is not subject to a corporate integrity agreement, consent order or similar agreement with any Governmental Authority.

(b) Affinity's receipt, collection, monitoring, maintenance, creation, transmission, use, analysis, disclosure, storage, disposal and security of Personal Information has, for the past six (6) years, complied, and complies, in all material respects, with (i) any Contracts to which Affinity is party, (ii) applicable Information Privacy and Security Laws, (iii) if applicable, PCI DSS, and (iv) all consents and authorizations that apply to Affinity's receipt, access, use and disclosure of Personal Information. Affinity has all necessary authority, consents and authorizations to receive, access, use and disclose the Personal Information in Affinity's possession or under its control in connection with the operation of the Business.

(c) For the past six (6) years Affinity has, in all material respects, protected the confidentiality, integrity and security of its Personal Information and IT Assets against any unauthorized control, use, access, interruption, modification or corruption in conformance with Information Privacy and Security Laws.

(d) Except as set forth on **Section 4.12(d) of the Disclosure Schedules**, for the past six (6) years there has been no data security breach or unauthorized access, control, use, modification or destruction of any IT Asset, or unauthorized access, use, acquisition or disclosure of any Personal Information owned, used, stored, received, or controlled by or on behalf of Affinity, including any unauthorized access, use or disclosure of Personal Information that would constitute a breach for which notification to individuals and/or Governmental Authorities is required under any applicable Information Privacy and Security Laws or Contracts to which Affinity is a party.

(e) Affinity is not subject to any Orders, nor are any Orders pending or, to the Knowledge of Affinity, threatened against Affinity or its “workforce” (as defined under HIPAA) regarding or relating to Affinity’s processing of Personal Information.

(f) The (i) collection, storage, processing, transfer, sharing and destruction of Personal Information in connection with the transactions contemplated by this Agreement and (ii) execution, delivery and performance of this Agreement and the other agreements and instruments contemplated hereby and the consummation of the transactions contemplated hereby and thereby complies with Affinity’s applicable privacy notices and policies and with all applicable Information Privacy and Security Laws. Affinity has the right to assign to Buyer, and Buyer shall have the right to possess and use following the Closing, all Personal Information as used or held for use by Affinity in the Business prior to the Closing.

(g) For the past six (6) years Affinity has performed a security risk assessment no less frequently than annually that meets (i) the standards set forth at 45 C.F.R. § 164.308(a)(1)(ii)(A), including an assessment as described at 45 C.F.R. § 164.306(d)(3), taking into account factors set forth in 45 C.F.R. § 164.306(a)–(c); (ii) to the extent applicable, the requirements of the PCI DSS; (iii) any requirements to perform security assessments under any Information Privacy and Security Law; and (iv) any obligations to perform security assessments set forth in any Contracts to which Affinity is party and has addressed all threats and deficiencies identified therein.

(h) Limitations. Notwithstanding any other provision of this Agreement to the contrary, the representations and warranties set forth above in this **Section 4.12** shall constitute the sole and exclusive representations and warranties made by Affinity with respect to HIPAA and Information Privacy and Security Law matters, and no other representation or warranty contained in any other section of this Agreement shall be deemed to be made with respect to HIPAA and Information Privacy and Security Law matters.

#### **Section 4.13 Employment and Benefits Matters.**

(a) As of the date hereof, Affinity has provided, for each employee of Affinity, the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; (vi) employing entity; (vii) current active/leave status and the type of leave (e.g., short-term disability, long-term disability, military); and (viii) exempt or non-exempt status, to be updated following the date hereof upon reasonable request of Buyer.

(b) Affinity is not a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, “*Union*”), and there is not any Union representing or purporting to represent any employee of Affinity, and, to Affinity’s Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor to Affinity’s Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Affinity or any employees of the Business.

(c) Affinity is, and for the past six (6) years has been, in compliance in all material respects with all applicable Laws regarding employment and employment practices (including anti-discrimination), terms and conditions of employment and wages and hours (including classification of employees and independent contractors, and equal pay practices) and other laws in respect of any reduction in force (including notice, information and consultation requirements).

(d) Affinity has not received notice of any pending or, to Affinity’s Knowledge, threatened (i) unfair labor practice charge or complaint against Affinity before the National Labor Relations Board or any similar state or local agency relating to an alleged violation or breach of any Laws or (ii) Action against Affinity concerning employment-related matters, employees of Affinity, or violation of any Laws regarding employment and employment practices or breach of any contractual obligations.

(e) There are no Actions, including audits, requests for information, investigations, complaints, charges, or claims with respect to any regular or leased employee, consultant, or independent contractor of Affinity pending with or threatened in writing by the Equal Employment Opportunity Commission, the Department of Labor, the Internal Revenue Service, the National Labor Relations Board, or any other Governmental Authority.

(f) **Section 4.13(f) of the Disclosure Schedules** contains a list of each Affinity Employee Plan. With respect to each Affinity Employee Plan, Affinity has furnished or made available to Buyer true and complete copies of the governing plan document and amendments thereto and, as applicable, (i) the trust agreement or other governing document for any related funding vehicle, (ii) the current summary plan description and any related summary of material modifications, or (iii) any written notices or other written material correspondence with any Governmental Authority.

(g) Each Affinity Employee Plan and related trust or other funding vehicle has been established, administered, funded and maintained in all material respects in accordance with its terms and in compliance in all material respects with applicable Law. All contributions, benefit payments and premium deposits or payments required to be made by Affinity under the Affinity Employee Plans have been made or paid by the due date thereof, and all contributions, benefit payments and premium deposits or payments that have accrued but have not been made or paid because they are not yet due have been properly accrued in the Financial Statements. No claims, investigations or other proceedings (other than routine claims for benefits in the ordinary course of business) are pending or, to the Knowledge of Affinity, threatened against or with respect to any Affinity Employee Plan.

(h) In the last six (6) years, Affinity has not participated in, maintained or been liable for contributions to, nor does Affinity have any Liability, contingent or otherwise, pursuant to Title IV of ERISA or otherwise with respect to a plan that is a “pension plan” (within the meaning of Section 3(2) of ERISA) that is or was subject to Section 412 of the Code or Section 302 or Title IV of ERISA or that is or was a “multiemployer plan” (within the meaning of Section 3(37) of ERISA).

(i) No Encumbrance has been imposed on the Purchased Assets pursuant to Section 302, 303 or Title IV of ERISA or Section 412 or 430 of the Code and no fact exists that would reasonably be expected to give rise to any such Encumbrance. Other than as required by Section 4980B of the Code or other similar applicable Law, no Affinity Employee Plan provides benefits or coverage in the nature of health, life or disability insurance following retirement or other termination of employment (other than death benefits when termination occurs upon death).

(j) Except as set forth on the AEP Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in conjunction with any other event) result in the acceleration of vesting or payment, trigger any payment or funding, or increase the amount or value of any compensation, payment or benefits (including severance and unemployment compensation) to any current or former employee or consultant of Affinity.

(k) No provision of a benefit, acceleration, or amount to be paid with respect to any current or former employee of, or consultant to, Affinity, would individually or in the aggregate, whether alone or in combination with any other event, (i) result in “excess parachute payments” within the meaning of Section 280G(b) of the Code; or (ii) require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

(l) All employees of the Business are located within the United States. No Affinity Employee Plan (i) was established or is maintained outside of the United States, or (ii) is subject to the Laws of any jurisdiction outside of the United States.

(m) No Affinity Employee Plan or other contract, plan, program, agreement or arrangement provides for retiree medical or welfare benefits to any current or former employees of the Business.

(n) Each Affinity Employee Plan or other contract, plan, program, agreement or arrangement that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A of the Code) has (i) been maintained and operated in compliance with Section 409A of the Code and all applicable Treasury Regulations promulgated thereunder so as to avoid any Tax, penalty or interest under Section 409A of the Code, and (ii) been in documentary and operational compliance with Section 409A of the Code and all applicable Internal Revenue Service guidance promulgated thereunder.

#### Section 4.14 **Taxes.**

(a) All Tax Returns required to be filed by Affinity or otherwise in respect of the Business or the Purchased Assets have been timely filed. Such Tax Returns are true, complete and correct in all material respects. All Taxes due and owing by Affinity or otherwise in respect

of the Business or the Purchased Assets (whether or not shown on any Tax Return) have been or will be timely paid.

(b) There are no pending or threatened audits, investigations, disputes, notices of deficiency, claims or other Actions for or relating to any Taxes of Affinity or otherwise in respect of the Business or the Purchased Assets. Affinity has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency that has not been resolved.

(c) There are no Encumbrances for Taxes upon any of the Purchased Assets other than Permitted Encumbrances.

(d) Affinity is not a “foreign person” as that term is used in Treasury Regulations Section 1.1445-2.

(e) Affinity is exempt from tax within the meaning of Code section 501(a) and is an organization described in Code section 501(c)(3).

(f) The IRS has not revoked Affinity’s status as an organization exempt from tax under Code section 501(c)(3) by ruling letter or otherwise.

(g) Affinity has not participated in any “reportable transaction” within the meaning of Treasury Regulation Section 1.6011-4.

(h) No claim has been made or threatened in writing by a taxing authority in a jurisdiction where Affinity has not filed a Tax Return asserting that Affinity is or may be subject to Taxes imposed by that jurisdiction.

(i) Affinity has properly and timely paid to the appropriate taxing authorities all payroll, unemployment and similar Taxes due on or before the Closing Date and has properly withheld and timely paid to the appropriate taxing authorities all other Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party with respect to the Business and the Purchased Assets, and has complied with all information reporting, backup withholding and Tax Return requirements, including maintenance of required records with respect thereto, in connection with any such amounts.

**Section 4.15 Brokers.** No broker, finder, investment banker or similar intermediary is entitled to any brokerage, finder’s or other fee or commission or similar compensation in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Affinity, other than as set forth in **Section 4.15 of the Disclosure Schedules.**

**Section 4.16 Health Care Matters.**

(a) Compliance with Health Care Laws. (i) The Business operations of Affinity (including its form and rate filing, reserving, marketing, investment, financial, claims, taxation, underwriting, premium collection and refunding, securities compliance and other practices, if

applicable) are, and for the past six (6) years have been, operated in compliance in all material respects with all applicable Laws, (ii) other than as set forth in **Section 4.16(a)(ii) of the Disclosure Schedules**, Affinity is not, and has not, been in the past six (6) years, in material violation of any of the provisions of applicable New York Law with respect to managed care organizations, and (iii) neither Affinity nor any Person acting on behalf of Affinity has violated or has incurred any Liability under (A) any federal or state fraud and abuse Laws, including the Stark Law (42 U.S.C. §1395nn), the civil False Claims Act (31 U.S.C. §3729 et seq.), Sections 1320a-7a and 1320a-7b of Title 42 of the United States Code, (B) Medicare (Title XVIII of the Social Security Act), (C) Medicaid (Title XIX of the Social Security Act), (D) any prompt pay Laws, (E) any quality, safety or accreditation standards, (F) any applicable licensure Laws or regulations, or (G) any other applicable health care Law.

(b) Debarment and Suspension. Neither Affinity nor any officer, director or current employee of Affinity has ever been debarred, suspended or otherwise excluded from participating in any state or federally funded health care program. Affinity has not, and, to its Knowledge, its employees have not, engaged in any conduct which could result in debarment or disqualification by any Governmental Authority, and there are no proceedings pending or, to Affinity's Knowledge, threatened that could reasonably be expected to result in criminal liability, debarment or disqualification by any Governmental Authority. Affinity is in good standing with, and not excluded or suspended from participation in, or limited in its right to participate in any Federal Health Care Program or any state or local government health care programs.

(c) Regulatory Filings. For the past six (6) years Affinity has timely filed (taking into account permitted extensions timely obtained, if any) all material regulatory reports, schedules, statements, documents, filings, submissions, forms, registrations and other documents, together with any amendments required to be made with respect thereto, that each was required to file with any Governmental Authority ("**Regulatory Filings**"). All such Regulatory Filings are accurate and complete in all material respects. For the past six (6) years Affinity has timely paid (taking into account permitted extensions timely obtained, if any) all fees and assessments due and payable in connection therewith, including the assessments required under the New York Health Care Reform Act.

(d) Penalties Under Medicaid Programs. Affinity has not been required to pay any civil monetary penalty under Law regarding false, fraudulent or impermissible claims under, or payments to induce a reduction or limitation of health care services to beneficiaries of, any state health care program or Federal Health Care Program. To the Knowledge of Affinity, Affinity is not currently the subject of any investigation, audit or proceeding that may result in such payment. Affinity is not a party to any corporate integrity agreement, monitoring agreement, consent decree, settlement order, or similar agreement imposed by any Governmental Authority. Except as disclosed in **Section 4.16(d) of the Disclosure Schedules**, Affinity has not received or otherwise been party to any (i) Orders, letters, communications or other notices from DOH or any other Governmental Authority relating to Affinity's failure to meet any of the requirements for continued participation in Federal Health Care Programs or New York State health care programs (including any Orders, letters, communications or notices stating that continued participation may be contingent on Affinity developing, adopting, implementing or taking any sort of corrective or remedial actions), or (ii) corrective action plans developed by Affinity in response to or as a result

of the orders, letters, communications and notices specified in clause (i), in each case, material to Affinity and the Business.

(e) Recoupment Proceedings. There are no material recoupments, adjustments or recovery proceedings of any Payor being sought, requested, claimed or threatened against Affinity. Other than set forth in **Section 4.16(e) of the Disclosure Schedules**, for the past six (6) years, neither Affinity nor any officers or directors of Affinity has received, or has been the subject of, any audit, inquiry, or investigation that requires, or could reasonably be expected to require, the payment of money by Affinity to any Governmental Authority, or requires or prohibits any activity by Affinity, other than routine reconciliations of eligibility, enrollments and disenrollments, including those conducted by the New York State Medicaid Inspector General, and any associated recoupments (e.g., audits of incarcerated or deceased Enrollees) (“**Routine Reconciliations**”). Any and all Routine Reconciliations of which Affinity has Knowledge and for which Affinity has not made repayment in full of the resulting Liability to the applicable Governmental Authority are set forth **Section 4.16(e) of the Disclosure Schedules**. There are no claims, Actions, payment reviews, or other proceedings of which Affinity has received written notice, or, to Affinity’s Knowledge, appeals pending or threatened, before any Governmental Authority with respect to any payments received by Affinity, which could have a Material Adverse Effect, either individually or in the aggregate.

(f) Marketing. Affinity’s marketing staff has not violated laws applicable to the marketing or enrollment of Affinity’s health plans in any material respect. The compensation payable by Affinity to its marketing staff complies in all material respects with applicable Laws.

(g) Compliance Program. Affinity has implemented a corporate compliance program which meets all applicable legal requirements in all material respects and staff to oversee the functioning of its corporate compliance program. As part of its corporate compliance program, Affinity has implemented administrative processes, policies and procedures that are reasonably designed to ensure that Affinity remains in compliance with health care Laws applicable to Affinity’s Business in all material respects. Affinity has in place a process to regularly check all applicable Federal Health Care Program or state health care program exclusion and debarment lists to determine whether any of the following are an Ineligible Person: Affinity, its officers, directors, managers, employees, and providers of services and any contracted vendor or agent that provides health care related services to Affinity. Neither Affinity nor, to the Knowledge of Affinity, any of these individuals or companies is an Ineligible Person who have been excluded or otherwise debarred from any Federal Health Care Program or other governmental health care programs.

(h) Other than as set forth in **Section 4.16(h) of the Disclosure Schedules**, Affinity has at all times complied with the requirements of New York State Executive Order 38 and has timely satisfied applicable reporting obligations and waiver requests thereunder.

(i) Duly Licensed Employees. Each employee of Affinity that is required to be licensed in connection with his or her employment holds a valid and unrestricted license to practice his or her profession in New York.

**Section 4.17 Related Party Transactions**. Other than this Agreement or pursuant to any Affinity Employee Plan listed in **Section 4.13(f) of the Disclosure Schedules**, no direct or

indirect member, director or officer of Affinity, nor any Subsidiary or Affiliate of any such direct or indirect member, director or officer, nor any Affiliate of Affinity, nor any FQHC Member, has any interest in any property or assets owned by Affinity, or has in the past three (3) years engaged in any transaction with or is currently directly or indirectly a party to any Contract with Affinity, including any agreement, arrangement or understanding, written or oral, providing for the employment of, furnishing of services by, rental of real or personal property from or otherwise requiring payment to any such Person.

**Section 4.18 Environmental Matters.** The Business, and Affinity with respect to the Business and the Purchased Assets, are in compliance, and for the past six (6) years have complied, with applicable Environmental Laws in all material respects. Except as would not reasonably be expected to result in material Liability, Affinity, with respect to the Business and the Purchased Assets, has not caused a Release, and to the Knowledge of Affinity, there has been no Release at, on, under or from the Leased Real Property. Affinity has made available to Buyer copies of all material environmental assessments, reports, audits and other material documents in its possession or under its control that relate to the compliance of the operations of the Business and Purchased Assets with Environmental Laws or the environmental condition of any real property currently or formerly owned, operated or leased with respect to the Business and Purchased Assets.

**Section 4.19 Insurance Coverage.** Set forth in **Section 4.19 of the Disclosure Schedules** is a complete list of all material insurance policies and fidelity bonds relating to the Purchased Assets or the Business. There are no material claims by or on behalf of Affinity pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights. To Affinity's Knowledge, each such policy and bond is a valid and binding agreement, is in full force and effect, and has not been subject to any lapse in coverage. Since January 1, 2019, neither Affinity or, to the Knowledge of Affinity, any other party thereto is in material default or breach in any respect under the terms of any such policy or bond. Affinity has not received any written notice of cancellation of, material premium increase related to the Business outside the ordinary course of business with respect to, or material alteration of coverage with respect to the Business under, any of such policies or bonds. Since January 1, 2019, all premiums due on such policies or bonds have either been paid or, if due and payable prior to the Closing, shall be paid prior to the Closing in accordance with the payment terms of each such policy or bond.

**Section 4.20 Provider Network.** Affinity has made available to Buyer a list of Providers in the Provider Network, including (a) primary care providers identified by name, such Provider's distinct National Provider Identifier ("**NPI**") and the number of Enrollees in each such Provider's panels; and (b) specialist Providers identified by name and such Provider's distinct NPI.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth in the Buyer Disclosure Schedules, Buyer hereby represents and warrants to Affinity that the statements contained in this **ARTICLE V** are true and correct as of the date hereof and as of the Closing Date, except to the extent that any such representation or warranty refers to a specified date, in which event such representation or warranty shall be true

and correct as of such specified date. The Buyer Disclosure Schedules have been arranged in separately numbered sections corresponding to the Sections of this **ARTICLE V**; however, the disclosure of any item in any section of the Buyer Disclosure Schedules shall be deemed to incorporate by reference all information disclosed in any other section of the Buyer Disclosure Schedules to which the relevance of such item is reasonably apparent on its face. Capitalized terms used in the Buyer Disclosure Schedules and not otherwise defined therein have the meanings given to them in this Agreement.

**Section 5.01 Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.

**Section 5.02 Authority.** Buyer has full corporate power and authority to enter into this Agreement and the other Transaction Documents to which it is or will be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is or will be a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Affinity) this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforcement is sought in a proceeding at law or in equity).

**Section 5.03 No Conflicts; Consents.** Except as set forth on **Section 5.03 of the Buyer Disclosure Schedules**, the execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated hereby and thereby, and performance by Buyer of the obligations hereunder and thereunder, do not and will not:

(a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer;

(b) conflict with or result in a violation or breach of any provision of any material Law or Order applicable to Buyer;

(c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the termination or acceleration of or create in any party a right of purchase, sale, acceleration, termination, modification or

cancellation under, any material Contract or Permit to which Buyer is a party or by which it is bound or affected;

(d) result in the creation or imposition of any Encumbrance on any of the material properties or assets of Buyer; or

(e) require the consent, Permit, Order, declaration or filing with, or notice to, any Governmental Authority by or with respect to Buyer.

**Section 5.04 Brokers.** No broker, finder, investment banker or similar intermediary is entitled to any brokerage, finder's or other fee or commission or similar compensation in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer, other than as set forth on **Section 5.04 of the Buyer Disclosure Schedules.**

**Section 5.05 Legal Proceedings.** Except as set forth on **Section 5.05 of the Buyer Disclosure Schedules**, as of the date hereof, there are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

**Section 5.06 Financial Capability.** Buyer currently has, and will at the Closing have, access to sufficient funds to consummate the transactions contemplated hereby. Buyer is currently (a) able to pay its debts as they become due and (b) has adequate capital to carry on its business.

## **ARTICLE VI COVENANTS**

**Section 6.01 Conduct of Business Prior to the Closing.** Except for actions contemplated by this Agreement, and as set forth in **Section 6.01 of the Disclosure Schedules**, from the date hereof until the earlier of (A) termination of this Agreement in accordance with **ARTICLE IX** or (B) the Closing, except as consented to in writing by Buyer, Affinity shall (i) conduct the Business in the ordinary course of business consistent with past practice, (ii) use commercially reasonable efforts to maintain and preserve intact Affinity's current business organization, assets, properties and operations and to preserve the rights, goodwill and relationships of its employees, Providers, Enrollees, suppliers, regulators and others having relationships with the Business, and (iii) use commercially reasonable efforts to maintain relationships with sufficient Providers to permit Buyer to meet the Minimum Network Requirements. Without limiting the foregoing, except as otherwise contemplated by this Agreement or consented to in writing by Buyer, Affinity shall:

(a) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;

(b) pay, discharge or satisfy the Liabilities, Taxes and other obligations of the Business and the Purchased Assets which are not in dispute when due in the ordinary course of business consistent with past practice;

(c) not make, change or revoke any material Tax election; not settle or compromise any material claim or assessment in respect of Taxes; not surrender any right to claim a material Tax refund; not amend any material position on a Tax Return; not change any Tax accounting method; not enter into any closing agreement relating to any material Tax; not consent to any extension or waiver of the statute of limitations period applicable to any material Tax claim or assessment; and not file or prepare any material Tax Return on a basis that is inconsistent with past practice;

(d) defend and protect the properties and assets included in the Purchased Assets from infringement or usurpation in the ordinary course of business consistent with past practice;

(e) perform in all material respects all of its obligations under all Provider Contracts and the Payor Contracts in the ordinary course of business consistent with past practice;

(f) except as set forth in **Section 6.01(f) of the Disclosure Schedules**, comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets;

(g) other than as set forth in **Section 6.01(g) of the Disclosure Schedules**, or as required by any Affinity Employee Plan or applicable Law, not (i) enter into, adopt, amend or terminate any Affinity Employee Plan (or any other agreement or arrangement which would be an Affinity Employee Plan if it were in effect as of the date hereof); (ii) increase the value or amount, or accelerate the receipt of, any compensation or benefits of any of its employees, directors, or officers; or (iii) increase or alter the Affinity Employee Payables;

(h) without limitation to **Section 4.05(g)**, not enter into, amend, assign, terminate, fail to renew or waive or release any material rights under any Material Contract, Real Property Lease or labor agreement, collective bargaining agreement or similar labor related agreement, except (i) for such immaterial amendments as may from time to time be required by the Governmental Authority having jurisdiction thereover, except as otherwise set forth in **Section 6.01(h)(i) of the Disclosure Schedules** or (ii) as set forth in **Section 6.01(h)(ii) of the Disclosure Schedules**;

(i) not take any action intentionally that would render, or that may reasonably be expected to render, any representation or warranty made by it in this Agreement untrue or inaccurate at the Closing;

(j) not enter into any Contract to support a community initiative or non-Affiliate non-profit corporation or similar entity or charitable endeavor that would create any obligation on Buyer;

(k) not (i) incur or otherwise acquire, or modify in any material respect the terms of, any Indebtedness for borrowed money or assume, guarantee or endorse or otherwise become responsible for any such Indebtedness of any Person, make any loans, advances or capital contributions to, or investments in, any other Person or issue or sell any debt securities or calls, options, warrants, or other rights to acquire any debt securities of Affinity, enter into any “keep well” or Contract to maintain any financial statement condition of another Person or enter into any

arrangement (including any capital lease) having the economic effect of the foregoing; or (ii) redeem, repurchase, prepay, defease or cancel any Indebtedness for borrowed money, other than (1) as required in accordance with its terms or expressly required by this Agreement or (2) in the ordinary course of business consistent with past practice;

(l) not sell, transfer, lease, license, mortgage, pledge, encumber, allow to lapse, incur any Encumbrance on (other than a Permitted Encumbrance), or otherwise dispose of, or agree to do any of the foregoing with respect to, any of the Purchased Assets except (i) in the ordinary course of business consistent with past practice, (ii) pursuant to Contracts in force on the date of this Agreement and made available to Buyer prior to the date hereof, or (iii) such dispositions of assets no longer used in the ordinary course of business consistent with past practice of Affinity's' business as conducted as of the date of this Agreement;

(m) not make or authorize any payment of, or commitment for, capital expenditures in excess of Two Million Dollars (\$2,000,000) in the aggregate, except those budgeted for in a budget made available to Buyer prior to the date hereof;

(n) not change any material financial accounting methods, practices, policies or elections from those utilized in the preparation of the Audited Financial Statements, other than any such changes as may be required by Applicable Accounting Principles;

(o) except as set forth on **Section 6.01(o) of the Disclosure Schedules**, not commence or settle any Action relating to the Business, the Purchased Assets or the Assumed Liabilities, except for settlements of Actions or potential Actions in the ordinary course of business consistent with past practice and so long as such settlement will not create any material obligation on behalf of Buyer following the Closing;

(p) not cancel, amend, compromise, terminate, release or waive any material debts, rights or claims relating to the Business or the Purchased Assets;

(q) not conclude or agree to any corrective action plans, consents, decrees, actions or Orders, other than in the ordinary course of business consistent with past practice;

(r) not adopt any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against Affinity under any similar Law;

(s) not purchase or otherwise acquire (by merger, exchange, consolidation, acquisition of stock or assets or otherwise) any property, material asset, corporation, partnership, joint venture, limited liability company or other business organization or division or material assets thereof for which the aggregate consideration paid or payable in the aggregate is in excess of One Million Dollars (\$1,000,000);

(t) not (i) enter into any transaction with any Affiliate of Affinity, any officers or directors of Affinity (or any of their respective Affiliates), or any FQHC Member (or any of their respective Affiliates) or (ii) amend, assign, terminate, or waive or release any material rights under any existing transactions or agreements with any Affiliate of Affinity, any officers or directors of Affinity (or any of their respective Affiliates) or any FQHC Member (or any of their

respective Affiliates), including any Provider Contracts with any FQHC Member (or any of their respective Affiliates);

(u) not allow to lapse any existing policy of insurance relating to the Business or the Purchased Assets;

(v) not make material loans, advances or capital contributions to, or material investments in, any Provider, except as required by applicable Law; and

(w) not enter into a Contract, commitment or arrangement to do any of the foregoing or that would materially impair its ability to consummate the transactions contemplated by this Agreement in accordance with the terms hereof.

**Section 6.02 Access to Information.** Affinity shall (a) furnish Buyer and its Representatives with such financial, operating and other data and information as Buyer or any of its Representatives may reasonably request related to (i) the Business, or (ii) the Purchased Assets; (b) use commercially reasonable efforts to provide Buyer (i) sufficiently in advance of the Closing, copies of such information as is reasonably requested by Buyer and its Representatives in order for Buyer to assume operations on the Closing Date for the transition of the Enrollees, as applicable, and continuity of care, and (ii) copies of such other information as is necessary for the operation, ownership and management of the Business or which is otherwise reasonably requested by Buyer, and which Affinity is permitted by applicable Law to provide or which is required in writing to be provided to Buyer by DOH (and Affinity shall provide such written consents and authorizations as may be reasonably necessary for Buyer to have access to materials on file with any Governmental Authority), including any information as may be required to permit Buyer to satisfy its obligations to any Governmental Authority following the Closing, including any third party accreditation or review organization (such as the National Committee for Quality Assurance); and (c) make available to the officers, employees, accountants, counsel and other Representatives of Buyer upon the reasonable request of Buyer and during normal working hours, officers, accountants, counsel, consultants, investment banker and other Representatives or agents of Affinity for discussion of the Business as Buyer may reasonably request; *provided*, that Affinity must be given no less than 5 Business Days prior written notice of, and a representative of Affinity must be given a reasonable opportunity to attend, any meeting, or participate in any telephone discussion, involving all or substantially all of Affinity's employees, on the one hand, and any such Person, on the other hand. Any inquiries pursuant to this **Section 6.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Affinity. Nothing in this Agreement or any of the other Transaction Documents to the contrary shall in any manner restrict the ability of Buyer, from and after the date of this Agreement, to discuss the business and affairs of Affinity with any Governmental Authority having jurisdiction over Affinity or the fiscal intermediaries administering Affinity's payor programs. From the date hereof until the earlier of (i) the Closing Date or (ii) the date this Agreement is terminated pursuant to **ARTICLE IX**, Affinity and Buyer shall cooperate to contact such third parties, including customers, prospective customers, specifying agencies, vendors or suppliers of Affinity, as Buyer deems reasonably necessary. Prior to the Closing Date and after any termination of this Agreement, each Party shall hold and shall cause its Representatives to hold, in confidence, all confidential documents and information concerning the other Party's or any of its Subsidiaries furnished to a Party or its Representatives in connection with the

transactions contemplated by this Agreement in the manner and for the time period specified in the Confidentiality Agreement, dated September 25, 2019.

**Section 6.03 No Solicitation of Other Bids.**

(a) Affinity shall not, and shall not authorize or permit any of its Representatives (collectively, the “*Affinity Parties*”) to, directly or indirectly, (i) knowingly encourage, solicit, initiate, knowingly facilitate, or respond to (other than solely to decline) inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Affinity shall immediately cease and or cause to be terminated, and shall cause the other Affinity Parties to immediately cease and cause to be terminated, all existing activities, discussions or negotiations with any Persons conducted heretofore with respect to, or that could reasonably be expected to lead to, an Acquisition Proposal and shall notify each such party that it, or any Representative retained by it, no longer seeks or requires the making of any Acquisition Proposal, and withdraws any consent theretofore given to the making of an Acquisition Proposal and shall promptly instruct (to the extent it has contractual authority to do so and has not already done so prior to the date of this Agreement) or otherwise request, any Person that has executed a confidentiality or non-disclosure agreement within the 48-month period prior to the date of this Agreement in connection with any actual or potential Acquisition Proposal to return or destroy all such information or documents or material incorporating confidential information in the possession of such Person or its Representatives. None of the Affinity Parties shall, directly or indirectly, and each of the Affinity Parties shall cause their Affiliates and their respective Representatives not to, solicit, initiate or conduct any discussions or negotiations with, or provide any information to or otherwise cooperate in any other way with, or facilitate or encourage any effort to attempt to, or enter into any agreement or understanding with, any Person or group of Persons regarding any Acquisition Proposal. For purposes hereof, “*Acquisition Proposal*” means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets or any public announcement of a proposal, plan or intention to do the foregoing or any agreement to engage in the foregoing.

(b) In addition to the other obligations under this **Section 6.03**, Affinity shall promptly (and in any event within two (2) Business Days after receipt thereof by any Affinity Party) advise Buyer orally and in writing of any Acquisition Proposal or any request for information with respect to any Acquisition Proposal, and the identity of the Person making the same and shall provide Buyer with a copy of all written materials relating to such Acquisition Proposal.

(c) Affinity agrees that the rights and remedies for noncompliance with this **Section 6.03(c)** shall include having such provision specifically enforced by any Court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

#### Section 6.04 Notice of Certain Events.

(a) From the date hereof until the earlier of termination of this Agreement in accordance with **ARTICLE IX** or the Closing, Affinity shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in any representation or warranty made by Affinity hereunder not being true and correct (to the extent occurring or arising after the date hereof, a “**Disclosure Update**”), or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 7.02** to be satisfied;

(ii) any written notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority, other than in the ordinary course of business consistent with past practice and other than that which does not relate to the transactions contemplated by this Agreement or the Transaction Documents; and

(iv) any Actions commenced or, to Affinity’s Knowledge, threatened against, relating to, involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date hereof, would have been required to have been disclosed pursuant to **Section 4.10** or that relate to the consummation of the transactions contemplated by this Agreement.

(b) No Disclosure Update shall be deemed to modify, or cure any breach of Affinity’s representations and warranties in this Agreement or have any effect for the purpose of determining satisfaction of the conditions set forth in **Section 7.02** (other than **Section 7.02(c)**) or the obligations of Affinity under **ARTICLE VII**.

#### Section 6.05 Employees.

(a) Sixty (60) days prior to the Closing Date, Affinity shall deliver to Buyer an updated version of the file containing the information referenced in **Section 4.13(a)** (the “**Employee Information**”), accurate as of such date. Thereafter and until the Closing Date, Affinity shall deliver to Buyer a further updated version of the Employee Information as soon as practicable after change in the information contained therein. Affinity shall provide Buyer with reasonable access during normal business hours to the employees of the Business not less than forty-five (45) days prior to the Closing Date and with information reasonably requested by Buyer with respect to employment, compensation and benefits of the employees of the Business. No less than ten (10) days prior to the Closing Date, to be effective as of the Closing but contingent on the Closing, Buyer or an Affiliate of Buyer shall offer employment to all individuals who are employed by Affinity in good standing in the operation of the Business; *provided however*, that Buyer shall not be required to make offers of employment to or hire (i) any employee of Affinity who does not satisfy Buyer’s employment policies regarding employee documentation, drug testing, background screening, and other similar matters or (ii) any Inactive Employee, except as set forth in this

**Section 6.05.** Each such offer of employment shall provide for the payments and benefits required to be provided by **Section 6.05(c)**. Each employee of Affinity who accepts Buyer's offer of employment and commences employment with Buyer as of immediately following the Closing shall be considered a "**Hired Employee**." Any Inactive Employee who returns to active employment on or prior to the later of (i) the date that is six (6) months after the Closing Date or (ii) the latest date on which the Buyer would be required to rehire such Inactive Employee pursuant to applicable Law and who satisfies Buyer's employment policies regarding employee documentation, drug testing, background screening, and other similar matters shall be considered a "**Hired Employee**" upon such Inactive Employee's commencement of employment with Buyer. From the Closing Date through the date six (6) months following the Closing Date, Buyer shall not terminate any Hired Employee other than (i) for Cause or (ii) due to the occurrence of any material adverse change to the Business, and if any Hired Employee is terminated during the one (1) year period following the Closing Date other than for Cause or due to the occurrence of any material adverse change to the Business, Buyer will pay that Hired Employee an amount equal to the base salary that such Hired Employee would have earned during the remainder of the one (1) year period following the Closing Date (the "**Severance Payment**") in lieu of any other severance payments, unless such Hired Employee has a contractual right (whether in such Hired Employee's employment agreement with Affinity or in a change in control agreement between such Hired Employee and Affinity) as set forth on **Section 6.05(a) of the Disclosure Schedules** that provides for a greater benefit upon termination, in which case Buyer will pay the Hired Employee solely the benefits provided in accordance with such agreement as set forth on **Section 6.05(a) of the Disclosure Schedules**. For the avoidance of doubt, any termination payments described in the immediately preceding sentence that are made will be considered to be inclusive of any amounts due under the Worker Adjustment and Retraining Notification Act of 1988.

(b) Effective as of the Closing Date, Affinity shall terminate the employment of all of the Hired Employees as of immediately prior to the Closing. Except as otherwise specified herein, effective as of immediately prior to the Closing, all Hired Employees will cease to be active participants in the Affinity Employee Plans. All Hired Employees shall be eligible to become participants in the corresponding new or existing plans of Buyer and its Affiliates, including group health and other welfare benefit plans in each case subject to the terms thereof. Buyer also understands and agrees that (i) certain Affinity employees have contractual rights that are triggered upon a change in control of Affinity as set forth on **Section 6.05(a) of the Disclosure Schedules**; and (ii) Buyer assumes and will perform the obligations pursuant to the contracts under which such rights are granted.

(c) For a period of one (1) year following the Closing Date, Buyer shall provide or cause to be provided to each Hired Employee who remains employed with Buyer during such period (i) base salary or base wages and annual or other periodic cash incentive opportunities (excluding any retention or similar bonuses and other special or non-recurring bonuses or cash awards) that are no less favorable in the aggregate than those provided to such Hired Employee by Affinity immediately before the Closing, and (ii) retirement (excluding pension and retiree medical or welfare benefits), welfare, fringe and other employee benefits which are substantially comparable in the aggregate to those provided to the Hired Employee by Affinity immediately prior to the Closing Date under the Affinity Employee Plans or, in Buyer's discretion, which are substantially comparable in the aggregate to those made available to similarly situated employees of Buyer.

(d) Buyer shall assume Affinity's Liability for and shall be solely responsible for the payment or satisfaction of (i) the Affinity Employee Payables payable following the Closing Date, but only to the extent set forth on the AEP Schedule; and (ii) any and all Liabilities to or with respect to any Hired Employee arising after the Closing Date. Buyer shall have no Liabilities with respect to any current or former employee of the Business who is not a Hired Employee except for any requirements under COBRA for all individuals who are "M&A qualified beneficiaries" as such term is defined in Treasury Regulation Section 54.4980B-9 with respect to the transactions contemplated by this Agreement. Except as otherwise set forth in the AEP Schedule, Buyer shall have no Liabilities with respect to any Hired Employee relating to the period prior to and including the Closing; *provided however*, that Buyer understands and agrees, as provided in **Section 6.05(a)**, that Buyer is obligated to make a Severance Payment to any Hired Employees who are terminated during the one (1) year period following the Closing Date or who have contractual rights that are triggered upon a change in control of Affinity as set forth on **Section 6.05(a) of the Disclosure Schedules**.

(e) Buyer shall ensure that (i) all Hired Employees receive credit for prior service with Affinity (or any predecessor entities) for purposes of eligibility, participation, vesting and benefit accrual (but not for benefit accruals under any defined benefit pension plan) under any employee benefit or compensatory plan, program or arrangement of Buyer or any of Buyer's Affiliates in which Hired Employees are eligible to participate, except for any employee benefits that are frozen or grandfathered as of the Closing Date, for purposes of qualifying for subsidized early retirement benefits (including retirement treatment under Buyer equity incentive plans) or to the extent it would result in a duplication of benefits, and (ii) except as otherwise required by Law, all Hired Employees shall receive seven (7) days of paid time off (i.e., personal or sick leave) upon commencement of employment with Buyer, after which the Hired Employees will accrue benefits and paid time off as provided under Buyer's policy. Buyer shall make reasonable best efforts to cause (A) any pre-existing conditions or limitations, eligibility waiting periods or required physical examinations under any group health benefit plans of Buyer or any of Buyer's Affiliates to be waived with respect to Hired Employees and their eligible spouses and dependents, to the extent waived or satisfied under a corresponding Affinity Employee Plan in which the applicable Hired Employee participated immediately prior to the Closing; and (B) subject to Affinity providing adequate data to Buyer, in a format reasonably requested by Buyer in writing, that the Hired Employees and their eligible spouses, dependents and beneficiaries will receive credit for the plan year in which the Closing Date occurs towards applicable deductibles and annual out-of-pocket limits for expenses incurred prior to the Closing Date that were credited for the same purpose to such individual under the corresponding Affinity Employee Plan as of the Closing Date. The aggregate amount of expenses subject to the immediately-preceding clause (B) shall be added to (and shall increase) the total value of all items listed on the AEP Schedule.

(f) Pursuant to the "Standard Procedure" provided in Section 4 of Revenue Procedure 2004-53, (i) Affinity and Buyer shall report on a predecessor/successor basis as set forth therein, (ii) Affinity will not be relieved from timely filing a Form W-2 with respect to any Hired Employees with respect to the portion of the calendar year in which the Closing occurs during which such employees are employed by Affinity and (iii) Buyer will undertake to file (or cause to be filed) a Form W-2 for each such Hired Employee with respect to the portion of the calendar year in which the Closing occurs during which the Hired Employee is employed by Buyer.

(g) This **Section 6.05** shall be binding upon and inure solely to the benefit of each of the Parties. Nothing contained herein shall be deemed to confer upon any Hired Employee or any other Person (or any spouse, dependent, beneficiary of or other Person claiming through such Hired Employee or other Person) any third party beneficiary rights or remedies of any nature whatsoever under or by reason of this **Section 6.05**. Except as expressly set forth in this **Section 6.05**, nothing in this Agreement shall be deemed to require Buyer or any of its Affiliates to hire or maintain the employment of any Person for any length of time, or to provide any element or level of compensation or benefits for any length of time. Nothing in this Agreement shall be deemed to create or amend any compensation or employee benefit plan, program, policy, practice, agreement or arrangement.

**Section 6.06 Confidentiality.** From and after the Closing, the Affinity shall, and shall use its reasonable best efforts to cause its Affiliates to, hold, and shall use their commercially reasonable efforts to cause their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business and Purchased Assets, except to the extent that (a) such information relates to Excluded Assets or Excluded Liabilities, except to the extent such information relates to the Business, (b) such information is generally available to and known by the public through no fault of Affinity or their Representatives, or (c) is lawfully acquired by Affinity or any of their Affiliates or Representatives from and after the Closing from sources (other than Buyer or its Affiliates or their respective Representatives) which, to the Knowledge of Affinity, are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Affinity or any of its Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Affinity shall promptly notify Buyer in writing, if and to the extent Affinity is permitted by applicable Law to do so, and shall disclose only that portion of such information which Affinity is advised by its counsel is legally required to be disclosed, *provided* that Affinity shall use commercially reasonable efforts, at Buyer's expense, to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

**Section 6.07 Non-competition; Non-solicitation.**

(a) During the Restricted Period, Affinity shall not, directly or indirectly, either for Affinity's own benefit or for the benefit of any other Person, without the prior consent of Buyer, which consent may be withheld in Buyer's sole discretion, (i) engage in, make any regulatory application to engage in, enter into any Contract (including any Provider Contract) in anticipation of engaging in, or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, joint venturer, agent, trustee, volunteer, lender or consultant; or (iii) induce or persuade, or seek or attempt to induce or persuade, any Provider, Enrollee, supplier or licensor of the Business (including any existing or former Provider, Enrollee, supplier or licensor of Affinity and any Person known to Affinity to have become a Provider, Enrollee, supplier or licensor of the Business during the Restricted Period) to terminate or modify its business relationship with the Business in a manner adverse to the Business.

(b) During the Restricted Period, Affinity shall not, directly or indirectly, solicit for employment, hire or retain the employment of any Hired Employee, or encourage any

employee of Buyer or its Affiliates to leave such employment or hire any Person who has left such employment, except pursuant to a general solicitation which is not directed specifically to any Hired Employees or any employees of Buyer or its Affiliates; *provided, however*, that nothing in this **Section 6.07(b)** shall prevent Affinity from hiring any employee of Buyer whose employment has been terminated by Buyer and such termination was not directly or indirectly attributable to or influenced by actions of Affinity.

(c) Affinity acknowledges that the restrictions contained in this **Section 6.07** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 6.07** should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any Court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this **Section 6.07** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

#### Section 6.08 **Governmental Approvals and Consents.**

(a) Subject to the terms and conditions set forth in this Agreement, including **Section 6.08(c)**, each Party shall (i) as promptly as possible, use its reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities set forth on **Schedule 6.08(a)** (collectively, the “**Required Governmental Approvals**”), (ii) cooperate fully with the other Party and its Affiliates in promptly seeking to obtain all such Required Governmental Approvals, and (iii) not willfully take any action for the purpose of delaying, impairing or impeding the receipt of any such Required Governmental Approvals. If required by the HSR Act and if the appropriate filing pursuant to the HSR Act has not been filed prior to the date hereof, each Party hereto agrees to make an appropriate filing pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the date hereof, with the exact timing of such filings to be mutually agreed upon by the Parties, and to supply as promptly as practicable to the appropriate Governmental Authority any additional information and documentary material that may be requested pursuant to the HSR Act. In addition, each Party shall provide or cause to be provided as promptly as practicable any information and documentary material that may be requested by the U.S. Department of Justice or Federal Trade Commission under the HSR Act or by any Governmental Authority with regulatory jurisdiction over enforcement of any Antitrust Laws. Affinity, on the one hand, and Buyer, on the other hand, shall be responsible for the payment of fifty percent (50%) of any filing fees under the HSR Act and any other Antitrust Laws.

(b) Without limiting the generality of Affinity’s and Buyer’s undertakings pursuant to this **Section 6.08**, and subject to **Section 6.08(c)**, each Party mutually agrees to use its reasonable best efforts and to take any and all steps necessary to avoid or eliminate each and every impediment under any Antitrust Law that may be asserted by any Governmental Authority or any

other party so as to enable the Parties to close the transactions contemplated by this Agreement as promptly as possible, including proposing, negotiating, committing to and effecting, by consent decree, hold separate orders, or otherwise, the sale, divestiture or disposition of any of its assets, properties or businesses or of the assets, properties or businesses to be acquired by it pursuant to this Agreement as are required to be divested in order to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order in any suit or proceeding, which would otherwise have the effect of materially delaying or preventing the consummation of the transactions contemplated by this Agreement. In addition, each Party shall use its reasonable best efforts to defend through litigation on the merits any claim asserted in Court by any party in order to avoid entry of, or to have vacated or terminated, any Order (whether temporary, preliminary or permanent) that would prevent the consummation of the Closing.

(c) Notwithstanding anything to the contrary in this Agreement, including this **Section 6.08**, nothing in this Agreement shall require Buyer or its Affiliates to take or refrain from taking any action, or to agree to any requirement, restriction, limitation, requirement, or condition (including any conditions that may be required by any Governmental Authority to obtain any Required Governmental Approval) that (i) would reasonably be expected to apply to or affect the businesses, assets or properties of Buyer or its Affiliates or the Business or the Purchased Assets and would, individually or in the aggregate, reasonably be expected to result in Losses to Buyer, its Affiliates, the Business and/or the Purchased Assets, collectively, that exceed One Million Dollars (\$1,000,000); and/or (ii) would reasonably be expected to materially and adversely affect the ability of Buyer and its Affiliates to provide health care coverage under the New York State Medicaid Managed Care, Health and Recovery Plan, Child Health Plus, or Essential Plan programs that make up the Business to the extent such health care coverage is provided by Affinity immediately prior to the Closing (such occurrence, a “**Regulatory Material Adverse Effect**”).

(d) The Parties agree that, with respect to the Required Governmental Approvals, Buyer and Affinity shall mutually determine in good faith (i) the scheduling of, and strategic planning for, any meeting with or filing with any Governmental Authority, (ii) the process for receipt of any Required Governmental Approvals and (iii) subject to **Section 6.08(c)**, the resolution of any investigation or other inquiry of any Governmental Authority; *provided*, that each Party shall keep the other Party reasonably apprised of the status of the matters relating to the Required Governmental Approvals, and each Party will work cooperatively with the other Party in connection with obtaining all such Required Governmental Approvals. Without limiting the foregoing, (x) all analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Affinity or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals and (y) each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to

attend and participate in such meeting, discussion, appearance or contact; *provided, however*, Affinity shall not be obligated to consult Buyer or provide notice to Buyer pursuant to the immediately preceding clauses (x) and (y) with respect to matters that that would not create any obligation on Buyer or otherwise impact the operation of the Business by Buyer or any of its Affiliates (including but not limited to discussions with the New York State Office of the Attorney General concerning the use of the proceeds from the sale of the Business under this Agreement by Affinity and the FQHC Members).

(e) Affinity shall give any notices to third parties in connection with the Required Third Party Consents, and shall use its reasonable best efforts to obtain the Required Third Party Consents. Affinity shall regularly consult with Buyer in connection with the foregoing and shall keep Buyer reasonably apprised of the status of the matters relating to the Required Third Party Consents. Affinity shall use its reasonable best efforts to obtain, or cause to be obtained, approval from all FQHC Members of the execution and delivery by Affinity of this Agreement, the other Transaction Documents and the performance and consummation by Affinity of the transactions contemplated hereby and thereby. Buyer shall reasonably cooperate with Affinity in connection with Affinity's efforts related thereto.

#### Section 6.09 **New Material Contracts.**

(a) Without limitation to **Section 6.01(h)**, Affinity shall promptly notify Buyer of any new Material Contract (based on anticipated payments during the twelve (12) months following its execution) proposed to be executed after the date hereof on behalf of Affinity.

(b) Affinity acknowledges that any Provider Contract that provides that it may be assigned by Affinity without the applicable Provider's consent shall be deemed to be assigned to Buyer at and subject to the Closing. Affinity acknowledges and agrees to promptly supply to Buyer, when reasonably requested, such information and materials (including specific answers or responses) required in connection with receipt of any required consents, authorizations, orders and approvals which relate to the provider network, the Provider Contracts and the continuity of services (such information and materials to be in such form as may reasonably be requested for purposes of filings with the applicable regulatory authorities). Without limiting the generality of **Section 2.08**, with respect to any Provider Contract requiring consent of the Provider to transfer or assign it: (A) this Agreement shall not constitute an agreement to assign or transfer any right, benefit or obligation arising thereunder if an assignment or transfer without the consent of the Provider would constitute a breach or violation thereof or adversely affect the rights of Affinity or Buyer thereunder (however, the foregoing shall not excuse or waive any breach of any representation or warranty contained herein) and (B) before the Closing, Affinity shall use its commercially reasonable efforts to cause such Provider Contract to be assigned with any required consent, and if such consent cannot be obtained, Affinity shall use its commercially reasonable efforts to assist Buyer to obtain its own direct contract on terms acceptable to Buyer. In addition, Affinity shall, to the extent reasonably requested by Buyer, use its commercially reasonable efforts to facilitate introductions to, and meetings with, Providers. Affinity shall provide reasonable access to all information necessary for Buyer to evaluate the extent to which the provider networks of Buyer and Affinity overlap.

**Section 6.10 Closing Conditions.** Except as otherwise expressly set forth herein, each Party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions relating to the Closing set forth in **ARTICLE VII** hereof.

**Section 6.11 Public Announcements.** Neither Affinity nor Buyer shall make, nor shall they permit any of their Representatives to make, any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other or in accordance with a communications plan mutually agreed to by the Parties, unless required by applicable Law or any listing agreement with or rules of the New York Stock Exchange or other stock exchange on which securities of Buyer are listed or as may be requested by a Governmental Authority, in which case the issuing party shall use its reasonable best efforts to consult with the other party before issuing any such release or making any such public statement, and the issuing party shall allow the other party reasonable time to comment on such release or public statement in advance of such issuance and shall consider in good faith any reasonable comments of such party. Upon execution of this Agreement and upon the Closing, Affinity and Buyer (or their respective Affiliates) may each issue press releases announcing the transaction, in each case in accordance with a communications plan mutually agreed to by the Parties.

**Section 6.12 Reconciliation.** If Buyer collects or receives any Excluded Asset from any third party after the Closing, then Buyer shall deliver such Excluded Asset to Affinity as soon as reasonably practicable after receipt thereof. If Affinity collects or receives any Purchased Asset from any third party after the Closing, then Affinity shall deliver to Buyer such Purchased Asset(s) as soon as reasonably practicable after receipt thereof. Likewise, Buyer shall forward any claim for an Excluded Liability to Affinity after the Closing and Affinity shall forward any claim for an Assumed Liability to Buyer after the Closing. Without limitation to this **Section 6.12**, Affinity shall reasonably cooperate with Buyer in Buyer's collection of the receivables that are Purchased Assets.

**Section 6.13 Transition Planning.** Affinity shall cooperate with Buyer as may be reasonably requested by Buyer from time to time to develop and implement an integration and transition plan for the Business for purposes of regulatory reporting and any other services mutually agreed to by the Parties, and the Parties shall use their commercially reasonable best efforts to enter into a transition services agreement on terms and conditions to be mutually agreed upon by the Parties. Without limiting the generality of the foregoing, Buyer and Affinity shall cooperate to develop and implement a mutually agreeable communications plan with respect to the Enrollees and Providers. Notwithstanding the foregoing, in no event shall Affinity make a general announcement to its non-executive employees regarding the transactions contemplated by this Agreement before any press releases have been issued by Buyer or Affinity in accordance with **Section 6.11**.

**Section 6.14 Further Assurances.** Following the Closing, each of the Parties shall, and shall cause its respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents. Without limiting the generality of the preceding sentence,

Affinity shall, on and after the Closing Date, transfer (or cause to be transferred) to Buyer such records and data (including electronic data files) that, prior to the Closing, are used by Affinity in providing services related to the operation of the Business, as may be reasonably requested by Buyer (and, in the case of electronic data files, in such format or formats as may be reasonably requested by Buyer).

**Section 6.15 Post-Closing Access to Information.**

(a) After the Closing, each Party shall afford the other Party and its counsel, accountants, consultants and other Representatives, during normal business hours, reasonable access to the books, records and other information in such Party's possession relating to the Business, and the right to make copies and extracts therefrom at its expense, or shall provide copies of such information to the other Party, in each case to the extent such access is reasonably required by the requesting Party (i) to comply with reporting, disclosure, filing or other requirements imposed by a Governmental Authority, (ii) for use in any Tax audits or litigation in which such requesting Party is a party, (iii) to comply with such requesting Party's obligations under this Agreement, or (iv) with respect to Buyer, relates to the operation, ownership and management of the Business and which Affinity is permitted by applicable Law to provide *provided*, that, Buyer agrees to treat such information as confidential, if applicable.

(b) In addition, after the Closing Affinity shall provide to Buyer such written certifications, sub-certifications or the like as may be reasonably requested by Buyer to support any attestation or representation required to be provided by Buyer in connection with any audit, accreditation review or similar proceeding relating to the operation of the Business prior to the Closing. For a period of six (6) years after the Closing Date, neither Affinity nor Buyer shall, or permit its Affiliates to, destroy or otherwise dispose of any of the books, records or other information described in this **Section 6.15** without first offering in writing to surrender such books, records and other information to the other Party, and the other Party shall have ten (10) days after such offer to agree in writing to take possession thereof.

**Section 6.16 Non-disparagement.** (a) Affinity shall not publicly talk about or otherwise publicly communicate to any third parties (including Providers and Enrollees) in a disparaging or defamatory manner regarding Buyer, or otherwise make or authorize to be made any written or oral statement that may disparage or damage the reputation of Buyer; and (b) Buyer shall not, and shall cause their respective Affiliates not to, publicly talk about or otherwise publicly communicate to any third parties (including Providers and Enrollees) in a disparaging or defamatory manner regarding Affinity, or otherwise make or authorize to be made any written or oral statement that may disparage or damage the reputation of Affinity; *provided, however*, that such restriction shall not prohibit (i) truthful statements compelled by legal process, as part of a response to a request for information from any Governmental Authority or as testimony in any legal or regulatory process or proceeding, (ii) any statements in connection with any legal dispute, (iii) filing any necessary documents in accordance with Law or applicable stock exchange requirements or (iv) factual statements by such Party regarding the business, condition, results or prospects of the

Business in connection with any public earnings call or otherwise, so long as such statements are not reasonably foreseen by such Party as likely to defame, disparage, or slander any other Party.

#### Section 6.17 **Post-Closing Buyer Covenants.**

(a) From and after the Closing, Buyer shall use commercially reasonable good faith efforts to:

(i) promote Enrollee health through (A) quality, accessible care and services, (B) partnering with health professionals to assist in providing health care services, (C) facilitating building linkages and systems for the coordination of care and services among health care, behavioral and social services, as well as educators, to address the spiritual, emotional, and physical needs of Enrollees, and (D) advocating for a health policy that accords true dignity and respect for all human persons, especially the poor and underserved;

(ii) maintain in all material respects to the extent commercially viable the scope and type of services currently provided to Enrollees by the Business as conducted immediately prior to the Closing;

(iii) subject to the limitations set forth in **Section 6.17(a)(ii)**, maintain a corporate presence in the State of New York no less significant than the operations of the Business in the State of New York immediately prior to the Closing (including maintaining a regional chief executive officer for the Business that reports directly to Buyer's national chief executive officer of community and state programs) and continue to provide a similar or greater level of employment opportunities to residents of the State of New York as compared to those provided by the Business immediately prior to the Closing;

(iv) promote growth and expansion of the Business through (A) partnering with health professionals with aligned mission and vision and (B) leveraging Affinity's existing capabilities for scale and efficiency, for accelerating care and process innovation, and for developing predictive health capabilities to foster healthier communities; and

(v) enhance population health capability of the Business by (A) maintaining existing high standards of quality that endeavor to be cost effective across all populations; (B) focusing on coordination of care and services among health care, behavioral, and social service needs of Enrollee populations, (C) developing systems to attain greater standards of clinical excellence and improving Enrollee health status, (D) focusing on a "person-centered" coordination of services and customer service; and (E) facilitating linkages and systems for coordination of care and services.

(b) With respect to the covenants contained in this **Section 6.17(a)**, (i) the covenants will survive for a period of eighteen (18) months from Closing, (ii) nothing herein is intended to or shall confer upon any Enrollee or Person (including any Governmental Authority) any legal or equitable enforcement or other right, benefit or remedy of any nature whatsoever under or by reason of this Agreement and (iii) the covenants are subject to any changes in applicable Laws or economic conditions to the extent such changes alter the commercially reasonable expectations of the Parties at the time they entered into this Agreement or the commercial viability of complying with such covenants.

(c) From and after the Closing until final payment of the Net Asset Value adjustment contemplated by **Section 2.07(g)**, Buyer shall pay or cause to be paid all claims payable and claims payable incurred in the ordinary course of business consistent with industry standard claims procedures.

(d) For the period commencing on the Closing Date and continuing through the five-year anniversary of the Closing Date, Buyer shall cause the headquarters of the Business to remain located in the Bronx, New York.

(e) For the period commencing on the one-month anniversary of the Closing Date and continuing through the five-year anniversary of the Closing Date, Buyer shall cause Molina Healthcare of New York, Inc. (“**MHNY**”) to appoint to its board of directors a representative designated by the board of directors of Affinity (the “**Affinity Representative**”) and approved by Buyer, such approval not to be unreasonably conditioned or withheld. Notwithstanding anything herein to the contrary, (A) the Affinity Representative shall not be an employee, officer or director of any competitor of Buyer, and (B) Buyer shall have the right to withhold any information, including any written materials, from the Affinity Representative, and to exclude the Affinity Representative from any board meeting or committee meeting or portion thereof if, in the reasonable good faith judgment of either Buyer or the board of directors of MHNY (other than the Affinity Representative), an issue is addressed in such written materials, or is to be discussed, which is not appropriate to be disclosed to or discussed in the presence of the Affinity Representative in order to avoid a conflict of interest as established by Buyer or MHNY policy on the part of the Affinity Representative or otherwise would require a similarly situated director to recuse himself under New York law.

**Section 6.18 Transfer Taxes.** All transfer, documentary, sales, use, excise, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) (collectively, the “**Transfer Taxes**”) incurred in connection with the sale of the Purchased Assets pursuant to this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Affinity when due. Affinity shall duly prepare any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary), and shall give Buyer a copy of each such Tax Return for its review and comment at least fifteen (15) days prior to filing. Following such review and comment period, Affinity shall file all necessary Tax Returns and other documentation with respect to all Transfer Taxes and, if required by applicable Law, Buyer shall join Affinity in the execution of any such Tax Returns and other documentation.

**Section 6.19 Minimum Network Requirements.** In the event that, prior to the Closing, one (1) or more Providers provide notice of the termination (each, a “**Terminating Provider**”) of any Provider Contract in accordance with its terms (each, a “**Provider Contract Termination**”) and, individually or in the aggregate, such Provider Contract Terminations would reasonably be expected to result in Buyer’s failure to satisfy the Minimum Network Requirements (a “**Network Failure**”), then, prior to the Closing, Affinity shall use its commercially reasonable efforts to assist Buyer in obtaining a direct contract on terms reasonably satisfactory to Buyer with such Terminating Providers that Buyer requests. If a contract is unattainable with a Terminating Provider, then upon the request of Buyer, Affinity shall use its commercially reasonable efforts to

identify and contract with (either directly or through its Affiliates) or assist Buyer to contract with alternate Provider(s) as soon as reasonably practicable as necessary to avoid a Network Failure.

**Section 6.20 No Sale or Dissolution; Post-Closing Cooperation.** Affinity hereby covenants and agrees that (i) for a period of six (6) years from the Closing Date (the “*Wind-Up Period*”), Affinity shall not dissolve, liquidate or wind up its affairs and (ii) during the Wind-Up Period, Affinity shall employ or retain one or more other representatives reasonably acceptable to Buyer whom Affinity shall direct and cause to consult with Buyer and its representatives on an as-needed basis regarding the Business in order to facilitate the transition of the Purchased Assets to Buyer following the Closing, including by responding to questions from Buyer and its representatives from time to time and providing reasonable cooperation with Buyer in any pending or future litigation or investigation or other dispute regarding the Business.

**Section 6.21 Insurance Coverage.** Prior to Closing, Affinity shall tender all actual and potential claims timely and completely to any insurance policies that may provide coverage to such claims in the format prescribed by the relevant insurance policy or policies.

## **ARTICLE VII CONDITIONS TO CLOSING**

**Section 7.01 Conditions to Obligations of All Parties.** The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The filings of Buyer and Affinity pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(b) All other Required Governmental Approvals shall have been obtained.

(c) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Law which has, or would have, the effect of (i) making the transactions contemplated by this Agreement illegal, (ii) otherwise restraining, enjoining or prohibiting consummation of such transactions or (iii) causing any of the transactions contemplated to be consummated at the Closing to be rescinded following completion thereof (a “*Prohibitive Order*”), and no Action by a Governmental Authority of applicable jurisdiction shall be pending for the purpose of obtaining a Prohibitive Order; *provided*, that, a Party may not assert its right to not consummate the transactions contemplated by this Agreement pursuant to this **Section 7.01(c)** if such Party shall have initiated or caused such Action or Prohibitive Order.

(d) The Payor Contracts shall have been assigned to Buyer in accordance with **Section 2.01** and all approvals, consents and waivers required in connection with such assignments shall have been received and executed counterparts thereof shall have been delivered to Buyer and Affinity at or prior to the Closing.

(e) The Parties shall have received a copy of the Escrow Agreement, duly executed by the Escrow Agent.

Section 7.02 **Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's written waiver, at or prior to the Closing, of each of the following conditions:

(a) (1) The representations and warranties of Affinity set forth in **ARTICLE IV** (other than the Affinity Fundamental Representations and the representations and warranties of Affinity set forth in **Section 4.13(h)** (Employment and Benefits Matters) and **Section 4.16** (Health Care Matters)), the other Transaction Documents and any certificate or other writing delivered pursuant hereto, disregarding any qualifications or limitations set forth in such representations or warranties as to materiality, Material Adverse Effect, or any other similar qualifier contained in such representations and warranties shall be true and correct in all respects, in each case, as of the date hereof and as of the Closing Date as though made on and as of such date except: (i) to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date; and (ii) where the failure of such representations and warranties to be so true and correct, has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (2) the Affinity Fundamental Representations shall be true and correct in all but *de minimis* respects, in each case as of the date hereof and as of the Closing Date as though made on and as of such date except to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date; and (3) the representations and warranties of Affinity set forth in **Section 4.13(h)** (Employment and Benefits Matters) and **Section 4.16** (Health Care Matters), disregarding any qualifications or limitations set forth in such representations or warranties as to materiality, Material Adverse Effect, or any other similar qualifier contained in such representations and warranties shall be true and correct in all material respects, in each case, as of the date hereof and as of the Closing Date as though made on and as of such date except to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct in all material respects as of such specified date.

(b) Affinity shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) From the date hereof, there shall not have occurred any Material Adverse Effect or Regulatory Material Adverse Effect, nor shall any event(s), occurrence(s), fact(s), condition(s), change(s) or effect(s) have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect or a Regulatory Material Adverse Effect.

(d) Affinity shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement).

(e) Affinity shall have delivered to Buyer a duly executed affidavit prepared in accordance with Treasury Regulations Section 1.1445-2(b) certifying Affinity's non-foreign status.

(f) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Affinity certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the Board of Directors of Affinity authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (ii) the names and signatures of the officers of Affinity authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(g) Buyer shall have received a certificate, dated as of the Closing Date and signed by a duly authorized officer of Affinity, that each of the conditions set forth in **Section 7.02(a)**, **Section 7.02(b)** and **Section 7.02(c)** have been satisfied.

(h) Buyer shall have received all Permits that are necessary for it to conduct the Business as conducted by Affinity as of the Closing Date.

(i) Buyer shall have received all consents, approvals and authorizations that are set forth in **Exhibit E** (collectively, the “*Required Third Party Consents*”).

(j) Affinity shall have delivered to Buyer the Estimated Closing Statement, which in Buyer’s reasonable judgment complies with this Agreement and is accurate in all material respects.

(k) Sufficient Provider Contracts shall have been successfully assigned to Buyer to enable Buyer to satisfy the Minimum Network Requirements.

(l) Buyer shall have received duly executed copies of the FQHC Non-Compete Agreements, which are valid and in full force and effect.

(m) Affinity shall have received approval for this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby from the requisite number of FQHC Members pursuant to Section 510(a)-1 of the New York Not-for-Profit Corporation Law and shall have delivered to Buyer a certificate, dated as of the Closing Date and duly executed by the requisite number of FQHC Members (pursuant to Section 510(a)-1 of the New York Not-for-Profit Corporation Law), approving the execution and delivery by Affinity of this Agreement, the other Transaction Documents and the performance and consummation by Affinity of the transactions contemplated hereby and thereby.

**Section 7.03 Conditions to Obligations of Affinity.** The obligations of Affinity to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Affinity’s written waiver, at or prior to the Closing, of each of the following conditions:

(a) (1) The representations and warranties of Buyer contained in this Agreement (other than the Buyer Fundamental Representations), the other Transaction Documents and any certificate or other writing delivered pursuant hereto disregarding any qualifications or limitations set forth in such representations or warranties as to materiality, Material Adverse Effect, or any other similar qualifier contained in such representations and warranties shall be true

and correct in all respects, in each case, as of the date hereof and as of the Closing Date as though made on and as of such date except: (i) to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date; and (ii) where the failure of such representations and warranties to be so true and correct, has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (2) the Buyer Fundamental Representations shall be true and correct in all but *de minimis* respects, in each case as of the date hereof and as of the Closing Date as though made on and as of such date except to the extent that any such representation or warranty refers to a specified date, in which event such representation and warranty shall be true and correct as of such specified date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by prior to or on the Closing Date.

(c) Buyer shall have delivered to Affinity duly executed counterparts to the Transaction Documents (other than this Agreement).

(d) Buyer shall have delivered to Affinity an instrument or instruments of assignment and assumption of the Assumed Liabilities in form and substance reasonably satisfactory to Affinity and its counsel.

(e) Buyer shall have delivered, or shall have caused to be delivered, to Affinity the Cash Purchase Price in accordance with **Section 2.06(a)**.

(f) Affinity shall have received a certificate, dated as of the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in **Section 7.03(a)** and **Section 7.03(b)** have been satisfied.

## **ARTICLE VIII INDEMNIFICATION**

Section 8.01 **Survival.** Subject to the limitations and other provisions of this **ARTICLE VIII**, (a) the representations and warranties contained in **ARTICLE IV** and **ARTICLE V** (other than the Affinity Fundamental Representations and the representations and warranties of Affinity set forth in **Section 4.13** (Employment and Benefits Matters), **Section 4.14** (Taxes) and **Section 4.16** (Health Care Matters)) shall survive the Closing and shall remain in full force and effect during the eighteen (18) month period from and following the Closing Date (the “*Survival Period*”), (b) the Affinity Fundamental Representations and the representations and warranties of Affinity set forth in **Section 4.13** (Employment and Benefits Matters), **Section 4.14** (Taxes) and **Section 4.16** (Health Care Matters) shall survive the Closing for six (6) years following the Closing Date, (c) all covenants, agreements and other obligations contained in this Agreement, and the indemnification obligations of the Parties with respect thereto, shall survive the Closing in accordance with their terms, and (d) each of the Special DOH Indemnity and the Special HCRA Indemnity shall survive the Closing through and until the sixth (6<sup>th</sup>) anniversary of the Closing. Notwithstanding the foregoing, any claims asserted in accordance with this **ARTICLE VIII** prior to the expiration date of the applicable survival period shall not thereafter be barred by the

expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

**Section 8.02 Indemnification by Affinity.** Subject to the other terms and conditions of this **ARTICLE VIII**, Affinity shall indemnify and defend each of Buyer, its Affiliates and its Representatives (collectively, the “*Buyer Indemnitees*”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Affinity contained in this Agreement (other than the Affinity Fundamental Representations and the representations and warranties of Affinity set forth in **Section 4.14** (Taxes));
- (b) any inaccuracy in or breach of any Affinity Fundamental Representation or the representations and warranties of Affinity set forth in **Section 4.14** (Taxes);
- (c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Affinity pursuant to this Agreement;
- (d) the Special DOH Indemnity;
- (e) the Special HCRA Indemnity;
- (f) any knowing and intentional common law fraud by Affinity in the making of the representations and warranties set forth in **ARTICLE IV**;
- (g) any Affinity Transaction Expenses which are outstanding as of the Closing and which are not fully accounted for in the Final Net Asset Value;
- (h) any Closing Date Indebtedness which is outstanding as of the Closing and which is not fully accounted for in the Final Net Asset Value;
- (i) any Liabilities in connection with or relating to any Affinity Employee Payables that exceed the amount itemized in respect thereof on the AEP Schedule and that are not otherwise fully accounted for in the Final Net Asset Value; or
- (j) any Excluded Asset or any Excluded Liability.

**Section 8.03 Indemnification by Buyer.** Subject to the other terms and conditions of this **ARTICLE VIII**, Buyer shall indemnify and defend Affinity, its Affiliates and its Representatives (collectively, the “*Affinity Indemnitees*”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Affinity Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement (other than the Buyer Fundamental Representations);

- (b) any inaccuracy in or breach of any Buyer Fundamental Representation;
- (c) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement;
- (d) any knowing and intentional common law fraud by Buyer in the making of the representations and warranties set forth in **ARTICLE V**; or
- (e) the Purchased Assets or Assumed Liabilities.

Section 8.04 **Certain Limitations.** The Parties' indemnification obligations under **Section 8.02** and **Section 8.03** shall be subject to the following limitations:

(a) Neither Affinity nor Buyer shall have any liability for monetary Losses arising under **Section 8.02(a)** or **Section 8.03(a)**, until the aggregate amount of Losses related thereto for which the Affinity or Buyer, as applicable, would otherwise be required to provide indemnification, exceeds an amount equal to Five Million Dollars (\$5,000,000) (the "**Basket Amount**"). The aggregate Liability of Affinity, on the one hand, and Buyer, on the other hand, for any Losses with respect to matters set forth in this **ARTICLE VIII** shall not exceed an amount equal to the Escrow Amount (the "**Cap**"); *provided*, that the Cap shall not apply with respect to (i) claims for any knowing and intentional common law fraud or willful breach, or (ii) Losses resulting from, arising out of or relating to breaches of the Affinity Fundamental Representations.

(b) Neither Affinity nor Buyer shall have any liability for monetary Losses under **Section 8.02(a)** or **Section 8.03(a)** unless and until the aggregate amount of all monetary Losses under **Section 8.02(a)** or **Section 8.03(a)** as applicable, for which Affinity or Buyer, as applicable, would otherwise be required to provide indemnification exceeds on a cumulative basis an amount equal to the Basket Amount, at which point Affinity or Buyer, as applicable, subject to the other provisions of this **Section 8.04**, shall indemnify the Buyer Indemnitees or the Affinity Indemnitees, as applicable, for the full amount of all such Losses in excess of such Basket Amount, subject in all respects to the Cap.

(c) From the Closing Date until the sixth (6<sup>th</sup>) anniversary of the Closing Date, the Buyer Indemnitees shall not be entitled to recover any Losses under a claim pursuant to **Section 8.02(d)** unless and until the aggregate amount of all Losses incurred by the Buyer Indemnitees with respect to the Special DOH Indemnity exceed the amounts accrued related to the Special DOH Indemnity in the Closing Statement (as finally determined pursuant to **Section 2.07(d)**).

(d) Notwithstanding anything in this Agreement to the contrary, any and all indemnification payments required to be made by Affinity pursuant to **Section 8.02** shall be paid solely from the Escrow Fund to the extent available in accordance with the Escrow Agreement. Affinity shall not be required to pay any Buyer Indemnitee for any indemnifiable Losses under **Section 8.02** once the Escrow Fund has been exhausted; *provided, however*, that the foregoing limitation shall not apply to (i) any claims for any knowing and intentional common law fraud or willful breach by Affinity, or (ii) any Losses resulting from, arising out of or relating to breaches of the Affinity Fundamental Representations. The Escrow Agent shall distribute to Affinity, subject to the terms and conditions of the Escrow Agreement, immediately following the Survival

Period, the then remaining Escrow Amount in excess of the sum of any amounts with respect to (x) which Buyer is entitled to, but has not yet received, indemnification, pursuant to this **ARTICLE VIII** (plus the amount of any interest or income earned on such amount), (y) any unresolved claims for indemnification as of such date (plus the amount of any interest or income earned on such amount) and (z) any amounts disputed but not yet resolved pursuant to **Section 2.07**. Once all indemnification claims are resolved between the Parties in accordance with this **ARTICLE VIII**, and all disputes (if any) are resolved between the Parties in accordance with **Section 2.07**, as applicable, all remaining amounts in the Escrow Fund, if any, shall be paid to Affinity.

(e) The amount of any Losses for which indemnification is provided to an Indemnified Party under this **ARTICLE VIII** shall be net of any amounts actually recovered by such Indemnified Party under policies of insurance (less any costs and expenses of recovery thereof), with respect to such Losses. If and to the extent any insurance proceeds are actually received by any Indemnified Party after such Indemnified Party has recovered any Losses pursuant to this **ARTICLE VIII** such Indemnified Party shall promptly pay to the Indemnifying Party an amount equal to such insurance proceeds to which the Indemnifying Party is entitled pursuant to the first sentence of this paragraph.

(f) No Indemnified Party shall be entitled to be compensated more than once for the same Loss.

(g) Each Indemnified Party shall use commercially reasonable efforts to mitigate Losses for which indemnification may be claimed by such Indemnified Party under this Agreement to the extent required by applicable Law.

(h) The right of an Indemnified Party to indemnification or to assert or recover on any claim shall not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy of, or compliance with, any of the representations, warranties, covenants, or agreements set forth in this Agreement. 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 agreement, shall not affect the right to indemnification or other remedy based on such representations, warranties, covenants or agreements.

**Section 8.05 Indemnification Procedures.** The party making a claim under this **ARTICLE VIII** is referred to as the “*Indemnified Party*”, and the party against which such claim is asserted under this **ARTICLE VIII** is referred to as the “*Indemnifying Party*”.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “*Third Party Claim*”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim (a “*Claim Notice*”). The

failure to give a Claim Notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that such failure has a materially prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such Third Party Claim or the indemnification obligations are materially increased as a result of such failure. A Claim Notice shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably determinable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party within thirty (30) calendar days from receipt of the Claim Notice, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel (which choice of counsel shall be subject to the Indemnified Party's prior written consent, not to be unreasonably withheld, conditioned or delayed), and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that (i) the Indemnifying Party shall have acknowledged in writing to the Indemnified Party its obligation to indemnify the Indemnified Party as provided hereunder in respect thereof, (ii) the Indemnifying Party must conduct the defense of the Third Party Claim actively and diligently in order to preserve its rights in this regard and (iii) notwithstanding the foregoing, the Indemnifying Party shall not have the right to elect to defend the Indemnified Party against a Third Party Claim (and the Indemnified Party shall have the sole power to direct and control such defense) if the Third Party Claim (A) could result in any Adverse Claim Consequences or (B) seeks non-monetary relief, relates to a criminal action or involves claims by a Provider or Governmental Authority. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 8.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided*, that (A) if the Indemnifying Party requests that the Indemnified Party participates in the defense of such Third Party Claim or (B) if, in the reasonable written opinion of counsel to the Indemnified Party, (x) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party or (y) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable documented fees and expenses of one counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to **Section 8.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Affinity and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 6.05(a)**) records relating to such Third Party Claim and using commercially reasonable efforts to furnish, without expense to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim. The Indemnified Party and the Indemnifying Party shall use commercially reasonable efforts to avoid production of confidential information (consistent with applicable Law), and to cause all communications among

employees, counsel and others representing any party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges.

(b) Settlement of Third Party Claims. If the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any Third Party Claim if the terms of such settlement do not contain a release of the Indemnified Parties or (i) would result in the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party, (ii) would result in a finding or admission of wrongdoing or violation of Law by the Indemnified Party, (iii) would result in any monetary Liability of the Indemnified Party that will not be paid or reimbursed by the Indemnifying Party, or (iv) has an adverse effect on any ongoing business of the Indemnified Party (any of the foregoing, “*Adverse Claim Consequences*”). If the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnified Party shall not admit any Liability with respect to, settle, compromise or discharge, such Third Party Claim without the Indemnifying Party’s prior written consent, which consent shall not be unreasonably withheld or delayed.

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “*Direct Claim*”) shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that such failure has a materially prejudicial effect on the defenses or other rights available to the Indemnifying Party with respect to such Direct Claim. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) calendar days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall reasonably cooperate with the Indemnifying Party and its professional advisors to allow the Indemnified Party to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party’s investigation by providing reasonable access (including access to the Indemnified Party’s premises and personnel, documents or records during normal business hours on a mutually convenient basis) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim described in such notice, or fails to so respond within such thirty (30) calendar day period that the Indemnifying Party disputes the claim described in such notice, the Losses in the amount specified in the Indemnified Party’s notice will be conclusively deemed a Liability of the Indemnifying Party and the Indemnified Party shall be entitled to recover the amount of such Losses from the Indemnifying Party in accordance with the terms and conditions of this **ARTICLE VIII**. If the Indemnifying Party has timely disputed its Liability with respect to such claim, the Indemnifying Party and Indemnified Party will proceed in good faith to negotiate a resolution of such dispute and if no such resolution is reached, to litigate such dispute.

Section 8.06 **Payments.** Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **ARTICLE VIII**, the Indemnifying Party shall satisfy its obligations within ten (10) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds (or, if the Indemnifying Party is Affinity, in accordance with the Escrow Agreement).

Section 8.07 **Tax Treatment of Indemnification Payments.** All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.08 **Exclusive Remedy.** Except in the case of **Section 8.02(f)** or **Section 8.02(d)**, claims for equitable relief (including the enforcement of any covenant requiring performance following the Closing) or Liabilities or Claims based on any knowing and intentional common law fraud or willful breach, from and after the Closing, the sole and exclusive remedy for all Losses relating to this Agreement or the transactions contemplated hereby shall be the indemnification provisions set forth in this **ARTICLE VIII**.

Section 8.09 **Materiality.** For purposes of **Section 8.02(a)**, **Section 8.02(b)**, **Section 8.03(a)**, and **Section 8.03(b)**, any qualifications as to materiality, Material Adverse Effect, material adverse effect or similar qualification contained in the representations or warranties in this Agreement (other than with respect to the representations and warranties contained in **Section 4.05**, as to which this **Section 8.09** shall not apply), shall be disregarded and have no effect.

## **ARTICLE IX TERMINATION**

Section 9.01 **Termination.** This Agreement may be terminated at any time prior to the Closing only as follows:

- (a) by the mutual written consent of Affinity and Buyer;
- (b) by Buyer by written notice to Affinity if Buyer is not then in material breach of any provision of this Agreement and:
  - (i) an event or condition occurs that has had a Material Adverse Effect on the Business;
  - (ii) Buyer suffers a Regulatory Material Adverse Effect; or
  - (iii) there has been a breach or inaccuracy in any representation or warranty, or failure to perform any covenant or agreement made by Affinity pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **ARTICLE VII** and such breach, inaccuracy or failure has not been cured by Affinity within thirty (30) calendar days of Affinity's receipt of written notice of such breach from Buyer.
- (c) by Affinity by written notice to Buyer if Affinity is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this

Agreement that would give rise to the failure of any of the conditions specified in **ARTICLE VII** and such breach, inaccuracy or failure has not been cured by Buyer within thirty (30) calendar days of Buyer's receipt of written notice of such breach from Affinity.

(d) by Buyer or Affinity, by written notice to the other party, in the event that:

(i) any Governmental Authority shall have issued a Prohibitive Order restraining or enjoining the transactions contemplated by this Agreement, and such Prohibitive Order shall have become final and non-appealable; *provided* that the right to terminate this Agreement pursuant to this **Section 9.01(d)(i)** shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been a material cause of, or resulted in, the occurrence of such Prohibitive Order, or who has initiated or taken any action in support of such Prohibitive Order; or

(ii) the Closing shall not have occurred on or prior to December 31, 2021 (the "**Initial Termination Date**"); *provided* that if prior to the Initial Termination Date, any of the conditions set forth in **Section 7.01(a)**, **Section 7.01(b)**, **Section 7.01(c)** (to the extent that such Order or Law by the Governmental Authority relates to the filing and/or approvals referenced in **Section 7.01(a)** and **Section 7.01(b)**) or **Section 7.01(c)** have not been satisfied (or waived) but all other conditions to the Closing (other than those conditions which by their terms cannot be satisfied until the Closing) have been satisfied or waived by the Initial Termination Date, the Initial Termination Date may be extended by either Affinity or Buyer for up to three (3) months from the Initial Termination Date (the Initial Termination Date, as it may be extended pursuant to this **Section 9.01(d)(ii)**, is referred to herein as the "**Termination Date**"); *provided*, further, that the right to terminate this Agreement pursuant to this **Section 9.01(d)(ii)** shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or prior to such date.

#### Section 9.02 **Effect of Termination.**

(a) In the event of the termination of this Agreement in accordance with this **ARTICLE IX**, this Agreement shall forthwith become void (in whole or in part, as applicable) and there shall be no liability on the part of any Party hereto (nor any of its Representatives or Affiliates) except:

(i) as set forth in this **ARTICLE IX**, in **Section 6.06** and in **ARTICLE X** hereof; and

(ii) nothing herein shall relieve any Party hereto from Liability or Losses for any fraud, willful breach or intentional misrepresentation or any breach of any representation, warranty, covenant or agreement contained in this Agreement prior to the date of termination.

**ARTICLE X  
MISCELLANEOUS**

Section 10.01 **Expenses.** Except as otherwise expressly provided herein, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses, whether or not the Closing shall have occurred.

Section 10.02 **Notices.** All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) upon transmission by e-mail with confirmation of receipt, (c) one (1) day after deposit with Federal Express or similar overnight courier service, or (d) three (3) days after being mailed by first class mail, return receipt requested. Notices, demands, and communications to the Parties shall, unless another address is specified in writing, be sent to the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this **Section 10.02**):

If to Affinity:	Affinity Health Plan, Inc. Address: 1776 Eastchester Road Bronx, New York 10461 Attention: Michael Murphy E-Mail: <a href="mailto:mmurphy@affinityplan.org">mmurphy@affinityplan.org</a>
with a copy to (which notice shall not constitute notice):	Greenberg Traurig LLP 54 State Street Albany, New York 12207 Attention: Harold Iselin E-Mail: <a href="mailto:iselinh@gtlaw.com">iselinh@gtlaw.com</a>
If to Buyer:	Molina Healthcare, Inc. 200 Oceangate, Suite 100 Long Beach, California 90802 Attention: Jeff Barlow, Chief Legal Officer & Burt Park, Deputy General Counsel Facsimile: (916) 646-4572 Email: <a href="mailto:jeff.barlow@molinahealthcare.com">jeff.barlow@molinahealthcare.com</a> and <a href="mailto:burt.park@molinahealthcare.com">burt.park@molinahealthcare.com</a>
with a copy to (which notice shall not constitute notice):	Milbank LLP 55 Hudson Yards New York, New York 10001 Attention: Scott Golenbock E-Mail: <a href="mailto:sgolenbock@milbank.com">sgolenbock@milbank.com</a>

Section 10.03 **Interpretation.** For purposes of this Agreement, whenever the context requires, the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders. As used

in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.” Except as otherwise indicated, all references in this Agreement to Articles, Sections and Exhibits are intended to refer to Articles or Sections of this Agreement and Exhibits to this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificates, reports or other documents made or delivered pursuant hereto or thereto, unless the context otherwise requires. Any reference to \$ in this Agreement shall mean the lawful currency of the United States. All references to statutes or related regulations shall include all amendments of the same and any successor or replacement statutes and regulations, in each case as in effect on the date of this Agreement, and all references to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of a Governmental Authority, Persons succeeding to the relevant functions of such Person). Any capitalized terms used in the Disclosure Schedules, the Buyer Disclosure Schedules or in any Exhibit hereto, but not otherwise defined therein, shall have the meanings as defined in this Agreement. All references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations.

Section 10.04 **Headings.** The headings in this Agreement, the Disclosure Schedules or the Buyer Disclosure Schedules are for reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.05 **Severability.** The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall be declared by any court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, all other provisions of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid, illegal, void or unenforceable, shall nevertheless remain in full force and effect and will in no way be affected, impaired or invalidated thereby. Upon such determination that any provision, or the application of any such provision, is invalid, illegal, void or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible.

Section 10.06 **Entire Agreement.** This Agreement (including the Disclosure Schedules, the Buyer Disclosure Schedules and Exhibits attached hereto), the Transaction Documents, and other documents delivered at the Closing pursuant hereto or thereto, contain the entire understanding of the Parties in respect of their subject matter and supersede all prior agreements and understandings (oral or written) between the Parties with respect to such subject matter. The Disclosure Schedules, the Buyer Disclosure Schedules and Exhibits attached hereto are hereby incorporated in and made a part of this Agreement as if set forth in full herein. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits, the Disclosure Schedules and the Buyer Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules or the Buyer Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 **Disclosure Schedules.** The Disclosure Schedules and the Buyer Disclosure Schedules shall be arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in **ARTICLE IV** and **ARTICLE V**, respectively, and any information set forth in a particular section of the Disclosure Schedules or the Buyer Disclosure Schedules shall qualify or modify (a) the correspondingly numbered section in this Agreement and (b) to the extent the relevance of such information to another section or subsection of this Agreement is reasonably apparent on the face of such disclosure, such other section or subsection. No reference to or disclosure of any item or other matter in the Disclosure Schedules or the Buyer Disclosure Schedules shall: (i) represent a determination that such item or other matter is material (or otherwise establish a standard of materiality) or that such item or matter is required to be referred to or disclosed in the Disclosure Schedules or the Buyer Disclosure Schedules; and (ii) represent a determination that such item or other matter did not arise in the ordinary course of business. The information contained in the Disclosure Schedules and the Buyer Disclosure Schedules is provided solely for purposes of making disclosures to each Party under this Agreement. In disclosing such information, each Party does not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed or discussed in the Disclosure Schedules and the Buyer Disclosure Schedules.

Section 10.08 **Successors and Assigns.** The rights and obligations of this Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. Except as expressly provided herein, the rights and obligations of this Agreement may not be assigned (by operation of law or otherwise) by any Party without the prior written consent of the other Party; *provided, however*, that Buyer may, without the prior written consent of Affinity, assign any of its rights and interests hereunder to any of its Affiliates; *provided, further*, that no such assignment shall relieve Buyer of any of its obligations or liabilities hereunder.

Section 10.09 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and each of their permitted successors and assigns, and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties and such permitted successors and assigns, any legal or equitable rights hereunder; *provided*, that the Buyer Indemnitees and the Affinity Indemnitees are intended third party beneficiaries of **ARTICLE VIII**.

Section 10.10 **Amendment and Modification; Waiver.** This Agreement may not be amended, supplemented or otherwise modified except in a written instrument executed by each Party. No waiver by either Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver by either Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the Party sought to be charged with such waiver. No failure by either Party to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 10.11 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) All matters relating to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic Laws of the State of New York without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than the State of New York.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL OR STATE COURTS LOCATED IN THE BOROUGH OF MANHATTAN (AND ANY FEDERAL OR STATE APPELLATE COURT THEREFROM), AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11(C).

**Section 10.12 Specific Performance.** Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage may occur if any provision of this Agreement are not performed in accordance with the terms hereof, for which damages, even

if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to seek an injunction, specific performance and other equitable relief to prevent or restrain breaches or threatened breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy.

**Section 10.13 No Recourse Against Non-Recourse Parties.** Notwithstanding anything to the contrary contained herein, this Agreement may be enforced only against, and any Claim based upon, arising out of or related to this Agreement, any Transaction Documents or the negotiation, execution or performance of this Agreement, any Transaction Documents or the transactions contemplated hereby or thereby, may be brought only against the Persons that are expressly named as parties hereto or thereto and then only with respect to the specific obligations set forth herein or therein with respect to such party. With respect to each named party to this Agreement or any Transaction Document, no Non-Recourse Party of such named party shall have any liability (whether in contract, tort or otherwise) for any one or more of the representations, warranties, covenants, agreements or other obligations or liabilities of such named party or for any Claim based on, arising out of or related to this Agreement, any Transaction Documents or the negotiation, execution or performance of this Agreement, any Transaction Documents or the transactions contemplated hereby or thereby. Without limiting the rights of (a) a Party against another Party in the case of this Agreement, in no event shall such Party or any of its Affiliates seek to enforce this Agreement against, make any Claims for any breach of this Agreement against, or seek to recover any Losses from, any Non-Recourse Party of such other Party and (b) a party to a Transaction Document against another party to such Transaction Document in the case of a Transaction Document, in no event shall such party or any of its Affiliates seek to enforce such Transaction Document against, make any Claims for any breach of such Transaction Document against, or seek to recover any Losses from, any Non-Recourse Party of such other party thereto. In furtherance of the foregoing, each Party, on behalf of itself and each of its Affiliates, hereby (i) waives and releases any and all Claims that may otherwise be available to such Party or any of its Affiliates at Law or in equity, granted by statute or otherwise, to avoid or disregard the entity form of any other Party or otherwise impose liability of any other Party on any Non-Recourse Party of such other Party (whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization or otherwise) and (ii) covenants that neither such Party nor any of such Party's Non-Recourse Parties will (and that such Party will cause all other Persons who may seek to claim as, by, through or in relation to such Party or any of such Party's Non-Recourse Parties not to) sue, or bring or otherwise pursue any Claim against, any Non-Recourse Party of any other Party on the basis of or in any way relating to this Agreement, any of the Transaction Documents or any transaction contemplated hereby or thereby (regardless of whether this **Section 10.13** is enforceable under, or prohibited by, applicable Law or otherwise).

**Section 10.14 Acknowledgements; Disclaimers.**

(a) The parties acknowledge and agree that Buyer is an informed and sophisticated Person, and has engaged expert advisors experienced in the evaluation and acquisition of the Purchased Assets and Assumed Liabilities as contemplated hereunder. Buyer has had an opportunity to conduct its own independent investigation and due diligence review of

Affinity, the Business and Affinity's assets and condition, financial and otherwise. Buyer acknowledges that: (1) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Affinity set forth in **ARTICLE IV** of this Agreement (including the related portions of the Disclosure Schedules); and (2) neither Affinity nor any other Person has made any representation or warranty as to Affinity, the Business, the assets or this Agreement except as expressly set forth in **ARTICLE IV** of this Agreement (including related portions of the Disclosure Schedules).

(b) NEITHER AFFINITY NOR ITS REPRESENTATIVES, DIRECTORS, OFFICERS, EMPLOYEES OR MEMBERS HAS MADE, AND SHALL NOT BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO ANY ONE OR MORE OF AFFINITY, THE BUSINESS, THE PURCHASED ASSETS OR THE ASSUMED LIABILITIES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN **ARTICLE IV**.

(c) NEITHER BUYER NOR ITS SUBSIDIARIES, THEIR RESPECTIVE REPRESENTATIVES, DIRECTORS, OFFICERS, EMPLOYEES OR MEMBERS HAS MADE, AND SHALL NOT BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO ANY ONE OR MORE OF BUYER OR ANY OF ITS SUBSIDIARIES, THEIR RESPECTIVE BUSINESSES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN **ARTICLE V** (INCLUDING RELATED PORTIONS OF THE BUYER DISCLOSURE SCHEDULES).

(d) With respect to all materials that are described as having been made available or delivered to Buyer, such materials shall be deemed to have been delivered or made available to Buyer if Buyer or any of its representatives or agents have been granted access to a dataroom, electronic dataroom or website in which such materials were available or by transmitting such materials to Buyer or its representatives or agents by any other electronic means. Buyer further agrees that neither Affinity nor any other Person (including the Non-Recourse Parties of Affinity) shall have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of, any information, documents or materials made available to Buyer or Buyer's representatives in certain "data rooms," management presentations or any other form in expectation of the transactions contemplated by this Agreement.

**Section 10.15 Prevailing Party.** If any Party seeks to enforce its rights under this Agreement by any judicial action, legal proceeding, case or the like against the other Party, the applicable adjudicating body shall award to the prevailing party or parties (as the case may be), if any, the costs and expenses (including attorneys' fees and costs of investigation and preparation) reasonably incurred by the prevailing party or parties (as the case may be) in connection with such judicial action, legal proceeding, case or the like, and, if the adjudicating body determines a party or parties to be the prevailing party or parties under circumstances where the prevailing party or parties won on some but not all of the claims and counterclaims, the adjudicating body may award

the prevailing party or parties an appropriate percentage of the costs and expenses (including attorneys' fees and costs of investigation and preparation) reasonably incurred by the prevailing party or parties in connection with such judicial action, legal proceeding, case or the like.

**Section 10.16 Release.** Effective as of the Closing, Buyer, on behalf of itself and its past, present and future Affiliates and each of its and their respective past, present and future equity holders, directors, officers, employees, members, managers, counsel, agents and representatives and each of its and their respective successors and assigns (collectively, the "**Releasing Parties**"), hereby voluntarily, unconditionally and irrevocably and forever releases and discharges (i) Affinity, (ii) each of Affinity's Affiliates, (iii) all past, present and future, directors, officers, employees, members, managers, counsel, agents and representatives of Affinity or any of its Affiliates and (iv) all of the successors and/or assigns of any of the foregoing Persons in the immediately preceding clauses (i) through (iii) (all of the foregoing Persons in the immediately preceding clauses (i) through (iv) are collectively referred to herein as the "**Released Parties**") of and from, and hereby voluntarily, unconditionally and irrevocably waive, any and all claims, counterclaims, debts, demands, Losses, costs, fees, expenses, penalties, proceedings, covenants, suits, judgments, damages, Actions and causes of Action, obligations, accounts and Liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract, contingent or absolute, matured or unmatured, liquidated or unliquidated, direct or indirect, at Law or in equity (collectively, "**Claims**") that any of the Releasing Parties ever had, now has or ever may have or claim to have against any of the Released Parties for or by reason of any matter, circumstance, event, action, inaction, omission, error, negligence, breach of contract, tort, violation of Law, cause or thing whatsoever arising prior to the Closing to the extent arising out of or relating to the Business or the Purchased Assets (including with respect to the management or operation of Affinity or the Business) (collectively, the "**Released Claims**"). Buyer, on behalf of itself and each of the other Releasing Parties, covenants that none of the Releasing Parties will (and that Buyer will cause all other Persons who may seek to claim as, by, through or in relation to any of the Releasing Parties or any of the matters released by or on behalf of the Releasing Parties in this **Section 10.16** not to) sue, or bring or otherwise pursue any Claim against, any of the Released Parties on the basis of or in any way relating to any of the Released Claims (regardless of whether the release of any such Released Claim is enforceable under, or prohibited by, applicable Law or otherwise). Notwithstanding the foregoing, nothing contained in this **Section 10.16** shall (A) constitute a release or waiver of any rights of Buyer or (B) release or relieve any obligations of Affinity, in either case of clauses (A) and (B), that are expressly set forth in this Agreement or any Transaction Document. The foregoing release and waiver of Released Claims (X) was made with the advice of counsel and fully, finally and forever settles and releases the Released Claims and (Y) shall be and remain in effect notwithstanding the discovery of any additional Claims or facts relating to any of the Released Claims.

**Section 10.17 Counterparts.** This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any such other document, shall

be disregarded in determining the party's intent or the effectiveness of such signature. No Party hereto shall raise the use of a facsimile machine or electronic transmission in pdf to deliver a signature or the fact that any signature or document was transmitted or communicated electronically as a defense to the formation of a contract, and each such Party forever waives any such defense.

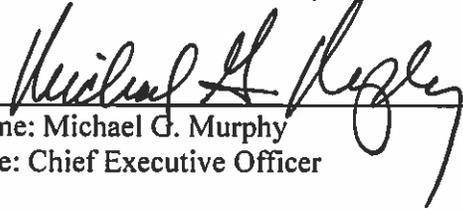
Section 10.18 **No Strict Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

AFFINITY:

AFFINITY HEALTH PLAN, INC.

By:   
Name: Michael G. Murphy  
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

BUYER:

MOLINA HEALTHCARE, INC.

By:   
Name: Mark Keim  
Title: Executive Vice President

**EXHIBIT A**  
**FORM OF ESCROW AGREEMENT**

*[See attached]*

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this “Agreement”) is made and entered into as of [●] 2020 (the “Effective Date”), by and among AFFINITY HEALTH PLAN, INC., a New York not-for-profit corporation (together with any of its successors and assigns, “Seller”), MOLINA HEALTHCARE, INC., a Delaware corporation (“Buyer”) and Citibank, National Association, as escrow agent (the “Escrow Agent”). Buyer and Seller are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

A. Buyer and Seller have entered into that certain Asset Purchase Agreement, dated as of September 28, 2020 (the “Purchase Agreement”).

B. The Purchase Agreement contemplates the execution and delivery of this Agreement and that an amount equal to Thirty-Seven Million Five Hundred Thousand Dollars (\$37,500,000.00) (the “Escrow Amount”) will be placed by Buyer into escrow with the Escrow Agent as of the Closing Date, in order to provide security for any purchase price adjustments or indemnification claims which Buyer may have against Seller under the Purchase Agreement.

### AGREEMENTS

**NOW, THEREFORE**, pursuant to the Purchase Agreement and in consideration of the foregoing, and intending to be legally bound and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, incorporating the recitals set forth above, the parties hereto hereby agree as follows:

1. Definitions. Capitalized terms used and not defined herein shall have the meanings set forth in the Purchase Agreement; provided however, the Escrow Agent will not be responsible for determining or making any inquiry into any term, capitalized or otherwise, not defined herein.

2. Appointment of the Escrow Agent. Buyer and Seller hereby appoint Escrow Agent as the escrow agent to receive, hold, invest, administer and disburse the Escrow Fund (as defined below) in accordance with the terms and conditions of this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent to receive, hold, invest, administer and disburse the Escrow Fund, all subject to and upon the terms and conditions set forth herein.

3. Establishment of Escrow Account; Rights to Escrow Account.

(a) Simultaneously with the execution of this Agreement, Buyer has deposited with the Escrow Agent the Escrow Amount. Any and all earnings, interest and income on the Escrow Amount which from time to time may be held by the Escrow Agent pursuant to the terms hereof are hereinafter referred to as the “Escrow Earnings.” The Escrow Agent hereby acknowledges receipt of the Escrow Amount and shall deposit the Escrow Amount into an account (the “Escrow Account”), subject to the terms and conditions of this Agreement.

(b) The Escrow Amount, and the Escrow Earnings relating thereto and any additional funds deposited into the Escrow Account following the date hereof pursuant to the Purchase Agreement, are collectively referred to as the “Escrow Fund.” The Escrow Fund shall be held by the Escrow Agent in accordance with the terms and conditions set forth herein. It is the Parties’ intention that the Escrow Agent shall dispose of the Escrow Fund only in accordance with the express provisions of this Agreement and the Escrow Agent agrees and covenants with Buyer and Seller that it will not deliver custody or possession of any of the Escrow Fund to anyone except pursuant to the terms of this Agreement.

(c) Except as otherwise expressly set forth herein, neither Buyer nor Seller shall have any right, title or interest in or possession of any of the Escrow Fund. Without limiting the generality of the foregoing, (i) no such Person shall have the ability to pledge, convey, hypothecate or grant a security interest in any portion of the Escrow Fund unless and until such portion of the Escrow Fund has been disbursed to such Person in accordance with the provisions of this Agreement, and (ii) until the Escrow Fund has been disbursed in accordance with the provisions of this Agreement, the Escrow Agent shall be in sole possession of the Escrow Fund and will not act or be deemed to act as custodian for any Party hereto for purposes of perfecting a security interest therein. Accordingly, no Person shall have any right to have or to hold any of the Escrow Fund as collateral for any obligation and shall not be able to obtain a security interest in any assets (tangible or intangible) contained in or relating to any of the Escrow Fund.

4. Investment of the Escrow Fund by the Escrow Agent. Unless otherwise instructed in writing by Buyer and Seller, the Escrow Agent shall invest and reinvest the Escrow Fund in an interest bearing deposit obligation of Citibank, N.A., with an initial interest rate of 25bps (0.25%), insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Escrow Fund shall at all times remain available for distribution in accordance with this Agreement. The Escrow Agent shall send an account statement to each of Buyer and Seller on a monthly basis reflecting activity in the Escrow Account for the preceding month. The Parties acknowledge that the initial interest rate is subject to change from time to time and shall be reflected in the monthly statement provided to the Parties. The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the Escrow Funds, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the Escrow Funds in accordance with the terms, and subject to the conditions of this Agreement.

5. Release of the Escrow Fund. The Escrow Agent shall hold the Escrow Fund until it releases the Escrow Fund as provided in this Section 5, as follows:

(a) If the Escrow Agent receives a joint direction in a written notice to the Escrow Agent which is executed by Buyer and Seller (a “Written Direction”) for the disbursement of funds from the Escrow Fund, the Escrow Agent shall disburse all or any portion of the Escrow Fund in accordance with such Written Direction promptly and in any event within five (5) Business Days of receipt by the Escrow Agent of such Written Direction.

(b) Within five (5) Business Days of receipt by the Escrow Agent of certified copy of a final and non-appealable adjudication of a court of competent jurisdiction,

together with (A) a certificate of Buyer to the effect that such adjudication is final and non-appealable and from a court of competent jurisdiction having proper authority and (B) the written payment instructions of Buyer to effectuate such adjudication (collectively, an “Order”), with respect to a particular outstanding claim or dispute with respect to any release of the Escrow Fund hereunder whereby Buyer or a Buyer Indemnitee (as defined in the Purchase Agreement) is the prevailing party in such proceeding, the Escrow Agent shall promptly pay to Buyer, for further distribution to the applicable Buyer Indemnitee, from the Escrow Fund the amount set forth in the Order (the “Ordered Amount”). In determining whether an order has been issued by a court of competent jurisdiction and/or is an Order, the Escrow Agent shall be entitled to rely on the certificate from Buyer.

(c) Claims Against the Escrow Fund.

i. If at any time prior to 11:59 p.m. Eastern Time on the six (6) year anniversary of the Effective Date (the “Escrow Expiration Date”) Buyer has any Claim for indemnification pursuant to Article VIII or payment pursuant to Section 2.07(g) of the Purchase Agreement, Buyer shall give written notice of such Claim to Seller (an “Escrow Claim”), with a copy to the Escrow Agent. The Escrow Claim shall describe the basis for such claim for (A) indemnification and the amount of Losses involved (if quantifiable), or (B) payment of the Final Closing Adjustment (in each case, the “Claimed Amount”), in each case, in reasonable detail in light of the facts then known to Buyer together with Buyer’s payment delivery instructions.

ii. No later than 5:00 pm Eastern Time on the sixtieth (60th) calendar day following but not including the date of receipt by the Escrow Agent of any Escrow Claim (“Response Period”), Seller shall, with respect to such Escrow Claim, by notice to the Escrow Agent, with a copy to Buyer (a “Response Notice”), either (i) concede liability for the Claimed Amount in whole, or (ii) deny liability for the Claimed Amount in whole or in part (it being understood that any portion of the Claimed Amount for which Seller has not denied liability shall be deemed to have been conceded). If Seller denies liability in whole or in part, such Response Notice shall be accompanied by a reasonably detailed description of the basis for such denial. The portion of the Claimed Amount for which Seller has conceded liability is referred to herein as the “Conceded Amount.” If Seller fails to deliver a Response Notice within such sixty (60) calendar day period, Seller shall be deemed to have conceded the Claimed Amount in full (and the Claimed Amount shall constitute the Conceded Amount).

iii. Within five (5) calendar days of receipt by the Escrow Agent of a Response Notice (or the expiration of the Response Period without receipt of a Response Notice), the Escrow Agent shall distribute to Buyer (on behalf of the applicable Buyer Indemnitees), or such other Person or Persons as Buyer directs in writing, an amount equal to the Conceded Amount.

iv. If Seller has denied liability for, or otherwise disputes, the Claimed Amount, in whole or in part, Seller and Buyer shall deliver to the Escrow Agent a Written Direction (“Settlement Notice”) signed by each of them upon any resolution of such dispute. Such Settlement Notice shall instruct the Escrow Agent to pay to Buyer the amount (the “Settled Amount”), if any, agreed to by both Buyer and Seller in settlement of such dispute.

(d) As soon as practicable following the eighteen month anniversary of the Effective Date (the date on which such eighteen month anniversary falls, the “First Distribution Date”), and in any event, no later than five (5) Business Days following the First Distribution Date, the Escrow Agent shall distribute to Seller (pursuant to instructions delivered by Seller to the Escrow Agent, with a copy to Buyer) or a designee of Seller (pursuant to instructions delivered by Seller to the Escrow Agent, with a copy to Buyer) (such designee, a “Transferee Organization”), an amount, if any, equal to the excess of (i) Eighteen Million Seven Hundred Fifty Thousand Dollars (\$18,750,000.00) minus (ii) the sum of (A) the aggregate amount of any disbursements from the Escrow Fund made prior to the First Distribution Date, plus (B) the Outstanding Claims Amount (as defined herein below) as of the First Distribution Date. “Outstanding Claims Amount” means, as of a particular date, the aggregate amount of Claims asserted by Buyer to Seller in Escrow Claims, to the extent such amounts are not Conceded Amounts, Settled Amounts or Ordered Amounts that have been distributed to the applicable Buyer Indemnatee. Seller’s instructions shall set forth its calculations of the Outstanding Claims Amount as of the First Distribution Date.

(e) Within five (5) days after the Escrow Expiration Date, the Escrow Agent shall distribute to Seller (pursuant to a Written Direction delivered by Seller and Buyer) or a Transferee Organization designated by Seller (pursuant to a Written Direction delivered by Seller and Buyer), an amount, if any, by which the amount that the Escrow Fund at such time exceeds any Outstanding Claims Amount as of such date.

(f) In the event a Written Direction, or other instruction for payment is delivered to the Escrow Agent, whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instruction by telephone call back to the person or persons designated in Exhibits B-1 and or B-2 annexed hereto (the “Call Back Authorized Individuals”), and the Escrow Agent may rely upon the confirmations of anyone purporting to be a Call Back Authorized Individual. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all such issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing actually received and acknowledged by the Escrow Agent. Concurrent with the execution of this Agreement, the Parties shall deliver to the Escrow Agent authorized signers’ forms in the form of Exhibit B-1 and Exhibit B-2 attached hereto.

6. Release and Discharge of Escrow Agent; Termination. Upon the disbursement of all of the cash amounts in the Escrow Fund to Buyer or Seller, as applicable, the Escrow Agent shall thereupon be released and discharged from any and all further obligations arising in connection with this Agreement, and this Agreement shall be terminated.

7. Compensation of the Escrow Agent. Buyer shall (a) pay the Escrow Agent upon execution of this Escrow Agreement and from time to time thereafter all reasonable compensation for the services to be rendered hereunder, which, unless otherwise agreed in writing by the Parties, shall be as described in Exhibit A attached hereto, and (b) pay or reimburse the Escrow Agent upon request all reasonable, documented and necessary expenses, disbursements and advances, including reasonable and documented attorney's fees and expenses, incurred or made by the Escrow Agent in connection with the preparation, execution, performance, delivery, modification and/or termination of this Agreement. The foregoing fees, expenses, disbursements and advancements of the Escrow Agent are to be billed to and to be borne by Buyer. The obligations of Buyer under this Section 7 shall survive any termination of this Agreement and the resignation or removal of the Escrow Agent.

8. Obligations and Liabilities of the Escrow Agent. The Escrow Agent undertakes to perform only such duties and obligations as are expressly set forth herein, which shall be deemed ministerial in nature, and no other duties or obligations, including but not limited to any fiduciary duties, shall be implied. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement. The Escrow Agent shall have no obligation to recognize, and shall not have any liability and responsibility arising under, any agreement to which the Escrow Agent is not a party, even though reference thereto may be made herein (including the Purchase Agreement). With respect to the Escrow Agent's responsibility, Buyer and Seller further agree that:

(a) The Escrow Agent shall have no liability or obligation with respect to the Escrow Fund, except to the extent that the Escrow Agent's fraud, willful misconduct or gross negligence was the cause of any direct loss to either Party. The Escrow Agent's sole responsibility shall be for the safekeeping, investment and disbursement of the Escrow Fund in accordance with the terms of this Agreement. The Escrow Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. The Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Fund, any account in which the Escrow Fund is deposited, this Agreement or the Purchase Agreement, or to prosecute or defend any such legal action or proceeding.

(b) The Escrow Agent is authorized to comply with court orders with respect to the Escrow Fund. If any portion of the Escrow Fund is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any such order, or in case any such order shall be made or entered affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized to rely upon and comply with any such order which it is reasonably advised by its legal counsel, whether internal or external, is a court order.

(c) Seller and Buyer each hereby agree jointly and severally to indemnify and hold harmless the Escrow Agent and each director, officer, employee, attorney, agent and affiliate of the Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) incurred by or asserted against any of the Indemnified Parties from and after

the date hereof, arising from any claim, demand, suit, action or proceeding (“Proceeding”) in connection with the performance by the Escrow Agent of this Agreement or any transactions contemplated hereby; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability, as adjudicated by a court of component jurisdiction, to have been caused by the fraud, willful misconduct or gross negligence of such Indemnified Party. If any such Proceeding shall be brought or asserted against any Indemnified Party, such Indemnified Party shall promptly notify Buyer and Seller in writing, and Buyer, on the one hand, and Seller, on the other hand, shall assume the defense thereof, including the retention of counsel; provided, that any failure by the Escrow Agent to so notify each of Buyer and Seller will not operate in any manner to relieve such Parties from any liability that they may have to the Escrow Agent under this Section 8(c) or otherwise except to the extent, and only to the extent, that any such failure by the Escrow Agent to give such notice materially prejudices such Parties. Such Indemnified Party shall have the right to retain separate counsel in any such action, and to participate in the defense thereof, and Buyer, on the one hand, and Seller, on the other hand, shall each be responsible for one half (1/2) of all reasonable and documented costs, fees and expenses associated with the employment of such separate counsel. Solely as between the Parties, from and after the date of this Agreement, Buyer, on the one hand, and Seller, on the other hand, shall each be responsible for one-half (1/2) of all reasonable and documented costs, fees and expenses incurred as a result of their shared obligation relating to this paragraph only, as set forth above. The obligations of Buyer and Seller under this Section 8(c) shall survive any termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

(d) The parties hereto agree that neither the payment by Buyer or Seller of any claim by any Indemnified Party for indemnification hereunder shall impair, limit, modify or affect, as between Buyer, on the one hand, and Seller, on the other hand, the respective rights and obligations of Buyer, on the one hand, and Seller, on the other hand, under the Purchase Agreement.

(e) The Escrow Agent may rely upon and shall not be liable for acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed by the proper Party or Parties. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. The Escrow Agent shall have no duty of inquiry in determining whether Buyer has submitted such Escrow Claim(s) to any other parties as provided in Section 5(c). The Escrow Agent shall have no duty to solicit any payments which may be due to it or the Escrow Fund. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith, except to the extent that a court of competent jurisdiction determines that the Escrow Agent’s fraud, willful misconduct or gross negligence was the cause of any direct loss to Buyer or to Seller. The Escrow Agent may execute any of its powers and perform any of its duties hereunder directly or through agents or attorneys (and shall be liable only for the careful selection of any such agent or attorney) and may consult with counsel, accountants and other skilled persons to be selected and retained by it. The Escrow Agent shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Escrow Agreement, it shall be entitled (1) to

refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise by a Written Direction or by an Order and (2) after thirty (30) calendar days' notice to the Parties of its intention to do so, to file a suit in interpleader and obtain an order from a court of competent jurisdiction requiring the Parties to interplead and litigate in such court their several claims and rights among themselves. In the event such interpleader suit is brought, the Escrow Agent will thereby be fully released and discharged from all further obligations imposed on it under this Agreement, and Seller and Buyer shall pay the Escrow Agent all costs, expenses and reasonable attorneys' fees expended or incurred by the Escrow Agent pursuant to the exercise of its rights under this Section 8(e). Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent be liable for special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

9. Successor Escrow Agent. The Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering not less than sixty (60) days' advance notice of its resignation to Buyer and Seller specifying a date when such resignation shall take effect and delivering the Escrow Fund to a successor Escrow Agent jointly designated by Buyer and Seller in writing. The Escrow Agent's resignation shall not be effective until (a) such appointment has been made, (b) the Escrow Fund has been delivered to the successor Escrow Agent, and (c) the successor's acceptance of this Agreement and receipt for the Escrow Fund from the successor Escrow Agent and copies thereof shall have been sent to Buyer and Seller. The Escrow Agent may petition a court of competent jurisdiction for the appointment of a successor Escrow Agent if one is not designated by Buyer and Seller within sixty (60) days of receipt of such resignation from the Escrow Agent. Any Person into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any Person to which all or substantially all the escrow business of the Escrow Agent (including the administration of the Escrow Fund) may be transferred, shall be the Escrow Agent under this Agreement without further act.

10. Notices. Any notices or other communications required or permitted hereunder will be in writing and will be sufficiently given if delivered personally, sent by registered mail or certified mail (return receipt requested) postage prepaid, reputable express courier or electronic mail. Such notice shall be deemed effective (a) on the third (3<sup>rd</sup>) Business Day following the day on which the notice or other communication is mailed, provided such notice is sent by certified mail, return receipt requested or (b) on the day delivered by other means in accordance with this Section 10 or, if not a Business Day, on the next succeeding Business Day, to the address as specified in this Section 10 (provided, that if given by electronic mail, it shall not be valid unless receipt confirmation is also received (automated messages confirming email delivery shall not constitute confirmation of receipt)); provided, however, that notices to the Escrow Agent shall be effective only upon receipt. Notwithstanding anything herein to the contrary, notice of an Escrow Claim by Buyer to Seller pursuant to Section 5(c) shall be deemed given only if delivered by a reputable express courier to the Chief Executive Officer of Seller, requiring his signature for acceptance of delivery, with a copy to be sent by email to the email address of the Chief Executive Officer of Seller with confirmation of receipt (automated messages confirming email delivery shall not constitute confirmation of receipt). In the event that the Escrow Agent, in its sole discretion, shall determine that an emergency exists, the Escrow Agent may use such other means of

communication as the Escrow Agent deems appropriate. All such notices and communications shall be delivered to the appropriate parties at the following addresses:

If to Buyer:

Molina Healthcare, Inc.  
200 Oceangate, Suite 100  
Long Beach, California 90802  
Attention: Jeff Barlow, Chief Legal Officer & Burt Park, Deputy General Counsel  
Facsimile: (916) 646-4572  
Email: [jeff.barlow@molinahealthcare.com](mailto:jeff.barlow@molinahealthcare.com) and [burt.park@molinahealthcare.com](mailto:burt.park@molinahealthcare.com)

with a copy (which shall not constitute notice) to:

Milbank LLP  
55 Hudson Yards  
New York, New York 10001  
Attention: Scott Golenbock  
E-Mail: [sgolenbock@milbank.com](mailto:sgolenbock@milbank.com)

If to Seller, to:

Affinity Health Plan, Inc.  
Address: 1776 Eastchester Road  
Bronx, New York 10461  
Attention: Michael Murphy  
E-Mail: [mmurphy@affinityplan.org](mailto:mmurphy@affinityplan.org)

with a copy (which shall not constitute notice) to:

Greenberg Traurig LLP  
54 State Street  
Albany, New York 12207  
Attention: Harold Iselin  
E-Mail: [iselinh@gtlaw.com](mailto:iselinh@gtlaw.com)

If to the Escrow Agent to:

Citi Private Bank  
Citibank, N.A.  
388 Greenwich Street, 29<sup>th</sup> Floor  
New York, NY 10013  
Attn: Debbie DeMarco  
Telephone No.: (212) 783-7092  
Facsimile No.: (212)783-7092

E-mail: debra.demarco@citi.com

Any notice address set forth above may be changed upon written notice to the other parties hereto. If any Escrow Claim or notice of any other kind is required to be delivered to the Escrow Agent and any other person, the Escrow Agent may assume without inquiry that such document was received by such other person on the same date on which it was received by the Escrow Agent.

11. Severability. If any term or provision (or any portion thereof) of this Agreement, or the application of any such term or provision (or any portion thereof) to any person or circumstance, is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provisions or any portion hereof had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a mutually acceptable manner.

12. Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No Party may assign (by operation of law or otherwise) its rights or obligations hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld or delayed, except that (i) Buyer may assign any or all of its rights and obligations under this Agreement without prior written consent to any of its subsidiaries or affiliates, provided that no such assignment shall relieve Buyer of any of its obligations hereunder; (ii) Seller shall assign all of its right and obligations under this Agreement (which shall not require any consent of any other Party hereto) to a Transferee Organization upon any dissolution or liquidation of Seller and in such event shall provide the Escrow Agent and Buyer with documented evidence of such assignment and the assumption of all obligations under this Agreement by such Transferee Organization; and (iii) the Escrow Agent may assign this Agreement pursuant to and in accordance with Section 9 without the prior written consent of the other parties hereto, if permitted by such section. In no event shall the Escrow Agent be obligated hereunder to (x) make any payments from the Escrow Fund directly to any assignee of any rights under this Agreement, or (y) obey any written instructions delivered pursuant hereto from any assignee of any rights under this Agreement, unless, in the case of clauses (x) and (y), such assignee has provided the Escrow Agent with any and all Patriot Act documentation reasonably required by the Escrow Agent and becomes a party to this Agreement.

13. Amendments; Waivers; Termination. This Agreement may only be modified or terminated by a writing signed by all of the parties hereto, and no waiver hereunder shall be effective unless in writing signed by the Party to be charged. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation, or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. This Agreement shall terminate automatically without any action by the parties

hereto upon delivery of all of the Escrow Fund as provided in Section 5 and be of no further force or effect, and no further fees or expenses shall be invoiced by the Escrow Agent pursuant hereto except for unbilled fees or expenses incurred by the Escrow Agent prior to such time.

14. Counterparts. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

15. Governing Law. This Agreement, and any Action arising or relating to this Agreement or any transactions contemplated hereby, shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of New York.

16. Jurisdiction; Service of Process.

(a) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT MAY ONLY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN NEW YORK, NEW YORK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG

OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 16.

17. Entire Agreement. This Agreement and any documents, instruments and certificates explicitly referred to herein, together with the Purchase Agreement (as between Buyer and Seller only), constitute the entire agreement between the parties hereto relating to the holding, investment and disbursement of the Escrow Fund and sets forth in their entirety the obligations, duties and indemnifications of the Escrow Agent with respect to the Escrow Fund.

18. Tax Reporting Information and Certification of Tax Identification Numbers.

(a) Buyer and Seller agree that, for tax reporting purposes, all Escrow Earnings earned in any taxable year shall be reported as taxable income of Seller for the calendar year in which such Escrow Earnings are earned.

(b) The Escrow Agent shall report and withhold any taxes as it determines may be required by any law or regulation in effect at the time of the distribution. In the absence of a Written Direction and except as otherwise provided herein, all proceeds of the Escrow Fund shall be retained in the Escrow Fund and reinvested from time to time by the Escrow Agent as provided in Section 4. The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the Escrow Fund and shall prepare and file IRS Forms 1099 reporting all interest and other income of the Escrow Fund and distributions therefrom for tax purposes in a manner consistent with Section 18(a).

(c) Buyer and Seller shall make available to the Escrow Agent any additional information necessary for it to comply with this Section 18.

19. U.S.A. Patriot Act Information. To help the U.S. federal government fight the funding of terrorism and money laundering activities, U.S. federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. Buyer and Seller each agree to provide all such information and documentation as to themselves as reasonably requested by Escrow Agent to ensure compliance with U.S. federal law.

20. Tax Reporting Documentation. Prior to the execution of this Agreement, Buyer and Seller shall each provide to the Escrow Agent their respective certified tax identification number on Form W-9 and such other forms and documents as the Escrow Agent may reasonably request (collectively, "Tax Reporting Documentation"). The parties hereto acknowledge that, if such Tax Reporting Documentation is not so delivered to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, to withhold a portion of any

interest or other income earned on the investment of monies or other property held by the Escrow Agent pursuant to this Agreement.

21. Rules of Construction. The Parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

22. Further Assurances. Each party hereto shall execute and cause to be delivered to each other party such instruments and other documents, and shall take such other actions, as such other party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

23. Force Majeure. The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility), it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

24. Use of Citibank Name. No publicly distributed printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any Party hereto, or on such Party's behalf, without the prior written consent of the Escrow Agent.

25. Publication; Disclosure. By executing this Agreement, the Parties and the Escrow Agent acknowledge that this Agreement (including all related attachments) contains certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow Agreement and related information to individuals or entities not a party to this Agreement. The Parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Agreement and information contained therein. If any Party becomes aware of any threatened or actual unauthorized disclosure, publication or use of this Escrow Agreement, that Party shall promptly notify in writing the other Parties and the Escrow Agent and shall be liable for any unauthorized release or disclosure.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties have executed and delivered this Escrow Agreement as of the date first written above.

**“SELLER”**

**AFFINITY HEALTH PLAN, INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“BUYER”:**

**MOLINA HEALTHCARE, INC.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“ESCROW AGENT”**

**CITIBANK, N.A.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

## EXHIBIT A

### ESCROW AGENT FEE SCHEDULE Citibank, N.A., Escrow Agent

#### Acceptance Fee

To cover the acceptance of the Escrow Agency appointment, the study of the Escrow Agreement, and supporting documents submitted in connection with the execution and delivery thereof, and communication with other members of the working group:

**Fee: WAIVED**

#### Administration Fee

The annual administration fee covers maintenance of the Escrow Account including safekeeping of assets in the Escrow Account, normal administrative functions of the Escrow Agent, including maintenance of the Escrow Agent's records, follow-up of the Escrow Agreement's provisions, and any other safekeeping duties required by the Escrow Agent under the terms of the Escrow Agreement. Fee is based on Escrow Amount being deposited in an interest bearing deposit obligation of Citibank, N.A., FDIC insured to the applicable limits.

**Fee: WAIVED**

#### Tax Preparation Fee

To cover preparation and mailing of Forms 1099-INT, if applicable for the escrow parties for each calendar year:

**Fee: INCLUDED**

#### Transaction Fees

To oversee all required disbursements or release of property from the Escrow Account to any escrow party, including cash disbursements made via check and/or wire transfer, fees associated with postage and overnight delivery charges incurred by the Escrow Agent as required under the terms and conditions of the Escrow Agreement:

**Fee: INCLUDED**

#### Other Fees

Material amendments to the Agreement: additional fee(s), if any, to be discussed at time of amendment

TERMS AND CONDITIONS: The above schedule of fees does not include charges for out-of-pocket expenses or for any services of an extraordinary nature that Citibank or its legal counsel may be called upon from time to time to perform. Fees are also subject to satisfactory review of the documentation, and Citibank reserves the right to modify them should the characteristics of the transaction change. Citibank's participation in this program is subject to internal approval of the third party depositing monies into the escrow account to be established hereunder. The Acceptance Fee, if any, is payable upon execution of the Agreement. Should this schedule of fees be accepted and agreed upon and work commenced on this program but subsequently halted and the program is not brought to market, the Acceptance Fee and legal fees incurred, if any, will still be payable in full.

Exhibit A to Escrow Agreement

EXHIBIT B-1

Certificate as to Seller's Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Seller and are authorized to initiate and approve transactions of all types for the Escrow Account or accounts established under this Agreement, on behalf of Seller. The below listed persons (must list at least two individuals) have also been designated Call Back Authorized Individuals and may be contacted by Citibank N.A. prior to the release of Escrow Funds from the Escrow Account.

Specimen Signature

Name / Title /Telephone #

Michael Murphy

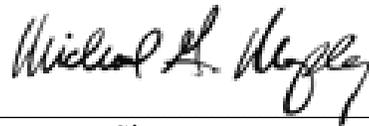
\_\_\_\_\_  
Name

Chief Executive Officer

\_\_\_\_\_  
Title

646-832-8978

\_\_\_\_\_  
Telephone #/Mobile Number



\_\_\_\_\_  
Signature

Name / Title /Telephone #

Clara Hansen

\_\_\_\_\_  
Name

Vice President

\_\_\_\_\_  
Title

347-831-1657

\_\_\_\_\_  
Telephone #/Mobile Number

Specimen Signature



\_\_\_\_\_  
Signature

EXHIBIT B-2

Certificate as to Buyer's Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of Buyer and are authorized to initiate and approve transactions of all types for the Escrow Account or accounts established under this Agreement, on behalf of Buyer. The below listed persons (must list at least two individuals) have also been designated Call Back Authorized Individuals and may be contacted by Citibank N.A. prior to the release of Escrow Funds from the Escrow Account(s).

Name / Title /Telephone #

Specimen Signature

Thomas Tran

Name

Chief Financial Officer

Title

888-562-5442 ext 111093

Telephone #/Mobile Number

Maurice Hebert

Name

Chief Accounting Officer

Title

888-562-5442 ext 111562

Telephone #/Mobile Number

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone #/Mobile Number

**EXHIBIT B**

**FORM OF BILL OF SALE**

*[See attached]*

**EXHIBIT B****FORM OF BILL OF SALE**

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to the terms and conditions of that certain Asset Purchase Agreement, dated as of September 28, 2020 (the “*Asset Purchase Agreement*”), by and between Affinity Health Plan, Inc., a New York not-for-profit corporation (“*Affinity*”), and Molina Healthcare, Inc., a Delaware corporation (“*Buyer*” and, together with Affinity, the “*Parties*”), Affinity hereby unconditionally and irrevocably sells, assigns, transfers, conveys, and delivers to Buyer, its successors and permitted assigns forever, all of Affinity’s right, title, and interest in, to and under the Purchased Assets pursuant to this bill of sale, dated as of [•], 2020 (this “*Bill of Sale*”) and subject to the terms of the Asset Purchase Agreement, including Section 2.01(a) thereof, free and clear of any Encumbrances other than Permitted Encumbrances, TO HAVE AND TO HOLD the Purchased Assets with all appurtenances thereto.

A. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Asset Purchase Agreement.

B. Notwithstanding anything to the contrary contained herein, none of the Excluded Assets shall be included in the Purchased Assets.

C. This Bill of Sale shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

D. This Bill of Sale is being executed solely pursuant to the Asset Purchase Agreement to give effect to the transactions contemplated by the Asset Purchase Agreement. Nothing in this Bill of Sale, express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms of the Asset Purchase Agreement. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall govern.

E. Nothing in this Bill of Sale, express or implied, is intended or shall be construed to confer upon or give to, any person, firm or corporation other than Buyer and its successors and permitted assigns any remedy or claim under or by reason of this instrument or any term, covenant or condition hereof, and all of the terms, covenants, conditions, promises and agreements in this instrument shall be for the sole and exclusive benefit of Buyer and its successors and permitted assigns.

F. At any time or from time to time, at Buyer’s request and without further consideration (but without any requirement that Affinity expend any out of pocket funds), Affinity shall execute and deliver to Buyer such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as Buyer may reasonably deem necessary in order to more effectively transfer, convey and assign the Purchased Assets to Buyer.

G. The provisions of Article X of the Asset Purchase Agreement are hereby incorporated into this Bill of Sale, *mutatis mutandis*.

H. A signed copy of this Bill of Sale delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, and intending to be legally bound hereby, this Bill of Sale is being executed and delivered by Affinity as of the date first written above.

**AFFINITY HEALTH PLAN, INC.**

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

**EXHIBIT C**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

*[See attached]*

**EXHIBIT C****FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement, dated as of [•], 2020 (this “*Agreement*”), is by and between Affinity Health Plan, Inc., a New York not-for-profit corporation (“*Assignor*”) and Molina Healthcare, Inc., a Delaware corporation (“*Assignee*”). Assignor and Assignee are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*”.

**RECITALS**

A. Assignor and Assignee are both party to that certain Asset Purchase Agreement, dated as of September 28, 2020 (the “*Asset Purchase Agreement*”), pursuant to which Assignee has agreed to purchase the Purchased Assets and assume the Assumed Liabilities pursuant to the terms of the Asset Purchase Agreement, including Section 2.03 thereof; and

B. In accordance with the terms of the Asset Purchase Agreement, Assignor and Assignee have agreed to enter into this Agreement, providing for (a) Assignor’s sale, assignment, transfer, conveyance and delivery to Assignee (or its designee) of all of Assignor’s right, title and interest in, under and to the Purchased Assets other than the Real Property Leases or Tangible Personal Property (which, for the avoidance of the doubt, have been transferred from Assignor to Assignee pursuant to a bill of sale substantially in the form attached to the Asset Purchase Agreement as Exhibit B) (collectively, the “*Assigned Assets*”), (b) Assignee’s acceptance of such sale, assignment, transfer, conveyance and delivery of the Assigned Assets and (c) Assignee’s assumption, payment, performance and dischargement of all of the Assumed Liabilities, in each case on and subject to the terms of the Asset Purchase Agreement.

**AGREEMENT**

The parties, intending to be legally bound, agree as follows:

1. **Definitions.** Undefined capitalized terms herein are defined in the Asset Purchase Agreement.

2. **Assignment.** Effective as of the Closing, Assignor hereby sells, assigns, transfers, conveys and delivers to Assignee all of its right, title and interest in, under and to the Assigned Assets free and clear of all Encumbrances other than Permitted Encumbrances in accordance with and subject to the terms and conditions of the Asset Purchase Agreement, including Section 2.03 thereof (the “*Assignment*”). For the avoidance of doubt, the Assigned Assets do not include the Excluded Assets.

3. **Acceptance and Assumption.** Effective as of the Closing, Assignee (or its designee) hereby (a) purchases, acquires and accepts the sale, assignment, transfer, conveyance and delivery of Assignor’s right, title and interest in, under and to the Assigned Assets free and clear of any Encumbrances other than Permitted Encumbrances and (b) assumes and agrees to pay, perform and discharge when due, and shall be liable with respect to the Assumed Liabilities in accordance with and subject to the terms and conditions of the Asset Purchase Agreement, including Section 2.03 thereof.

4. **Further Assurances.** Each of the Parties shall execute and deliver, at the reasonable request of the other Party, such additional documents, instruments, conveyances and assurances and take such further actions as such other Party may reasonably request to carry out the provisions hereof and the transactions contemplated hereby.

5. **Terms of Asset Purchase Agreement.** The scope, nature, and extent of the Purchased Assets and Assumed Liabilities are expressly set forth in the Asset Purchase Agreement. Nothing contained herein will itself change, amend, extend, or alter (nor should it be deemed or construed as changing, amending, extending, or altering) the terms or conditions of the Asset Purchase Agreement in any manner whatsoever. This instrument does not create or establish rights, liabilities or obligations not otherwise created or existing under or pursuant to the Asset Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms of this Agreement, the terms of the Asset Purchase Agreement will govern.

6. **Other Provisions.** The provisions of Article X of the Asset Purchase Agreement are hereby incorporated into this Agreement, *mutatis mutandis*.

7. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[*Signature Page Follows*]

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

ASSIGNOR:

**AFFINITY HEALTH PLAN, INC.**

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

Name:

Title:

ASSIGNEE:

**MOLINA HEALTHCARE, INC.**

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

**EXHIBIT D**

**FORM OF IP ASSIGNMENT AGREEMENT**

*[See attached]*

**EXHIBIT D****FORM OF INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT**

This **INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT** (this “Assignment”), effective as of [●] (the “Effective Date”), is by and between AFFINITY HEALTH PLAN, INC., a New York not-for-profit corporation, with an office located at 1776 Eastchester Road, Bronx, New York 10461, United States of America, (“Assignor”) and MOLINA HEALTHCARE, INC., a Delaware corporation whose registered address is at 200 Oceangate, Suite 100, Long Beach, California 90802, United States of America (“Assignee”). Capitalized terms which are used but not otherwise defined in this Assignment will have the meaning ascribed to such terms in the Asset Purchase Agreement.

WHEREAS, Assignor and Assignee are each party to that certain Asset Purchase Agreement, dated as of September 28, 2020 (the “Asset Purchase Agreement”);

WHEREAS, under the terms of the Asset Purchase Agreement, Assignor agreed to sell, assign, transfer, convey and deliver to Assignee (or its designee) all of its right, title and interest in and to the Registered Intellectual Property (as defined in the Asset Purchase Agreement), including the copyright registrations and domain names set forth on Exhibit A hereto (collectively, the “Assigned IP”); and

WHEREAS, under the terms of the Asset Purchase Agreement, Assignee agreed to acquire the Assigned IP from Assignor, free and clear of any Encumbrances other than Permitted Encumbrances.

NOW, THEREFORE, for good and valuable consideration, including the consideration reflected in the Asset Purchase Agreement, the sufficiency and receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby irrevocably and unconditionally sells, assigns, transfers, conveys and delivers to Assignee its entire worldwide right, title and interest in, to and under the Assigned IP along with (i) all rights and privilege arising under applicable law with respect to Assignor’s use of any of the Assigned IP; and (ii) all rights of action pertaining to the Assigned IP, including, without limitation, all rights in and to all causes of action (whether in law or in equity) with respect thereto, the right to sue, counterclaim, and recover for past, present and future infringement of the Assigned IP or any rights relating to the Assigned IP, the right to secure registration of the Assigned IP and of this Assignment, the right to initiate and prosecute other proceedings before all government and administrative bodies with respect to the Assigned IP, and the right to claim priority, file foreign counterparts, and any and all other proceeds of any of the foregoing, including, but not limited to, all income, royalties, damages and payments now or hereafter due or payable with respect thereto.
2. This Assignment is binding upon, and inures to the sole benefit of, the parties hereto and their respective permitted successors and assigns.
3. Assignor will execute additional documents, instruments, conveyances and assurances and take other actions at the sole cost and expense of Assignee as may be necessary or desirable to record or

memorialize the assignments of the Assigned IP, and to vest in Assignee all rights, title, interests and protections in and to the Assigned IP as assigned and transferred to Assignee hereunder.

4. Assignor hereby authorizes and requests (i) the officials of the United States Copyright Office to record this Assignment and record Assignee as assignee and owner of the entire right, title and interest in, to and under the copyright registrations included in the Assigned IP set forth on Exhibit A and (ii) the applicable domain name registrars to effectuate and record the transfer of the domain names included in the Assigned IP set forth on Exhibit A, including, but not limited to: (a) taking any and all actions that may be required or recommended by the applicable registrar to confirm the transfer in accordance with its procedures therefor; and (b) providing Assignee with administrative and technical access to the domain names, and sole control over where the domain names point.
5. The unenforceability or invalidity of any provision of this Assignment shall not affect the enforceability or validity of any other provision. If any provision of this Assignment or the application of any such provision to any Person or circumstance shall be declared by any court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, all other provisions of this Assignment, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid, illegal, void or unenforceable, shall nevertheless remain in full force and effect and will in no way be affected, impaired or invalidated thereby.
6. All matters relating to the interpretation, construction, validity and enforcement of this Assignment shall be governed by and construed in accordance with the domestic Laws of the State of New York without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than the State of New York.
7. This Assignment may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. This Assignment, to the extent signed and delivered by means of a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto, through their authorized representatives, have caused this Assignment to be duly executed and delivered as of the Effective Date.

**As Assignor:**

AFFINITY HEALTH PLAN, INC.

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

Name:

Title:

*[Signature Page to the IP Assignment Agreement]*

**As Assignee:**

MOLINA HEALTHCARE, INC.

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

Name:

Title:

*[Signature Page to IP Assignment Agreement]*

**EXHIBIT A**

**ASSIGNED IP**

1. Copyrights:

<b>Copyright Application Title</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>Type of Work</b>	<b>Owner of Record</b>
Health Literacy – Helping Our Patients Understand Their HealthCare	Pau003347897	06/12/2008	Motion Picture	Affinity Health Plan, Inc.
E-Application and Eligibility Calculator Source Code	TXu001570403	01/04/2008	Computer File	Affinity Health Plan, Inc.

2. Domain Name:

Domain: affinityplan.org  
Registrar: Register.com, Inc.  
Registered On: 2001-10-17  
Expires On: 2021-10-17  
Updated On: 2018-08-28

**EXHIBIT E**  
**REQUIRED THIRD PARTY CONSENTS**

*[See attached]*

**EXHIBIT E**

**REQUIRED THIRD PARTY CONSENTS\***

1. Contract by and between Affinity and NYSDOH, dated as of March 1, 2019, for New York State Medicaid Managed Care and New York Health and Recovery Plan
2. Contract by and between Affinity and NYSDOH, effective as of January 1, 2016, for New York State Child Health Plus
3. Contract by and between Affinity and NYSDOH, effective as November 1, 2015, for New York State Essential Plan
4. Master Agreement, dated as of January 23, 2006, by and between Cognizant Technology Solutions U.S. Corporation (as successor in interest to The TriZetto Group, Inc.) and Affinity\*
5. Master License and Services Agreement, dated as of April 13, 2018, by and between Casenet, LLC and Affinity\*
6. Master Services Agreement, dated as of March 1, 2016, by and between Change Healthcare Resources, LLC (f/k/a Altegra Health Operating Company, LLC) and Affinity, as amended\*
7. Health Services Agreement, dated as of November 1, 2012, by and between Cotiviti, LLC (as successor in interest to iHT Government Services, LLC) and Affinity, as amended

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\* Indicates that the applicable contract only requires that Affinity give notice of assignment to the applicable counterparty, rather than obtain consent to such assignment.

**EXHIBIT F****APPLICABLE ACCOUNTING PRINCIPLES AND SAMPLE CALCULATION**

Capitalized terms used but not defined herein will have the meanings given to such terms in the Agreement.

**Section A – Principles Applicable to Net Asset Value**

These Applicable Accounting Principles have been prepared to address certain accounting principles, judgments, methodologies, practices, classifications, estimation techniques and assumptions to be used in determining Net Asset Value under the Agreement (the “*NAV Calculations*”).

- (1) The provisions of these Applicable Accounting Principles shall be interpreted to avoid double counting (whether positive or negative) of any item to be included in any NAV Calculation. Net Asset Value shall exclude any Closing Date Indebtedness, any Affinity Transaction Expenses, and any Closing Affinity Employee Payables that remain outstanding as of the Closing and that adjust the Purchase Price in accordance with Section 2.05 of the Agreement. For the avoidance of doubt, any Closing Date Indebtedness, Affinity Transaction Expenses or Closing Affinity Employee Payables that remain outstanding as of the Closing Date but did not adjust the Purchase Price in accordance with Section 2.05 of the Agreement shall be taken into account in the calculation of the Updated Net Asset Value.
- (2) The NAV Calculations shall exclude the effect of a change of control or ownership of Affinity and will not take into account (a) the effects of any post-Closing reorganizations or the post-Closing intentions or obligations of Buyer or its Affiliates, (b) any changes in assets or liabilities as a result of purchase accounting adjustments, or (c) any changes in assets or liabilities resulting from actions, decisions or events that are made by Buyer or unique or specific to Buyer.
- (3) Each NAV Calculation shall, unless otherwise expressly provided in the Agreement or in these Applicable Accounting Principles, be based on the conditions as they exist as of the Measurement Time, in accordance with FASB Accounting Standards Codification Topic 855, Subsequent Events, and solely based on information available to the parties to this Agreement as of the date on which the Closing Statement is delivered by Buyer to Affinity, except as it relates to the Medical Claims Reserve, accounts receivable, including the Premiums Receivable Accrual, and accounts payable, which shall be calculated as set forth in paragraphs (a)–(d) below:
  - (a) the Medical Claims Reserve shall take into account all actuarial liabilities and receivables, including outstanding Medical Claims, medical loss ratio/risk share guarantees, stop-loss receivables, service fund, pharmacy, capitated arrangements, provider bonuses, provider disputes, and loss adjustment expense, in each case, incurred, including incurred but not reported, or with admission dates, prior to the Measurement Time;

- (b) the Medical Claims Reserve that is included in the Updated Net Asset Value shall be equal to the aggregate dollar amount of (I) the total amount of Medical Claims incurred prior to the Measurement Time which are paid within two hundred seventy (270) days following the Measurement Time, (II) all recoveries and repayments of Medical Claims incurred and paid prior to the Measurement Time which are applied, credited, offset or received within two hundred seventy (270) days following the Measurement Time (including repayments or recoveries received or due for overpayments, from reinsurance and stop-loss coverage, subrogation and coordination of benefits), and (III) a good-faith estimate of all Medical Claims incurred prior to the Measurement Time which have not been paid within two hundred seventy (270) days following the Measurement Time;
  - (c) all premiums, including any premium deficiency reserves, accounts or notes receivable of the Business as of the Measurement Time that are included in the Updated Net Asset Value, including the Premiums Receivable Accrual, shall be equal to the aggregate dollar amount of (I) the total amount of such receivables as of the Measurement Time, including premium capitation for services performed by or on behalf of Affinity with respect to the period of time prior to the Measurement Time, that is received by or on behalf of Affinity after the Measurement Time and within two hundred seventy (270) days following the Measurement Time and (II) a good-faith estimate of all such receivables as of the Measurement Time, including premium capitation for services performed by or on behalf of Affinity with respect to the period of time prior to the Measurement Time, which have not been received by or on behalf of Affinity within two hundred seventy (270) days following the Measurement Time; and
  - (d) all accounts payable of the Business as of the Measurement Time that are included in the Updated Net Asset Value shall be equal to the aggregate dollar amount of (I) the total amount of such payables as of the Measurement Time that are paid by or on behalf of Affinity after the Measurement Time and within two hundred seventy (270) days following the Measurement Time and (II) a good-faith estimate of all such payables as of the Measurement Time that have not been paid by or on behalf of Affinity within two hundred seventy (270) days following the Measurement Time.
- (4) The NAV Calculations will be prepared in United States Dollars (“**US Dollars**”). Assets and liabilities in the NAV Calculations denominated in a currency other than US Dollars shall be converted into US Dollars utilizing the applicable mid-market exchange rates published by the Wall Street Journal as of the Measurement Time.
  - (5) The NAV Calculations shall be prepared (a) applying no minimum materiality limit; (b) using the information extracted from the accounting records of Affinity; and (c) in accordance with the specific procedures that would be adopted at a financial year-end, including detailed analyses of accruals and cut-off procedures.
  - (6) Each NAV Calculation shall exclude consideration of accrued interest.
  - (7) Each NAV Calculation shall exclude any contingent receivable of Affinity which is derived from the Purchase Price.

- (8) Subject to any other policies set forth on this Exhibit, where an accrual, provision or reserve was made (or was zero) in the Balance Sheet in relation to any matter or series of related matters, no increase or decrease in that accrual, provision or reserve shall be made in the calculation of Net Asset Value, unless, since the Balance Sheet Date, new facts or circumstances have arisen which justify such increase or decrease using the policies, methods and estimation techniques, as set out in the definition of Applicable Accounting Principles.
- (9) No new categories, classifications or types of costs or assets will be included in the NAV Calculations that were not classified as such in the Balance Sheet.
- (10) Intercompany balances shall be reconciled and eliminated. Any unreconciled liabilities shall be considered in the NAV Calculations at Closing.
- (11) No amounts shall be included in the NAV Calculations in relation to deferred income Tax liabilities or assets.
- (12) To the extent Affinity uses Closing Cash to settle any Closing Date Indebtedness, Affinity Transaction Expenses or Closing Affinity Employee Payables (except, pursuant to Section 2.06(b) of the Agreement, paid from the Cash Purchase Price) between the Measurement Time and the Closing, then Closing Cash for purposes of calculating Net Asset Value shall be deemed reduced by any such settled amounts.
- (13) For the avoidance of doubt, for purposes of the NAV Calculations, in no event shall the aggregate amount of DSRIP EIP Liabilities payable as of the Measurement Time exceed the aggregate amount of DSRIP EIP Receivables receivable as of the Measurement Time.
- (14) For the avoidance of doubt, (a) the security deposits for the Real Property Leases, (b) all prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees of the Business set forth on Section 2.01(a)(iv) of the Disclosure Schedules, and (c) all of Affinity's rights, title and interests in and to the portion of the Montefiore Claim that is treated as an admitted asset as of the Measurement Time shall be calculated in accordance with SAP notwithstanding their treatment in the Balance Sheet.
- (15) Cash shall not include the Statutory Escrow Account, Retained Cash and Investments and any petty cash, and shall include all balances held in the operating accounts set forth on Section 2.01(a)(i) of the Disclosure Schedules as of the Measurement Time.

## **Section B – Sample Calculation**

Illustrative Net Asset Value

*[See attached]*

**The Sample Calculation is for illustrative purposes only. The line items included represent the line items to be included in the Updated Net Asset Value; however the numbers contained within the line items shall not form part of the calculation of Updated Net Asset Value.**

Net Asset Value (Jul-20)

Work in process draft

Please see notes below for latest changes (row 54)

\$ in 000s	Jul-20 NAV (GAAP)	Total Nonadmitted assets	Jul-20 NAV (SAP)	Excluded Assets and Liabilities							Total Excluded Assets and Liabilities	Jul-20 NAV (per APA)	Excluded assets/ liabilities	Not admitted assets	Check vs. GAAP BS	
				2.02(a) Legal confidences	2.02(b) Risk Corridor Claim	2.02(c) Other books and records	2.02(d) Rights and claims	2.02(e) Excluded Contracts	2.02(f) Emblem Claim	2.02(g) Retained Cash and Investments						2.02(h) Excluded Rights and Claims
<b>Assets</b>																
Cash and cash equivalents	205,137	-	205,137	-	-	-	-	-	-	(3,507)	-	-	(3,507)	201,630	3,507	-
Premiums receivable	18,097	-	18,097	-	-	-	-	-	-	-	-	-	-	18,097	-	-
Current portion of investments	8,320	(95)	8,225	-	-	-	-	-	-	(8,225)	-	-	(8,225)	-	8,225	95
Current portion of stop-loss receivable	26,947	-	26,947	-	-	-	-	-	-	-	-	-	-	26,947	-	-
Advances to providers and other assets, net	59,527	(25,239)	34,289	-	-	-	-	-	-	(167)	(9,678)	-	(9,845)	24,443	9,845	25,239
Funds held for DSRIP program	8,861	-	8,861	-	-	-	-	-	-	-	-	-	-	8,861	-	-
<b>Current assets</b>	<b>326,888</b>	<b>(25,334)</b>	<b>301,555</b>	-	-	-	-	-	-	<b>(11,899)</b>	<b>(9,678)</b>	-	<b>(21,577)</b>	<b>279,977</b>	<b>21,577</b>	<b>25,334</b>
Investments, net of current portion	24,779	(3,862)	20,917	-	-	-	-	-	-	(20,917)	-	-	(20,917)	-	20,917	3,862
Assets whose use is limited	83,124	-	83,124	-	-	-	-	-	-	(83,124)	-	-	(83,124)	-	83,124	-
Property and equipment, net	8,252	(8,252)	0	-	-	-	-	-	-	-	-	-	-	0	-	8,252
<b>Total assets</b>	<b>443,043</b>	<b>(37,448)</b>	<b>405,595</b>	-	-	-	-	-	-	<b>(115,940)</b>	<b>(9,678)</b>	-	<b>(125,618)</b>	<b>279,977</b>	<b>125,618</b>	<b>37,448</b>
<b>Liabilities</b>																
Accounts payable and accrued expenses	(17,358)	-	(17,358)	-	-	-	-	-	-	-	-	(0)	(0)	(17,358)	0	-
Medical claims payable	(211,932)	-	(211,932)	-	-	-	-	-	-	-	-	-	-	(211,932)	-	-
Payable to providers or NYSDOH under DSRIP program	(8,861)	-	(8,861)	-	-	-	-	-	-	-	-	-	-	(8,861)	-	-
<b>Payables</b>	<b>(238,151)</b>	-	<b>(238,151)</b>	-	-	-	-	-	-	-	-	(0)	(0)	<b>(238,151)</b>	0	-
Due to NYSDOH	(179,884)	-	(179,884)	-	-	-	-	-	-	-	-	-	23,405	23,405	(23,405)	-
Due to Centers for Medicare and Medicaid Services	(2,028)	-	(2,028)	-	-	-	-	-	-	-	-	-	2,028	2,028	(2,028)	-
Revolving credit line	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Current liabilities</b>	<b>(420,063)</b>	-	<b>(420,063)</b>	-	-	-	-	-	-	-	-	(0)	<b>25,434</b>	<b>25,433</b>	<b>(394,630)</b>	<b>(25,433)</b>
Deferred rent	(7,761)	-	(7,761)	-	-	-	-	-	-	-	-	-	-	(7,761)	-	-
<b>Total liabilities</b>	<b>(427,824)</b>	-	<b>(427,824)</b>	-	-	-	-	-	-	-	-	(0)	<b>25,434</b>	<b>(402,390)</b>	<b>(25,433)</b>	-
<b>Net asset value (deficit)</b>	<b>15,219</b>	<b>(37,448)</b>	<b>(22,229)</b>	-	-	-	-	-	-	<b>(115,940)</b>	<b>(9,678)</b>	(0)	<b>25,434</b>	<b>(100,184)</b>	<b>(122,413)</b>	<b>37,448</b>

Target NAV Amount 133,770  
 per APA  
 Variance (256,183)

Source: 4.4.4\_Quarterly Trial Balance 2018; 4.4.6\_Monthly Trial Balance Dec 2019; 4.4.7\_Jan 2020 Trial Balance; 4.4.8\_Feb 2020 Monthly Trial Balance; 4.4.10\_Monthly TB May 2020

**Note**  
 The following nonadmitted assets will remain with Affinity per the APA:  
 1) the Montefiore Claim (i.e. the Monte Advance) (2.01(a)(vii) and 2.02(h))  
 2) The Emblem Claim (i.e. the Emblem earn out receivable) (2.02(f))  
 3) Investments (2.02(g))  
 4) Pharmacy rebate receivables (2.02(h))

**Additional Excluded Assets (Stay with AHP) - Seller Notes**  
 Retained Cash and Investments include Petty Cash (acct 10060)  
 Int. Rec. Accts (Other Assets - accts 10970 & 10976) related to Excluded Investments





**EXHIBIT G**  
**FORM OF FQHC NON-COMPETE AGREEMENT**

[See attached]

**NON-COMPETITION AGREEMENT**

THIS NON-COMPETITION AGREEMENT (this “Agreement”) is entered into as of [●], 2020, by and between Molina Healthcare, Inc., a Delaware corporation (the “Company”), and [●], a [●] (the “Member”). The Company and the Member are each individually referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Affinity Health Plan, Inc., a New York not-for-profit corporation (“Affinity”) is a prepaid health services plan pursuant to Section 4403-a of the New York Public Health Law and provides health care coverage under the New York State Medicaid Managed Care, Health and Recovery Plan, Child Health Plus, and Essential Plan programs (collectively, the “Business”);

WHEREAS, contemporaneously with the execution and delivery hereof, Affinity and the Company are entering into that certain Asset Purchase Agreement (the “Purchase Agreement”), pursuant to which the Company will purchase all of the assets owned or leased by Affinity that are used in the operation of the Business;

WHEREAS, as a condition and essential inducement to the Company’s willingness to enter into the Purchase Agreement and in consideration of the transactions contemplated by the Purchase Agreement, the Member has agreed to execute and deliver to the Company this Agreement; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the Parties’ mutual covenants and agreements set forth herein, and for other good, valuable and adequate consideration received, the Parties agree as follows:

1. Restrictive Covenants.

(a) The Member agrees that beginning on the Closing Date and for the eighteen (18) months thereafter (the “Restricted Period”), the Member shall not, directly or indirectly, either for the Member’s own benefit or for the benefit of any other Person, without the prior consent of the Company, which consent may be withheld in the Company’s sole discretion, (i) engage in, make any regulatory application to engage in, enter into any Contract in anticipation of engaging in, or assist others in engaging in the Restricted Business in the Restricted Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Restricted Territory in any capacity, including as a partner, shareholder, member, employee, principal, joint venturer, agent, trustee, volunteer, lender or consultant (other than as set forth on Exhibit A attached hereto, it being acknowledged and agreed by the Parties that such interests of the Member shall continue to exist and not be deemed to be in violation of this Agreement); or (iii) induce or persuade, or seek or attempt to induce or persuade, any Provider, Enrollee, supplier or licensor of the Business (including any prospective, existing or former Provider, Enrollee, supplier or licensor of Affinity and any Person known to the Member to have become a Provider, Enrollee, supplier or licensor of the Business during the Restricted Period) to terminate or modify its business relationship with the Business in a manner

adverse to the Business, provided, however, that the acquisition of a Provider shall not be deemed to be an action adverse to the Business if the acquired Provider continues to participate with the Business.

(b) During the Restricted Period, the Member shall not, directly or indirectly, solicit for employment, hire or retain the employment of any Hired Employee, or encourage any employee of the Company or its Affiliates to leave such employment or hire any Person who has left such employment, except pursuant to a general solicitation which is not directed specifically to any Hired Employees or any employees of the Company or its Affiliates; provided, however, that nothing in this Section 1(b) shall prevent the Member from hiring any employee of the Company whose employment has been terminated by the Company and such termination was not directly or indirectly attributable to or influenced by actions of the Member.

(c) For the purposes of this Section 1 (and except as designated on Exhibit A):  
(x) “Restricted Business” means operating (i) any health insurance-related business or (ii) any managed health care business, in each case, wherein the Member or any Member Affiliate bears insurance risk; provided, however, that the following shall not be deemed to be a Restricted Business: the assumption of financial risk for the provision of health care services by an independent practice association (“IPA”), health home, or accountable care organization (“ACO”) to the extent that applicable New York Law allows the IPA, health home, or ACO, or such Member or Member Affiliate in its individual capacity as a health care provider, to assume financial risk, and further provided that if the Member or Member Affiliate forms or assumes an ownership or controlling interest in an IPA, health home, or ACO, the Member or Affiliate of the Member shall use its reasonable best efforts to encourage such IPA, health home, or ACO to enter into a contract with the Company or Affiliate of the Company; and (y) “Restricted Territory” means the service area consisting of the counties of Bronx, Kings (Brooklyn), Nassau, New York (Manhattan), Orange, Queens, Richmond (Staten Island), Rockland, Suffolk, and Westchester in the State of New York.

(d) The Member acknowledges that the restrictions contained in this Section 1 are reasonable and necessary to protect the legitimate interests of the Company and constitute a material inducement to the Company to enter into the Purchase Agreement and consummate the transactions contemplated by the Purchase Agreement. In the event that any covenant contained in this Section 1 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any Court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 1 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

2. Termination. Anything herein or elsewhere to the contrary notwithstanding, this Agreement shall terminate with no surviving obligations effective immediately upon the earliest to occur of (i) any termination of the Purchase Agreement in accordance with its terms, or (ii) the completion of the Restricted Period pursuant to Section 1(a).

3. Assignment. Except as expressly provided herein, neither this Agreement nor any of the rights or obligations of the Parties may be assigned by a Party without the prior written consent of the other Parties; provided, however, that the Company may assign its rights and interests hereunder to any of its Affiliates without consent. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the Parties and their respective successors and permitted assigns. Any attempted assignment in violation of this Section 3 shall be void.

4. Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein expressed or implied shall give or be construed to give to any other Person any benefit or legal or equitable rights or create any right or cause of action for any other Persons.

5. Entire Agreement; Amendments. This Agreement, the Purchase Agreement, the Confidentiality Agreement and the Transaction Documents contain the complete and entire understanding of the Parties in respect to their subject matter. This Agreement supersedes all prior written or oral statements, representations, warranties, promises, assurances, agreements and understandings between the Parties relating to or in connection with the subject matter of this Agreement. This Agreement may not be amended, modified or superseded except in writing signed by each Party.

6. Miscellaneous.

(a) Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) upon transmission by e-mail with confirmation of receipt, (c) one (1) day after deposit with Federal Express or similar overnight courier service, or (d) three (3) days after being mailed by first class mail, return receipt requested. Notices, demands, and communications to the Parties shall, unless another address is specified in writing, be sent to the addresses indicated below:

If to Buyer: [●]

with a copy to (which notice shall not constitute notice):  
Milbank LLP  
55 Hudson Yards  
New York, New York 10001  
Attention: Scott Golenbock  
E-Mail: [sgolenbock@milbank.com](mailto:sgolenbock@milbank.com)

If to Member: [●]

With a copy to (which notice shall not constitute notice): [●]

(b) Severability. The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall be declared by any court of competent jurisdiction to be invalid, illegal, void or unenforceable in any respect, all other provisions of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it has been held invalid, illegal, void or unenforceable, shall nevertheless remain in full force and effect and will in no way be affected, impaired or invalidated thereby. Upon such determination that any provision, or the application of any such provision, is invalid, illegal, void or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible

(c) Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(i) All matters relating to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic Laws of the State of New York without giving effect to any choice or conflict of Law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than the State of New York.

(ii) ANY LEGAL SUIT, ACTION OR PROCEEDING (WHETHER AT LAW, IN EQUITY, IN CONTRACT, IN TORT OR OTHERWISE) ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY ONLY BE INSTITUTED IN THE FEDERAL OR STATE COURTS LOCATED IN THE BOROUGH OF MANHATTAN (AND ANY FEDERAL OR STATE APPELLATE COURT THEREFROM), AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(iii) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (ii) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.11(C).

(d) Specific Performance. Without intending to limit the remedies available to the Parties hereunder, the Parties agree that irreparable damage may occur if any provision of this Agreement are not performed in accordance with the terms hereof, for which damages, even if available, will not be an adequate remedy. Accordingly, the Parties shall be entitled to seek an injunction, specific performance and other equitable relief to prevent or restrain breaches or threatened breaches of this Agreement and to enforce specifically the terms hereof, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees not to oppose the granting of such injunctive relief on the basis that monetary damages are an adequate remedy

(e) Prevailing Party. If any Party seeks to enforce its rights under this Agreement by any judicial action, legal proceeding, case or the like against the other Party, the applicable adjudicating body shall award to the prevailing party or parties (as the case may be), if any, the costs and expenses (including attorneys' fees and costs of investigation and preparation) reasonably incurred by the prevailing party or parties (as the case may be) in connection with such judicial action, legal proceeding, case or the like, and, if the adjudicating body determines a party or parties to be the prevailing party or parties under circumstances where the prevailing party or parties won on some but not all of the claims and counterclaims, the adjudicating body may award the prevailing party or parties an appropriate percentage of the costs and expenses (including attorneys' fees and costs of investigation and preparation) reasonably incurred by the prevailing party or parties in connection with such judicial action, legal proceeding, case or the like.

(f) Counterparts. This Agreement and any amendments hereto may be executed and delivered in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an

original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any such other document, shall be disregarded in determining the party's intent or the effectiveness of such signature. No Party hereto shall raise the use of a facsimile machine or electronic transmission in pdf to deliver a signature or the fact that any signature or document was transmitted or communicated electronically as a defense to the formation of a contract, and each such Party forever waives any such defense.

*[Remainder of this Page Intentionally Left Blank; Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

MOLINA HEALTHCARE, INC.

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

[●]

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

**FQHC Restrictive Covenant  
EXHIBIT A**

**Charles B. Wang Community Center**

- Chinese-American Medical Society
- CAIPA
- SOMOS
- NYU Hospital
- NYP (Downtown and Flushing)
- Flushing Hospital

**Cornerstone**

- New York Community Health IPA (CHIPA)
- Health Home – Hudson Valley Care

**Institute for Family Health (“Institute”)**

- Community Health IPA (CHIPA)
- Family Health ACO
- Institute’s Health Home
- Community Care Management Partners (CCMP) – Health Home
- DSRIPs: Mount Sinai, St Barnabas, Westchester Medical Center
- VBP arrangements with health plans, primarily, if not entirely, level 1 arrangements.
- Non-material investments that are part of retirement investments or routine passive stock or bond investments in health plans.

**Morris Heights**

- Bronx Accountable Health Care Network Health Home
- Collaborative for Children and Families Health Home
- CMO, The Care Management Company
- Acquisition of the Andrade Medical Center

**Urban Health Plan**

- Community Health IPA (CHIPA)
- Community Care Management Partners (CCMP) – Health Home

**William F. Ryan Health:**

- Community Health IPA (CHIPA)
- Mount Sinai Health Partners IPA

- Coordinated Behavioral Care (CBC)
- Coordinated Collaborative (ACO)

**DISCLOSURE SCHEDULES  
TO  
ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**AFFINITY HEALTH PLAN, INC.**

**AND**

**MOLINA HEALTHCARE, INC.**

**Dated as of September 28, 2020**

This document constitutes the Disclosure Schedules (these “**Disclosure Schedules**”) to that certain Asset Purchase Agreement (the “**Agreement**”), made as of September 28, 2020 between Affinity Health Plan, Inc., a New York not-for-profit corporation (“**Affinity**”), and Molina Healthcare Inc., a Delaware corporation (“**Buyer**”). All capitalized terms used, but not defined, herein shall have the meaning ascribed to such term in the Agreement.

Section and sub-section numbers and letters used herein correspond to the section and sub-section numbers and letters in the Agreement, unless otherwise noted. The titles given to each part, paragraph, or section of these Disclosure Schedules are summaries of the material included in such part, paragraph or section of the Agreement. The titles are included for convenience only and are not intended to limit the scope of such part, paragraph or section of these Disclosure Schedules as set forth in the Agreement. Any information disclosed herein under any particular part, paragraph or section of these Disclosure Schedules shall qualify or modify (a) the correspondingly numbered section in the Agreement and (b) to the extent the relevance of such information to another section or subsection of the Agreement is reasonably apparent on the face of such disclosure, such other section or subsection.

No reference to or disclosure of any item or other matter in these Disclosure Schedules shall: (i) represent a determination that such item or other matter is material (or otherwise establish a standard of materiality) or that such item or matter is required to be referred to or disclosed in these Disclosure Schedules; and (ii) represent a determination that such item or other matter did not arise in the ordinary course of business. The information contained in these Disclosure Schedules is provided solely for purposes of making disclosures to Buyer under the Agreement. In disclosing such information, Affinity does not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed or discussed in these Disclosure Schedules.

## **Section 1.1(a)**

### **Permitted Encumbrances**

1. Affinity maintains a regulatorily mandated escrow deposit in the amount of \$83,123,808.81 (as of July 31, 2020) that is held in a trust account and cannot be accessed absent regulatory approval.

**Section 1.1(b)**

**Liabilities Due to NYSDOH**

As of July 31, 2020:

<b>Description</b>	<b>Medicaid Managed</b>	<b>Health and Recovery Plan</b>	<b>Essential Plan</b>	<b>Child Health Plus</b>	<b>Qualified Health Plan</b>	<b>Total</b>
Premiums Paid in Excess of Earned	\$15,873,756	\$2,181,420	\$12,777,874	\$117,832	-	\$30,950,881
Min MLR Rebates	-	\$21,239,384	\$48,872,309	-	-	\$70,111,693
Potential VBP Penalty	\$5,067,699	-	-	-	-	\$5,067,699
Stop Loss Recoveries in Excess of Earned	\$615,016	-	-	-	-	\$615,016
Encounter Penalty	\$376,000	-	-	-	-	\$376,000
Minimum Wage Reconciliation	\$6,699,584	-	-	-	-	\$6,699,584
Blood Clotting Factor Reconciliation	\$6,006,212	-	-	-	-	\$6,006,212
Family Planning Chargeback 2015-2/2020	\$3,489,993	-	-	-	-	\$3,489,993
HCRA Liability 2016-2020	\$12,973,322	\$99,508	\$852,943	\$417,738	\$40,800	\$14,384,311
OMIG Audit and Other Regulatory Audit Accruals	\$16,082,405	\$2,695,216	-	-	-	\$18,777,621

**Section 1.1(c)**

**Liabilities Due to CMS**

1. CMS RADV Accrual Liabilities, including but not limited to the \$2,028,261 QHP 2017 RADV Accrual.

**Section 1.1(d)**

**Special DOH Payables**

1. 2016 Medical Loss Ratio Premium Rebate Liability for Essential Plans: \$23,405,333

**Section 2.01(a)(i)**

**Closing Cash and Bank Accounts**

1. Chase Bank Accounts:

- (a) Checking Account # 006301481911509
- (b) Checking – Medicare Payment Account # 000000817546278
- (c) HIX Essentials Account # 000000219287023
- (d) Affinity Essential FP Account # 000000535837590
- (e) Operating Account # 000000590136372

**Section 2.01(a)(iv)****Pre-Paid Expenses**

As of July 31, 2020:

<b>Description</b>	<b>Amount</b>
CDW Direct, LLC – Premium Support Renewal	\$8,926
Netwrix – Support & Maintenance (Password Expiration Alert)	\$353
Alarm Specialists Inc. – License (40 MiniDome Cameras)	\$4,788
PC Connection, Inc. – Software Licensing	\$7,697
ABMS Solutions, LLC – CertiFACTS Renewal	\$5,513
Specops Software, Inc. – Support and Maintenance Specops Deploy	\$402
Change HealthCare Solutions LLC – Claims License Fees	\$25,460
CDW Direct LLC – Software Licensing	\$1,437
Velosio LLC – Dynamics SL Advantage Plus Plan	\$3,573
Progress Software Corporation – Yearly Standard Support	\$1,252
ConvergeOne, Inc. – CI Maintenance	\$252
ConvergeOne, Inc. – License Fee	\$1,227
PC Connection – Renewal	\$482
PacketLogix, Inc. – Renewal Support	\$8,317
Hudson Center for Health Equity and Quality – Annual License Fee/Support & Maintenance	\$53,616
SalesForce.Com, Inc.	\$19,061
Dell Marketing LP – System Service Tags	\$5,025
Brown & Brown of Garden City – Commercial Umbrella	\$2,651
Brown & Brown of Garden City – Excess Liability	\$2,079
Brown & Brown of Garden City – Cyber Liability	\$5,759
Brown & Brown of Garden City – Workers Compensation	\$21,172
Calero Software LLC – Maintenance	\$527
PC Connection, Inc. – Maintenance Renewal	\$2,900
IT Savvy, LLC – Subscription License	\$2,174
Brown & Brown of Garden City	\$6,952
Brown & Brown of Garden City	\$8,667
Salary.com – Subscription	\$833
Salary.com – Subscription Market Data	\$833
Cognizant/Trizetto Software Technology Solutions – FACETS Maintenance	\$230,709
OptumInsight – License Fee	\$184,567
Episerver Inc. – Maintenance & Support Renewal	\$4,617
Optum 360 LLC	\$8,086
ABBYY Software	\$3,395
BitSight Technologies Inc. – Continuous Security Ratings	\$10,000
Quest Analytics – Cloud Subscription	\$12,917

ShoreGroup Solutions – Software Support and Maintenance	\$16,685
BMC Software – Support Maintenance	\$14,320
Tech Arts – Subscription Renewal	\$12,000
Axiom Holdings LLC – Yearly Postings	\$8,323
Axiom Holdings LLC – Recruiter Contract-LinkedIn Posting	\$60,301
LogRhythm	\$6,198
ConvergeOne, Inc.	\$83,370
Synertech, Inc. – Tidal Maintenance	\$7,526
Dell Marketing LP – Production Support/Subscription Vmare	\$30,392
SAS Institute	\$30,802
HGS Colibrium Inc. – Maintenance	\$26,563
ESI Employee Assistance Group (EAP) – Wellness Coaching & EAP Services	\$10,470
Envision Telephony, Inc. – Enhanced Software Support	\$41,415
Digicert Inc. – ELA Site License Agreement	\$3,591
Everbridge Inc. – Maintenance Renewal	\$5,212
Callidus Software – Litmus Bundle	\$18,594
Manatt, Phelps & Phillips – Dues	\$50,384
Brown & Brown of Garden City – Primary D&O/EPLI	\$38,453
Brown & Brown of Garden City – Excess Liability	\$31,263
Brown & Brown of Garden City – Excess Liability (2 <sup>nd</sup> Excess)	\$22,330
Brown & Brown of Garden City – Errors and Omission Liability	\$64,458
Brown & Brown of Garden City – Crime Policy	\$9,999
Brown & Brown of Garden City – Fiduciary Liability	\$11,000
Health Plan Association – 2020 Membership Dues	\$17,701
SPH Analytics – 2020 CAHPS Survey	\$15,522
Association for Community Affiliated Plans – 2020 ACAP Dues	\$27,083
The Advisory Board Company – Chief Medical Officer Dues	\$11,667
Streamline Verify LLC – Subscription	\$27,792
Quest Software Inc. – Maintenance Renewal	\$9,261
Linkedin Corporation – Learning Pro	\$1,209
The Advisory Board Company – Health Plna Advisory Council-YEAR 3 Travel	\$47,606
Beyond Trust – Subscription Services	\$1,573
UpToDate	\$3,125
Glassdoor Inc.	\$3,827
Alarm Specialists Inc. - License Fee	\$8,525
Integ Systems Corporation – Maintenance	\$4,317
FIS Workflow Solutions, LLC – MaccessSupport Fees	\$7,321
Quest Software Inc. – Maintenance Fees	\$11,744
Quest Software Inc. – Support and Maintenance Fees	\$12,642
BisCom Inc. – Standard Support and Maintenance	\$9,041
Cisco Systems Capital Corporation – Maintenance	\$47,596

Politico, LLC – Politico Pro Plus	\$4,900
SalesForce.Com, Inc.	\$6,733
IDK Cooling Corp.	\$17,260
Avalution Consulting, LLC – Consulting	\$5,000
Cofense Inc – License Renewal	\$4,667
Spectrum Corporation – Annual Maintenance Renewal	\$2,875
Altec Products Inc. – Doc-Link Software Annual Maintenance	\$7,135
Fresche Solutions USA Corporation – Agent License Support	\$5,620
ConvergeOne, Inc. – Maintenance	\$24,195
Alarm Specialists Inc. – License	\$1,125
Mytonomy, Inc. – Cloud Software License Fee	\$127,500
PC Connection – License Renewal	\$5,629
Tableau Software Inc. – License Renewal	\$16,400
MCG Health, LLC – License (Covered Lives)	\$314,279
Altec Products Inc. – Doclink Software Annual Maintenance	\$3,010
Power DMS	\$6,967
SAS Institute	\$47,053
RJ Health Systems International, LLC – License Fee	\$11,550
Velosio LLC – Solver B1360 Maintenance Plan	\$14,203
Dell Marketing LP – VLA Symantec Endpoint Security	\$7,572
Alarm Specialists Inc. – Maintenance Support and Semi-Annual inspection	\$2,748
Carr Business System – Kodak V-Care Maintenance	\$52,846
PC Connection – License	\$43,657
PC Connection – License	\$4,138
Optum 360 LLC	\$38,366
Casenet, LLC – License Fee (Year 2)	\$508,333
Dell Marketing LP – License Fee	\$186,034
Dell Marketing LP – License Fee	\$192,535
Change HealthCare Solutions LLC – Claims License Fees	\$314,680
IPD Analytics, LLC – Subscription (Pharmacy)	\$37,583
Gartner Inc.	\$94,783
Tableau Software Inc. – Multi-Year Add-On license	\$8,840
NFP Corporate Services (PA), Inc. – Broker Consulting Fee-RD QTR 2020	\$25,000
Hutch 40, LLC – Additional Security Deposit 1260 Waters Place	\$5,979
Renahar Realty, LLC – Three Months Refundable Deposit	\$19,500
1250 Waters Place – Deposit, New Expansion 2nd Floor (Finance Suite)	\$37,134
2230 Church Avenue Realty, LLC – Additional Security Deposit/Safety Deposit Box	\$501
Mikaela Mgmt Inc. – Waterbury Parking Lot, Bronx Parking Lot	\$1,500
Metro Center – Warehouse	\$4,021
120-08 Liberty Avenue. NY 11419	\$7,500

2230C Church Avenue, Brooklyn, NY	\$15,841
41-44/46 Main Street	\$38,022
149 Broadway, Newburgh, NY	\$6,000
204 North Street, Middletown, NY	\$2,200
2829-2833 3rd Avenue-Bronx-NY	\$46,000
5221 8th Avenue, Brooklyn, NY	\$22,279
10 Palisades Avenue, Yonkers, NY	\$12,000
753 Commack Rd, Brentwood, NY	\$1,200
168-22 Jamaica Avenue, NY	\$18,750
210 Broadway, Amityville, NY	\$3,200
122 North Central Avenue, Valley Stream, NY	\$1,000
41-44/46 (1D) Main Street	\$25,500
37-06 74th Street, Jackson Heights, NY	\$43,500
21-03 Mott Avenue, Far Rockaway	\$10,500
43A 4th Avenue, Mt. Vernon, New York	\$10,500
1307 St. Nicholas Avenue, NY	\$13,500
18 Clinton Street, Hempstead, NY	\$17,200
757B Suffolk Avenue, Brentwood, NY	\$20,000
1684 Pitkin Avenue, NY	\$9,500
88E Broadway, Unit 142 NY	\$24,974
857 Flatbush, Brooklyn, NY	\$22,500
1250 Water's Place-Tower 1	\$16,667
102-19 Roosevelt Avenue	\$1,000
Pitney Bowes – Deposit for Postage	\$50,000
Long Island Power Authority(Hempstead)	\$1,760
Long Island Power Authority (Brentwood)	\$725
NFSCapLease – Security Deposit	\$21,354
US Postage Service Church St Station PO Box 6499	\$25,000
US Postage Service Affinity Essential Plan Pymt PO Box 28535	\$5,000
Con Edison - Acct # 302039103300011	\$25,119
Metro Center - Security Deposit LOC acct# 100077423851	\$543,739
Beacon Prepaid	\$100,000

**Section 2.01(a)(xii)**

**Books and Records**

1. Corporate minute books of Affinity, including its organizational documents and board and member resolutions and/or minutes.
2. Records to the extent related to Affinity's enrollees who will not be transitioning to Buyer.
3. Records to the extent related to Affinity's employees who will not be transferring to Buyer.

## Section 2.02(e)

### Excluded Contracts

1. Prescription Benefit Services Agreement, dated as of October 1, 2019, by and between Affinity and CaremarkPCS, L.L.C., as amended
2. Pharmacy Network Services Agreement, dated as of August 1, 2019, by and between Affinity and Caremark IPA, L.L.C., as amended
3. Engagement Letter by and between Affinity and Cain Brothers, a division of KeyBanc Capital Markets
4. Management Services Agreement, dated as of June 12, 2020, by and between Affinity and ProgenyHealth LLC
5. Master Services Agreement, dated as of May 15, 2014, by and between RxEOB.COM, LLC and Affinity
6. Subscription Agreement, dated as of November 5, 2018, by and between IPD Analytics, LLC and Affinity, as amended by that Subscription Renewal Agreement, dated as of April 2, 2020
7. Letter of Agreement, dated as of December 3, 2018, by and between The Advisory Board Company and Affinity
8. Medical Benefit Management Services Agreement, dated as of September 28, 2016, by and between MedSolutions, Inc. (d/b/a eviCore healthcare) and Affinity, as amended
9. Agreement for Ancillary Services, Multi-Specialty, Primary Care, and Specialty Care Services, dated as of July 1, 2020, by and between Teladoc Physicians, PC and Affinity
10. Teladoc Service Agreement, dated as of July 1, 2020, by and between Teladoc Health, Inc. and Affinity, as amended
11. Independent Contractor Agreement, dated as of October 16, 2017, by and between Daraja Enterprises, Inc. and Affinity<sup>1</sup>
12. Agreement, dated as of August 28, 2013, by and between Into the Sun Advertising and Affinity, as amended<sup>2</sup>
13. Management Services Agreement, effective as of August 1, 2018, by and between Affinity and Rachel Amalfitano

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<sup>1</sup> The term of this Contract has expired and there is no written extension in place. However, the parties continue to operate under the terms and conditions of the expired Contract.

<sup>2</sup> The term of this Contract has expired and there is no written extension in place. However, the parties continue to operate under the terms and conditions of the expired Contract.

**Section 2.02(g)**

**Retained Cash and Investments**

1. Wilmington Trust Account # 3001388, including accrued interest receivable
2. City National Bank Account # 48170220, including accrued interest receivable
3. City National Bank Account # 48170210, including accrued interest receivable
4. City National Bank Account # 665292134, including accrued interest receivable

## **Section 2.02(h)**

### **Excluded Rights and Claims**

1. Affinity's pharmacy rebate receivables from CaremarkPCS, L.L.C. as of the Measurement Time, calculated in accordance with the Applicable Accounting Principles.
2. Affinity's rights, title and interests in and to the portion of the Montefiore Claim that is a non-admitted asset under SAP as of the Measurement Time, calculated in accordance with the Applicable Accounting Principles.

## **Section 4.01**

### **Organization and Qualification**

The following entities were formed by Affinity but such entities never issued any equity interests and are currently dormant:

1. AHP Enterprises, Inc.
2. Affinity Health Services Holdings, Inc.

## **Section 4.02**

### **Members of Affinity**

1. Cornerstone Family Healthcare
2. The Institute for Family Health
3. Morris Heights Health Center, Inc.
4. Charles B. Wang Community Health Center, Inc.
5. William F. Ryan Community Health Center, Inc.
6. Urban Health Plan, Inc.

## Section 4.03

### No Conflicts; Consents

(c) Material Contracts Consents\*

Hospital Contracts:

1. Agreement for Hospital Services, dated as of April 1, 2005, by and between Affinity and The Parkway Hospital, Inc.
2. Agreement for Hospital Services, dated as of January 1, 2020, by and between Affinity and Westchester County Health Care Corporation, as Operator of Westchester Medical Center
3. Hospital Services Agreement, dated as of October 5, 1995, by and between Affinity (as successor in interest to Genesis Healthplan, Inc.) and Yonkers General Hospital
4. Agreement for Hospital Services, dated as of September 9, 2019, by and between Affinity and Blythedale Children's Hospital
5. Agreement for Hospital Services, dated as of October 1, 2012, by and between Affinity and Bon Secours Charity Health System, Inc., as amended\*
6. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of October 1, 1998, by and between Affinity (as successor in interest to The Bronx Health Plan, Inc.) and Bronx-Lebanon Hospital Center
7. Agreement for Hospital Services, dated as of March 15, 2019, by and between Affinity and BronxCare Health System
8. Agreement for Hospital Services, dated as of October 1, 2013, by and between Affinity and The Brookdale Hospital Medical Center
9. Agreement for Hospital Services, dated as of October 1, 2019, by and between Affinity and One Brooklyn Health System, Inc. (on behalf of The Brookdale Hospital Medical Center and Interfaith Medical Center, and Kingsbrook Jewish Medical Center)
10. Agreement for Hospital Services, dated as of March 15, 2014, by and between Affinity and Burke Rehabilitation Hospital\*
11. Agreement for Hospital Services, dated as of June 11, 2008, by and between Affinity and Beth Israel Medical Center and Beth Israel Medical Center – Kings Highway Division
12. Agreement for Hospital Services, dated as of July 7, 2008, by and between Affinity and Long Island College Hospital
13. Agreement for Hospital Services, dated as of July 7, 2008, by and between Affinity and New York Eye and Ear Infirmary

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\* Indicates that the applicable Contract only requires that Affinity give notice of assignment to the applicable counterparty, rather than obtain consent to such assignment.

14. Agreement for Hospital Services, dated as of June 11, 2008, by and between Affinity and St. Lukes Roosevelt Hospital
15. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and Good Samaritan Hospital Medical Center
16. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and Good Samaritan Nursing Home
17. Agreement for Hospital Services, dated as of April 1, 2010, by and between Affinity and Orange Regional Medical Center, as amended
18. Agreement for Hospital Services, dated as of January 1, 2019, by and between Affinity and Helen Hayes Hospital
19. Agreement for Hospital Services, dated as of July 15, 2019, by and between Affinity and Hospital For Special Surgery
20. Agreement for Hospital Services, dated as of July 1, 2018, by and between Affinity and Interfaith Medical Center
21. Agreement for Hospital Services, dated as of January 1, 2018, by and between Affinity and John T. Mather Memorial Hospital
22. Agreement for Hospital Services, dated as of August 1, 2013, by and between Affinity and Kingsbrook Jewish Medical Center\*
23. Agreement for Hospital Services, dated as of April 1, 2006, by and between Affinity and Lenox Hill Hospital
24. Hospital Service Agreement, dated as of August 2, 1996, by and between Affinity (as successor in interest to Genesis Healthplan, Inc.) and Long Beach Medical Center, as amended
25. Agreement for Hospital Services, dated as of April 1, 2008, by and between Affinity and Lutheran Medical Center
26. Agreement for Hospital Services, dated as of April 1, 2006, by and between Affinity and Manhattan Eye, Ear and Throat Hospital
27. Agreement for Hospital Services, dated as of September 1, 2015, by and between Affinity and Flushing Hospital Medical Center, as amended
28. Agreement for Hospital Services, dated as of September 1, 2015, by and between Affinity and Jamaica Hospital Medical Center, as amended
29. Agreement for Hospital Services, dated as of July 16, 2002, by and between Affinity and Montefiore Medical Center, as amended
30. Agreement for Hospital Services, dated as of November 1, 2019, by and between Affinity and Mount Sinai Hospitals Group, Inc.
31. Agreement for Hospital Services, dated as of January 1, 2008, by and between Affinity and New York Downtown Hospital
32. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated November 1, 1998, by and between Affinity (as successor in interest to The Bronx

- Health Plan, Inc.) and North Bronx Healthcare Network, on behalf of New York City Health and Hospitals Corporation
33. Agreement for Hospital & Physician Services, dated as of April 1, 2020, by and between Affinity and New York City Health & Hospitals Corporation
  34. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated March 31, 2006, by and between Affinity and North General Diagnostic & Treatment Center
  35. Agreement for Hospital Services, dated as of October 1, 2019, by and between Affinity and Northwell Health, Inc.
  36. Agreement for Physician/Hospital Services, dated as of May 1, 2019, by and between Affinity and Nassau Health Care Corporation (on behalf of Nassau University Medical Center and NUMC Faculty Practice Plan)
  37. Agreement for Hospital Services, dated as of October 1, 2009, by and between Affinity and NYU Hospitals Center
  38. Agreement for Hospital Services, dated as of December 1, 2018, by and between Affinity and Richmond University Medical Center
  39. Agreement for Hospital Services, dated as of October 1, 2019, by and between Affinity and St. Barnabas Hospital
  40. Agreement for Hospital Services, dated as of September 1, 2019, by and between Affinity and Episcopal Health Services, Inc., (d/b/a St. John's Episcopal Hospital)
  41. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and St. John's Riverside Hospital
  42. Agreement for Hospital Services, dated as of July 1, 2019, by and between Affinity and St. Joseph's Medical Center
  43. Hospital Service Agreement, dated as of October 11, 1994, by and between Affinity (as successor in interest to Genesis Healthplan, Inc.) and St. Joseph's Hospital, Yonkers
  44. Agreement for Hospital Services, dated as of January 1, 2004, by and between Affinity and St. Luke's Cornwall Hospitals
  45. Hospital Services Agreement, dated as of August 7, 1998, by and between Affinity (as successor in interest to Genesis Healthplan, Inc.) and Phelps Memorial Hospital
  46. Agreement for Hospital Services, dated as of June 1, 2010, by and between Affinity and Summit Park Hospital
  47. Agreement for Hospital Services, dated as of October 1, 2019, by and between Affinity and State University of New York (d/b/a SUNY Downstate Medical Center, University Hospital of Brooklyn, also referred to as SUNY Health Science Center of Brooklyn)
  48. Agreement for Specialty Care, dated as of February 18, 2004, by and between Affinity and Our Lady of Mercy Medical Center

49. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of June 1, 2007, by and between Affinity and Peninsula Hospital Center
50. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of May 19, 2005, by and between Affinity and Southampton Hospital
51. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of June 1, 2011, by and between Affinity and White Plains Hospital Center
52. Agreement for Hospital Services, dated as of October 1, 2019, by and between Affinity and The Brooklyn Hospital Center
53. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of March 1, 2008, by and between Affinity and Faculty Practice Group of Winthrop University Hospital
54. Agreement for Hospital Services, dated as of October 1, 2019 by and between Affinity and Wyckoff Heights Medical Center
55. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and Mercy Medical Center
56. Agreement for Hospital Services, dated April 1, 2005, by and between Affinity and Stony Brook University Hospital (as successor in interest to Southampton Hospital Association), as amended
57. Hospital Services Agreement, dated as of August 12, 1996, by and between Affinity (as successor in interest to Genesis Healthplan, Inc.) and Maimonides Medical Center
58. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and Our Lady of Consolation Geriatric Care Center
59. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and St. Catherine of Siena Medical Center
60. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and St. Catherine of Siena Nursing and Rehabilitation Care Center
61. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and St. Charles Hospital and Rehabilitation Care Center
62. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and St. Francis Hospital
63. Agreement for Hospital Services, dated as of May 1, 2019, by and between Affinity and St. Joseph Hospital
64. Agreement for Hospital Services, dated as of August 1, 2020, by and between Affinity and Brookhaven Memorial Medical Center (d/b/a Long Island Community Hospital)

Medical Group Contracts:

65. Agreement for Multi-Specialty Services, dated as of June 1, 2014, by and between Affinity and University Physicians of Brooklyn, Inc.

66. Agreement for Multi-Specialty Services, dated as of June 1, 2014, by and between Affinity and Allied Pediatrics of New York, PLLC
67. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of March 17, 2003, by and between Affinity and Children's Physicians of Westchester, LLP, as amended
68. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of May 23, 2005, by and between Affinity and Brentwood Pediatric and Adolescent Associates, P.C.
69. Agreement for Primary Care Services, dated as of March 25, 2005, by and between Affinity and Community Medical Care PC
70. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of January 1, 2011, by and between Affinity and Family Medical Care of Bay Shore, PC
71. Agreement for Primary Care, dated as of October 20, 2004, by and between Affinity and Francisco A. Martinez Pediatrics, PC, as amended
72. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of October 1, 2015, by and between Affinity and Horizon Family Medical Group, P.C.
73. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of December 1, 2008, by and between Affinity and Middletown Medical P.C., as amended
74. Agreement for Primary Care, dated as of March 1, 2010, by and between Affinity and Irwin Reichman, M.D., Robert Brown, M.D. & A. Michael Kaplan, M.D., P.C.
75. Agreement for Primary Care, dated as of May 5, 2004, by and between Affinity and Suffolk Pediatrics PC
76. Agreement for Multi-Specialty Services, dated as of January 1, 2014, by and between Affinity and The Mount Sinai School of Medicine
77. Agreement for Multi-Specialty Services, dated as of January 15, 2017, by and between Affinity and SBH Physicians, P.C.
78. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of February 12, 2010, by and between Affinity and Amboy Medical Practice, P.C.
79. Agreement for Pathology Services, dated as of May 1, 2015, by and between Affinity and HSS Pathology\*
80. Agreement for Pathology Services, dated as of May 1, 2015, by and between Affinity and HSS Radiologists\*
81. Agreement for Multi-Specialty Services, dated as of February 1, 2015, by and among Affinity, Lutheran Physician Services, PC, Lutheran Medical Center/Lutheran Family Health Center, and Shore Radiology Associates, PC
82. Agreement for Specialty Care, dated as of October 15, 2005, by and between Affinity and North American Partners In Anesthesia, LLP

83. Agreement for Primary Care, dated as of August 11, 2008, by and between Affinity and Alaaeldin Pediatrics, P.C.
84. Agreement for Primary Care, dated as of March 5, 2008, by and between Affinity and Jatin Kapadia, M.D.
85. Agreement for Primary Care, dated as of July 5, 2006, by and between Affinity and East End Pediatrics, P.C., as amended
86. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of August 1, 2008, by and between Affinity and Interfaith Medical Center
87. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of July 8, 2004, by and between Affinity and Mercy Medical Center
88. Agreement for Urgent Care Services, dated as of May 1, 2015, by and between Affinity and City Medical of Upper East Side, LLC
89. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of April 28, 1995, by and between Affinity (as successor in interest to The Bronx Health Plan, Inc.) and Montefiore Medical Center, as amended
90. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of November 30, 2000, by Affinity (as successor in interest to Genesis Healthplan, Inc.) and between Joseph P. Addabbo Family Health Center
91. Agreement for Urgent Care Services, dated as of January 1, 2016, by and between Affinity and Westchester Medical Group, P.C. (d/b/a WestMed Medical Group)\*
92. Agreement for Ambulatory Surgery Services, dated as of January 1, 2017, by and between Affinity and Westchester Medical Group, P.C. (d/b/a WestMed Medical Group)\*
93. Agreement for Specialty Care, dated as of September 1, 2008, by and between Affinity and ENT and Allergy Associates, LLP, as amended
94. Agreement for Medical Services, dated as of June 1, 2007, by and between Affinity and Trustees of Columbia University in the City of New York, on behalf of its College of Physicians and Surgeons and Faculty Practice Organization, as amended
95. Agreement for Anesthesia and Pain Management Services, dated as of June 1, 2015, by and between Affinity and East River Medical Associates, P.C.

FQHC Contracts:

96. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of July 3, 2002, by and between Affinity and The Bedford Stuyvesant Health Center, Inc., as amended
97. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of April 14, 2008, by and between Affinity and Brooklyn Plaza Medical Center
98. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of August 12, 2004, by and between Affinity and Brownsville Community Development Corp. on behalf of Brownsville Multi-Service Family Health Center, as amended

99. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated April 12, 2012, by and between Affinity and Care for the Homeless, as amended
100. Agreements for Primary Care, On-Site Specialty and Ancillary Services, dated as of February 22, 2001, by and between Affinity and Community Healthcare Network, as amended<sup>3</sup>
101. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated March 5, 2012, by and between Affinity and Covenant House
102. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of July 27, 2005, by and between Affinity and Damian Family Care Center
103. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of March 28, 2007, by and between Affinity and Ezras Chiolim Health Center, Inc.<sup>4</sup>
104. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of January 3, 2005, by and between Affinity and Heritage Healthcare
105. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of April 20, 2009, by and between Affinity and Hudson River Healthcare, as amended
106. Primary Care, On-Site Specialty and Ancillary Agreement, dated as of December 4, 1994 and July 1, 2016, by and between Affinity and Institute for Family Health, as amended
107. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of June 1, 2010, by and between Affinity and Middletown Community Health Center, Inc.
108. Agreement for Urgent Care Services, dated as of March 12, 2003, by and between Affinity and Morris Heights Health Center
109. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of October 1, 2015, by and between Affinity and Morris Heights Health Center, as amended
110. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of June 7, 2005, by and between Affinity and Ryan/Chelsea-Clinton Community Health Center, as amended<sup>5</sup>

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<sup>3</sup> Affinity is a party to an amendment, dated as of October 1, 2016, with Community Health Network, which purports to modify and incorporate an agreement, dated as of May 6, 2008. However, Affinity has not been able to locate a copy of the Contract from 2008 and, therefore, is not able to ascertain whether consent or notice is required thereunder. As part of obtaining the consent of the 2001 contract, Affinity will use commercially reasonable efforts to obtain consent to assign the 2008 contract, as amended by the 2016 amendment.

<sup>4</sup> Affinity has a copy of this Contract executed by the Provider, but it has not been able to locate a fully executed copy.

<sup>5</sup> Affinity is a party to an amendment, dated as of July 1, 2016, with Ryan/Chelsea-Clinton Community Health Center, which purports to modify and incorporate an agreement, dated as of December 4, 1994. However, Affinity has not been able to locate a copy of the Contract from 1994 and, therefore, is not able to ascertain whether consent or notice is required thereunder. As part of obtaining the consent of the 2003 contract, Affinity will use commercially reasonable efforts to obtain consent to assign the 1994 contract, as amended by the 2016 amendment.

111. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of September 1, 2009, by and between Affinity and The Floating Hospital, Inc., as amended
112. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of April 19, 1996, by and between Affinity and Urban Health Plan, Inc.<sup>6</sup>
113. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of July 1, 2005, by and between Affinity and William F. Ryan Community Health Center, as amended.<sup>7</sup>

IPA Contracts:

114. Agreement for On-Site Specialty Services, dated as of May 1, 2010, by and between Affinity and Medisys IPA, LLC
115. IPA Agreement, dated as of April 27, 2017, by and between Affinity and Reliacare Alliance, IPA, LLC
116. Independent Practice Association Agreement, dated as of January 1, 2017, by and between Affinity and Somos Your Health IPA, Inc., as amended
117. Independent Practice Association Agreement, dated as of March 1, 2016, by and between Affinity and Bronx United IPA, Inc., as amended
118. IPA Agreement, dated as of July 1, 2011, by and between Affinity and Chinese American Independent Practice Association, Inc.\*
119. IPA Agreement, dated as of July 1, 2013, by and between Affinity and Corinthian Medical IPA, Inc.
120. IPA Agreement, dated as of June 9, 2014, by and between Affinity and Empire Physicians IPA, LLC
121. Agreement for Medical Services, dated as of August 22, 2008, by and between Affinity and Korean American Physicians IPA, Inc.
122. Independent Practice Association Agreement, dated as of January 1, 2015, by and between Affinity and BHS IPA, LLC, as amended
123. Dental Services IPA Agreement, dated as of June 17, 2020, by and between Affinity and DentaQuest IPA of New York, LLC

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<sup>6</sup> Affinity is a party to an amendment, dated as of April 1, 2016, with Urban Health Plan, Inc., which purports to modify and incorporate an agreement, dated as of June 1, 2008. However, Affinity has not been able to locate a copy of the Contract from 2008 and, therefore, is not able to ascertain whether consent or notice is required thereunder. As part of obtaining the consent of the 1996 contract, Affinity will use commercially reasonable efforts to obtain consent to assign the 2008 contract, as amended by the 2016 amendment.

<sup>7</sup> Affinity is a party to an amendment, dated as of July 1, 2016, with William F. Ryan Community Health Center, which purports to modify and incorporate an agreement, dated as of December 4, 1994. However, Affinity has not been able to locate a copy of the Contract from 1994 and, therefore, is not able to ascertain whether consent or notice is required thereunder. As part of obtaining the consent of the 2005 contract, Affinity will use commercially reasonable efforts to obtain consent to assign the 1994 contract, as amended by the 2016 amendment.

124. Amended and Restated Covered Services IPA Agreement, dated as of January 1, 2015, by and between Affinity and Landmark Healthcare IPA New York, Inc., as amended
125. Agreement, dated as of January 1, 2017, by and between Affinity and UVC Independent Practice Association, Inc.
126. Value-Based Payment Program Agreement, dated as of January 1, 2017, by and between Affinity and Community Health IPA, Inc.
127. Value-Based Payment Program Agreement, dated as of January 1, 2019, by and between Affinity and Community Health IPA, LLC

Ancillary Provider Contracts:

128. Agreement for Primary Care, On-Site Specialty and Ancillary Services, dated as of October 19, 2011, by and between Affinity and Daytop Village Inc.
129. Agreement for Certified Home Health Agency Services, dated as of June 1, 2014, by and between Affinity and Good Samaritan Hospital Home Care CHHA\*
130. Agreement for Skilled Nursing Services, dated as of December 1, 2009, by and between Affinity and Palm Tree Center for Nursing and Rehabilitation
131. Agreement for Skilled Nursing Services, dated as of March 11, 2015, by and between Affinity and Jewish Home Lifecare, Manhattan
132. Agreement for Home Infusion Services, dated as of September 1, 2011, by and among Affinity, Coram Healthcare Corporation of Greater New York (for itself and as successor in interest to Coram Healthcare Corporation of New York), CoramRx, LLC and Coram Alternative Site Services, Inc., as amended
133. Agreement for Ancillary Services, Multi-Specialty, Primary Care and Specialty Care Services, dated as of January 1, 2018, by and between Affinity and Laboratory Corporation of America Holdings
134. Agreement for Personal Care Services, dated as of August 1, 2011, by and between Affinity and FECS Home Attendant Services, Inc.\*

Management Services Contracts:

135. Amended Managed Behavioral Health Management Services Agreement, dated as of January 1, 2019, by and between Affinity and Beacon Health Strategies, LLC, as amended by that First Amendment, dated as of July 1, 2019, that Second Amendment, dated as of January 1, 2020, and that Third Amendment, effective as of July 1, 2019.
136. Dental Services Management Services Agreement, dated as of June 17, 2020, by and between Affinity and DentaQuest of New York, LLC
137. Vision Services Management Agreement, dated as of January 1, 2017, by and among Affinity, Superior Vision Benefit Management, Inc. and UVC Independent Practice Association, Inc.

Lease Agreements:

138. Lease, dated as of July 3, 2014, by and between 1776 Eastchester Operating LLC and Affinity, as amended by that Modification of Lease, dated as of January 5, 2015, that Expansion Rent Commencement Date Agreement, dated as of January 5, 2015, and that Second Modification of Lease, dated as of September 15, 2015, for the property located at 1776 Eastchester Road, Bronx New York 10461.
139. Lease, dated as of 2016, by and between Hutch Tower One LLC and Affinity, for the property located at 1250 Waters Place, Unit 1, Bronx, New York 10461.
140. Lease, dated as of February 12, 2015, by and among Fordham Retail Associates, LLC, DG Fordham, LLC and Affinity, for the property located at 305 East Fordham Road, Bronx, New York 10458.
141. Store Lease, dated as of December 2014, by and between Queensrich Plaza Corp. and Affinity, for the property located at 41-46 Main Street, Units 1-D, 2-C & 2-D, Flushing, New York 11355.
142. Agreement of Lease, dated as of November 8, 2007, by and between Chee Kwong Poon and Affinity, as amended by that Lease Extension and Modification, dated as of August 10, 2012, that Lease Extension, dated as of August 25, 2014, and that Lease Extension and Modification, dated as of March 8, 2019, for the property located at 5221 8<sup>th</sup> Avenue, Brooklyn, New York 11220.
143. Lease, dated as of December 17, 2019, by and between Palisade Avenue Realty Corporation and Affinity, for the property located at 10 Palisade Avenue, Yonkers, New York 10701.
144. Lease, dated as of September 1, 2015, by and between Kenisha LLC and Affinity, for the property located at 37-06 74<sup>th</sup> Street, Jackson Heights, New York 11372.
145. Store Lease, dated as of September 30, 2010, by and between 601-609 West 175 St. Corp. and Affinity, as amended by that Amendment to Lease, dated as of November 6, 2015, for the property located at 601-609 West 175<sup>th</sup> Street, Stores 4 & 5, New York, New York 10033.\*
146. Store Lease, dated as of September 4, 2014, by and between 857 Flatbush Ave, LLC and Affinity, for the property located at 857 Flatbush Avenue, Brooklyn, New York 11226.

Miscellaneous Material Contracts:

147. Asset Purchase Agreement, dated as of October 27, 2018, by and between Health Insurance Plan of Greater New York and Affinity, as amended by that First Amendment, dated as of December 13, 2018.
148. Master Agreement, dated as of January 23, 2006, by and between Cognizant Technology Solutions U.S. Corporation (as successor in interest to The TriZetto Group, Inc.) and Affinity\*
149. Master License and Services Agreement, dated as of April 13, 2018, by and between Casenet, LLC and Affinity\*

150. Master Services Agreement, dated as of March 1, 2016, by and between Change Healthcare Resources, LLC (f/k/a Altegra Health Operating Company, LLC) and Affinity, as amended\*
151. SSI Management Services Agreement, dated as of January 12, 2016, by and between Change Healthcare Solutions, LLC and Affinity
152. Amended and Restated Advertising Agreement, dated as of March 3, 2017, by and between Queens Ballpark Company, L.L.C. and Affinity
153. Master Services Agreement, dated as of May 15, 2019, by and between Mytonomy, Inc. and Affinity
154. Business Associate Agreement, dated as of July 9, 2020, by and between TalentHub WorldWide, Inc. and Affinity
155. Business Associate Agreement, dated as of January 3, 2019, by and between First Choice Staffing NY, Inc. and Affinity
156. Master License Agreement, dated as of December 5, 2005, by and between MCG Health, LLC (formerly Milliman Care Guidelines LLC) and Affinity, as amended
157. Client Agreement, dated as of January 1, 2019, by and between Express Scripts, Inc. and Affinity
158. Master Services Agreement, dated as of July 24, 2015, by and between DC Solutions, LLC and Affinity\*
159. Information Systems Master Services Agreement, dated as of August 5, 2014, by and between Colibrium Partners, LLC and Affinity
160. Master Services and License Agreement, dated as of November 30, 2005, by and between OptumInsight, Inc. (f/k/a Ingenix, Inc.) and Affinity
161. Facilities Management and Support Services Agreement, dated as of October 5, 2015, by and between The Millennium Group of Delaware, Inc. and Affinity, as amended
162. Contract #3321172, dated as of October 30, 2019, by and between The Lamar Companies and Affinity
163. Contract #3341553, dated as of December 6, 2019, by and between The Lamar Companies and Affinity
164. Contract #3346413, dated as of December 17, 2019, by and between The Lamar Companies and Affinity
165. Business Associate Agreement, dated as of July 5, 2020, by and between Green Key Solutions, LLC and Affinity
166. Master Services Agreement, dated as of May 6, 2013, by and between Transaction Applications Group, Inc. and Affinity, as amended
167. Software License Agreement, dated as of September 20, 2017, by and between Quest Analytics, L.L.C. and Affinity

168. Investment Manager Agreement, dated as of September 15, 2017, by and between Sage Advisory Services, Ltd. Co. and Affinity
169. Investment Manager Agreement, dated as of October 2, 2017, by and between Sage Advisory Services, Ltd. Co. and Affinity
170. Institutional Consulting Services Agreement, dated as of September 20, 2016, by and between Raymond James & Associates, Inc. and Affinity
171. Interpreting Services Agreement, dated as of June 23, 2016, by and between Pacific Interpreters, Inc. and Affinity
172. Electricity Sales Agreement, dated as of November 22, 2016, by and between Aggressive Energy, LLC and Affinity\*
173. Lease Agreement, dated as of December 28, 2016, by and between Pitney Bowes and Affinity
174. Client Services Master Agreement, dated as of July 23, 2013, by and between Red-Card Systems, LLC and Affinity\*
175. Maintenance Agreement, dated as of January 14, 2019, by and between Carr Business Systems and Affinity
176. Credit Agreement, dated as of September 27, 2017, by and between Affinity and City National Bank with an original principal amount of \$50,000,000, as amended by that Renewal Letter: Short Term Clear Extension of Termination Date, dated as of October 24, 2018
177. Security Agreement, dated as of September 27, 2017, by and between Affinity and City National Bank
178. Participation Agreement, dated as of June 30, 2019, by and between Bronx RHIO, Inc. and Affinity

(e) Governmental Authority Consents

1. New York State Department of Health (“NYSDOH”) Approval, in consultation with the New York State Office of Mental Health (“OMH”), the New York State Office of Addiction Services and Supports (“OASAS”) and the New York State Department of Financial Services (“NYDFS”)
2. Charities Bureau of the New York State Office of the Attorney General and/or New York State Supreme Court Approval
3. To the extent the Payor Contracts are assigned from Affinity to Buyer, New York Office of State Comptroller (“NYOSC”) has not objected to such assignment following notification thereof.
4. To the extent the Payor Contracts are assigned from Affinity to Buyer, Centers for Medicare and Medicaid Services (“CMS”) has not objected to such assignment following notification thereof.
5. HSR Act Filing



## Section 4.04

### Financial Statements

(b)

1. By letter dated December 18, 2019, Affinity received notice that NYSDOH would be conducting an audit to validate surcharge and assessment payments made pursuant to the State's Health Care Reform Act.

(e)

1. Credit Agreement, dated as of September 27, 2017, by and between Affinity and City National Bank with an original principal amount of \$50,000,000, as amended by that Renewal Letter: Short Term Clear Extension of Termination Date, dated as of October 24, 2018.
2. Security Agreement, dated as of September 27, 2017, by and between Affinity and City National Bank.
3. Forbearance Agreement, dated as of December 10, 2018, by and between Affinity and City National Bank, as amended by that Amendment No. 1, dated as of March 19, 2019, that Amendment No. 2, dated as of June 28, 2019, that Amendment No. 3, dated as of September 25, 2019, that Amendment No. 4, dated as of November 8, 2019, that Amendment No. 5, dated as of December 31, 2019, that Amendment No. 6, dated as of February 25, 2020, that Amendment No. 7, dated as of April 29, 2020, that Amendment No. 8, dated as of July 2, 2020, and that Amendment No. 9, dated as of September 3, 2020.
4. Master Equipment Lease No. 2017-330, dated as of November 30, 2017, by and between NFS Leasing, Inc. and Affinity

## **Section 4.05**

### **Absence of Certain Changes, Events and Conditions**

1. Affinity entered into that certain Dental Services IPA Agreement, dated as of June 17, 2020, with DentaQuest IPA of New York, LLC.
2. Affinity entered into that certain Dental Services Management Services Agreement, dated as of June 17, 2020, with DentaQuest of New York, LLC
3. Affinity entered into that certain Management Services Agreement, dated as of June 12, 2020, with ProgenyHealth LLC.
4. Affinity entered into that certain Agreement for Ancillary Services, Multi-Specialty, Primary Care, and Specialty Care Services, dated as of July 1, 2020, with Teladoc Physicians, PC.
5. Affinity entered into that certain Teladoc Service Agreement, dated as of July 1, 2020, with Teladoc Health, Inc., as amended.
6. Affinity entered into that certain Agreement for Hospital Services, dated as of August 1, 2020, with Brookhaven Memorial Medical Center (d/b/a Long Island Community Hospital).
7. Affinity entered into that certain Project Order Form, dated as of June 3, 2020, with Change Healthcare Resources, LLC.
8. Affinity entered into that certain Business Associate Agreement, dated as of July 9, 2020, with TalentHub WorldWide, Inc.
9. Affinity entered into that certain Business Associate Agreement, dated as of July 5, 2020, with Green Key Solutions, LLC.
10. Affinity entered into that certain Non-Disclosure and Confidentiality Agreement, dated as of July 15, 2020, with Green Key Solutions, LLC.
11. Affinity terminated its Contract with Universal Printing, effective as of July 13, 2020.
12. Affinity entered into that certain Amendment No. 8, dated as of July 2, 2020, and that certain Amendment No. 9, dated as of September 3, 2020, to the Forbearance Agreement, dated as of December 10, 2018, with City National Bank.
13. Affinity entered into that certain Amendment, effective as of January 1, 2021, to the Prescription Benefit Services Agreement, dated as of October 1, 2019, with CaremarkPCS, L.L.C.
14. Affinity entered into that certain Amendment, effective as of January 1, 2021, to the Pharmacy Network Services Agreement, dated as of August 1, 2019, with Affinity and Caremark IPA, L.L.C.
15. Affinity entered into that certain Agreement for Ancillary Services, Multi-Specialty, Primary Care, and Specialty Care Services, effective as of April 1, 2020 (but entered into as of June 29, 2020), by and between Affinity and Cornerstone Family Healthcare, Inc.



## Section 4.06

### Material Contracts

#### (a) Material Contracts (excluding Provider Contracts and Payor Contracts)

1. Prescription Benefit Services Agreement, dated as of October 1, 2019, by and between Affinity and CaremarkPCS, L.L.C., as amended
2. Amended Managed Behavioral Health Management Services Agreement, dated as of January 1, 2019, by and between Affinity and Beacon Health Strategies, LLC, as amended by that First Amendment, dated as of July 1, 2019, and that Second Amendment, dated as of January 1, 2020
3. Dental Services Management Services Agreement, dated as of June 17, 2020, by and between Affinity and DentaQuest of New York, LLC
4. Medical Benefit Management Services Agreement, dated as of September 28, 2016, by and between Affinity and MedSolutions, Inc. (d/b/a eviCore healthcare), as amended
5. Vision Services Management Agreement, dated as of January 1, 2017, by and among Affinity, Superior Vision Benefit Management, Inc. and UVC Independent Practice Association, Inc.
6. Management Services Agreement, dated as of June 12, 2020, by and between Affinity and ProgenyHealth LLC
7. Credit Agreement, dated as of September 27, 2017, by and between Affinity and City National Bank with an original principal amount of \$50,000,000, as amended by that Renewal Letter: Short Term Clear Extension of Termination Date, dated as of October 24, 2018.
8. Security Agreement, dated as of September 27, 2017, by and between Affinity and City National Bank.
9. Forbearance Agreement, dated as of December 10, 2018, by and between Affinity and City National Bank, as amended by that Amendment No. 1, dated as of March 19, 2019, that Amendment No. 2, dated as of June 28, 2019, that Amendment No. 3, dated as of September 25, 2019, that Amendment No. 4, dated as of November 8, 2019, that Amendment No. 5, dated as of December 31, 2019, that Amendment No. 6, dated as of February 25, 2020, that Amendment No. 7, dated as of April 29, 2020, that Amendment No. 8, dated as of July 2, 2020, and that Amendment No. 9, dated as of September 3, 2020.
10. Asset Purchase Agreement, dated as of October 27, 2018, by and between Health Insurance Plan of Greater New York and Affinity, as amended by that First Amendment, dated as of December 13, 2018
11. Lease, dated as of July 3, 2014, by and between 1776 Eastchester Operating LLC and Affinity, as amended by that Modification of Lease, dated as of January 5, 2015, that Expansion Rent Commencement Date Agreement, dated as of January 5, 2015, and

- that Second Modification of Lease, dated as of September 15, 2015, for the property located at 1776 Eastchester Road, Bronx New York 10461.
12. Lease, dated as of 2016, by and between Hutch Tower One LLC and Affinity, for the property located at 1250 Waters Place, Unit 1, Bronx, New York 10461.
  13. Store Lease, dated as of December 2014, by and between Queensrich Plaza Corp. and Affinity, for the property located at 41-46 Main Street, Units 1-D, 2-C & 2-D, Flushing, New York 11355.
  14. Lease, dated as of February 12, 2015, by and among Fordham Retail Associates, LLC, DG Fordham, LLC and Affinity, for the property located at 305 East Fordham Road, Bronx, New York 10458.
  15. Store Lease, dated as of February 1, 2019, by and between Nevada Real Estate Co., Inc. and Affinity, for the property located at 400-416 149<sup>th</sup> Street, Second Floor, Bronx, New York 10455.
  16. Agreement of Lease, dated as of November 8, 2007, by and between Chee Kwong Poon and Affinity, as amended by that Lease Extension and Modification, dated as of August 10, 2012, that Lease Extension, dated as of August 25, 2014, and that Lease Extension and Modification, dated as of March 8, 2019, for the property located at 5221 8<sup>th</sup> Avenue, Brooklyn, New York 11220.
  17. Lease, dated as of December 17, 2019, by and between Palisade Avenue Realty Corporation and Affinity, for the property located at 10 Palisade Avenue, Yonkers, New York 10701.
  18. Lease, dated as of September 1, 2015, by and between Kenisha LLC and Affinity, for the property located at 37-06 74<sup>th</sup> Street, Jackson Heights, New York 11372.
  19. Store Lease, dated as of September 30, 2010, by and between 601-609 West 175 St. Corp. and Affinity, as amended by that Amendment to Lease, dated as of November 6, 2015, for the property located at 601-609 West 175<sup>th</sup> Street, Stores 4 & 5, New York, New York 10033.
  20. Store Lease, dated as of March 28, 2012, by and between Brentwood Commons LLC and Affinity, for the property located at 727-759 Suffolk Avenue, Store No. B1, Brentwood, New York 11717.
  21. Store Lease, dated as of September 4, 2014, by and between 857 Flatbush Ave, LLC and Affinity, for the property located at 857 Flatbush Avenue, Brooklyn, New York 11226.
  22. Store Lease, dated as of December 7, 2017, by and between SSL Realty LLC and Affinity, for the property located at 79 Division Street, Unit 3, New York, New York 10002.
  23. Store Lease, dated as of June 2014, by and between 1684 Plaza LLC and Affinity, for the property located at 1684 Pitkin Avenue, Brooklyn, New York 11212.
  24. Warehouse Lease, dated as of February 24, 2015, by and between Hutch 40 LLC and Affinity, as amended by that First Amendment, dated as of July 19, 2017, and that

- Second Amendment, dated as of October 31, 2019, for the property located at 1260 Waters Place, Warehouse 23, Bronx, New York 10461.
25. Master Agreement, dated as of January 23, 2006, by and between Cognizant Technology Solutions U.S. Corporation (as successor in interest to The TriZetto Group, Inc.) and Affinity
  26. Master License and Services Agreement, dated as of April 13, 2018, by and between Casenet, LLC and Affinity
  27. Statement of Work, dated as of June 11, 2019, by and between Brandon Associates and Affinity
  28. 3M Services Agreement, dated as of April 25, 2019, by and between 3M Health Information Systems, Inc. and Affinity
  29. Software License Agreement, dated as of March 31, 2015, by and between 3M Health Information Systems, Inc. and Affinity, as amended<sup>8</sup>
  30. Master Services Agreement, dated as of March 1, 2016, by and between Change Healthcare Resources, LLC (f/k/a Altegra Health Operating Company, LLC) and Affinity, as amended\*
  31. SSI Management Services Agreement, dated as of January 12, 2016, by and between Change Healthcare Solutions, LLC and Affinity
  32. ENVOY Payer Agreement, dated as of September 22, 2000, by and between Change Healthcare Solutions, LLC (f/k/a Envoy LLC) and Affinity, as amended<sup>9</sup>
  33. Emdeon Business Services Payer Agreement, dated as of August 22, 2008, by and between Change Healthcare Solutions, LLC (f/k/a Envoy LLC) and Affinity, as amended<sup>10</sup>
  34. Settlement Advocate Services Rider, dated as of December 2, 2016, by and between Change Healthcare Solutions, LLC (f/k/a Envoy LLC) and Affinity, to the Business Services Payer Agreement, dated as of August 22, 2008, by and between Change Healthcare Solutions, LLC (f/k/a Envoy LLC) and Affinity
  35. Clinical Care Visit and Smart Connect Statement of Work, dated as of March 31, 2018, by and between Change Healthcare Resources, LLC and Affinity
  36. Smart Connect Statement of Work, dated as of July 1, 2016, by and between Change Healthcare Resources, LLC (f/k/a Altegra Health Operating Company) and Affinity, as amended
  37. Project Order Form, dated as of June 3, 2020, by and between Change Healthcare Resources, LLC and Affinity

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<sup>8</sup> Affinity has only been able to locate the amendments to this Contract (which have been provided to Buyer) but not the underlying Contract or any of the other amendments. However, the parties continue to operate under the terms and conditions of this Contract.

<sup>9</sup> Affinity has only been able to locate the rider to this Contract (which has been provided to Buyer) but not the underlying Contract. However, the parties continue to operate under the terms and conditions of this Contract.

<sup>10</sup> Affinity has only been able to locate the addendum to this Contract (which has been provided to Buyer) but not the underlying Contract. However, the parties continue to operate under the terms and conditions of this Contract.

38. Coding and Chart Retrieval Services; Medicaid Statement of Work, dated as of December 1, 2016, by and between Change Healthcare Resources, LLC (f/k/a Altegra Health Operating Company) and Affinity, as amended
39. Security & Maintenance & Support Contract, dated as of March 17, 2018, by and between Alarm Specialists, Inc. and Affinity
40. Purchase Order No. 021392, dated as of December 23, 2019, with Alarm Specialist, Inc.
41. Master Service Agreement, dated as of November 6, 2014, by and between Ameridial, Inc. and Affinity, as amended
42. Statement of Work No. 001, dated as of November 6, 2014, by and between Ameridial, Inc. and Affinity
43. Statement of Work No. 002, dated as of May 18, 2016, by and between Ameridial, Inc. and Affinity, as amended
44. Statement of Work No. 003, dated as of December 13, 2017, by and between Ameridial, Inc. and Affinity
45. Master Services Agreement, dated as of May 6, 2013, by and between Transaction Applications Group, Inc. and Affinity, as amended
46. Parent Guarantee, dated as of May 6, 2013, by and between Transaction Applications Group, Inc. and Affinity
47. Master Services and License Agreement, dated as of November 30, 2005, by and between OptumInsight, Inc. (f/k/a Ingenix, Inc.) and Affinity
48. Consulting Services Schedule, dated as of February 1, 2017, by and between OptumInsight, Inc. (f/k/a Ingenix, Inc.) and Affinity
49. Independent Contractor Agreement, dated as of October 16, 2017, by and between Daraja Enterprises, Inc. and Affinity<sup>11</sup>
50. Master Services Agreement, dated as of August 17, 2017, by and between PPT Solutions, LLC and Affinity
51. Agreement, dated as of August 28, 2013, by and between Into the Sun Advertising and Affinity, as amended<sup>12</sup>
52. Service Agreement, dated as of May 22, 2014, by and between Cablevision Lightpath, Inc. and Affinity
53. Master Services Agreement, dated as of June 9, 2014, by and between TierPoint, LLC and Affinity
54. Sales Order T01210431, dated January 23, 2018, by and between TierPoint, LLC and Affinity

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<sup>11</sup> The term of this Contract has expired and there is no written extension in place. However, the parties continue to operate under the terms and conditions of the expired Contract.

<sup>12</sup> The term of this Contract has expired and there is no written extension in place. However, the parties continue to operate under the terms and conditions of the expired Contract.

55. Contractor Agreement, dated as of January 13, 2017, by and between DBI Staffing and Affinity<sup>13</sup>
56. Master Services Agreement, dated as of July 24, 2015, by and between DC Solutions, LLC and Affinity
57. Statement of Work, dated as October 23, 2017, by and between DC Solutions, LLC and Affinity
58. Statement of Work, dated as January 1, 2020, by and between DC Solutions, LLC and Affinity
59. Facilities Management and Support Services Agreement, dated as of October 5, 2015, by and between The Millennium Group of Delaware, Inc. and Affinity, as amended
60. Amended and Restated Advertising Agreement, dated as of March 3, 2017, by and between Queens Ballpark Company, L.L.C. and Affinity
61. Letter of Intent, dated as of September 22, 2016, by and between HGS Healthcare LLC and Affinity
62. Information Systems Master Services Agreement, dated as of August 5, 2014, by and between HGS Healthcare LLC (as successor in interest to Colibrium Partners, LLC) and Affinity
63. Statement of Work, dated as of August 5, 2014, by and between HGS Healthcare LLC (as successor in interest to Colibrium Partners, LLC) and Affinity
64. Master Equipment Lease No. 2017-330, dated as of November 30, 2017, by and between NFS Leasing, Inc. and Affinity
65. Master Services Agreement, dated as of May 15, 2014, by and between RxEOB.COM, LLC and Affinity
66. Janitorial Services Agreement, dated as of October 1, 2017, by and between The Professional Cleaning People, Inc. and Affinity<sup>14</sup>
67. Master Service Agreement, dated as of August 12, 2019, by and between Legacy Support Services (d/b/a Support Services Group) and Affinity
68. Master Services Agreement, dated as of May 15, 2019, by and between Mytonomy, Inc. and Affinity
69. Service Agreement, dated as of June 1, 2018, by and between NFP Corporate Services (PA), Inc. and Affinity
70. Letter of Agreement, dated as of December 3, 2018, by and between The Advisory Board Company and Affinity
71. Master License Agreement, dated as of December 5, 2005, by and between MCG Health, LLC (formerly Milliman Care Guidelines LLC) and Affinity, as amended

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<sup>13</sup> The term of this Contract has expired and there is no written extension in place. However, the parties continue to operate under the terms and conditions of the expired Contract.

<sup>14</sup> The term of this Contract has expired and there is no written extension in place. However, the parties continue to operate under the terms and conditions of the expired Contract.

72. Client Agreement, dated as of January 1, 2019, by and between Express Scripts, Inc. and Affinity
73. Retainer Agreement, dated as of February 11, 2019, by and between Jackson Lewis P.C. and Affinity
74. Contract #3321172, dated as of October 30, 2019, by and between The Lamar Companies and Affinity
75. Contract #3341553, dated as of December 6, 2019, by and between The Lamar Companies and Affinity
76. Contract #3346413, dated as of December 17, 2019, by and between The Lamar Companies and Affinity
77. Business Associate Agreement, dated as of July 9, 2020, by and between TalentHub WorldWide, Inc. and Affinity
78. Business Associate Agreement, dated as of January 3, 2019, by and between First Choice Staffing NY, Inc. and Affinity
79. Business Associate Agreement, dated as of July 5, 2020, by and between Green Key Solutions, LLC and Affinity
80. Non-Disclosure and Confidentiality Agreement, dated as of July 15, 2020, by and between Green Key Solutions, LLC and Affinity
81. Contractor Agreement, dated as of August 26, 2014, by and between Green Key Resources, LLC and Affinity
82. License and Service Agreement, dated as of August 14, 2012, by and between The Hudson Center for Health Equity & Quality, Inc. and Affinity
83. Verizon Entity Agreement, dated as of June 26, 2017, by and between Cellco Partnership (d/b/a Verizon Wireless) and Affinity
84. Software License Agreement, dated as of September 20, 2017, by and between Quest Analytics, L.L.C. and Affinity
85. Investment Manager Agreement, dated as of September 15, 2017, by and between Sage Advisory Services, Ltd. Co. and Affinity
86. Investment Manager Agreement, dated as of October 2, 2017, by and between Sage Advisory Services, Ltd. Co. and Affinity
87. Institutional Consulting Services Agreement, dated as of September 20, 2016, by and between Raymond James & Associates, Inc. and Affinity
88. Interpreting Services Agreement, dated as of June 23, 2016, by and between Pacific Interpreters, Inc. and Affinity
89. Electricity Sales Agreement, dated as of November 22, 2016, by and between Aggressive Energy, LLC and Affinity
90. Statement of Work, dated as of April 1, 2020, by and between Bradley Marketing Group and Affinity

91. Lease Agreement, dated as of December 28, 2016, by and between Pitney Bowes and Affinity
92. Agreement, dated as of November 6, 2017, by and between Health Dynamics Consulting, LLC and Affinity
93. Health Services Agreement, dated as of November 1, 2012, by and between Cotiviti, LLC (as successor in interest to iHT Government Services, LLC) and Affinity, as amended
94. Sales Order, dated as of May 14, 2020, by and between Carr Business Systems and Affinity
95. Maintenance Agreement, dated as of January 14, 2019, by and between Carr Business Systems and Affinity
96. Service Level Agreement, dated as of January 31, 2019, by and between Carr Business Systems and Affinity
97. Engagement Letter, dated as of October 15, 2019, with KPMG LLP
98. Client Services Master Agreement, dated as of July 23, 2013, by and between Red-Card Systems, LLC and Affinity
99. Statement of Work No. 1 for Statement Processing, dated as of July 1, 2013, by and between Red-Card Systems, LLC and Affinity
100. Management Services Agreement, effective as of August 1, 2018, by and between Affinity and Rachel Amalfitano
101. Invoice No. 01005, dated as of January 17, 2020, from the Coalition of New York State Public Health Plans
102. The Murphy Executive Employment Contract
103. On November 26, 2019, Affinity signed a settlement agreement with the NYS Office of the Attorney General's Medicaid Fraud Control Unit relating to overpayments associated with Medicaid Managed Care and/or Family Health Plus and/or HIV Special Needs and/or Health and Recovery Plan, Provider ID # 04342307, which (for informational purposes but not in limitation of the scope of the agreement) amounted to \$216,263.78.
104. On November 26, 2019, Affinity signed a settlement agreement with the NYS Office of the Attorney General's Medicaid Fraud Control Unit relating to overpayments associated with Medicaid Managed Care and/or Family Health Plus and/or HIV Special Needs Plan, Provider ID # 00477156, which (for informational purposes but not in limitation of the scope of the agreement) amounted to \$3,687,674.19.
105. Settlement Agreement, dated as of March 6, 2020, by and between Affinity and New York City Health and Hospitals Corporation
106. Settlement Agreement, dated as of March 27, 2020, by and between Affinity and Beacon Health Strategies LLC (d/b/a Beacon Health Options), on the one hand, and New York City Health and Hospitals Corporation, on the other

107. Agreement and Mutual Release, dated as of March 27, 2020, by and between Affinity and Beacon Health Strategies LLC (d/b/a Beacon Health Options)

(b) Payor Contracts

1. Contract by and between Affinity and NYSDOH, dated as of March 1, 2019, for New York State Medicaid Managed Care and New York Health and Recovery Plan
2. Contract by and between Affinity and NYSDOH, effective as of January 1, 2016, for New York State Child Health Plus
3. Contract by and between Affinity and NYSDOH, effective as November 1, 2015, for New York State Essential Plan

## **Section 4.07**

### **Provider Contracts**

(a)

1. New York Presbyterian Health System
2. Montefiore Health System
3. Northwell Health
4. NYC Health and Hospitals Corporation
5. Mount Sinai Health System
6. Bronx Care Health System
7. Columbia University
8. Westchester Medical Center
9. Stony Brook
10. Crystal Run
11. Orange Regional Medical Center
12. Good Samaritan
13. Hudson River Health System
14. One Brooklyn Health
15. City MD
16. Nassau University Medical Center
17. ReliaCare
18. Bon Secours Charity Health System Inc.
19. St. Barnabas Hospital
20. Lab Corp
21. WestMed Medical Group
22. Blythedale Children's Hospital
23. BioReference Laboratories Inc.
24. Coram Healthcare Corporation of Greater New York
25. SUNY Downstate
26. Quest
27. St. John's Riverside
28. Urban Health Plan, Inc.
29. Jamaica Hospital

30. Mercy Medical Center
31. ENT and Allergy Associates
32. Maimonides
33. Brooklyn Hospital Center
34. Weill Cornell
35. St. Joseph's Medical Center
36. Middletown Medical
37. FEGS Home Attendant Services Inc.
38. Cornerstone Family Healthcare
39. ProHealth Care Associates, LLP
40. Long Island Community Hospital

(b)

1. The IPA Agreement, dated as of April 27, 2017, with Reliacare Alliance, IPA, LLC was terminated as of January 31, 2020.

(c)(i)

None.

(c)(ii)

None.

## Section 4.08

### Title to and Sufficiency of Purchased Assets; Leased Real Property

(a)

None.

(b) ♦

1. Lease, dated as of July 3, 2014, by and between 1776 Eastchester Operating LLC and Affinity, as amended by that Modification of Lease, dated as of January 5, 2015, that Expansion Rent Commencement Date Agreement, dated as of January 5, 2015, and that Second Modification of Lease, dated as of September 15, 2015, for the property located at 1776 Eastchester Road, Bronx New York 10461.
2. Lease, dated as of 2016, by and between Hutch Tower One LLC and Affinity, for the property located at 1250 Waters Place, Unit 1, Bronx, New York 10461.
3. Lease, dated as of December 17, 2019, by and between Palisade Avenue Realty Corporation and Affinity, for the property located at 10 Palisade Avenue, Yonkers, New York 10701.
4. License Agreement, dated as of December 19, 2019, by and between Crystal Run Galleria LLC and Affinity, for the RMU Space No. K117A located at the Crystal Run Galleria in Middletown, New York.
5. License, dated as of January 29, 2015, by and between United Community Center of Westchester, Inc. and Affinity, for desk space located in 360-362 North Avenue, New Rochelle, New York 10801. ♦
6. Memorandum of Understanding, dated as of August 1, 2018, by and between United Community Center of Westchester, Inc. and Affinity, for desk space located in 362 North Avenue, New Rochelle, New York 10801. ♦
7. Store Lease, dated as of March 6, 2012, by and between Hempstead Retail LLC and Affinity, for the property located at 400 Fulton Street, Store No. E, Hempstead, New York 11550. ♦
8. Lease, dated as of February 12, 2015, by and among Fordham Retail Associates, LLC, DG Fordham, LLC and Affinity, for the property located at 305 East Fordham Road, Bronx, New York 10458.
9. Store Lease, dated as of March 28, 2012, by and between Brentwood Commons LLC and Affinity, for the property located at 727-759 Suffolk Avenue, Store No. B1, Brentwood, New York 11717.

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♦ Indicates that the applicable Real Property Lease has expired and Affinity is occupying the applicable property on a month-to-month basis.

10. Store Lease, dated as of September 30, 2010, by and between 601-609 West 175 St. Corp. and Affinity, as amended by that Amendment, dated as of November 6, 2015, for the property located at 601-609 West 175<sup>th</sup> Street, Stores 4 & 5, New York, New York 10033.
11. Store Lease, dated as of June 2014, by and between 1684 Plaza LLC and Affinity, for the property located at 1684 Pitkin Avenue, Brooklyn, New York 11212.
12. Agreement of Lease, dated as of November 8, 2007, by and between Chee Kwong Poon and Affinity, as amended by that Lease Extension and Modification, dated as of August 10, 2012, that Lease Extension, dated as of August 25, 2014, and that Lease Extension and Modification, dated as of March 8, 2019, for the property located at 5221 8<sup>th</sup> Avenue, Brooklyn, New York 11220.
13. Store Lease, dated as of December 2014, by and between Queensrich Plaza Corp. and Affinity, for the property located at 41-46 Main Street, Units 1-D, 2-C & 2-D, Flushing, New York 11355. ♦
14. Store Lease, dated as of September 4, 2014, by and between 857 Flatbush Ave, LLC and Affinity, for the property located at 857 Flatbush Avenue, Brooklyn, New York 11226.
15. Lease, dated as of September 1, 2015, by and between Kenisha LLC and Affinity, for the property located at 37-06 74<sup>th</sup> Street, Jackson Heights, New York 11372.
16. License, dated as of December 4, 2019, by and between Basia Properties LLC and Affinity, for office space located in 1732 Great Neck Road, Copiague, New York 11726.
17. Agreement, dated as of November 1, 2013, by and between Compare Foods and Affinity, for parking lot space at 120 North Main Street, Freeport, New York 11520. ♦
18. License, dated as of October 28, 2019, by and between Gotham Insurance & Financial Services Corp and Affinity, for office space located in 120-08 Liberty Avenue, Richmond Hill, New York 11419.
19. License, dated as of February 7, 2019, by and between Rockland Urgent Care and Affinity, for office/desk space located in 89 South Route 9W, West Haverstraw, New York 10993. ♦
20. License, dated as of July 15, 2019, by and between Salumed Pharmacy, Inc. and Affinity, for desk space located in 753 Commack Road, Brentwood, New York 11717. ♦
21. License, dated as of July 19, 2019, by and between 5<sup>th</sup> Ave Drug, Inc. and Affinity, for desk space located in 1805 Fifth Avenue, Bayshore, New York 11706. ♦
22. License, dated as of November 19, 2018, by and between Servia Iris Corp. and Affinity, for desk space located in 280 Oak Street, Copiague, New York 11726. ♦
23. Store Lease, dated as of February 1, 2019, by and between Nevada Real Estate Co., Inc. and Affinity, for the property located at 400-416 149<sup>th</sup> Street, Second Floor, Bronx, New York 10455.
24. Lease, dated as of March 25, 2019, by and between Renahar Realty LLC and Affinity, for the property located at 90-34 161<sup>st</sup> Street, Jamaica, New York 11432.
25. Lease, dated as of March 13, 2006, by and between Polonia Development and Preservation Services Co., LLC (f/k/a 117 Liberty Street, LLC) and Affinity, as amended by those

Extensions, dated January 27, 2014 and October 30, 2018, for the property located at 149 Broadway, Newburgh, New York 12550.

26. Store Lease, dated as of December 7, 2017, by and between SSL Realty LLC and Affinity, for the property located at 79 Division Street, Unit 3, New York, New York 10002.
27. License Agreement, dated as of December 19, 2019, by and between EklecCo NewCo LLC and Affinity, for the RMU Space No. 3E located at the Palisades Center in West Nyack, New York.
28. Warehouse Lease, dated as of February 24, 2015, by and between Hutch 40 LLC and Affinity, as amended by that First Amendment, dated as of July 19, 2017, and that Second Amendment, dated as of October 31, 2019, for the property located at 1260 Waters Place, Warehouse 23, Bronx, New York 10461.
29. License, dated as of July 1, 2016, by and between D.G. Allen Insurance Agency and Affinity, for desk space located in 198-14 Linden Blvd., St. Albans, New York 11412.♦

**Section 4.09**

**Intellectual Property; Claims**

(c)

1. Copyrights:

Copyright Application Title	Registration No.	Registration Date	Type of Work	Owner of Record
Health Literacy – Helping Our Patients Understand Their HealthCare	Pau003347897	06/12/2008	Motion Picture	Affinity Health Plan, Inc.
E-Application and Eligibility Calculator Source Code	TXu001570403	01/04/2008	Computer File	Affinity Health Plan, Inc.

2. Domain Name:

Domain: affinityplan.org  
Registrar: Register.com, Inc.  
Registered On: 2001-10-17  
Expires On: 2021-10-17  
Updated On: 2018-08-28

(d)

1. Master Agreement, dated as of January 23, 2006, by and between Cognizant Technology Solutions U.S. Corporation (as successor in interest to The TriZetto Group, Inc.) and Affinity, as amended
2. Master License and Services Agreement, dated as of April 13, 2018, by and between Casenet, LLC and Affinity
3. Statement of Work, dated as of June 11, 2019, by and between Brandon Associates and Affinity
4. 3M Services Agreement, dated as April 25, 2019, by and between 3M Health Information Systems, Inc. and Affinity
5. Software License Agreement, dated as March 31, 2015, by and between 3M Health Information Systems, Inc. and Affinity, as amended<sup>15</sup>
6. Information Systems Master Services Agreement, dated as of August 5, 2014, by and between Colibrium Partners, LLC and Affinity
7. Statement of Work, dated as of August 5, 2014, by and between Colibrium Partners, LLC and Affinity

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<sup>15</sup> Affinity has only been able to locate the amendments to this Contract (which have been provided to Buyer) but not the underlying Contract or any of the other amendments. However, the parties continue to operate under the terms and conditions of this Contract.

8. Master Services Agreement, dated as of March 1, 2016, by and between Change Healthcare Resources, LLC (f/k/a Altegra Health Operating Company, LLC) and Affinity, as amended
9. SSI Management Services Agreement, dated as of January 12, 2016, by and between Change Healthcare Solutions, LLC and Affinity
10. ENVOY Payer Agreement, dated as of September 22, 2000, by and between Change Healthcare Solutions, LLC (f/k/a Envoy LLC) and Affinity, as amended<sup>16</sup>
11. Emdeon Business Services Payer Agreement, dated as of August 22, 2008, by and between Change Healthcare Solutions, LLC (f/k/a Envoy LLC) and Affinity, as amended<sup>17</sup>
12. Clinical Care Visit and Smart Connect Statement of Work, dated March 31, 2018, by and between Change Healthcare Resources, LLC and Affinity
13. Smart Connect Statement of Work, dated as of July 1, 2016, by and between Change Healthcare Resources, LLC and Affinity, as amended
14. Project Order Form, dated as of June 3, 2020, by and between Change Healthcare Resources, LLC and Affinity
15. Coding and Chart Retrieval Services; Medicaid Statement of Work, dated as of December 1, 2016, by and between Change Healthcare Resources, LLC and Affinity, as amended
16. Master Services Agreement, dated as of May 15, 2014, by and between RxEOB.COM, LLC and Affinity
17. Master Services Agreement, dated as of June 9, 2014, by and between TierPoint, LLC and Affinity
18. Sales Order T01210431, dated January 23, 2018, by and between TierPoint, LLC and Affinity
19. Sales Order T01210504, dated February 13, 2018, by and between TierPoint, LLC and Affinity
20. Master Services Agreement, dated as of July 24, 2015, by and between DC Solutions, LLC and Affinity
21. Statement of Work, dated as October 23, 2017, by and between DC Solutions, LLC and Affinity
22. Statement of Work, dated as January 1, 2020, by and between DC Solutions, LLC and Affinity
23. Master Services Agreement, dated as of May 15, 2019, by and between Mytonomy, Inc. and Affinity

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<sup>16</sup> Affinity has only been able to locate the rider to this Contract (which has been provided to Buyer) but not the underlying Contract. However, the parties continue to operate under the terms and conditions of this Contract.

<sup>17</sup> Affinity has only been able to locate the addendum to this Contract (which has been provided to Buyer) but not the underlying Contract. However, the parties continue to operate under the terms and conditions of this Contract.

24. On-Demand Services Subscription Agreement, dated as of December 13, 2018, by and between Callidus Software Inc. and Affinity
25. Order #00506923.0, dated as of December 17, 2019, by and between BMC Software, Inc. and Affinity
26. Software License Agreement, dated as of November 24, 2004, by and between Envision Telephony, Inc. and Affinity
27. Software Support Agreement, dated as of November 24, 2004, by and between Envision Telephony, Inc. and Affinity
28. Subscription Agreement, dated as of November 5, 2018, by and between IPD Analytics, LLC and Affinity, as amended by that Subscription Renewal Agreement, dated as of April 2, 2020
29. Master Sales Agreement, dated as of March 12, 2018, by and between ConvergeOne, Inc. and Affinity
30. Security & Maintenance & Support Contract, dated as of March 17, 2018, by and between Alarm Specialists and Affinity
31. Purchase Order No. 021392, dated as of December 23, 2019, with Alarm Specialist, Inc.
32. Master License Agreement, dated as of December 5, 2005, by and between MCG Health, LLC (formerly Milliman Care Guidelines LLC) and Affinity, as amended
33. Installment Payment Agreement, dated as of December 16, 2019, by and between Cisco Systems Capital Corp. and Affinity
34. Master Services and License Agreement, dated as of November 30, 2005, by and between OptumInsight, Inc. (f/k/a Ingenix, Inc.) and Affinity
35. Master License Agreement No. 53016, dated as of May 31, 2006, by and between SAS Institute Inc. and Affinity
36. Services Supplement No. 1, dated as of June 5, 2006, by and between SAS Institute Inc. and Affinity
37. Services Supplement No. 6, dated as of October 22, 2013, by and between SAS Institute Inc. and Affinity
38. Exclusion List Screening Services Agreement, dated as of September 12, 2016, by and between Streamline HR Management, LLC and Affinity
39. Statement of Work, dated as of October 26, 2018, by and between Azara Healthcare, LLC and Affinity
40. Participation Agreement, dated as of June 30, 2019, by and between Bronx RHIO, Inc. and Affinity
41. License and Service Agreement, dated as of August 14, 2012, by and between The Hudson Center for Health Equity & Quality, Inc. and Affinity
42. Software License Agreement, dated as of September 20, 2017, by and between Quest Analytics, L.L.C. and Affinity

43. Master Services Agreement, dated as of May 6, 2013, by and between Transaction Applications Group, Inc. and Affinity, as amended
44. Client Services Master Agreement, dated as of July 23, 2013, by and between Red-Card Systems, LLC and Affinity
45. Statement of Work No. 1 for Statement Processing, dated as of July 1, 2013, by and between Red-Card Systems, LLC and Affinity
46. Health Services Agreement, dated as of November 1, 2012, by and between Cotiviti, LLC (as successor in interest to iHT Government Services, LLC) and Affinity, as amended

(e)

1. Master Services Agreement, dated as of May 15, 2019, by and between Mytonomy, Inc. and Affinity
2. SSI Management Services Agreement, dated as of January 12, 2016, by and between Change Healthcare Solutions, LLC and Affinity
3. Master Services Agreement, dated as of May 6, 2013, by and between Transaction Applications Group, Inc. and Affinity, as amended

(h)

The following Contracts require that Affinity obtain the consent of, or give notice to, the counterparty in order to validly assign the applicable Contract to Buyer:

1. Master Agreement, dated as of January 23, 2006, by and between Cognizant Technology Solutions U.S. Corporation (as successor in interest to The TriZetto Group, Inc.) and Affinity\*
2. Master License and Services Agreement, dated as of April 13, 2018, by and between Casenet, LLC and Affinity\*
3. 3M Services Agreement, dated as April 25, 2019, by and between 3M Health Information Systems, Inc. and Affinity
4. Master Services Agreement, dated as of March 1, 2016, by and between Change Healthcare Resources, LLC (f/k/a Altegra Health Operating Company, LLC) and Affinity, as amended\*
5. Smart Connect Statement of Work, dated as of July 1, 2016, by and between Change Healthcare Resources, LLC and Affinity, as amended\*
6. Coding and Chart Retrieval Services; Medicaid Statement of Work, dated as of December 1, 2016, by and between Change Healthcare Resources, LLC and Affinity, as amended\*
7. SSI Management Services Agreement, dated as of January 12, 2016, by and between Change Healthcare Resources, LLC and Affinity
8. Master Services Agreement, dated as of May 15, 2019, by and between Mytonomy, Inc. and Affinity

9. On-Demand Services Subscription Agreement, dated as of December 13, 2018, by and between Callidus Software Inc. and Affinity
10. Software License Agreement, dated as of November 24, 2004, by and between Envision Telephony, Inc. and Affinity
11. Software Support Agreement, dated as of November 24, 2004, by and between Envision Telephony, Inc. and Affinity
12. Installment Payment Agreement, dated as of December 16, 2019, by and between Cisco Systems Capital Corp. and Affinity
13. Master Sales Agreement, dated as of March 12, 2018, by and between ConvergeOne, Inc. and Affinity
14. Master License Agreement, dated as of December 5, 2005, by and between MCG Health, LLC (formerly Milliman Care Guidelines LLC) and Affinity, as amended
15. Information Systems Master Services Agreement, dated as of August 5, 2014, by and between Colibrum Partners, LLC
16. Master Services Agreement, dated as of July 24, 2015, by and between DC Solutions, LLC and Affinity\*
17. Master Services and License Agreement, dated as of November 30, 2005, by and between OptumInsight, Inc. (f/k/a Ingenix, Inc.) and Affinity
18. Master License Agreement No. 53016, dated as of May 31, 2006, by and between SAS Institute Inc. and Affinity
19. Services Supplement No. 1, dated as of June 5, 2006, by and between SAS Institute Inc. and Affinity
20. Services Supplement No. 6, dated as of October 22, 2013, by and between SAS Institute Inc. and Affinity
21. Exclusion List Screening Services Agreement, dated as of September 12, 2016, by and between Streamline HR Management, LLC and Affinity
22. Participation Agreement, dated as of June 30, 2019, by and between Bronx RHIO, Inc. and Affinity
23. Master Services Agreement, dated as of May 6, 2013, by and between Transaction Applications Group, Inc. and Affinity, as amended
24. Software License Agreement, dated as of September 20, 2017, by and between Quest Analytics, L.L.C. and Affinity
25. License and Service Agreement, dated as of August 14, 2012, by and between The Hudson Center for Health Equity & Quality, Inc. and Affinity
26. Client Services Master Agreement, dated as of July 23, 2013, by and between Red-Card Systems, LLC and Affinity
27. Statement of Work No. 1 for Statement Processing, dated as of July 1, 2013, by and between Red-Card Systems, LLC and Affinity

## Section 4.10

### Legal Proceedings; Orders

(a)

1. The disclosure set forth in item 1 of Section 4.04(b) of these Disclosure Schedules is hereby incorporated by reference.
2. On or about January 23, 2018, Affinity filed suit against the United States in the United States Court of Federal Claims seeking \$21,716,935.61 plus interest, fees, and costs arising from alleged violations of the mandatory risk corridor payment obligations imposed by Section 1342 of the Patient Protection and Affordable Care Act, and its implementing regulations.
3. Derek Newman v. Affinity Health Plan and Rudy Andrew (Index No. 31170/2017E; New York State Supreme Court, Bronx County) – Mr. Newman, a former employee of Affinity, brought suit claiming discrimination on the basis of race, color, sex and/or sexual preference and unlawful retaliation. The parties are currently conducting discovery. Affinity served its answer and discovery requests on Mr. Newman. Mr. Newman was deposed on October 10, 2019 and, as a result of information provided in that deposition, Affinity continues to seek records from third party medical and pharmacy providers. Affinity is waiting for further discovery from Mr. Newman’s counsel, but has not heard anything from his counsel regarding its discovery requests.
4. Keith Mitchell v. Affinity Health Plan, Michael Murphy, Barbara Witte and Jason Robinson (Index No. 23669/2019E; New York State Supreme Court, Bronx County) – Mr. Mitchell, a former employee of Affinity, brought suit claiming unlawful retaliation. The parties are currently conducting discovery. Affinity served its answer and discovery requests on Mr. Mitchell. Affinity received responses from Mr. Mitchell, which were wholly deficient. Mr. Mitchell’s deposition was scheduled for November 6, 2019, but it was adjourned due to the delay in the production of discovery from Mr. Mitchell. Mr. Mitchell recently served Affinity with his discovery requests, but Affinity intends on asking for an extension of time to serve objections and responses.
5. Blanca Aviles, Demand Letter, dated February 23, 2018 – Ms. Aviles, a former employee of Affinity, has made allegations of wrongful termination, disability discrimination and violation of FMLA. Since the initial demand letter, Affinity and its counsel on the matter have not heard anything further from Ms. Aviles or her counsel regarding her claims.
6. Marlon Bradshaw v. Affinity Health Plan, Inc. (Index No. 29252/2020E, New York State Supreme Court, Bronx County) – Mr. Bradshaw, a former employee of Affinity, brought suit claiming discrimination based on physical disability, unlawful retaliation, and failure to engage in interactive or good faith negotiations regarding his disability accommodations. Mr. Bradshaw filed a complaint on August 24, 2020.
7. Ruth Greaves Litigation – Ms. Greaves, a former employee of Affinity, brought suit against the landlord of Affinity’s former Jamaica, NY location for a slip and fall accident that occurred in 2014. Under the terms of the lease for such location, Affinity is required to

hold the landlord harmless for the suit and, therefore, is conducting the defense of the suit. The parties are currently conducting discovery.

8. Health Acquisition Corp. Litigation – Health Acquisition Corp. brought suit against Affinity, alleging that Affinity did not pay for services rendered. Health Acquisition Corp. provided certain home aid personnel to Affinity, and alleges that Affinity owes \$106,225.00 for such services rendered.
9. Gurmit Gill, MD PC Summons – Mr. Gill served Affinity with a Summons With Notice in August 2017 seeking monetary damages of \$10,000,000. Affinity has not received anything further from Dr. Gill with respect to this matter.
10. Sunrise Manor Center for Nursing and Rehabilitation – Sunrise Manor for Nursing and Rehabilitation brought suit against Affinity Health Plan, alleging that Affinity did not pay for services rendered. Sunrise Manor Center for Nursing and Rehabilitation provided nursing and rehabilitation services to Ronald Nanos, whom Affinity provided insurance coverage to, and alleges that Affinity owes \$24,300.00 for services rendered.
11. Leroy Solis Litigation – Mr. Solis brought suit against Kenneth Coleby and Affinity, claiming that he was injured by a car owned by Affinity being driven by Mr. Coleby with the permission and consent of Affinity. The parties are currently conducting discovery.
12. Northwell Health, Inc. Litigation – Northwell Health, Inc. brought suit against Affinity, seeking monetary damages of \$39,500,000.00. The litigation settled in October 1, 2019, and Affinity is in the process of preparing a stipulation of discontinuance to remove the matter from the New York State court public docket, case number 609424-2018.
13. Ophthalmic Consultants of Long Island Litigation – Ophthalmic Consultants of Long Island brought suit against Affinity, alleging that Affinity did not pay for services rendered. Ophthalmic Consultants of Long Island provided various eye procedures to five patients, whom Affinity provided insurance coverage to, and alleges that Affinity owes \$21,810.00 for services rendered.
14. Denise Abel, Draft Complaint – Ms. Abel, a former employee, has provided a draft complaint to be filed in the New York State Supreme Court, Bronx County, in which she makes allegations of sexual harassment, hostile work environment and constructive wrongful termination. Affinity is exploring whether a reasonable resolution can be achieved short of litigation.
15. Gismell Abud, Demand Letter, dated July 2, 2020 – Ms. Abud, a former employee of Affinity, has made allegations of sexual harassment under New York State and New York City laws. Ms. Abud has made a demand of \$175,000. Affinity is exploring whether a reasonable resolution can be achieved short of litigation.
16. Beacon Indemnification Matter – Affinity is seeking indemnification from Beacon Health Strategies, LLC (“Beacon”) with respect to \$1,400,000 in overpayments made as a result of Beacon paying hospital claims at incorrect amounts. The parties are currently in settlement discussions.

17. Open Workers' Compensation Claims:

- a. Angela Ballesteros (Claim No. 2440207282, Date of Loss: 11/22/2014) – The claimant tripped over wires in an Affinity office and sustained an injury to her left knee.
- b. Ana Quijada (Claim No. 2440255909, Date of Loss: 4/4/2016) – The claimant sustained neck and back injuries when she was involved in a motor vehicle accident.
- c. Laura Clark (Claim No. 2440262227, Date of Loss: 7/26/2016) – The claimant was involved in a motor vehicle accident and sustained injury to the left shoulder and spine.
- d. Dawn Baxter (Claim No. 2440273179, Date of Loss: 12/22/2016) – The claimant sustained an injury to her back. She is also alleging cervical and psych injuries.
- e. Idalia Monge (Claim No. 2440289564, Date of Loss: 1/1/2017) – The claimant developed bilateral Carpal Tunnel Syndrome due to repetitive job duties.
- f. Amorille Shepherd (Claim No. 2440279003, Date of Loss: 5/5/2017) – The claimant was involved in a motor vehicle accident in which she was at fault. She sustained multiple body injuries including her head, neck, back, bilateral shoulders, bilateral wrist and bilateral ankles.
- g. Jonita Ingram-Coley (Claim No. 2440298213, Date of Loss: 9/7/2018) – The claimant sustained an injury to her right shoulder.
- h. Melissa Yee (Claim No. 2440321002, Date of Loss: 11/19/2019) – The claimant was involved in a motor vehicle accident.
- i. Therese Reiser (Claim No. 2230443869, Date of Loss: 2/21/2020) – The claimant was involved in a slip and fall accident.

(b)

1. Reserve Deficiency. NYSDOH issued a Statement of Deficiency on March 22, 2018 for failure to meet minimum net worth requirements. Affinity is currently operating under an extension granted by NYSDOH through September 30, 2020 to resolve the issue.
2. Montefiore Medical Center (“Montefiore”) has alleged that Affinity improperly denied claims for certain services rendered by Montefiore to Affinity enrollees pursuant to certain agreements between the parties. Montefiore filed an arbitration demand with the American Arbitration Association on March 31, 2020, seeking \$12,581,000 plus interest. On April 22, 2020, Affinity filed a counterclaim against Montefiore seeking the return of the undisputed portion of the approximately \$27 million advance against receivables held by Montefiore, which is approximately \$15 million after taking into account the amount sought by Montefiore. On July 20, 2020, the parties participated in a mediation, which was unsuccessful. An arbitrator will soon be assigned and the parties will proceed to pre-hearing discovery.
3. The disclosures set forth in Section 4.10(a) of these Disclosure Schedules are hereby incorporated by reference.

## Section 4.11

### Compliance with Laws

(a)

1. The disclosures set forth in Section 4.10 of these Disclosure Schedules are hereby incorporated by reference.
2. The disclosures related to the Min MLR Rebates and the Potential VBP Penalty set forth in Section 1.1(b) of these Disclosure Schedules are hereby incorporated by reference.
3. NYSDOH issued an Article 44 and Article 49 Statement of Deficiencies relating to an annual operational survey that occurred from January 11-15, 2016. (Survey ID # 1446487356). This Statement of Deficiencies has been resolved.
4. NYSDOH issued an Article 44 and Article 49 Statement of Deficiencies relating to a comprehensive operational survey that occurred from October 15, 2018 to November 8, 2018. (Survey ID # 1533135104). This Statement of Deficiencies has been resolved.
5. NYSDOH issued Article 44 and Article 49 Statements of Deficiencies relating to phase 2 comprehensive operational surveys that occurred from March 25-29, 2019. (Survey ID # 1548167128). NYSDOH had scheduled a follow-up inspection for May 11, 2020 to determine whether the correction plan for Phase 1 and 2 that was implemented by Affinity has resolved the applicable deficiencies, but such follow-up inspection was delayed until further notice by NYSDOH.
6. A New York State Office of the Medicaid Inspector General (“OMIG”) audit resulted in \$482,921 in audit liabilities. (Audit # 15-1097)
7. An OMIG audit resulted in \$1,059 in audit liabilities. (Audit # 15-1098)
8. An OMIG audit resulted in \$325,145 in audit liabilities. (Audit # 15-3331)
9. An OMIG audit resulted in \$414,986 in audit liabilities. (Audit # 15-3740)
10. An OMIG audit resulted in \$1,591,547 in audit liabilities. (Audit # 15-4185)
11. An OMIG audit resulted in \$961,769 in audit liabilities. (Audit # 15-4272)
12. An OMIG audit resulted in \$520,725 in audit liabilities. (Audit # 15-5819)
13. An OMIG audit resulted in \$133,359 in audit liabilities. (Audit # 15-5962)
14. An OMIG audit resulted in \$121,902 in audit liabilities. (Audit # 15-6287)
15. An OMIG audit resulted in \$188,794 in audit liabilities. (Audit # 16-1653)
16. An OMIG audit resulted in \$393,107 in audit liabilities. (Audit # 16-2084)
17. An OMIG audit resulted in \$154,269 in audit liabilities. (Audit # 16-3878)
18. An OMIG audit resulted in \$6,618 in audit liabilities. (Audit # 16-4004)
19. An OMIG audit resulted in \$948,552 in audit liabilities. (Audit # 17-2033)

20. An OMIG audit resulted in \$32,857 in audit liabilities. (Audit # 17-2035)
21. An OMIG audit resulted in \$1,354 in audit liabilities. (Audit # 17-2034)
22. An OMIG audit resulted in \$48,761 in audit liabilities. (Audit # 17-5836)
23. An OMIG audit resulted in \$96,936 in audit liabilities. (Audit # 17-6153)
24. On December 5, 2017, OMIG issued a final audit report that identified \$960,855.57 in alleged Medicaid overpayments. (Audit # 15-6680)
25. On December 7, 2017, OMIG issued a final audit report that identified \$478,891.76 in alleged Medicaid overpayments. (Audit # 17-5835)
26. On January 4, 2018, OMIG issued a final audit report that identified \$2,742,064.32 in alleged Medicaid overpayments. (Audit # 16-4565)
27. On January 9, 2018, OMIG issued a final audit report that identified \$11,799.96 in alleged Medicaid overpayments. (Audit # 17-4043)
28. On January 16, 2018, OMIG issued a final audit report that identified \$197,539.87 in alleged Medicaid overpayments. (Audit # 17-4042)
29. On March 7, 2018, OMIG issued a final audit report that identified \$118,073.17 in alleged Medicaid overpayments. (Audit # 17-7166)
30. On May 9, 2018, OMIG issued a final audit report that identified \$1,642,577.61 in alleged Medicaid overpayments. (Audit # 17-6622)
31. On September 19, 2018, OMIG issued a final audit report that identified \$1,965.54 in alleged Medicaid overpayments. (Audit # 18-5965)
32. On January 17, 2019, OMIG issued a final audit report that identified \$508,711.97 in alleged Medicaid overpayments. (Audit # 18-3369)
33. On January 24, 2019, OMIG issued a final audit report that identified \$590,488.09 in alleged Medicaid overpayments. (Audit # 16-4895)
34. On January 24, 2019, OMIG issued a final audit report that identified \$1,168,101.83 in alleged Medicaid overpayments. (Audit # 17-7803)
35. On January 31, 2019, OMIG issued a final audit report that identified \$2,227.44 in alleged Medicaid overpayments. (Audit # 18-8827)
36. On February 28, 2019, OMIG issued a final audit report that identified \$313,644.26 in alleged Medicaid overpayments. (Audit # 18-1063)
37. On April 4, 2019, OMIG issued a final audit report that identified \$88,141.06 in alleged Medicaid overpayments. (Audit # 18-6094)
38. On May 2, 2019, OMIG issued a final audit report that identified \$530,433.97 in alleged Medicaid overpayments. (Audit # 18-6093)
39. On May 13, 2019, OMIG issued a final audit report that identified \$949,009.66 in alleged Medicaid overpayments. (Audit # 18-7995)
40. On May 13, 2019, OMIG issued a final audit report that identified \$361,402.20 in alleged Medicaid overpayments. (Audit # 18-7996)

41. On May 23, 2019, OMIG issued a final audit report that identified \$434,404.91 in alleged Medicaid overpayments. (Audit # 18-8828)
42. On May 23, 2019, OMIG issued a final audit report that identified \$1,126,875.65 in alleged Medicaid overpayments. (Audit # 18-8826)
43. On October 9, 2019, OMIG issued a final audit report that identified \$160,720.92 in alleged Medicaid overpayments. (Audit # 19-1822)
44. On December 5, 2019, OMIG issued a final audit report that identified \$4,151.80 in alleged Medicaid overpayments. (Audit # 19-4035)
45. On February 28, 2020, OMIG issued a final audit report that identified \$17,593.76 in alleged Medicaid overpayments. (Audit # 2020Z80-009J)
46. On April 24, 2020, OMIG issued a final audit report that identified \$1,735,786.31 in alleged Medicaid overpayments. (Audit # 19-4036)
47. On April 24, 2020, OMIG issued a final audit report that identified \$381,179.73 in alleged Medicaid overpayments. (Audit # 19-4034)
48. On May 15, 2020, OMIG issued a final audit report that identified \$895,550.44 in alleged Medicaid overpayments. (Audit # 19-5933)
49. On May 15, 2020, OMIG issued a final audit report that identified \$320,053.47 in alleged Medicaid overpayments. (Audit # 19-5934)
50. On May 22, 2020, OMIG issued a final audit report that identified \$1,590,509.79 in alleged Medicaid overpayments. (Audit # 19-2450)
51. On May 22, 2020, OMIG issued a final audit report that identified \$4,210,298.03 in alleged Medicaid overpayments. (Audit # 19-7522)
52. On May 22, 2020, OMIG issued a final audit report that identified \$467,301.17 in alleged Medicaid overpayments. (Audit # 20-1016)
53. On May 22, 2020, OMIG issued a final audit report that identified \$87,399.74 in alleged Medicaid overpayments. (Audit # 19-7523)
54. On May 22, 2020, OMIG issued a final audit report that identified \$113,039.18 in alleged Medicaid overpayments. (Audit # 20-1015)
55. On November 26, 2019, Affinity signed a settlement agreement with the NYS Office of the Attorney General's Medicaid Fraud Control Unit relating to overpayments associated with Medicaid Managed Care and/or Family Health Plus and/or HIV Special Needs and/or Health and Recovery Plan, Provider ID # 04342307, which (for informational purposes but not in limitation of the scope of the agreement) amounted to \$216,263.78.
56. On November 26, 2019, Affinity signed a settlement agreement with the NYS Office of the Attorney General's Medicaid Fraud Control Unit relating to overpayments associated with Medicaid Managed Care and/or Family Health Plus and/or HIV Special Needs Plan, Provider ID # 00477156, which (for informational purposes but not in limitation of the scope of the agreement) amounted to \$3,687,674.19.

57. By letter dated as of December 23, 2019, the New York City Human Resources Administration (“NYHRA”) notified Affinity that it was conducting an audit for the period from October 1, 2015 to October 31, 2019 regarding overpayments received by Affinity for Medicare Parts A/B-enrolled individuals, for which NYHRA has not indicated an anticipated overpayment recovery amount. Affinity has reserved \$221,482.96, but it has not received any further communication from the NYHRA regarding this matter.
58. On August 17, 2018, OMIG initiated a Medical Payment Integrity Review (Review Number NYPI1808), which found \$9,847.96 in overpayments.
59. On August 26, 2020, OMIG notified Affinity that it had initiated a Medical Payment Integrity Review (Review Number NYPI2008) and indicated that it has identified \$978,514.96 in potential overpayments.
60. HCRA Liability 2016-2020 with an accrued liability of \$14,384,311.

(b)

1. NYSDOH issued Certificate of Authority to Affinity to operate a Health Maintenance Organization pursuant to Article 44 of the NYS Public Health Law. The Certificate of Authority was initially issued on October 9, 1986 and was most recently reissued on April 20, 2016. The Certificate of Authority will not be transferred to Buyer as part of the transaction contemplated by the Agreement.

## **Section 4.12**

### **HIPAA**

(d)

1. On or about March 18, 2019, Affinity's business associate, DentaQuest, mailed a complaint resolution letter to an Affinity member that contained another member's protected health information. The breach affected one individual. The affected member and OCR were notified and additional safeguards were put in place to avoid similar incidents.
2. On or about July 21, 2018, an Affinity member's authorization letter was sent to the member's prior employer's address. The breach affected one individual. The appropriate notices were sent out and corrective actions were taken.
3. In late summer/early fall of 2015, Affinity mistakenly sent renewal letters to members that contained membership information for other members. The breach affected 721 individuals. The appropriate notices were sent out and corrective actions were taken.

## Section 4.13

### Employment and Benefits Matters

(f)

1. Affinity Health Plan, Inc. Employee Benefits Plans, including:
  - (a) Cigna DHMO Plan
  - (b) Cigna DPPO Plan
  - (c) VSP Voluntary Vision Plan
  - (d) Aetna Select Plan (In-Network Only)
  - (e) Aetna Choice POS II Plan
2. Health Care Flexible Spending Account administered by Wage Works
3. Dependent Care Flexible Spending Account administered by Wage Works
4. Basic Life and Accidental Death and Dismemberment Coverage from Symetra
5. Supplemental Life Insurance from Symetra
6. Short Term Disability Coverage from Symetra
7. Long Term Disability Coverage from Symetra
8. 403(b) Retirement Plan administered by TIAA-CREF
9. Employee Assistance Program from ESI Employee Assistance Group
10. Tuition Reimbursement Program
11. Qualified Transportation Expense Plan administered by Benefit Resource Inc.
12. Accident and Critical Illness Insurance from Lincoln Life & Annuity Company of New York
13. Identity Theft Protection Services provided by LegalShield, pursuant to that certain Agreement, dated as of January 1, 2019, by and between Pre-Paid Legal Services, Inc. and Affinity
14. Management Services Agreement, effective as of August 1, 2018, by and between Affinity and Rachel Amalfitano
15. Change in Control Agreements and/or Retention Agreements in the forms provided to Buyer prior to the date hereof with the following employees of Affinity:
  - (a) Scott Breidbart (Chief Medical Officer)
  - (b) Clara Hansen (Vice President & Chief of Staff – Corporate Planning & Initiative)
  - (c) Lisa Mingione (Vice President – Chief Compliance Officer)
  - (d) Denise Pesich (Vice President – Chief Marketing Officer)

- (e) Adrian Roberts (Executive Director – Medicaid)
- (f) Jason Robinson (Vice President – Human Resources)
- (g) Mark Scalfani (Vice President – Sales and Retention)

16. The Murphy Executive Employment Contract

17. Certain employees of Affinity have received, or may receive prior to the Closing, increased compensation as part of the regular cycle of reviewing employee performance and making bonus determinations.

## **Section 4.15**

### **Brokers**

1. Cain Brothers, a division of KeyBanc Capital Markets

## Section 4.16

### Health Care Matters

(a)(ii)

1. The disclosures in Sections 4.11(a) and 4.12 of these Disclosure Schedules are hereby incorporated by reference.
2. Since 2014, Affinity has been subject to 3,073 prompt pay and other claims made by Providers to the New York State Department of Financial Services, of which 3,026 have been closed and 48 remain outstanding.

(d)

1. The disclosure set forth in item 1 of Section 4.10(b) of these Disclosure Schedules is hereby incorporated by reference.
2. The disclosures set forth in items 2-60 of Section 4.11(a) of these Disclosure Schedules are hereby incorporated by reference.
3. Plan of Correction submitted to NYSDOH on April 16, 2018 (as revised on September 18, 2018)
4. Plan of Correction submitted to NYSDOH on April 12, 2019
5. Plan of Correction submitted to NYSDOH on July 31, 2019

(e)

None.

(h)

1. Filings related to New York State Executive Order 38 prior to June 2019 were not made by Affinity because the regulation was in litigation and filing obligations were suspended.
2. June 2019 filings were not made because Affinity determined that it was in compliance and did not realize that it nonetheless had to make the required filing.

## **Section 4.19**

### **Insurance Coverage**

1. Commercial Crime Policy, Policy No. FINYABPDLE002, issued by Liberty Mutual Insurance Company
2. Managed Care Errors and Omissions Liability Policy, Policy No. 001326907, issued by Ironshore Indemnity, Inc.
3. Automobile Insurance Policy issued by American Casualty Company of Reading
4. Flood Insurance Policy, Policy No. 31 1151229349 04, issued by Wright National Flood Insurance Company
5. Excess Liability Insurance Policy, Policy No. ZUP-12S3150A-19-NF, issued by The Travelers Indemnity Company
6. Commercial Package Policy issued by American Casualty Company of Reading
7. Workers Compensation Policy issued by American Casualty Company of Reading
8. Umbrella Liability Policy issued by American Casualty Company of Reading
9. Excess Liability Policy issued by American Casualty Company of Reading
10. Cyber Liability Policy, Policy No. 0312-0118, issued by Allied World Assurance Company (U.S.), Inc.
11. Employee Benefit Plan Fiduciary Insurance Policy, Policy No. 003832601, issued by Ironshore Indemnity, Inc.
12. Directors & Officers Liability including Employment Practices Liability Policy, Policy No. SHP31210269, issued by Hudson Insurance Company
13. Excess Liability Insurance Policy, Policy No. 0311-6039, issued by Allied World Specialty Insurance Company
14. Excess Insurance Policy, Policy No. DOX-00594-19, issued by Atlantic Specialty Insurance Company
15. Specific Excess Loss Reinsurance Agreement, effective January 1, 2020, between Affinity and Odyssey Reinsurance Company

## Section 6.01

### Conduct of Business Prior to the Closing

(f)

None.

(g)

1. Certain employees of Affinity may receive increased compensation as part of the regular cycle of reviewing employee performance and making bonus determinations, the estimated aggregate amount of such increased compensation not to exceed \$3,000,000.<sup>18</sup>
2. Without limitation to and subject to Affinity's obligations under Section 6.08 of the Agreement, the Murphy Executive Employment Contract may be amended or modified with the approval of the board of directors of Affinity to increase the amount of the bonus and retention payments due thereunder; *provided*, that (i) such amendment or modification does not and will not, directly or indirectly, give rise to any incremental amounts payable by Buyer or any of its Affiliates at any time at or after the Closing (other than payments that reduced the Net Asset Value on a dollar-for-dollar basis for purposes of calculating the adjustments contemplated by Section 2.05 and Section 2.07 of the Agreement) and (ii) Affinity provides Buyer with a written copy of any such proposed amendment or modification at least five (5) Business Days before it is entered into.
3. Affinity intends to enter into Change in Control Agreements and/or Retention Agreements (or replace existing Change in Control Agreements and/or Retention Agreements) in the forms provided to Buyer prior to the date hereof with the following employees:
  - (a) Rudy Andrew (Vice President – Pharmacy)
  - (b) Craig Ballise (Vice President – Controller)
  - (c) Scott Breidbart (Chief Medical Officer)
  - (d) Clara Hansen (Vice President & Chief of Staff – Corporate Planning & Initiative)
  - (e) Victor Hayghe (Vice President – Facilities & Administrative Services)
  - (f) Emerich Janny (Vice President – CIO)
  - (g) Lisa Mingione (Vice President – Chief Compliance Officer)
  - (h) Denise Pesich (Vice President – Chief Marketing Officer)
  - (i) Adrian Roberts (Executive Director – Medicaid)
  - (j) Jason Robinson (Vice President – Human Resources)

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<sup>18</sup> The estimated aggregate amount does not include any payments to Michael Murphy.

- (k) Joanne Scillia (Vice President – Medical Management)
- (l) Mark Sclafani (Vice President – Sales and Retention)
- (m) Alisa Simmons (Vice President – Quality Management)
- (n) TBD (Vice President – Network Management)

(h)(i)

1. The Murphy Executive Employment Contract, except as contemplated by item 2 of Section 6.01(g) of these Disclosure Schedules.

(h)(ii)

1. Affinity intends to enter into an amendment to the Management Services Agreement, effective as of August 1, 2018, with Rachel Amalfitano.
2. Affinity intends to enter into an extension for the Medical Benefit Management Services Agreement, dated as of September 28, 2016, with MedSolutions, Inc. (d/b/a eviCore healthcare), as amended.
3. Affinity intends to enter into an extension for the Vision Services Management Agreement, dated as of January 1, 2017, with Superior Vision Benefit Management, Inc. and UVC Independent Practice Association, Inc.
4. Affinity intends to enter into a new Value-Based Payment Program Agreement with Community Health IPA, Inc.
5. Affinity intends to enter into a Value-Based Payment Program Agreement with Morris Heights Health Center, Inc.
6. The disclosure set forth in item 2 of Section 6.01(g) of these Disclosure Schedules is hereby incorporated by reference.

(m)

1. Affinity intends to undertake the following projects that will involve capital expenditures by Affinity that may exceed \$2,000,000, in the aggregate. The projects are in the early stages of planning (except for the Cactus Upgrade, which is expected to be completed in fourth quarter of 2020) and will be vetted during the budgeting and planning process. Affinity shall consult with Buyer, and consider in good faith the views of Buyer, in connection with the foregoing and shall keep Buyer reasonably apprised of the status of the following projects prior to implementation of such plans and procedures.

Project	Targeted Implementation	Description
Interoperability	July 2021	The federal government is requiring healthcare providers and payers to facilitate seamless data

Project	Targeted Implementation	Description
		exchange to coordinate care effectively and reduce avoidable costs. The project will entail software purchase and development work.
Facets Upgrade	Third Quarter 2021	Upgrade of claims system to ensure not greater than two releases behind. Development work may be required for existing interfaces and extensions.
EDI Migration	First Quarter 2021	Project to replace Sybase EDI with supported TIBCO product for enrollment/billing applications integrated with Facets. It will entail software purchase and development work.
CHP Kids Process Improvement	First Quarter 2021	CHP Kids enrollment processing is on outdated technology and is need of operational efficiencies. A move from old to new technology will add process improvement. The project will not require a software purchase, but will entail development work.
Cactus Upgrade	Fourth Quarter 2020	Optional upgrade to Web version with many enhancements.
Customer Relationship Management	2021	Implement Customer Relationship Management for Provider Network team to track communications with providers; include functionality for tracking Provider Ops, Provider Data updates and

Project	Targeted Implementation	Description
		Contracting Process and terms. The project will entail new software purchase and development work.
Behavioral Health Insourcing	Fourth Quarter 2021	For strategic and operational efficiency. The project is in the early stages of planning.
Infrastructure Spend	2021	Payments for multi-year software licenses, including SQL 2016, Windows Server, and Centera.
Hardware (Laptops)	2020/2021	To accommodate telework and Windows upgrade.
Facilities & Administrative Services	Ongoing	Capital expenditures related to retail stores, vehicles, etc.

(o)

1. Affinity expects to settle the Actions described in items 4, 14, 15 and 16 of Section 4.10(a) of these Disclosure Schedules and item 2 of Section 4.10(b) of these Disclosure Schedules; *provided*, that any such settlement does not and will not give rise to any incremental amounts payable by Buyer or any of its Affiliates at any time at or after the Closing (other than payments that reduced the Net Asset Value on a dollar-for-dollar basis for purposes of calculating the adjustments contemplated by Section 2.05 and Section 2.07 of the Agreement).

(t)

1. The disclosures set forth in items 2 and 3 of Section 6.01(g) of these Disclosure Schedules are hereby incorporated by reference.
2. The disclosures set forth in item 1 and 5 of Section 6.01(h)(ii) of these Disclosure Schedules is hereby incorporated by reference.

(u)

1. Affinity intends to renew the following insurance policies that will otherwise expire as of December 31, 2020:

- (a) Commercial Crime Policy, Policy No. FINYABPDLE002, issued by Liberty Mutual Insurance Company
- (b) Managed Care Errors and Omissions Liability Policy, Policy No. 001326907, issued by Ironshore Indemnity, Inc.
- (c) Employee Benefit Plan Fiduciary Insurance Policy, Policy No. 003832601, issued by Ironshore Indemnity, Inc.
- (d) Directors & Officers Liability including Employment Practices Liability Policy, Policy No. SHP31210269, issued by Hudson Insurance Company
- (e) Excess Liability Insurance Policy, Policy No. 0311-6039, issued by Allied World Specialty Insurance Company
- (f) Excess Insurance Policy, Policy No. DOX-00594-19, issued by Atlantic Specialty Insurance Company

## **Section 6.05(a)**

### **Employees**

1. Change in Control Agreements and/or Retention Agreements in the forms provided to Buyer prior to the date hereof with the following employees:
  - (a) Rudy Andrew (Vice President – Pharmacy)
  - (b) Craig Ballise (Vice President – Controller)
  - (c) Scott Breidbart (Chief Medical Officer)
  - (d) Clara Hansen (Vice President & Chief of Staff – Corporate Planning & Initiative)
  - (e) Victor Hayghe (Vice President – Facilities & Administrative Services)
  - (f) Emerich Janny (Vice President – CIO)
  - (g) Lisa Mingione (Vice President – Chief Compliance Officer)
  - (h) Denise Pesich (Vice President – Chief Marketing Officer)
  - (i) Adrian Roberts (Executive Director – Medicaid)
  - (j) Jason Robinson (Vice President – Human Resources)
  - (k) Joanne Scillia (Vice President – Medical Management)
  - (l) Mark Sclafani (Vice President – Sales and Retention)
  - (m) Alisa Simmons (Vice President – Quality Management)
  - (n) TBD (Vice President – Network Management)<sup>19</sup>
2. The Murphy Executive Employment Contract

---

<sup>19</sup> Annual salary up to \$250,000.

**Section 6.08(a)**

**Required Government Approvals**

1. NYSDOH Approval, in consultation with OMH, OASAS and NYDFS
2. Charities Bureau of the New York State Office of the Attorney General and/or New York State Supreme Court Approval
3. To the extent the Payor Contracts are assigned from Affinity to Buyer, NYOSC has not objected to such assignment following notification thereof.
4. To the extent the Payor Contracts are assigned from Affinity to Buyer, CMS has not objected to such assignment following notification thereof.
5. HSR Act Filing

**BUYER DISCLOSURE SCHEDULES  
TO  
ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**AFFINITY HEALTH PLAN, INC.**

**AND**

**MOLINA HEALTHCARE, INC.**

**Dated as of September 28, 2020**

This document constitutes the Buyer Disclosure Schedules (these “**Buyer Disclosure Schedules**”) to that certain Asset Purchase Agreement (the “**Agreement**”), made as of September 28, 2020 between Affinity Health Plan, Inc., a New York not-for-profit corporation (“**Affinity**”), and Molina Healthcare Inc., a Delaware corporation (“**Buyer**”). All capitalized terms used, but not defined, herein shall have the meaning ascribed to such term in the Agreement.

Section and sub-section numbers and letters used herein correspond to the section and sub-section numbers and letters in the Agreement, unless otherwise noted. The titles given to each part, paragraph, or section of these Buyer Disclosure Schedules are summaries of the material included in such part, paragraph or section of the Agreement. The titles are included for convenience only and are not intended to limit the scope of such part, paragraph or section of these Buyer Disclosure Schedules as set forth in the Agreement. Any information disclosed herein under any particular part, paragraph or section of these Buyer Disclosure Schedules shall qualify or modify (a) the correspondingly numbered section in the Agreement and (b) to the extent the relevance of such information to another section or subsection of the Agreement is reasonably apparent on the face of such disclosure, such other section or subsection.

No reference to or disclosure of any item or other matter in these Buyer Disclosure Schedules shall: (i) represent a determination that such item or other matter is material (or otherwise establish a standard of materiality) or that such item or matter is required to be referred to or disclosed in these Buyer Disclosure Schedules; and (ii) represent a determination that such item or other matter did not arise in the ordinary course of business. The information contained in these Buyer Disclosure Schedules is provided solely for purposes of making disclosures to Seller under the Agreement. In disclosing such information, Buyer does not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed or discussed in these Buyer Disclosure Schedules.

**Section 5.03****No Conflicts; Consents**

(c)

1. On April 30, 2020, Buyer entered into a Stock and Asset Purchase Agreement (the “Magellan Purchase Agreement”) with Magellan Health, Inc. (“Magellan”) to purchase and acquire the Magellan Complete Care business (the “MCC Acquisition”). The closing of the MCC Acquisition is conditioned upon the receipt of certain regulatory approvals, including approvals by regulatory bodies of the State of New York (“NY Authorities”), and Buyer is obligated to undertake efforts specified in the Magellan Purchase Agreement to obtain these approvals. As of the date hereof, the closing of the MCC Acquisition has not yet occurred, and review of the MCC Acquisition by the NY Authorities is ongoing and is expected to continue following the date hereof (the “MCC Acquisition Approval”).

(e) Governmental Authority Consents

1. New York State Department of Health (“NYSDOH”) Approval, in consultation with the New York State Office of Mental Health (“OMH”), the New York State Office of Addiction Services and Supports (“OASAS”) and the New York State Department of Financial Services (“NYDFS”)
2. Charities Bureau of the New York State Office of the Attorney General and/or New York State Supreme Court Approval
3. To the extent the Payor Contracts are assigned from Affinity to Buyer, New York Office of State Comptroller (“NYOSC”) has not objected to such assignment following notification thereof.
4. To the extent the Payor Contracts are assigned from Affinity to Buyer, Centers for Medicare and Medicaid Services (“CMS”) has not objected to such assignment following notification thereof.
5. HSR Act Filing
6. Reference is made to the MCC Acquisition Approval.

**Section 5.04**

**Brokers**

1. Deutsche Bank Securities Inc.

**Section 5.05**

**Legal Proceedings**

1. Reference is made to the MCC Acquisition Approval.

# EXHIBIT B

**Affinity Health Plan  
IRS Determination Letter**

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

The Bronx Health Plan, Inc.  
c/o Dept. of Family Medicine  
Montefiore Medical Center  
11 East 210th St.  
New York, NY 10467

Person to Contact: Bill Brockner  
Telephone Number: (202) 566-4757

Refer Reply to: OP:E:EO:R:4

Date: 8 JAN 1987

Employer Identification Number: 13-3330672  
Key District: Brooklyn  
Accounting Period Ending: December 31  
Foundation Status Classification: 509(a)(1) & 170(b)(1)(A)(iii)

Dear Applicant:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

We have further determined that you are not a private foundation within the meaning of Code section 509(a), because you are an organization described in the sections of the Code shown above.

If your sources of support, or your purposes, character, or method of operation change, please let your key district know so that office can consider the effect of the change on your exempt status and foundation status. Also, you should inform your key District Director of all changes in your name and address.

Unless specifically excepted, beginning January 1, 1984, you must pay taxes under the Federal Insurance Contributions Act (social security taxes) for each employee who is paid \$100 or more in a calendar year. You are not required to pay tax under the Federal Unemployment Tax Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other federal excise taxes. If you have questions about excise, employment, or other federal taxes, contact your key District Director.

Donors may deduct contributions to you as provided in Code section 170 on and after the effective date of exemption. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522.

The Bronx Health Plan, Inc.

You are required to file Form 990, Return of Organization Exempt from Income Tax, only if your gross receipts each year are normally more than \$25,000. If your gross receipts are not normally more than \$25,000 we ask that you establish that you are not required to file Form 990 by completing Part I of that Form for your first tax year. Thereafter, you will not be required to file a return until your gross receipts normally exceed the \$25,000 minimum. For guidance in determining if your gross receipts are "normally" not more than the \$25,000 limit, see the instructions for the Form 990. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. There is a penalty of \$10 a day, up to a maximum of \$5,000, when a return is filed late unless you establish, as required by section 6652(d)(1), that the failure to file timely was due to reasonable cause

You are not required to file federal income tax returns unless you are subject to the tax on unrelated business income under Code section 511. If you are subject to this tax, you must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513.

Please show your employer identification number on all returns you file and in all correspondence with the Internal Revenue Service.

We are informing your key District Director of this ruling. Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact your key District Director.

Sincerely yours,

  
Milton Cerny  
Chief, Exempt Organizations  
Rulings Branch

# EXHIBIT C

## **Affinity Health Plan Certificate of Incorporation**

USC

CERTIFICATE OF INCORPORATION

USC

OF

THE BRONX HEALTH PLAN, INC.

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, natural persons over 19 years of age,  
desiring to form a corporation pursuant to the provisions of Section  
402 of the Not-for-Profit Corporation Law of the State of New York,  
hereby certify:

FIRST: The name of the corporation is THE BRONX HEALTH  
PLAN, INC. (herein sometimes referred to as "the Corporation").

SECOND: The Corporation is a corporation as defined in  
subparagraph (a)(5) of Section 402 of the Not-for-Profit Corporation  
Law.

THIRD: The purposes for which the Corporation is formed  
are:

- (a) To perform studies, feasibility surveys and  
planning, as authorized pursuant to Section 4403-a  
of the Public Health Law of the State of New York,  
with respect to the development and formation of a  
special purpose comprehensive health services plan;  
in conjunction herewith, to accumulate, compile,  
analyze, and distribute statistics and such other  
data as will promote the health, safety, and welfare  
of the general public; and
- (b) Upon obtaining a Special Purpose Certificate of  
Authority from the Commissioner of Health, to

032006-1  
032006-1

provide or arrange for the provision of comprehensive health services, as defined in Article 44 of the Public Health Law, on a prepaid capitated basis, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program, to wit:

- (1) To own, operate, and maintain a special purpose comprehensive health services plan or plans and all services required or appropriate for the provision of comprehensive health services, as defined in Section 4401(3) of the Public Health Law, to an enrolled population substantially comprised of beneficiaries of the Medical Assistance Program, and
- (ii) To enter into contracts with individuals, partnerships, associations, not-for-profit corporations, hospital and health service corporations, both public and private, and appropriate state and federal agencies, for the purpose of providing health services as may be necessary to carry out the foregoing purposes, provided, however, that nothing herein contained shall authorize the Corporation to establish, operate, conduct, lease, or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a hospice as provided for in Articles 28, 33, 36, and 40,

respectively, of the Public Health Law, or to solicit, collect, or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

(iii) In furtherance of the foregoing purpose, and subject to such limitations and conditions as are or may be prescribed by law, the Corporation may exercise such powers as are now, or hereafter may be conferred, by law upon a corporation organized for the purpose above set forth or necessary or incidental to such purpose, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for charitable, scientific and educational purposes, as specified in Section 501(c)(3) of the Code (as hereafter defined), and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code (or, in each such case, the corresponding provisions of any subsequent Federal tax laws).

FOURTH: The Corporation is a Type B corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

FIFTH: The office of the Corporation is to be located in the County of New York, State of New York.

SIXTH: The number of Directors constituting the entire Board of Directors of the Corporation (the number of which shall not be less than five (5)), their term of office, by whom and how they shall be elected or appointed, the number of Directors necessary to constitute a quorum for the transaction of business, the number of affirmative votes of Directors necessary for the transaction of business, and the number of affirmative votes of Directors and Members necessary to adopt amendments to the Certificate of Incorporation or By-laws of the Corporation, shall all be as provided for in By-laws of the Corporation to be adopted by its Members.

The names and post office addresses of the persons constituting the initial Directors of the Corporation (until their respective successors are elected or appointed in accordance with the By-laws of the Corporation) are as follows:

Stanley E. Harris, M.D.

Comprehensive Health Care  
Center  
230 East 162nd Street  
Bronx, NY 10451

Robert Massad, M.D.

Family Health Center  
360 East 193rd Street  
Bronx, NY 10458

Verona Greenland

Morris Heights Health Center  
70 West Burnside Avenue  
Bronx, NY 10453

Angel Quinones

Morrisania Neighborhood Family  
Care Center  
1225 Gerard Avenue  
Bronx, NY 10452

Gloria Perry

Dr. Martin Luther King, Jr.,  
Health Center  
3674 Third Avenue  
Bronx, NY 10456

SEVENTH: The Corporation is authorized to have more than one class of members. The designations and characteristics of each class, including provisions relating to the termination of membership upon the occurrence of certain events, shall be contained in By-Laws of the Corporation to be adopted by its Members. The persons constituting the initial Members of the Corporation shall be the Project Directors (or persons holding equivalent positions, however designated) of the following nine (9) Community health centers located in the County of The Bronx:

Ambulatory Care Network/ Bronx-Lebanon Hospital Center	Comprehensive Family Care Center of the Albert Einstein College of Medicine
Soundview Health Center	Montefiore Family Health Center
Morris Heights Health Center	Dr. Martin Luther King, Jr. Health Center
Montefiore Comprehensive Health Care Center	Morrisania Neighborhood Family Care Center
Segundo Ruiz-Belvis Neighborhood Family Care Center	

EIGHTH: The Board of Directors of the Corporation is authorized to enter into agreements with one or more entities, each of which shall be an organization of the kind described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (the "Code"), or the corresponding provisions of any subsequent Federal tax laws, for the provision of all (or some part) of the management and administrative services required of or by the Corporation in connection with activities undertaken by it in furtherance of its corporate purpose.

NINTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is:

The Bronx Health Plan, Inc., c/o Office of Planning, MMC, 111 E.  
210th St., Bronx, NY 10467.

TENTH: The Corporation is not formed for pecuniary profit or financial gain, and no part of the net earnings of the Corporation shall be distributed to or inure to the benefit of any Member, Director or officer of the Corporation or any other private person.

ELEVENTH: No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code, or the corresponding provisions of any subsequent Federal tax laws), and the Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of or against any candidate for public office.

TWELFTH: In the event of the dissolution of the Corporation, the assets and property of the Corporation remaining after payment or provision for payment of all liabilities of the Corporation, shall be distributed to other corporation(s) or organization(s) which at the time qualify as exempt corporation(s) or organization(s) under Section 501(c)(3) of the Code (or the corresponding provisions of any subsequent Federal tax laws) to be used exclusively for charitable, scientific and/or educational purposes, upon approval of a Justice of the Supreme Court of the State of New York.

6

IN WITNESS WHEREOF, this Certificate of Incorporation has  
been signed, and the statements made herein are affirmed as true,  
under the penalties of perjury, this 9th day of September, 1985.

*Maurice Blum*  
Maurice Blum  
c/o Office of Planning  
Montefiore Medical Center  
111 E. 210th Street  
Bronx, NY 10467

*Helle Lustgarten*  
Helle Lustgarten  
c/o Office of Planning  
Montefiore Medical Center  
111 E. 210th Street  
Bronx, NY 10467

7

The undersigned has no objection to the granting  
of Judicial approval hereon and waives statutory notice.

Dated: \_\_\_\_\_, 1985

THE UNDERSIGNED HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL  
APPROVAL HEREON AND WAIVES  
STATUTORY NOTICE.

ROBERT ABRAMS  
ATTORNEY GENERAL  
STATE OF NEW YORK

ROBERT ABRAMS, ATTORNEY GEN.  
STATE OF NEW YORK

By

*Laura Werner*

*December 19, 1985*

LAURA WERNER

IRWIN M. SILBOWITZ

a Justice of

the Supreme Court of the State of New York for the Twelfth  
Judicial District, do hereby approve the foregoing Certifi-  
cate of Incorporation of The Bronx Health Plan, Inc. and  
consent that the same be filed.

Dated: *December 20* 1985

*BRONX, NEW YORK*



JSC

*8*



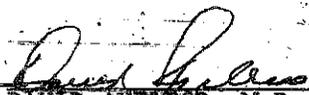
STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY

DAVID AXELROD, M.D.  
COMMISSIONER

CONSENT

to the CERTIFICATE OF INCORPORATION  
of THE BRONX HEALTH PLAN, INC.

I, David Axelrod, M.D., Commissioner of Health of  
the State of New York, do this *9th* day of October, 1985,  
pursuant to section 404(r) of the Not-for-Profit Corporation  
Law, consent to the filing with the Secretary of State of the  
State of New York of the Certificate of Incorporation of  
THE BRONX HEALTH PLAN, INC., as executed on the 9th day  
of September, 1985.

  
DAVID AXELROD, M.D.  
Commissioner of Health



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

October 28, 1985

Maura Bluestone  
c/o Office of Planning  
Montefiore Medical Center  
111 East 210th Street  
Bronx, New York 10467

Re: Proposed certificate of  
incorporation, The Bronx  
Health Plan, Inc.

Dear Ms. Bluestone:

The proposed certificate of incorporation of The Bronx Health Plan, Inc., as executed on the 9th day of September, 1985, does not require the formal approval of the Public Health Council as the powers and purposes set forth therein do not authorize the corporation to operate a hospital as defined in Article 28 of the Public Health Law, and for the further reason that paragraph "THIRD (b)(ii)" thereof contains the following provision:

... provided, however, that nothing herein contained shall authorize the Corporation to establish, operate, conduct, lease, or maintain a hospital or to provide hospital service or health related service, or to operate a drug maintenance program, a certified home health agency, or a hospice as provided for in Articles 28, 33, 36, and 40, respectively, of the Public Health Law, or to solicit, collect, or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

Sincerely yours,

*Nancy A. Massaroni*  
Nancy Massaroni  
Executive Secretary

cc: D. Horinka  
J. Franzen

USC

*Prova*  
*1-19-86*

STATE OF NEW YORK  
DEPARTMENT OF REVENUE

PAID FEB 7 - 1986

TAXPAYER'S NAME: [REDACTED]

AMOUNT OF CHECK: [REDACTED]

FILED FEB 7 1986

QUANTITY: [REDACTED]

BOX: [REDACTED]

AMOUNT: [REDACTED]

PERIOD: [REDACTED]

SPEC AMOUNT: [REDACTED]

PROSKAUER ROSE GOETZ & MENDESJOHN COUNSELLORS AT LAW 500 PARK AVENUE 10022 New York, N.Y. (212) 909-7055	THE MONX HEALTH PLAN, INC. 11
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JAN 8 10 46 AM '86

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**BILLED**

FILED  
 FEB 7 1 28 PM '86  
 FEB 9 AM '86

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE BRONX HEALTH PLAN, INC.

*Under Section 803 of the Not-for-Profit Corporation Law.*

We, the undersigned, being the Chairperson and Secretary, respectively, of The Bronx Health Plan, Inc., do hereby certify:

1. The name of the corporation is The Bronx Health Plan, Inc.
2. The Certificate of Incorporation was filed by the Secretary of State of New York on February 7, 1986 under Section 402 of the Not-for-Profit Corporation Law.
3. The Bronx Health Plan, Inc. is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation is amended as authorized in Section 801 of the Not-for-Profit Corporation Law to effect the following amendments:

a. To change the corporate name. The first Paragraph of the Certificate of Incorporation shall be amended to read as follows:

FIRST: The name of the corporation is AFFINITY HEALTH PLAN, INC. (herein sometimes referred to as "the Corporation").

To change the County where the office of the corporation is located. The fifth Paragraph of the Certificate of Incorporation shall be amended to read as follows:

FIFTH: The office of the Corporation is to be located in Bronx County, State of New York.

To change the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her. The ninth Paragraph of the Certificate of Incorporation shall be amended to read as follows:



STATE OF NEW YORK )

COUNTY OF Bronx )

SS.:

On this 13<sup>th</sup> day of December, Two Thousand One, before me, the subscriber, personally appeared Anita Wilenkin, to me known and who, being duly sworn by me, deposed and said that she resides in White Plains, that she is the Secretary of The Bronx Health Plan, Inc., the corporation described in the foregoing Certificate; that deponent has read the foregoing Certificate of Amendment and knows the contents thereof, and that the same is true to deponent's own knowledge.

*Michelle M. Jacome*

MICHELLE M. JACOME  
Notary Public  
N.Y.  
Commission Expires 12/15, 2006  
Notary Public

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower - The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12247

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

December 21, 2001

Tricia A. Asaro, Esq.  
Couch White, ELP  
540 Broadway  
PO Box 22222  
Albany, New York 12201-2222

Re: Certificate of Amendment of Certificate of Incorporation

Dear Ms. Asaro:

Enclosed please find a Consent and Approval to the filing with the Secretary of State of the proposed Certificate of Amendment of the Certificate of Incorporation to effectuate the name change of The Bronx Health Plan, Inc. to Affinity Health Plan, Inc.

Thank you.

Very truly yours,

*Sandra Martino*

Sandra Martino  
Senior Attorney  
Bureau of House Counsel

Enclosure

4



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whalen  
Executive Deputy Commissioner

CONSENT

TO FILING A

CERTIFICATE OF AMENDMENT

I, Dennis P. Whalen, Executive Deputy Commissioner, as the Commissioner's designee,  
do this 19<sup>th</sup> day of December, 2001, consent to the filing with the Secretary of State of the State  
of New York of the Certificate of Amendment of the Certificate of Incorporation of The Bronx  
Health Plan, Inc., as executed on the 17<sup>th</sup> day of December, 2001, whereby the name of the  
corporation will be changed to Affinity Health Plan, Inc., pursuant to Sections 404(c), 804(a)(i)  
and 805(D) of the Not-for-Profit Corporation Law and 19 NYCRR Section 98-1.4.

Dennis P. Whalen  
Executive Deputy Commissioner  
New York State Department of Health

5

F 011221000-764

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE BRONX HEALTH PLAN, INC.

Under Section 803 of the Not for Profit Corporation Law

lcc

STATE OF NEW YORK  
DEPARTMENT OF STATE

DEC 21 2001

RECEIVED

2001 DEC 21 PM 2:36

Re

FILED  
TAX \$  
BY: Re

New to Bronx

Filed By:

Colby Attorneys Service Co., Inc.  
41 State Street, Suite 106  
Albany, NY 12207

6

D.C. -08

- ROUTINE
- 24 HOUR
- SAME DAY
- 1 HOUR

DRAWDOWN

719

DC-08

110714000100

New York State Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231  
www.dos.state.ny.us

CERTIFICATE OF CHANGE  
OF

AFFINITY HEALTH PLAN, INC.

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

AFFINITY HEALTH PLAN, INC.

If the name of the corporation has been changed, the name under which it was formed is:

THE BRONX HEALTH PLAN, INC.

SECOND: The certificate of incorporation was filed by the Department of State on:

FEBRUARY 7, 1986

THIRD: The change(s) effected hereby are: (Check appropriate statement(s))

The county location, within this state, in which the office of the corporation is located, is changed to:

The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:

Affinity Health Plan, Inc. Attn: Regulatory & Legal Affairs Dept.  
2500 Halsey St.  
Bronx, NY 10461

The corporation hereby: (Check One)

Designates \_\_\_\_\_  
as its registered agent upon whom process against the corporation may be served.

The street address of the registered agent is:

Changes the designation of its registered agent to: \_\_\_\_\_

The street address of the registered agent is:

Changes the address of its registered agent to:

Revokes the authority of its registered agent.

110714000100

FOURTH: The change was authorized by the board of directors.

*Stephen M. Buhr*  
(Signature)

Stephen M. Buhr, Esq.  
(Name of Signer)

AUTHORIZED PERSON  
(Title of Signer)

2011 JUL 13 PM 2:49

*Buhr*

CERTIFICATE OF CHANGE  
OF

AFFINITY HEALTH PLAN, INC.  
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

LCC  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 14 2011

Filer's Name:

**Colby Attorneys Service Co., Inc.**

**111 Washington Ave., Suite 703**

Address:

**Albany, NY 12210**

TAX \$

BY: *Buhr*

*Buhr*

City, State and Zip Code:

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

For Office Use Only

DC-08

DRAWDOWN

2011 JUL 14 1:13:36

110714000106



**Division of Corporations,  
State Records and  
Uniform Commercial Code**

170809000521

New York State  
Department of State  
**DIVISION OF CORPORATIONS,  
STATE RECORDS AND  
UNIFORM COMMERCIAL CODE**  
One Commerce Plaza  
99 Washington Ave.  
Albany, NY 12231-0001  
www.dos.ny.gov

**CERTIFICATE OF CHANGE  
OF**

**AFFINITY HEALTH PLAN, INC.**

*(Insert Name of Domestic Corporation)*

Under Section 803-A of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is:  
**AFFINITY HEALTH PLAN, INC.**

If the name of the corporation has been changed, the name under which it was formed is:  
**THE BRONX HEALTH PLAN, INC.**

**SECOND:** The certificate of incorporation was filed by the Department of State on:  
**FEB. 07, 1986**

**THIRD:** The change(s) effected hereby are: *(Check appropriate statement(s))*

The county location, within this state, in which the office of the corporation is located, is changed to: \_\_\_\_\_

The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:

**METRO CENTER ATRIUM  
1776 EASTCHESTER ROAD, BRONX, NY 10461**

The corporation hereby: *(Check One)*

Designates \_\_\_\_\_  
as its registered agent upon whom process against the corporation may be served.  
The street address of the registered agent is:  
\_\_\_\_\_

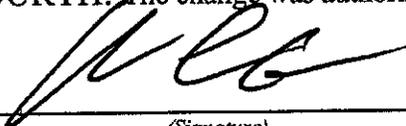
Changes the designation of its registered agent to: \_\_\_\_\_  
The street address of the registered agent is:  
\_\_\_\_\_

Changes the address of its registered agent to:  
\_\_\_\_\_

Revokes the authority of its registered agent.

521

FOURTH: The change was authorized by the board of directors.

X  STEPHEN GRABI  
 (Signature) (Name of Signer)  
CEO  
 (Title of Signer)

CERTIFICATE OF CHANGE  
 OF

AFFINITY HEALTH PLAN INC.  
 (Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name: Stephen Grabi CEO  
 Address: 1776 Eastchester Road  
 City, State and Zip Code: Bronx, N.Y. 10461

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at [www.dos.ny.gov](http://www.dos.ny.gov).
2. This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
2. The Department of State recommends that all documents be prepared under the guidance of an attorney.
3. The certificate must be submitted with a \$20 filing fee.

For Office Use Only

STATE OF NEW YORK  
 DEPARTMENT OF STATE

FILED AUG 09 2017

TAX \$

BY: 

Brumle

# EXHIBIT D

## **Affinity Health Plan Bylaws**

**AMENDED AND RESTATED**  
**CORPORATE BY-LAWS**  
**OF**  
**AFFINITY HEALTH PLAN, INC.**

ARTICLE I - OBJECTS

Section 1.1 Objects. The objects of Affinity Health Plan, Inc. (hereinafter called the "Plan") shall be to plan, develop, own, operate and maintain comprehensive health care coverage programs, all in accordance with applicable provisions of the laws of the United States and the State of New York and regulations promulgated thereunder.

ARTICLE II - OFFICE

Section 2.1 Office. The principal office of the Plan shall be at such place as the Board of Directors may from time to time designate.

ARTICLE III - USE OF PROPERTY

Section 3.1 Property. All property of the Plan from whatever sources arising, shall be devoted exclusively to furthering the purpose of the Plan as set forth in the Certificate of Incorporation.

ARTICLE IV – ORGANIZATIONAL MEMBERS

Section 4.01 – Organizational Members. The Plan shall have the following Organizational Members:

- (a) Charles B. Wang Community Health Center, Inc.;
- (b) Cornerstone Family Healthcare;
- (c) The Institute for Family Health;
- (d) Morris Heights Health Center, Inc.;
- (e) William F. Ryan Community Health Center, Inc.; and
- (f) Urban Health Plan, Inc.

Section 4.02 – Organizational Member Rights. Except as set forth herein or as required by law, Organizational Members shall possess no rights, obligations or powers to vote on the business of the Plan, the conduct of the Plan's affairs, or the amendment of these By-laws.

Section 4.03 – Member Vote for Disposition of Substantially All Property. In order to sell, lease, exchange, or otherwise dispose of substantially all of the Plan's assets, the Board must adopt and present a resolution of such disposition to the Organizational Members, and the Organizational Members must approve and ratify such disposition by a two-thirds vote as provided in Section 613(c) of the New York State Not-for-Profit Corporation Law. In addition, a disposition of substantially all of the assets of the Plan must comply with the requirements of Section 510 of the New York State Not-for-Profit Corporation Law.

## ARTICLE V - DIRECTORS

Section 5.1 Qualifications and Number. The Board of Directors shall consist of not more than thirteen (13) persons. To the extent practicable, the Board members shall consist of the following:

- (a) at least seven (7) members who are representatives of Healthcare Provider organizations or are licensed independent health care providers. A majority of such provider Board members shall be affiliated with Federally Qualified Health Centers, provided that such Health Centers (i) do not maintain, directly or indirectly, an ownership interest in competitor health plans, and (ii) currently participate in the Plan, and, provided further, that such representatives shall include any such Health Center that had a participation agreement prior to October 1, 1989.
- (b) at least six (6) public representatives.
- (c) at least one (1) of the thirteen (13) Board members shall be either a Plan enrollee or an individual who, by means of his/her personal or professional activity, represents a community or communities served by the Plan

Section 5.2 Duties of the Board of Directors. The business, property, activities and affairs of the Plan shall be vested in the Board of Directors. Without limiting the generality of this provision, the Board of Directors shall:

- (a) approve the By-Laws and regulations of the Plan;
- (b) define the committees of the Board of Directors and the functions and responsibilities thereof;
- (c) provide for Plan management by a qualified administrator, to be entitled President and Chief Executive Officer, establish the salary and compensation for such administrator, and delegate to such administrator executive authority and responsibility;
- (d) provide for the proper review and control of all Plan assets and funds including annual audits thereof;
- (e) oversee the Plan's Quality Management Program;
- (f) approve the Plan's annual budget and strategic plans; and
- (g) promulgate Plan policies that address the organization's mission, direction, values and key results.

Section 5.3 Appointment of Directors and Term. Directors shall be appointed by a majority of the members of the Board then in office. The initial term for new Board members shall be from the date of appointment to the date of the next annual meeting of the Board, unless

that meeting is scheduled to take place less than six (6) months following the date of appointment, in which case the initial term shall be from the date of appointment to the date of the annual meeting following the next annual meeting. Thereafter, Board members shall serve for a term of three years upon reappointment at the annual meeting; provided, however, that the Board may approve terms for a shorter period of time in order to allow for staggered terms. To the extent possible, terms shall be staggered so that there are no more than three Board members with term expiration in any given year. The members of the Board of Directors shall, upon the effective date of their appointment, immediately enter upon the performance of their duties and shall continue in office until the next annual meeting and until their successors shall be duly appointed and qualified, or until their death, resignation or removal.

Section 5.4 Resignation. A Director may resign his/her office at any time, such resignation to be in writing and to take effect from the time of its receipt by the Board Chair and Corporate Secretary of the Plan, unless some time be fixed in the resignation, and then from that time. A Director serving on the Board pursuant to Section 5.1(a) must resign upon termination of his/her organization's network participation Agreement.

Section 5.5 Removal of Directors. A Director may be removed for cause at any time by the affirmative vote of at least 75% of the number of Director positions filled at that time, exclusive of the Director whose removal is under consideration. A Director's failure to attend three (3) consecutive Board meetings or five (5) meetings in the aggregate in any year (without reasonable justification) will be considered a cause for such termination.

Section 5.6 Vacancies. Any vacancy on the Board of Directors due to death, resignation or removal, and any newly created directorships resulting from an increase in the authorized number of directors shall be filled by the means provided in Sections 5.1 and 5.3.

Section 5.7 Compensation. The Directors shall be paid for their services, provided that the compensation complies with the NonProfit Revitalization Act of 2013 and relevant Executive Orders on the Model Audit Rule. The Board, however, also may approve reimbursement for travel and related expenses incurred by Directors in attending Board meetings and related events.

Section 5.8 Annual Meeting. The annual meeting of the Board of Directors shall be held during the first calendar quarter of the year. If for any reason the annual meeting is not held at that time, a meeting may be held in place thereof at a later date and any elections held or business transacted at such meeting shall be as valid as if held or transacted at the annual meeting.

Section 5.9 Annual Report. At the annual meeting of the Board of Directors, the President and Treasurer shall present a report in accordance with the provisions of Section 519 of the New York Not-for-Profit Corporation Law, verified by said President and Treasurer or by a majority of the Directors and certified by an independent public or certified accountant or a firm of such accountants selected by the Board of Directors, which report shall be filed with the records of the Plan and either a copy or an abstract thereof entered in or annexed to the minutes of the meeting.

Section 5.10 Meetings. The Board shall meet not less frequently than four (4) times each calendar year. Regular meetings of the Board of Directors may be held without notice at such time and place as the Board of Directors may by resolution fix; but if there be no such resolution

then in effect, notice of such meeting, outlining the agenda and issues on which voting is anticipated, shall be transmitted to all Directors at least three (3) business days in advance. Special meetings of the Board of Directors may be called by the President or the Chairperson of the Board of Directors or at the request of two (2) Directors to the President, on at least three (3) business days notice to each Director, unless prevented by extraordinary emergency, either personally or by mail, telegram, cablegram, telephone, facsimile or e-mail, as appropriate.

Section 5.11 Telephonic or Videoconference Meetings. Any member or members of the Board of Directors, or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of a conference telephone, videoconference or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time, and participation in a meeting by such means shall constitute presence of a person at such meeting.

Section 5.12 Quorum. Except as otherwise provided by law, a quorum for the transaction of business shall consist of a majority of the Director positions filled at that time. The affirmative vote of a majority of those Directors or their designees present at a meeting (assuming proper notice of the meeting and quorum) shall be required for all issues except Charter and By-Law amendments as provided in Article XI.

Section 5.13 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors or any Committee thereof may, to the extent permitted by the Corporation Laws of the State of New York, be taken without a meeting if all members of the Board of Directors or the Committee consent in writing to the adoption of the resolution authorizing the action. The resolution and written consent thereto by the members of the Board of Directors or Committee shall be filed with the minutes of the proceedings of the Board of Directors or Committee.

## ARTICLE VI - OFFICERS

Section 6.1 Number. The officers of the Plan shall consist of a Chairperson and a Vice-Chairperson of the Board of Directors, a President, a Secretary, and a Treasurer, as the Board of Directors may from time to time deem advisable. The Chairperson, Vice-Chairperson and the Treasurer shall be Directors of the Plan. Any officer other than the Chairperson, Vice Chairperson and Treasurer may be, but is not required to be, a Director of the Plan.

Section 6.2 Election of Officers. The Chairperson, Vice-Chairperson, Treasurer and Board Secretary of the Plan shall be elected at the annual meeting of the Board of Directors and shall hold office for a two-year term or until their successors are elected and qualify. The Board shall designate a Corporate Secretary. The same person may not hold the offices of President and Treasurer. Additional officers may be appointed at any time by the Board of Directors.

Section 6.3 Resignations. Any officer may resign his/her office in the manner and with the effect hereinbefore provided for the resignation of Directors.

Section 6.4 Removal of Officers. The Chairperson, Vice-Chairperson, Secretary or Treasurer may be removed, either with or without cause, at any time by a 75% vote of the Directors present at any duly convened meeting of the Board at which a quorum is present.

Section 6.5 Vacancies. A vacancy in a Board office resulting from death, resignation, removal or other cause shall be filled for the unexpired portion of the term by the Board at any meeting thereof.

Section 6.6 President. The President shall be the Chief Executive Officer of the Corporation, and shall have general charge of the business, affairs and property thereof, subject to the direction of the Board of Directors, and shall have general supervision over its officers, employees and agents. The President shall, if present, preside at all meetings of the Board of Directors in the absence of the Chairperson and Vice-Chairperson of the Board. The President may do and perform all acts incident to the office of President.

Section 6.7 Subordinate Officers. The Board may appoint such other officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine. In addition, the Board may delegate to the President the power to appoint any such subordinate officers, to specify their duty and authority and to determine their compensation.

Section 6.8 Corporate Secretary. The Secretary shall arrange to:

- (a) keep the minutes of the meetings of the Board of Directors in appropriate books;
- (b) give and serve notice of all meetings of the Board of Directors of the Plan;
- (c) be custodian of the records and of the corporate seal of the Plan and affix the latter to such instruments or documents as may be authorized by the Board of Directors; and
- (d) do and perform all other duties incident to the office of Secretary.

Section 6.9 Treasurer. The Treasurer shall oversee the financial and related activities of the Corporation, subject to the direction of the Board of Directors, including:

- (a) the care and custody of the funds and securities of the Plan, and the deposit of such funds in the name and to the credit of the Plan in such a bank and safe deposit vaults as the Directors may designate;
- (b) the maintenance of full and accurate books and accounts of the Plan;
- (c) the rendering of a statement of the financial condition of the Plan at each stated meeting of the Board of Directors, if called upon to do so, and a full report at the annual meeting; and
- (d) the performance of all other duties incident to the office of Treasurer.

## ARTICLE VII - COMMITTEES

Section 7.1 Board Committees. The Board may appoint one or more committees and delegate to such committees any of the authority of the Board, except with respect to:

- (a) The filling of vacancies on the Board or on any committee;
- (b) The amendment or repeal of Bylaws or the adoption of new Bylaws;
- (c) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (d) The appointment of other committees of the Board or the members thereof.

The Board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless the Board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be governed by the provisions of this Article applicable to meetings and actions of the Board. Minutes shall be kept of each meeting of each committee.

Committee members shall be appointed by the Board Chair, and may include non-Board members. All Committee appointments shall be subject to approval by the Board. Non-Board members may not serve as Committee Chairpersons.

Section 7.2 Executive Committee. The Board of Directors may create an Executive Committee consisting of two or more Directors to be designated by the Board at least annually. The Executive Committee shall have general supervision and control of the affairs of the Plan in the intervals between meetings of the Board. Minutes shall be kept of its meetings and presented for ratification at the next regular meeting of the Board of Directors.

Section 7.3 Quality and Medical Management Committee. There shall be a Quality and Medical Management Committee consisting of the Plan's Chief Medical Officer, three (3) or more Directors to be designated by the Board of Directors at least annually and any other person as the Board may determine. One of these Directors shall serve as Committee chairperson. The Committee shall: a) review and recommend for Board approval the annual Quality Management Plan (QMP); b) review and approve clinical standards of care and practice guidelines for inclusion in the QMP; c) monitor performance and quality against QMP guidelines and indicators defined by the Committee to identify and assess the effectiveness of QMP activities and quality issues and areas for improvement; and d) perform any other duties as provided in the Board-approved Committee charter.

Section 7.4 Finance Committee. There shall be a Finance Committee consisting of the Plan's Treasurer who shall serve as committee Chairperson, and three (3) or more Directors to be designated by the Board of Directors at least annually. The Finance Committee shall a) develop and recommend for Board approval policies related to the Corporation's financial condition, budget, investments, and reserves; b) review monthly financial reports submitted by the CFO to ensure compliance with Board-approved policies; c) review the annual operating and capital budgets prepared by staff to ensure compliance with organizational policies and strategic focus, and recommend a budget to the Board for approval; d) recommend for Board approval the certified public accountant to be retained as independent auditor; e) recommend the annual audit and management letter from the Corporation's independent auditor, and report to the Board on

the audit and management's response thereto; and f) perform any other duties as provided in the Board-approved Committee charter.

Section 7.5 Audit Committee. There shall be an Audit Committee consisting of the Plan's Treasurer and three (3) or more Directors to be designated by the Board of Directors at least annually. The Audit Committee shall a) develop and recommend for Board approval policies related to the Corporation's financial condition, budget, investments, and reserves; b) review monthly financial reports submitted by the CFO to ensure compliance with Board-approved policies; c) review the annual operating and capital budgets prepared by staff to ensure compliance with organizational policies and strategic focus, and recommend a budget to the Board for approval; d) recommend for Board approval the certified public accountant to be retained as independent auditor; e) recommend the annual audit and management letter from the Corporation's independent auditor, and report to the Board on the audit and management's response thereto; and f) perform any other duties as provided in the Board-approved Committee charter, including oversight of the Internal Audit function.

Section 7.6 Nominating and Board Development Committee. There shall be a Nominating and Board Development Committee consisting of not less than three members. The Nominating and Board Development Committee shall: a) provide leadership in establishing selection criteria for new Directors based on an assessment of Board and organizational needs; b) identify, screen and recommend potential Board candidates; c) develop and advise on the scope and content of the Board orientation; d) evaluate Board members eligible for appointment against current criteria and assess their past performance; e) recommend and prepare a slate of officers for election at the annual meeting; and f) perform any other duties as provided in the Board-approved Committee charter.

Section 7.7 Compliance Committee. There shall be a Compliance Committee comprised of the Chairperson, Vice-Chairperson, Treasurer and Secretary. The Compliance Committee shall oversee the corporate compliance program, including the fraud and abuse prevention, whistleblower and conflict of interest as provided in the Board-approved Committee Charter.

Section 7.8 Compensation Committee. There shall be a Compensation Committee consisting of not less than three members, each of whom shall be appointed for a period of three years. The Compensation Committee shall: a) meet requirements as determined by the Board; b) annually review and set the base salary, incentive compensation, long-term incentive compensation for the President and such other senior executive employees of the Plan as shall be directed by the Board; c) receive reports from the President as to compensation policies and arrangements for other management employees of the Plan; d) review and adopt employment agreements, severance agreements and change-in-control agreements covering management employees of the Plan; e) obtain advice and assistance, as needed, from internal or external legal counsel, accounting firms, search firms, compensation specialists or other advisors, with the sole authority to retain, terminate and negotiate the terms and conditions of the assignment; and f) perform any other duties as provided in the Board-approved Committee charter. Decisions of the Compensation Committee shall be required to be ratified by the Board at a duly called meeting in order to become effective.

Section 7.9 Committee Quorum. A majority of any committee of the Board shall constitute a quorum for the transaction of business.

Section 7.10 Committee Meetings. Each standing committee shall meet on a scheduled or as-needed basis as provided in its Board-approved charter.

## ARTICLE VIII - GENERAL FISCAL PROVISIONS

Section 8.1 Fiscal Year. The Plan shall employ a fiscal year beginning January 1 and ending on December 31.

Section 8.2 Payments. No indebtedness shall be incurred and no payments other than those made from the current expense account shall be made, except as authorized by the Board of Directors.

Section 8.3 Signatures. Checks, drafts, notes and other orders for the payment of money shall be signed by such officer or officers, or person or persons as may be thereunto authorized from time to time by the Board of Directors.

Section 8.4 Contracts. Except as otherwise provided by resolution duly adopted at any meeting of the Board of Directors, all contracts, agreements, deeds and formal instruments shall be signed on behalf of the Plan by the President or such other officer or officers or person or persons, as shall be thereunto authorized from time to time by the President.

Section 8.5 Stock. Any stock in other corporations which may from time to time be held by the Plan may be represented and voted at any meeting of stockholders of such other corporations by the Chairperson, the Treasurer or the President, or by any attorney or proxy designated by the Chairperson, the Treasurer or the President by power of attorney or proxy executed by him or her, or as may otherwise at any time be authorized by the Board of Directors.

Section 8.6 Investments. The Board of Directors shall establish policies to guide the investment of Plan funds, and shall authorize and empower the Chief Executive Officer to retain the services of one or more investment managers to invest the funds of the Plan in accordance with said policies, subject to the advice and consent of the Board's Finance Committee. The investment manager(s) shall be either a) investment advisor(s) registered under the Investment Advisors Act of 1940, or b) a bank as defined by that Act. The Chief Executive Officer shall be authorized to open and operate brokerage and custodian accounts in the name of and on behalf of the Plan, or in the name of a nominee on behalf of the Plan, and to give directions, written or oral, for the purpose of sale of securities on behalf of the Plan. The Chief Executive Officer may determine the amount of assets to be invested, and may delegate authority to control the investment of Plan assets in accordance with the Plan's Investment Policy.

Section 8.7 Bonds. All officers, employees and contractors authorized to receive or disburse funds of the Plan as the Board of Directors may determine, may be required to furnish bonds for the faithful discharge of their duties, in such sums and with such surety and on such conditions as the Board of Directors may from time to time determine. The expenses of cash bonds shall be borne by the Plan.

## ARTICLE IX - NOTICE AND WAIVER OF NOTICE

Section 9.1 Notice. Whenever, under the provisions of these by-laws, notice is required to be given to any Director, it shall not be construed to mean persona notice, but such notice may

be given in writing by depositing the same in a post office or letter box in a prepaid sealed wrapper addressed to such Director, at his or her address as the same appears on the records of the Plan or may be given by properly addressed telegram, cablegram, facsimile or e-mail, as appropriate, and such notice shall be deemed to be given at the time the same is mailed or such telegram, cablegram, facsimile or email, as appropriate, is delivered for transmission.

Section 9.2 Waiver. Any Director may at any time waive any notice required to be given under the provisions of these by-laws or of any law.

## ARTICLE X - INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND CONTRACTORS

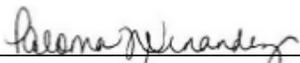
Section 10.1 Indemnification of Directors and Officers. The Plan shall indemnify any person made, or threatened to be made, a party to any action, suit or proceeding by reason of the fact that s/he, his testator or intestate, is or was a member of the Board of Directors or officer of the Plan or any other corporation s/he served as such at the request of the Plan, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him/her in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, and including the cost of court approved settlements, to the extent and in the manner prescribed by the Not-for-Profit Corporation Law of the State of New York. Such rights of indemnification shall not be deemed exclusive of any other rights to which such Director or officer may be entitled, apart from the forgoing provision.

Section 10.2 Indemnification of Other Persons. The Board of Directors, in its discretion, shall have power on behalf of the Plan, to indemnify any person, other than a Director or officer made a party to any action, suit or proceeding, by reason of the fact that s/he, his/her testator or intestate is or was an employee or contractor of the Plan.

## ARTICLE XI - AMENDMENTS

Section 11.1 Amendments. At any meeting of the Board of Directors duly held upon proper notice, these by-laws may be modified, repealed or amended by the affirmative vote of at least 75% of the number of Director positions filled at that time. Such notice shall set forth or expressly specify the proposed action concerning the by-laws to be taken at such meeting.

ADOPTED: 8/5/86	REVISED: 5/16/00	REVISED: 4/28/2015
REVISED: 2/1/88	REVISED: 1/15/02	REVISED: 7/28/2015
REVISED: 11/14/89	REVISED: 1/26/04	REVISED: 11/10/2015
REVISED: 7/21/92	REVISED: 4/17/07	REVISED: 4/24/2017
REVISED: 4/27/93	REVISED: 7/10/07	REVISED: 11/11/2019
REVISED: 3/23/94	REVISED: 4/13/10	REVISED: 4/21/2020
REVISED: 1/31/96	REVISED: 4/24/12	
REVISED: 11/1/99	REVISED: 12/9/2014	

  
\_\_\_\_\_  
Chairperson, Board of Directors

# EXHIBIT E

**Affinity Health Plan  
Directors and Officers**



**Board of Directors  
January 2021**

<b>Name</b>	<b>Home Address</b>
<b>Judith Fairweather</b>	564 Autumn Avenue Brooklyn, NY 11208
<b>Nanette Falkenberg</b>	118 Davenport Rd Roxbury, CT 06783
<b>Verona Greenland</b>	276 St. Johns Ave Yonkers, NY 10704
<b>Paloma Hernandez, Chair</b>	310 Crescent Ave. Leonia, NJ 07605
<b>Amy Knapp</b>	75 N. Mountain Avenue Montclair, NJ 07042
<b>Brian McIndoe</b>	22 King Arthur CT. New City, NY 10956
<b>Linda Muller</b>	5 Primrose Court Cornwall, NY 12518
<b>John Sardelis</b>	260-07 Pembroke Ave. Great Neck, NY 11020
<b>Robert Schiller, MD</b>	186 Washington Park Brooklyn, NY 11205
<b>Lynn D. Sherman</b>	7 Pennsylvania Blvd. Bellerose Village, NY 11001
<b>Yvette Walker, MD MPH</b>	58 Bay Hill Drive Camden Wyoming, DE 19934



**Officers  
January 2021**

<b>Name</b>	<b>Home Address</b>
<b>Michael Murphy, President &amp; CEO</b>	1440 Pacland Place Chesterfield, MO 63005
<b>Rachel Amalfitano, CFO</b>	15 Jackson Street Port Washington, NY 11050
<b>Clara Hansen, Vice President &amp; Chief of Staff</b>	122 Rocky Brook Road New Canaan, CT 06840

# EXHIBIT F

## **Affinity Health Plan Financial Statements**



**AFFINITY HEALTH PLAN, INC.**

Financial Statements

December 31, 2020 and 2019

(With Independent Auditors' Report Thereon)

**AFFINITY HEALTH PLAN, INC.**

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Statements of Operations and Changes in Net Assets (Deficit)	4
Statements of Cash Flows	5
Notes to Financial Statements	6



KPMG LLP  
345 Park Avenue  
New York, NY 10154-0102

## Independent Auditors' Report

To the Board of Directors  
Affinity Health Plan, Inc.:

We have audited the accompanying financial statements of Affinity Health Plan, Inc. (the Plan), which comprise the balance sheets as of December 31, 2020 and 2019, and the related statements of operations and changes in net assets (deficit) and cash flows for the years then ended, and the related notes to the financial statements.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditors' Responsibility*

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Opinion*

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Affinity Health Plan, Inc. as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended, in accordance with U.S. generally accepted accounting principles.



*Emphasis of Matter*

The accompanying financial statements have been prepared assuming that the Plan will continue as a going concern. As discussed in notes 1(b) and 12 to the financial statements, the Plan has a working capital deficit and has not met the statutory reserves required by the New York State Department of Health (NYSDOH) as of December 31, 2020 and 2019. Additionally, the Plan has received a statement of deficiency letter from NYSDOH. These factors raise substantial doubt about the Plan's ability to continue as a going concern. Management's evaluation of the events and conditions and management's plans regarding these matters are also described in note 1(b). The financial statements do not include any adjustments that might result from the outcome of this uncertainty. Our opinion is not modified with respect to this matter.

*KPMG LLP*

March 31, 2021

**AFFINITY HEALTH PLAN, INC.**

Balance Sheets

December 31, 2020 and 2019

(In thousands)

<b>Assets</b>	<b>2020</b>	<b>2019</b>
Current assets:		
Cash and cash equivalents	\$ 201,145	89,959
Premiums receivable, net	33,153	30,589
Current portion of investments	39,466	8,095
Current portion of stop-loss receivable, net	23,359	19,485
Advances to providers and other assets, net	59,761	69,538
Funds held for DSRIP program	11,125	22,717
Total current assets	<u>368,009</u>	<u>240,383</u>
Investments, net of current portion	93,521	18,987
Assets whose use is limited	83,638	79,556
Stop-loss receivable, net of current portion	3,319	17,115
Property and equipment, net	8,037	8,289
Total assets	<u>\$ 556,524</u>	<u>364,330</u>
<b>Liabilities and Net Assets (Deficit)</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 22,018	16,220
Medical claims payable	236,586	217,234
Due to NYSDOH	238,806	140,492
Due to Centers for Medicare and Medicaid Services	2,040	2,039
Payable to providers or DOH under DSRIP program	11,125	22,717
Total current liabilities	<u>510,575</u>	<u>398,702</u>
Deferred rent and other liabilities	7,959	7,434
Total liabilities	<u>518,534</u>	<u>406,136</u>
Commitments and contingencies		
Net assets (deficit) without donor restrictions:		
Unrestricted	(62,887)	(139,933)
Statutorily restricted	100,877	98,127
Total net assets (deficit)	<u>37,990</u>	<u>(41,806)</u>
Total liabilities and net assets (deficit)	<u>\$ 556,524</u>	<u>364,330</u>

See accompanying notes to financial statements.

**AFFINITY HEALTH PLAN, INC.**

Statements of Operations and Changes in Net Assets (Deficit)

Years ended December 31, 2020 and 2019

(In thousands)

	<u>2020</u>	<u>2019</u>
Revenue:		
Net premium revenue	\$ 1,354,034	1,304,530
Investment income	5,785	8,024
Other income	22,668	12,221
Total revenue	<u>1,382,487</u>	<u>1,324,775</u>
Expenses:		
Medical expenses	1,170,742	1,171,342
Administrative expenses:		
Salaries and fringe benefits	59,529	57,201
Other administrative	72,420	68,201
Total administrative expenses	<u>131,949</u>	<u>125,402</u>
Total expenses	<u>1,302,691</u>	<u>1,296,744</u>
Excess of revenue over expenses	79,796	28,031
Net assets, beginning of year	<u>(41,806)</u>	<u>(69,837)</u>
Net assets, end of year	<u>\$ 37,990</u>	<u>(41,806)</u>

See accompanying notes to financial statements.

**AFFINITY HEALTH PLAN, INC.**

Statements of Cash Flows

Years ended December 31, 2020 and 2019

(In thousands)

	<b>2020</b>	<b>2019</b>
Cash flows from operating activities:		
Excess of revenue over expenses	\$ 79,796	28,031
Adjustments to reconcile excess of revenue over expenses to net cash provided by operating activities:		
Loss on disposal of property and equipment	—	49
Depreciation and amortization	4,093	6,458
Realized and unrealized gains on investments	(2,626)	(5,196)
Changes in operating assets and liabilities:		
Premiums receivable	(2,564)	15,352
Stop-loss receivable	9,922	7,363
Advances to providers and other assets	9,777	7,013
Accounts payable, capital lease payable, and accrued expenses	6,054	(5,548)
Medical claims payable	19,352	(64,822)
Due to NYSDOH	98,314	18,402
Due to Center for Medicare and Medicaid Services	1	(67)
Deferred rent	525	681
Net cash provided by operating activities	222,644	7,716
Cash flows from investing activities:		
Sales of investments and assets whose use is limited	117,190	103,146
Purchases of investments and assets whose use is limited	(224,551)	(65,437)
Purchases of property and equipment	(3,841)	(2,860)
Net cash (used in) provided by investing activities	(111,202)	34,849
Cash flows from financing activities:		
Borrowings under secured line of credit	—	(50,000)
Payments on capital lease obligations	(256)	(256)
Net cash used in financing activities	(256)	(50,256)
Net increase (decrease) in cash and cash equivalents	111,186	(7,691)
Cash and cash equivalents at beginning of year	89,959	97,650
Cash and cash equivalents at end of year	\$ 201,145	89,959
Supplemental disclosure of noncash, investing, and financing activities:		
Interest paid on claims	\$ 518	2,785

See accompanying notes to financial statements.

## AFFINITY HEALTH PLAN, INC.

Notes to Financial Statements

December 31, 2020 and 2019

### (1) Organization and Summary of Significant Accounting Policies

#### (a) Organization

Affinity Health Plan, Inc. (the Plan) is a New York not-for-profit corporation that operates a licensed prepaid health services plan providing comprehensive healthcare coverage to Medicaid recipients and other low-income individuals under various programs. The Plan operates in the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland, and Orange.

The Plan's Medicaid program is administered under an agreement with the New York State Department of Health (NYSDOH). The approved service area consists of the five boroughs of New York City, and the surrounding counties of Nassau, Suffolk, Westchester, Rockland, and Orange, and the program is the predominant source of revenue for the Plan. The agreement with NYSDOH is effective through February 29, 2024.

The Plan's Child Health Plus program (CHP), which began operations on July 1, 1991, is available to children under the age of 19 who are not eligible for Medicaid and who do not already have comprehensive health coverage. The premium received by the Plan depends upon income (some participants are fully subsidized). The Plan's current agreement for CHP with NYSDOH extends through September 30, 2024. This agreement also encompasses the Plan's provision of family planning and reproductive health services to certain CHP members of Fidelis Care New York (Fidelis), an unrelated health plan, who reside in Nassau, Rockland, Suffolk, and Westchester counties. The agreement with NYSDOH for Fidelis' CHP members is incorporated into the Plan's CHP contract. Effective January 1, 2019, the Plan's agreement with NYSDOH no longer contains a provision for Fidelis CHP members.

The Plan also operated a Medicare Advantage program that is administered under an agreement with CMS and includes a prescription drug benefit component under Part D of Title XVIII of the Social Security Act. The Medicare Advantage agreement extended through December 31, 2019. The Plan's Special Needs Plan (SNP) is administered under an agreement with NYSDOH and extended through December 31, 2019. The SNP provided coverage to members dually eligible for Medicare and Medicaid. Effective January 1, 2019, the Plan no longer offers a Medicare Advantage program. As a result of the sale of the Medicare line of business, the Plan received \$7.8 million in 2019, which is included in other income in the statement of operations and changes in net assets (deficit). Additionally, the Plan recorded an additional \$1.9 million related to Minimum Loss Requirement (MLR) performance, which is included in other income in the 2019 statement of operations and changes in net assets and other assets in the 2019 balance sheet. These amounts were received during 2020.

The Patient Protection and Affordable Care Act (ACA) continues to go through program modifications and legislative updates. The Plan continues to monitor changes and adjusts the business model accordingly. U.S. Congress is contemplating material changes to or a total replacement of the ACA. There are other proposals at the federal and New York State levels that could, among other things, reduce reimbursement rates, modify reimbursement methods, and increase managed care penetration, including Medicare and Medicaid. The ultimate outcome of these proposals and other market changes cannot presently be determined and could be material to the Plan's future results of operations and cash flows.

## **AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

December 31, 2020 and 2019

The Plan established an Essential Plan effective January 1, 2016 under the ACA, which is certified by The Health Insurance Exchange (the Exchange). The Essential Plan covers essential health benefits, including inpatient and outpatient care, physician services, diagnostic services, and prescription drugs among others, with no annual deductible and low out-of-pocket costs. Preventive care, such as routine office visits and recommended screenings, are free. Plan members with income at or below 150% of the federal poverty level do not pay any monthly premium. Plan members with income at 200% of the federal poverty level pay a monthly premium of \$20. The Essential Plan is administered under an agreement between the Plan and NYSDOH and was extended on January 1, 2021 through December 31, 2025.

The Plan initiated its participation in the HARP “Enriched Health” Medicaid Managed Care carve-in on July 1, 2016. HARP is an addendum to the Medicaid contract stated above and is subject to the same contract terms. HARP plans provide enhanced care management for members to help them coordinate all their physical health, behavioral health, substance use disorder, and nonmedical support needs. HARP participants must be 21 or older, insured only by Medicaid, and be eligible for Medicaid managed care. Individuals identified as HARP eligible must be offered care management through a Health Home designated by New York State.

Affinity Health Services Holdings, Inc. is the sole corporate member of the Plan.

The Plan incorporated AHP Enterprises, Inc. on December 12, 2013 as a Delaware corporation for the purpose of providing management services. As of December 31, 2020 and 2019, there was no activity to be reflected in the accompanying financial statements.

In October 2020, the Plan entered into an Asset Purchase Agreement to be acquired by Molina Healthcare, Inc. (Molina) (the Transaction) with amounts to be paid once regulatory approvals are obtained. Molina and the Plan are working together with the State Department of New York relating to approval of the Transaction with an expected closing of the Transaction to occur in the third quarter of 2021.

### *Impact of COVID-19 Pandemic*

The spread of coronavirus (COVID-19) around the world during 2020 has caused significant volatility in U.S. and international markets. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic, and on March 13, 2020, a national emergency was declared. As such, the federal and state governments, including New York, imposed strict measures to curtail certain aspects of public life in an effort to contain the virus. On March 27, 2020, Congress passed the Coronavirus Aid, Relief and Economic Security (CARES Act) (the Act) which provided for more than \$2 trillion in economic relief impacting all sectors of the economy. As the pandemic continues, there is significant uncertainty around the breadth and duration of business disruptions related to COVID-19, as well as its impact on the U.S. and internationally. Affinity will continue to assess the potential impact of the pandemic, the potential impact of any future stimulus measures, if any, and any impact of other laws, regulations, and guidance related to COVID-19 on Affinity’s business, results of operations, financial condition and cash flows. In addition, the Plan did not receive any grants or funding from the Cares Act in fiscal year-end December 31, 2020.

During 2021, NYSDOH has proposed certain rate adjustments relating to COVID-19, including Risk Corridor adjustments for Medicaid and HARP products. These adjustments would only apply to the

## AFFINITY HEALTH PLAN, INC.

Notes to Financial Statements

December 31, 2020 and 2019

state fiscal year 2021 (April 2020 through March 2021). The target medical loss ratios are +/- 4% on the base percentages of 86% and 89% for Medicaid and HARP, respectively. The Plan is currently within those target ranges and doesn't anticipate any material changes from NYSDOH.

### **(b) Basis of Presentation and Going Concern**

The financial statements of the Plan have been prepared in accordance with U.S. generally accepted accounting principles (GAAP). Net assets of the Plan are classified based on the existence or absence of donor-imposed restrictions. This is accomplished by classification of fund balances into two classes of net assets: without donor restrictions and with donor restrictions. The Plan does not have net assets with donor restrictions. Net assets without donor restrictions include amounts not subject to donor-imposed stipulations and available for operations (unrestricted) and to meet regulatory requirements (statutorily restricted).

The Plan's financial statements are prepared as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As of December 31, 2020, the Plan has a working capital deficit of \$142.6 million and its statutory surplus of \$18.1 million is \$82.8 million lower than the required statutory reserve of \$100.9 million, as discussed in note 13.

The Plan received a letter dated March 22, 2018 from the New York State Department of Health (NYSDOH) that referred to a statement of deficiency. This letter was issued as a result of the Plan failing to meet its contingent reserve requirement. The NYSDOH requested that the Plan submit a corrective action plan within ten days of receipt of the letter. Management received an extension to April 16, 2018, at which time it submitted its corrective action plan to the NYSDOH. The corrective action plan addressed what actions the Plan has implemented and how these actions impact the Plan's ability to meet its net worth requirements. The corrective action plan also included the new actions the Plan anticipates implementing to cure its negative net worth, a timeline from receipt of the letter to July 1, 2018 detailing how the plan anticipates to meet its various financial objectives, and the continuation of the Plan submitting monthly financial statements under statutory accounting principles to NYSDOH no later than 30 days after the end of the month.

The Plan received a letter dated March 18, 2019 from NYSDOH that referred to updated responses to the statement of deficiency letter issued on March 22, 2018. NYSDOH found that the Plan's revised plan of correction failed to adequately answer the NYSDOH's requests for how the Plan will cure its negative net worth, which includes recapitalization and/or any other options for the Plan's control of operations. As such, NYSDOH requested that a revised plan of correction be submitted within ten business days of receipt of the letter. The Plan requested an extension for the submission of the revised plan of correction and received an extension for the submission to April 15, 2019, which was later extended by NYSDOH to April 30, 2020.

On October 14, 2020, NYSDOH acknowledged that the Plan has provided an acceptable plan of correction, however, this letter requires that the Plan continue to submit monthly financial statements no later than 45 days after the end of each month to NYSDOH and that the Plan continue to participate in monthly meetings with NYSDOH. The acknowledgment from the NYSDOH did not lift the previous statement of deficiency letter that the Plan received.

**AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

December 31, 2020 and 2019

The Plan's working capital deficit, statutory deficiency, and statement of deficiency letter received from NYSDOH raise substantial doubt about the Plan's ability to continue as a going concern. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Management's corrective action plan, which commenced in 2017 through 2020, resulted in cost savings, included initiatives to reduce medical costs through enhanced medical management, improved claims processing, network optimization, revenue rate enhancements, and implementing value-based contracting. In addition, management intends to continue to further reduce administrative expenses including costs of claims processing and information technology.

**(c) Use of Estimates**

The preparation of the financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenue and expenses during the reporting year. Actual results could differ from those estimates.

**(d) Cash and Cash Equivalents**

Cash and cash equivalents include highly liquid investments purchased with original maturities of three months or less at the time of purchase, excluding amounts, which are classified as assets whose use is limited and security deposits.

There were no outstanding checks in excess of funds on deposit with financial institutions at December 31, 2020 and 2019.

**(e) Advances to Providers and Other Assets, net**

Advances to providers represent payments made by the Plan to certain healthcare facilities prior to the resolution of disputed claims with the Plan. These advances are recognized as of the agreement effective date between the Plan and the healthcare facility.

Other assets also includes cost savings for pharmaceutical benefits provided to the Plan's members, other receivables from the State of New York, prepaid expenses, and security deposits.

**(f) Investments and Investment Income**

Investments are reported at fair value and generally consist of cash and cash equivalents, fixed-income securities issued or guaranteed by government entities, fixed-income securities issued by corporations, and equity securities. Fair value of marketable securities is determined by reference to quoted market prices. Fixed-income securities with maturities of 12 months or less and equity securities are classified as current assets.

The Plan's investment portfolio is classified as trading, with the change in unrealized gains and losses included in the excess of revenue over expenses within investment income. Interest income, dividend income, and realized and unrealized gains and losses on investments are recorded as investment income and included in other income on the statement of operations and changes in net assets (deficit).

**AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

December 31, 2020 and 2019

**(g) Assets Whose Use is Limited**

NYSDOH regulations under Article 44 of the Public Health Law require the Plan to maintain an escrow deposit, which is reported as assets whose use is limited (note 3).

**(h) Property and Equipment**

Property and equipment are recorded at cost, less accumulated depreciation and amortization. Assets acquired under capitalized leases are recorded at the present value of the lease payments at the inception of the lease.

Annual provisions for depreciation and amortization of property and equipment, including amortization of leasehold improvements, are computed using the straight-line method over the shorter of the lease term or the estimated useful lives of the assets. Depreciation is generally computed based on useful lives of three years for computer software, five years for furniture and fixtures, five years for major movable equipment, and three to ten years for leasehold improvements.

Management routinely evaluates the carrying value of its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of assets, or related group of assets, may not be recoverable from estimated undiscounted cash flows generated by the underlying tangible assets. When the carrying value of an asset exceeds its estimated recoverability, an asset impairment charge is recognized for the difference between the fair value and carrying value of the asset.

**(i) Medical Expenses Cost Recognition**

The Plan contracts with various healthcare providers for the provision of medical care to its members. The Plan compensates these providers on either a capitation case rate or fee-for-service basis. The cost of healthcare services is accrued in the period services are provided to enrollees based in part on estimates for hospital and other healthcare services, which have been reported but not paid and incurred but not yet reported to the Plan. Such accruals are reflected as medical claims payable in the accompanying balance sheets. Such estimates are continually monitored and reviewed and, as settlements are made or estimates adjusted, the resulting differences are reflected in current operations. Adjustments to the estimate for accrued medical claims will be recorded in future periods as amounts become known.

Due to uncertainties inherent in the claims estimation process, it is at least reasonably possible that the claims paid could differ materially from the accrued amounts in the near term. Management believes that the methods employed to estimate medical claims payable are reasonable and that the amounts recorded at December 31, 2020 and 2019 are appropriate.

**(j) Accrued Premium Deficiency**

U.S. GAAP requires losses under prepaid healthcare services contracts to be recognized when it is probable that expected future healthcare costs and maintenance costs under a group of existing contracts will exceed anticipated future premiums and stop-loss insurance recoveries on those contracts.

## AFFINITY HEALTH PLAN, INC.

Notes to Financial Statements

December 31, 2020 and 2019

The Plan has not recorded a premium deficiency reserve for any programs as of December 31, 2020 and 2019. Estimates are continually monitored and reviewed and, as estimates are adjusted, the resulting differences are reflected in current operations within medical expenses in the statement of operations and changes in net assets (deficit). Due to the uncertainties inherent in the estimation process for accrued premium deficiency and New York State's ability to change rates on a retroactive basis, these estimates may change by a material amount in the near term. Management believes that the methods employed to estimate accrued premium deficiency are reasonable and that no amounts are required at December 31, 2020.

### **(k) Reinsurance (Stop-Loss Insurance)**

Stop-loss coverage is provided to the Plan by private insurance carriers, except for stop-loss insurance for the inpatient claims of Medicaid enrollees, which is provided by the State of New York. Stop-loss coverage limits the Plan's losses on aggregate claims received during a member's enrollment year. Under the terms of private coverage, the private insurance carrier will reimburse the Plan up to \$3,000,000 per member for Medicare and CHP and \$3,333,333 for EP for 90% of each member's healthcare costs (excluding outpatient services, physician services, dialysis, and custodial care) in excess of \$650,000 after the claim has been paid. Effective January 1, 2010, under the terms of coverage for Medicaid enrollees, the State of New York will reimburse the Plan for 80% of each member's inpatient costs in excess of \$100,000 and 100% in excess of \$250,000 (calculation is based on the lower of the Plan's negotiated hospital rate or Medicaid rates of payment). Additionally, the State of New York will reimburse the Plan for enrollees that exceed the 30-day psychiatric/substance abuse inpatient limit and enrollees that exceed the 60-day nursing home limit. The process for submitting stop-loss claims and ultimately receiving payment is complex and can be subject to delays. Management of the Plan believes that the amounts submitted are appropriate and that the Plan will ultimately receive full payment on the receivable balances recorded at December 31, 2020 and 2019. However, there is at least a reasonable possibility that the recorded estimates will change by a material amount in the near term or that payments from stop-loss coverage could be delayed beyond current estimates. Adjustments to the stop-loss insurance receivable will be recorded in future periods as amounts become known or can be estimated.

Reinsurance premiums paid to the State of New York and private insurance carriers are reported as medical expense and reinsurance recoveries are reported as reductions of medical expense. For the years ended December 31, 2020 and 2019, the Plan recorded reinsurance premiums of approximately \$20.1 million and \$13 million to the State of New York and approximately \$2.4 million and \$2.1 million to the private insurance carriers, respectively. The Plan recognized approximately \$32.3 million and \$19.3 million for the years ended December 31, 2020 and 2019, respectively, in reinsurance recoveries, which are included in medical expenses in the accompanying statements of operations and changes in net assets (deficit).

As of December 31, 2020 and 2019, \$3.4 million and \$14 million, respectively, has been recorded for an implicit price concession related to the stop-loss receivable. The implicit price concession is estimated by management based on general factors, such as the historical collection experience and the current business and economic conditions and member enrollment and eligibility criteria.

**AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

December 31, 2020 and 2019

**(l) Due to New York State Department of Health**

At December 31, 2020 and 2019, due to NYSDOH principally comprises amounts due to the state for premiums paid to the Plan in excess of premiums earned, estimates for audits performed by the OMIG (Office of the Medicaid Inspector General), liabilities under the MLR for the Essential Plan, HARP and CHP, and an accrual for family planning chargebacks.

**(m) Performance Indicator**

The statement of operations and changes in net assets (deficit) includes excess of revenue over expenses as the performance indicator.

**(n) Income Taxes**

The Plan is tax-exempt under Section 501(c)(3) of the Internal Revenue Code (IRC) and its income is generally not subject to federal, New York state, or local income taxes. The Plan recognizes income tax positions when it is more likely than not that the position will be sustainable based on the merits of the position. Management has concluded that there are no material tax liabilities that need to be recorded as of December 31, 2020 and 2019.

**(o) Funds Held for DSRIP**

Delivery System Reform Incentive Payment (DSRIP) Program is the main mechanism by which New York State will implement the Medicaid Redesign Team (MRT) Waiver Amendment. DSRIP's purpose is to fundamentally restructure the healthcare delivery system by reinvesting in the Medicaid program, with the primary goal of reducing avoidable hospital use by 25% over five years. The funds are passed through the Plan to hospitals that participate in the program and the amounts are not included in premium revenue or any expenses. During 2020 and 2019, the Plan received \$42.1 million and \$64.8 million, respectively, and disbursed \$53.7 million and \$61.3 million, respectively. At December 31, 2020 and 2019, an asset and a liability of approximately \$11.1 million and \$22.7 million, respectively, was recognized by the Plan within funds held for DSRIP program and payable to providers or NYSDOH under DSRIP program.

**(p) Upcoming Accounting Standards**

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016-02, *Leases (Topic 842)*, which supersedes FASB Accounting Standards Codification (ASC) Topic 840, *Leases*, and requires lessees to recognize most leases on balance sheet via a right-of-use asset and a lease liability and additional qualitative and quantitative disclosures. Leases will be classified as either finance or operating leases, which will impact the expense recognition of such leases over the lease term. The ASU also modifies the lease classification criteria for lessors and eliminates some of the real estate leasing guidance previously applied for certain leasing transactions. This ASU is effective for the Plan for fiscal years beginning after December 15, 2020, with early adoption permitted, and mandates a modified transition method. The Plan expects to adopt this ASU on January 1, 2022. The Plan is currently evaluating the impact of ASU No. 2016-02 on its financial statements.

## AFFINITY HEALTH PLAN, INC.

Notes to Financial Statements

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### **(2) Premium Receivable and Net Premium Revenue**

Premiums receivable and revenue are recorded in the month for which members are entitled to service. Premiums receivable are recorded net of estimated amounts attributable to members who may be deemed ineligible. Retroactive rate change adjustments are considered in the recognition of revenue on an estimated basis in the period for which the related members are entitled to service and adjusted in future periods as adjustments or changes to estimated amounts become known.

Net premium revenue is substantially derived from the state-sponsored programs (Medicaid, Essential Plan, HARP, and CHP) under capitation arrangements with the State of New York, Medicare programs, and products related to health exchanges, and includes estimated retroactive revenue adjustments due to future audits, reviews, and investigations. Premiums and retroactive adjustments charged to the State of New York for healthcare services are recognized as revenue during the period in which the Plan is obligated to provide services to members. Premiums are adjusted upon the issuance of new rates by the State of New York, and such rates may be adjusted retroactively. The Plan's capitation rates include a component for pharmacy benefits provided to the participants of the Plan's Medicaid, Essential Plan, HARP, and CHP programs. Estimated amounts are adjusted as rates are finalized by the State of New York and changes are known.

At contract inception, the Plan assesses the promised goods or services in the contract and identifies the performance obligation for each promise to transfer a good or service (or bundle of goods or services) that is distinct. Revenue is recognized when performance obligations are satisfied by transferring control of the good or service provided. For the majority of the Plan's operations, the primary performance obligation is to provide access to healthcare services for a typical term of one year or less, depending on member eligibility.

The consideration received for goods and services may include variable components. Variable consideration is included in the transaction price to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved.

The Plan satisfies its performance obligation and recognizes revenue ratably over the period in which members are eligible to access healthcare services.

#### **(a) Collectability Assessment**

At contract inception, the Plan generally collects payments for contracts with customers in advance of the services provided or in the month due, thus a collectability assessment is typically not required. On a monthly basis, the Plan estimates the amount of uncollectible receivables. The allowances for uncollectible receivables are estimated based on historical experience and the age of unpaid balances using a portfolio approach and generally treated as an implicit price concession.

#### **(b) Significant Judgments**

Below is a summary of significant judgments and changes in judgments related to the recognition of revenue that significantly affect the determination of the amount and timing of revenue for the Plan. For the performance obligation related to access to healthcare services, the Plan transfers promised services by providing access to healthcare services over time. A time-elapsed output method is used

**AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

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for revenue recognition to measure progress because the Plan transfers promised services by providing access to healthcare services over the period that the member is entitled to the services.

Determining a measure of progress requires management to make judgments that affect the timing of revenue recognized. The Plan has determined that the above method provides a faithful depiction of the transfer of goods or services to the customer. The Plan stands ready to provide coverage for healthcare services as needed and efforts are expended evenly throughout the period.

**(c) Remaining Performance Obligations**

The remaining performance obligations for contracts that are greater than one year were not material for the Plan.

Laws and regulations governing the Medicaid and Medicare programs are complex and subject to interpretation. As a result, there is at least a reasonable possibility that recorded estimates will change by a material amount in the near term. Compliance with such laws and regulations are subject to future government review and interpretation as well as significant regulatory action, including repayments, fines, penalties, and exclusion from the Medicaid and Medicare programs depending upon the nature and level of noncompliance determined. Management believes it is in compliance with all applicable laws and regulations. Additionally, any future changes in funding for state-sponsored programs, Medicare, and health exchange-related products could have a material impact on the Plan.

There were no writeoffs in 2020 and 2019 for premiums receivable due from the State of New York, which were determined to be uncollectible. The Plan has an allowance (implicit price concession) for retroactive membership adjustments of \$2.8 million and \$5 million at December 31, 2020 and 2019, respectively, which is offset against premiums receivable in the accompanying balance sheets.

The Plan receives medical home amounts for payment of provider subsidies on behalf of the NYSDOH. These subsidies provide enhanced payment for primary care practices that achieve NCQA Medical Home Certification. Because the Plan acts only as a payor agent for the NYSDOH, these funds are accounted for as deposits when received by the Plan. Any excess remaining after the distribution of payments is returned to the NYSDOH. At December 31, 2020 and 2019, a receivable of approximately \$12.8 million and \$12.6 million, respectively, was recognized by the Plan within advances to providers and other assets, net, in the accompanying balance sheets, as disbursements made by the Plan exceeded medical home receipts from NYSDOH.

Among other provisions in the contract for the Essential Plan and HARP there are requirements that the Plan must submit financial reports to the State in a manner and form that is consistent with the Medicaid Managed Care Operating Report and achieve an 85% Medical Loss Ratio (MLR) for Essential Plan and 89% for HARP beginning January 1, 2016. The premium rebate liability related to the MLR is \$98.5 million and \$62.4 million as of December 31, 2020 and 2019, respectively, and is included in Due to NYSDOH in the accompanying balance sheets. Subsequent to December 31, 2020, the Plan made a payment of \$23.4 million related to the Essential Plan 2016 premium rebate liability.

In February 2021, NYSDOH proposed to enact an 85% minimum loss ratio on CHP retroactive to the state fiscal year 2020 (April 2019 through March 2020). The Plan recorded a \$3.8 million premium rebate liability through December 31, 2020, which is included in Due to NYSDOH in the accompanying 2020 balance sheet.

**AFFINITY HEALTH PLAN, INC.**

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Net premium revenue is also received under capitation arrangements with CMS and the State of New York for the Plan's Medicare and Medicaid dual-eligible programs, respectively. Rates for these programs are adjusted annually based upon rate filings submitted by the Plan.

New York State has obtained a Medicaid 1115 waiver to fully implement the Medicaid Redesign Team (MRT) action plan. The stated objective of the waiver is to allow New York State to reinvest in its healthcare infrastructure as well innovate with new service delivery model. Significant savings from a reformed healthcare system are expected from reductions in hospital and emergency room utilization. In connection with the waiver, the Plan's Medicaid rate includes an add-on amount that is specifically designated to be paid to hospitals to fund this initiative. The funds were distributed to specific hospitals at the direction of the NYSDOH during 2020 and 2019.

During 2014 through 2016, the Plan participated in the risk corridor program under the Affordable Care Act. Due to uncertainties regarding the funding by the Federal Government of the risk corridor program, in 2016, the Plan wrote off receivables in the amount of \$26.9 million relating to policy years 2014 through 2016, relating to this program. In 2017, various insurance plans (including the Plan), filed lawsuits to recover the monies owed under this program. In 2020, the Plan was reimbursed \$20.6 million relating to this program, after the courts ruled in favor of the plans, which is included in other income in the accompanying statement of operations and changes in net assets (deficiency) for the year ended December 31, 2020.

**AFFINITY HEALTH PLAN, INC.**

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**(3) Investments, Assets Whose Use is Limited, and Secured Line of Credit**

Assets whose use is limited consist of cash and fixed-income securities consisting of U.S. government obligations, U.S. government agency obligations, municipal bonds, corporate bonds, and mortgage-backed securities at both December 31, 2020 and 2019. In 2020, the plan invested \$100 million of cash into its nonescrow portfolio.

Investments and assets whose use is limited consist of the following:

	<u>2020</u>	<u>2019</u>
	(In thousands)	
Cash and cash equivalents	\$ 582	2,958
U.S. government obligations	23,732	1,874
Government agency obligations	19,233	11,906
Municipal bonds	23,139	13,869
Corporate bonds	124,903	42,600
Mortgage-backed securities	20,086	29,297
Equity securities	4,391	3,646
Accrued interest	559	488
	<u>216,625</u>	<u>106,638</u>
Less:		
Current portion of investments	(39,466)	(8,095)
Assets whose use is limited	<u>(83,638)</u>	<u>(79,556)</u>
Investments, net of current portion	<u>\$ 93,521</u>	<u>18,987</u>

Investment income consists of the following:

	<u>Years ended December 31</u>	
	<u>2020</u>	<u>2019</u>
	(In thousands)	
Interest and dividend income	\$ 3,159	2,828
Net realized gains	2,987	4,411
Net unrealized (losses) gains	<u>(361)</u>	<u>785</u>
Total investment income	<u>\$ 5,785</u>	<u>8,024</u>

As of December 31, 2020, the Plan has a line of credit with a commercial bank in the amount of \$25 million with an expiration date of July 1, 2021, collateralized by the Plan's investment securities. Management anticipates renewing the line of credit if needed. The \$25 million is a single line with an effective interest rate of 2.5% as of December 31, 2020. In case of extreme fluctuations in the value of the underlying

## AFFINITY HEALTH PLAN, INC.

Notes to Financial Statements

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securities, the limit on the drawdown may change. The Plan has no outstanding balance on this line of credit as of December 31, 2020.

As of December 31, 2019, the Plan has a line of credit with a commercial bank in the amount of \$25 million with an expiration date of May 1, 2020, collateralized by the Plan's investment securities. The \$25 million is a single line with an effective interest rate of 3.75% as of December 31, 2019. In case of extreme fluctuations in the value of the underlying securities, the limit on the drawdown may change. The Plan has no outstanding balance on this line of credit as of December 31, 2019.

#### (4) Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. A three-level hierarchy for fair value measurements exists based upon the transparency of inputs to the valuation of an asset or liability as of the measurement date. The three levels are defined as follows:

- *Level 1* – Inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets
- *Level 2* – Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities; Level 2 assets and liabilities include fixed-income securities with quoted market prices that are traded less frequently than exchange-traded instruments
- *Level 3* – Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

In determining fair value, the Plan utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible, as well as consider counterparty credit risk in its assessment of fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

The carrying amounts of premiums receivables, other assets, accounts payable and accrued expenses, and medical claims payable approximate fair value due to the short maturity of these instruments.

**AFFINITY HEALTH PLAN, INC.**

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Financial assets carried at fair value are classified in the table below in one of the three categories described above at December 31:

	<b>December 31, 2020</b>		
	<b>Level 1</b>	<b>Level 2</b>	<b>Total</b>
	(In thousands)		
Cash and cash equivalents	\$ 582	—	582
Fixed income:			
U.S. government obligations	23,732	—	23,732
Government agency obligations	19,233	—	19,233
Municipal bonds	—	23,139	23,139
Corporate bonds	—	124,903	124,903
Mortgage-backed securities	—	20,086	20,086
Equity	4,391	—	4,391
	<u>\$ 47,938</u>	<u>168,128</u>	<u>216,066</u>

	<b>December 31, 2019</b>		
	<b>Level 1</b>	<b>Level 2</b>	<b>Total</b>
	(In thousands)		
Cash and cash equivalents	\$ 2,958	—	2,958
Fixed income:			
U.S. government obligations	1,874	—	1,874
Government agency obligations	11,906	—	11,906
Municipal bonds	—	13,869	13,869
Corporate bonds	—	42,600	42,600
Mortgage-backed securities	—	29,297	29,297
Equity	3,646	—	3,646
	<u>\$ 20,384</u>	<u>85,766</u>	<u>106,150</u>

As of December 31, 2020 and 2019, included within investments and assets whose use is limited is \$559,000 and \$488,000, respectively, of accrued interest receivable.

Fair value for Level 1 assets is based upon quoted market prices. Level 2 assets consist of certain fixed-income securities for which the fair value at each year-end is estimated based on quoted prices and other valuation considerations (e.g., credit quality and prevailing interest rates).

There were no Level 3 assets at December 31, 2020 and 2019 and no transfers between levels during 2020 and 2019.

**AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

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**(5) Property and Equipment**

Property and equipment, at cost, consist of the following at December 31:

	<u>2020</u>	<u>2019</u>
	(In thousands)	
Computer software	\$ 43,645	42,041
Furniture and fixtures	6,035	5,943
Major movable equipment	20,740	19,377
Leasehold improvements	<u>6,627</u>	<u>6,481</u>
	77,047	73,842
Less accumulated depreciation	<u>69,719</u>	<u>65,626</u>
	7,328	8,216
Project in process	<u>709</u>	<u>73</u>
Property and equipment, net	<u>\$ 8,037</u>	<u>8,289</u>

Depreciation expense on property and equipment aggregated approximately \$4.1 million and \$6.4 million for the years ended December 31, 2020 and 2019, respectively, and is included in other administrative expenses. Total estimated cost to complete the projects in process at December 31, 2020 is approximately \$0.7 million.

**(6) Employee Benefit Plans**

The Plan offers a savings plan to its employees under the provisions of IRC Section 403(b). Voluntary contributions may be made by employees from their date of hire. Employees are eligible to receive employer contributions after completion of one year of service. Under plan design changes, effective January 1, 2007, once eligible, the Plan contributes an employer basic contribution of 3.0% of eligible compensation for most exempt and nonexempt employees and an employer basic contribution of between 5.2% and 9.0% of eligible compensation for executive staff based on years of service. In addition, the Plan matches 50% of employee contributions up to 6% of eligible compensation, or a maximum employer matching contribution of 3% of compensation. Total expense related to the retirement savings plan was approximately \$1.8 million and \$1.6 million for the years ended December 31, 2020 and 2019, respectively.

**AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

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**(7) Leases**

The Plan has executed various noncancelable operating leases for office space and equipment. Total rental expense charged to operations approximated \$6.6 million and \$6.7 million for December 31, 2020 and 2019, respectively. The following is a schedule of the future minimum lease payments required under the operating leases currently in effect (in thousands):

Year ending December 31:		
2021	\$	5,407
2022		5,052
2023		5,102
2024		5,081
2025		4,798
Thereafter		<u>51,327</u>
	\$	<u><u>76,767</u></u>

The Plan's lease for office space contains escalation clauses and amounts paid by the landlord for leasehold improvements, such amounts are recorded as deferred rent within the accompanying balance sheets and amortized into rental expense over the life of the lease.

In July 2014, the Plan entered into a 20-year operating lease agreement with 1776 Eastchester Operating, LLC for new office space to house the operations of the Plan (Metro Center). The Plan took possession of Metro Center in April 2015 (Possession Date). Under the terms of the lease agreement, payments by the Plan commenced (the Rent Commencement Date) 12 months after the Possession Date. Upon expiration of the lease agreement, the Plan has the option to extend the original term for a period of five years. Beginning on the Rent Commencement Date, monthly rental payments are approximately \$290,000 with a 3.0% increase in each lease year thereafter.

The Plan modified the Metro Center lease agreement effective October 1, 2018 to return certain square footage to the landlord.

Rent expense each year is based on the total lease commitment recognized over the lives of the leases on a straight-line basis. Rent expense for Metro Center is \$4.2 million for both of the years ended December 31, 2020 and 2019. Deferred rent of \$8.0 million and \$7.4 million at December 31, 2020 and 2019, respectively, represents the cumulative difference between rent expense recognized and the amounts paid on the leases.

**(8) Related-Party Transactions**

The Plan has six and seven board members that are officers of separate healthcare facilities that provide services to the Plan's members for the years ended December 31, 2020 and 2019, respectively. Payments to these organizations for medical claims and other programs were \$11.9 million and \$13 million for the years ended December 31, 2020 and 2019, respectively. These transactions were carried out on an arm's length basis.

**AFFINITY HEALTH PLAN, INC.**

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**(9) Commitments and Contingencies**

Various lawsuits and claims arising in the normal course of operations are pending or are on appeal against the Plan. Such lawsuits and claims are either specifically covered by insurance or are not material. While the outcome of these lawsuits cannot be determined at this time, management believes that any loss, which may arise from these actions, will not have a material adverse effect on the financial position or results of operations of the Plan.

In addition, because of the nature of the healthcare business, we may become subject to a variety of legal disputes relating to our business operations, including the design, management, and offering of products and services.

In addition, as of December 31, 2020 and 2019, respectively, certain of the Plan's healthcare providers have asserted requests for payment for denied and other unpaid claims. Management has accrued an estimate for the potential settlement of these disputed claims. The amounts in dispute are materially in excess of the amounts that have been accrued for by the Plan. The ultimate resolution of these denied and unpaid claims could have a material adverse effect on the Plan's financial position, statutory net deficit, results of operation, and cash flow.

The Plan has a letter of credit for the administrative facility lease with 1776 Eastchester Operating, LLC in the amount of \$543,739 that automatically renews on an annual basis. There were no amounts drawn on the letter of credit as of December 31, 2020 and 2019.

**(10) Concentrations of Credit and Customer Risk**

At December 31, 2020 and 2019, cash and cash equivalents are invested with major U.S. banks. The amounts invested exceed federal deposit insurance limits; however, management believes risk related to these deposits is minimal.

The Plan receives the majority of its net premium revenue and stop-loss insurance through various programs of the State of New York. The Plan also contracts with two healthcare systems which together represent approximately 25.5% and 29.3% of medical claims paid for the years ended December 31, 2020 and 2019, respectively.

As of March 26, 2019, the Plan's contract with one of the two healthcare systems was extended to June 15, 2019. The Plan and the healthcare system are continuing to negotiate a new contract. In the event the parties are unable to agree to a new contract, it could have a material adverse effect on the Plan's future results of operations. For the years ended December 31, 2020 and 2019, this healthcare system represented approximately 12.9% and 13.9%, respectively, of medical claims.

**AFFINITY HEALTH PLAN, INC.**

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**(11) Medical Claims Payable**

The following table shows the components of the change in total accrued claims liability for the years ended December 31, 2020 and 2019 (included in medical claims payable in the accompanying balance sheets) (in thousands):

	<u>2020</u>	<u>2019</u>
Accrued claims liability at beginning of year	\$ 149,530	221,771
Incurred related to:		
Current year	688,795	723,733
Prior year	<u>(37,346)</u>	<u>(23,732)</u>
Total incurred (included in medical expense)	<u>651,449</u>	<u>700,001</u>
Paid related to:		
Current year	(546,629)	(583,351)
Prior year	<u>(103,082)</u>	<u>(188,892)</u>
Total paid	<u>(649,711)</u>	<u>(772,243)</u>
Accrued claims liability at end of year	<u>\$ 151,268</u>	<u>149,529</u>

Reserves for unpaid claims attributable to prior year incurred claims decreased by \$37.3 million and \$23.7 million in 2020 and 2019, respectively. The adjustments are primarily the result of ongoing analysis of recent loss development trends and is attributable to case maturation. In addition, the Plan had settlements with providers for various contractual disputes of \$3.2 million and \$6.2 million for the years ended December 31, 2020 and 2019, respectively.

Excluded from the table above is \$16.4 million and \$17.5 million of accrued claims liability, for the years ended December 31, 2020 and 2019, respectively, for which claims are processed by a third-party (included in medical claims payable in the accompanying balance sheets). For the year ended December 31, 2020, total claims incurred and paid related to these claims are \$105.0 million and \$106.1 million, respectively. For the year ended December 31, 2019, total claims incurred and paid related to these claims are \$97.4 million and \$101.4 million, respectively.

**(12) Regulatory Requirements and Statutory Accounting Practices**

*New York State Regulatory Requirements*

At December 31, 2020 and 2019, the Plan was required by the NYSDOH to deposit in the form of an escrow deposit account for the protection of enrollees, an amount equal to the greater of 5% of the following year's estimated expenditures for healthcare services or a minimum amount of \$100,000.

The escrow deposit account is reported as assets whose use is limited in the accompanying balance sheets. At December 31, 2020 and 2019, the Plan recorded approximately \$83.6 million and \$79.6 million, respectively, as assets whose use is limited. The escrow deposit accounts are required to be funded by March 31 of the subsequent year pursuant to NYSDOH requirements.

**AFFINITY HEALTH PLAN, INC.**

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Additionally, the Plan must maintain a minimum net worth (contingent reserve), as required by the NYSDOH. The requirement is recalculated annually based on statutory premium revenue for the year. For 2020, the Plan utilized net premium revenue of \$1.4 billion for purposes of the statutory premium revenue in the calculation.

During 2011, the NYSDOH amended the regulations governing the contingent reserve requirement. The amendments provide special reduced percentages to be applied to revenue from the Medicaid managed care program offered by New York State. The changes were effective beginning with the calendar year ended December 31, 2011. Further changes were made to the contingent reserve requirement in each subsequent year. The table below presents the required reserve percentage by program:

	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Medicaid	7.25 %	8.25 %	9.25 %	10.25 %	11.25 %
Essential Plan	7.25	8.25	9.25	10.25	11.25
HARP	7.25	8.25	9.25	10.25	11.25
CHP	Remains at 12.5% for all future periods				
Maximum across all programs	Remains at 12.5% for all future periods				

Under Regulation 172, *Financial Statement Filings and Accounting Practice and Procedures*, the New York State Department of Financial Services (NYDFS) utilizes, with certain exceptions, the National Association of Insurance Commissioner's revised *Accounting Practices and Procedures Manual* (the Manual) in its evaluations of prepaid health services plans. The Manual recognizes only statutory accounting practices (SAP) for determining and reporting the financial position and results of operations of a health maintenance organization and for determining its solvency under New York State insurance laws. No consideration is given to financial statements prepared in accordance with accounting principles generally accepted in the United States of America in making such determinations. The application by the Plan of the Manual, as modified by Regulation 172, is subject to audit by the NYSDOH.

At December 31, 2020 and 2019, the Plan was required by NYSDOH to maintain a minimum net worth based on admitted assets. The minimum net worth of the Plan was required to be equal to the greater of the escrow deposit account requirement or the contingent reserve requirement.

As of December 31, 2020 and 2019, the Plan's minimum net worth of \$18.1 million and minimum net deficit of \$77.9 million, respectively, based on admitted assets, was less than the required contingent reserve requirement of \$100.9 million and \$98.1 million, respectively. In March 2018, the Plan received notification from NYSDOH that it approved the Plan's self-initiated plan of correction and will allow the Plan to operate as a certified managed care organization under certain conditions. Those conditions include the Plan submitting monthly financial statements in accordance with SAP to the NYSDOH no later than 30 days after the end of each month and providing quarterly updates in person at the NYSDOH on current and year-to-date operating results and progress with respect to other Plan initiatives.

## **AFFINITY HEALTH PLAN, INC.**

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Additionally, the Plan received a letter dated March 22, 2018 from NYSDOH that referred to a statement of deficiency. This letter was issued as a result of the Plan failing to meet its contingent reserve requirement. The NYSDOH requested that the Plan submit a corrective action plan within ten days of receipt of the letter. Management received an extension to April 16, 2018 at which time it submitted its corrective action plan to the NYSDOH. The corrective action plan addressed what actions the Plan has implemented and how these actions impact the Plan's ability to meet its net worth requirements. The corrective action plan also included the new actions the Plan anticipates implementing to cure its negative net worth, a timeline from receipt of the letter to July 1, 2018 detailing how the plan anticipates to meet its various financial objectives, and the continuation of the Plan submitting monthly financial statements under statutory accounting principles to NYSDOH no later than 30 days after the end of the month.

The Plan received a letter dated March 18, 2019 from NYSDOH that referred to updated responses to the statement of deficiency letter issued on March 22, 2018. NYSDOH found that the Plan's revised plan of correction failed to adequately answer the NYSDOH's requests for how the Plan will cure its negative net worth, which includes recapitalization and/or any other options for the Plan's control of operations. As such, NYSDOH requested that a revised plan of correction be submitted within ten business days of receipt of the letter. The Plan requested an extension for the submission of the revised plan of correction and received an extension for the submission to April 15, 2019, which was later extended by NYSDOH to April 30, 2020. On October 14, 2020, NYSDOH acknowledged that the Plan has provided an acceptable plan of correction; however, NYSDOH requires that the Plan continue to submit monthly financial statements no later than 45 days after the end of each month to NYSDOH, as well as to participate in monthly meetings with NYSDOH.

### **(13) Generally Accepted Accounting Principles to Statutory Requirements Reconciliation**

Effective November 10, 2015, the State of New York issued certain audit and reporting standards for managed care organizations. Under the regulations, the Plan must file annual audited financial statements with the state for the years ended December 31, 2020 and 2019 in conformity with SAP prescribed by NYSDFS or in accordance with GAAP with a reconciliation to SAP. SAP are a comprehensive basis of accounting other than GAAP. Financial statements prepared under GAAP vary from those prepared under SAP. The primary differences that apply to the financial statements of the Plan are as follows:

Nonadmitted assets – assets designated as “nonadmitted” assets (principally, property and equipment, prepaid expenses, security deposits, advances to providers, risk corridor receivable, and other receivables) have been excluded from total admitted assets with a corresponding reduction in statutory net worth. Nonadmitted assets totaled \$19.9 million and \$36.1 million as of December 31, 2020 and 2019, respectively.

Fixed income securities – carried at amortized cost under SAP and assessed for other-than-temporary impairment. For GAAP, these securities are carried at their estimated fair value with changes in fair value recorded in excess of revenue over expenses as unrealized gains/losses.

**AFFINITY HEALTH PLAN, INC.**

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Equity securities – carried at fair value under both GAAP and SAP. GAAP requires unrealized gains and losses on trading securities to be recorded in earnings while SAP requires unrealized gains and losses to be recognized in statutory net worth. Also, under SAP, declines in fair value, which are determined to be other than temporary, are recorded as realized losses in earnings.

Reconciliations of revenue over expenses and net deficit as reported in conformity with GAAP to that reported on a statutory basis are included in the following table:

	<u>2020</u>	<u>2019</u>
Excess of revenue over expenses, GAAP basis	\$ 79,796	28,031
Increases (decreases):		
Reversal of unrealized losses on investments	—	—
Realized losses on impaired investments	(47)	(36)
Statutory net income	<u>\$ 79,749</u>	<u>27,995</u>
Net assets (deficit), GAAP	\$ 37,990	(41,806)
Adjustment for:		
Fair value to amortized cost on fixed-income securities	(3,347)	(1,204)
Less nonadmitted assets:		
Property and equipment, net	(8,037)	(8,289)
Advances to providers	(1,658)	(16,778)
Other receivables	(2,734)	(6,468)
Prepays assets and security deposits	(4,103)	(3,382)
Statutory net gain (deficit)	<u>\$ 18,111</u>	<u>(77,927)</u>

**AFFINITY HEALTH PLAN, INC.**

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**(14) Liquidity and Availability of Resources**

The Plan's financial assets available within one year of the balance sheet date for general expenditure are as follows:

	<u>2020</u>	<u>2019</u>
Cash and liquid investments:		
Cash	\$ 201,145	89,959
Investments	<u>39,466</u>	<u>8,095</u>
Total cash and liquid investments	<u>240,611</u>	<u>98,054</u>
Other short-term assets:		
Premiums receivable, net	33,153	30,589
Stop loss receivable	23,359	19,485
Other receivables	<u>12,464</u>	<u>19,753</u>
Total other short-term assets	<u>68,976</u>	<u>69,827</u>
Total liquidity available within one year	<u>\$ 309,587</u>	<u>167,881</u>

Separately, the Plan has a line of credit with a commercial bank. As of December 31, 2020 and 2019, the line of credit was \$25 million. The Plan has no outstanding balance on this line of credit as of December 31, 2020 and 2019.

**AFFINITY HEALTH PLAN, INC.**

Notes to Financial Statements

December 31, 2020 and 2019

**(15) Functional Allocation of Expenses**

The costs of providing services have been summarized on a functional basis. Accordingly, certain costs have been allocated among the programs and supporting services benefitted. Expenses directly attributable to a specific functional area of the Plan are reported as expenses of those functional areas. The majority of expenses are directly identified with the program for supporting services to which they relate and are charged accordingly. Other expenses have been allocated among program and supporting services on the basis of the department.

	<b>2020</b>		
	<u>Managed care</u>	<u>Management and general</u>	<u>Total expenses</u>
Salary and fringe benefits	\$ 9,701	49,828	59,529
Medical benefit expenses	1,170,742	—	1,170,742
Third party administrative fees	21,746	—	21,746
Purchased services and other	6,194	31,085	37,279
Building and services expense	—	8,767	8,767
Interest	—	535	535
Depreciation and amortization	—	4,093	4,093
Total 2020 expenses	<u>\$ 1,208,383</u>	<u>94,308</u>	<u>1,302,691</u>
	<b>2019</b>		
	<u>Managed care</u>	<u>Management and general</u>	<u>Total expenses</u>
Salary and fringe benefits	\$ 10,612	46,589	57,201
Medical benefit expenses	1,171,342	—	1,171,342
Third party administrative fees	17,942	—	17,942
Purchased services and other	2,619	29,011	31,630
Building and services expense	—	9,349	9,349
Interest	—	2,822	2,822
Depreciation and amortization	—	6,458	6,458
Total 2019 expenses	<u>\$ 1,202,515</u>	<u>94,229</u>	<u>1,296,744</u>

**(16) Subsequent Events**

The Plan's management has evaluated subsequent events from December 31, 2020 through March 31, 2021, which is the date the financial statements were available to be issued.

# EXHIBIT G

**Affinity Health Plan  
Board Approval**

**RESOLUTIONS OF THE  
BOARD OF DIRECTORS  
OF  
AFFINITY HEALTH PLAN, INC.**

**WHEREAS**, the Board of Directors (the “Board”) of Affinity Health Plan, Inc. (the “Corporation”) appointed a special committee (the “Strategic Planning Task Force”) to develop and evaluate a universe of options available to the Corporation that would be in the best interest of the Corporation and further the mission and purpose of the Corporation; and

**WHEREAS**, the Strategic Planning Task Force retained advisors to assist in developing and evaluating options that would serve the best interests of the Corporation and recommended to the Board that it is in the best interests of the Corporation to pursue a sale of substantially all of the Corporation’s assets and assignment of substantially all of the Corporation’s liabilities (an “Asset Sale”) to a buyer that is aligned with the Corporation’s mission to the extent possible;

**WHEREAS**, the Board accepted the recommendation of the Strategic Planning Task Force and authorized the Corporation to take all acts and actions necessary or desirable in furtherance of the Asset Sale;

**WHEREAS**, the Corporation engaged a financial advisor, Cain Brothers (“Cain”), to commence a bid process whereby several potential buyers were invited to enter into preliminary discussions and submit bids to purchase the Corporation’s assets and assume the Corporation’s liabilities in the Asset Sale;

**WHEREAS**, after reviewing all of the bids that were submitted and consulting with Cain and the Corporation’s legal counsel, the Board determined that Molina Healthcare, Inc. (“Buyer”) submitted an acceptable proposal and demonstrated alignment with and a commitment to promote the Corporation’s mission and purposes;

**WHEREAS**, the Board had previously authorized the Corporation to enter into exclusive negotiations with Buyer for the sale of substantially all of the Corporation’s assets and assumption of substantially all of the Corporation’s liabilities in the Asset Sale (the “Contemplated Transaction”);

**WHEREAS**, in connection with the Contemplated Transaction, the Board deems it to be in the best interest of the Corporation to enter into an asset purchase agreement with Buyer substantially in the form attached hereto as **Exhibit A** (the “Asset Purchase Agreement”);

**WHEREAS**, pursuant to the terms of the Asset Purchase Agreement, the

dissolution of the Corporation is contemplated after a period of six (6) years from the closing of the Asset Purchase Agreement;

**WHEREAS**, the Board, having reviewed the terms and conditions of the Asset Purchase Agreement, deems the consideration offered thereunder and the terms thereof to be fair and reasonable to the Corporation;

**WHEREAS**, in connection with the consideration to be paid under the Asset Purchase Agreement resulting in the creation of a charitable asset, the Board desires to authorize the Corporation to distribute the charitable asset to FQHCs and community organizations in furtherance of the Corporation's mission;

**WHEREAS**, the Board deems it to be in the best interests of the Corporation to enter into the Asset Purchase Agreement and to recommend that the organizational members of the Corporation (the "Members") approve and ratify the Board's determination to proceed with the transaction contemplated thereby; and

**WHEREAS**, the Board desires, upon ratification by the Members, to authorize the Chief Executive Officer (the "Authorized Representative") of the Corporation to execute and deliver the Asset Purchase Agreement and any and all other agreements, waivers, consents, notices, certificates, elections, documents, schedules, exhibits or other instruments that are necessary, desirable or required to effectuate the transactions contemplated therein (collectively, the "Transaction Documents").

**NOW, THEREFORE, IT IS HEREBY**

**RESOLVED**, that the Asset Purchase Agreement, the Transaction Documents, and the respective terms and conditions thereof and transactions contemplated thereby be, and they hereby are, approved in all respects by the Board and recommended to the Members for approval and ratification of the transactions contemplated thereby; and be it further

**RESOLVED**, that, upon the approval and ratification of the Members, the Authorized Representative be, and he hereby is, authorized, empowered and directed to take, or cause to be taken, such further action, including, without limitation, the execution and delivery of the Asset Purchase Agreement substantially in the form as attached hereto as **Exhibit A**, provided, that, the Corporation has received written confirmation from the relevant New York State authorities (other than the Charities Bureau of the New York State Attorney General) that they will not oppose the proposed distribution of the charitable asset; and be it further

**RESOLVED**, that, upon the approval and ratification of the Members, the Authorized Representative be, and he hereby is, authorized, empowered and directed to execute and deliver the Transaction Documents and any other instruments as the Authorized Representative shall deem necessary or desirable and in the best interest

of the Corporation to consummate the transactions contemplated by the Asset Purchase Agreement and the Transaction Documents, the taking of any such action to be deemed conclusive evidence thereof; and be it further

**RESOLVED**, that all acts and deeds done by the Authorized Representative in furtherance of these resolutions for and on behalf of the Corporation or in carrying out the terms and intentions of such resolutions are hereby authorized and approved by the Board in all respects; and be it further

**RESOLVED**, that any and all acts and actions previously taken and any and all agreements, instruments, documents, or certificates previously executed or delivered in connection with the foregoing, be, and they hereby are, approved and ratified as the true acts and deeds of the Corporation with the same force and effect as if each such act or agreement had been specifically authorized in advance by the Board.

The undersigned, as Secretary of the Corporation, does hereby certify that the above resolutions are a true and complete copy of the resolutions duly adopted by the Board of Affinity Health Plan, Inc. at a meeting held on the 14<sup>th</sup> day of August, 2020. The resolutions have not been amended or revoked and are in full force and effect as of the date hereof.

Date: Aug 15, 2020

Affinity Health Plan, Inc.

By: Clare Hudson  
Secretary

# EXHIBIT H

**Affinity Health Plan  
Organizational Member Approval**

**MINUTES**  
**OF**  
**THE MEETING OF THE ORGANIZATIONAL MEMBERS**  
**OF**  
**AFFINITY HEALTH PLAN, INC.**

A special meeting of the organizational members of Affinity Health Plan, Inc., a New York Not-for-Profit corporation ("**Affinity**"), was held on August 31, 2020 at 10:30 a.m. via video conference, pursuant to notice given in accordance with §603(c) of the New York Not-for-Profit Corporation Law and Affinity's by-laws.

Lynn Sherman, Affinity board member and Executive Vice President of Finance, IT, Capital Projects & HR of CBWCHC, acted as Secretary of the meeting and confirmed that authorized representatives of all of the organizational members of Affinity were present at the meeting. The authorized representatives are listed below:

- Kaushal Challa, on behalf of Charles B. Wang Community Health Center ("**CBWCHC**");
- Linda Muller, on behalf of Cornerstone Family Health Center ("**Cornerstone**");
- Neil Calman, on behalf of The Institute for Family Health ("**Institute**");
- Mari Millet, on behalf of Morris Heights Health Center ("**MHHC**");
- Paloma Hernandez, on behalf of Urban Health Plan ("**UHP**"); and
- Brian McIndoe, on behalf of William F. Ryan Health Center ("**Ryan Health**").

Also present at the meeting via videoconference were certain of Affinity's board members, officers, and counsel:

- Lynn Sherman, board member;
- Robert Schiller, board member;
- Judith Fairweather, board member;
- Verona Greenland, board member;
- Michael Murphy, CEO;
- Clara Hansen, Vice President;
- Harold Iselin, counsel to Affinity;
- Tricia Asaro, counsel to Affinity; and
- Fatin Haddad, counsel to Affinity.

Paloma Hernandez, chair of the Affinity board of directors and the Chief Executive Officer of UHP, acted as chair of the meeting.

Ms. Hernandez called the meeting to order. After confirmation from Ms. Sherman (acting as Secretary of the meeting) that all members were represented and able to see and hear the video and audio, Ms. Hernandez determined that the meeting could proceed.

The first and only order of business before the meeting was the approval of the form of written resolution of the members of Affinity ratifying and approving the decision of Affinity's board of directors to complete the sale and assignment of substantially all of Affinity's assets and liabilities to Molina Healthcare and enter into an asset purchase agreement with Molina Healthcare (the "**Resolution**").

- A motion to approve the Resolution was made by Brian McIndoe, on behalf of Ryan Health.
- The motion was seconded by Linda Muller, on behalf of Cornerstone.

Ms. Hernandez asked if there were any questions or comments before the voting commenced

- Neil Calman, on behalf of The Institute, requested that this meeting be postponed for two weeks to give Institute adequate time to review and discuss the materials.

There were no further comments, so Ms. Hernandez asked each authorized representative to cast their vote on behalf of each Affinity Member:

- Paloma Hernandez, voting on behalf of UHP, voted to approve the Resolution;
- Kaushal Challa, voting on behalf of CBWCHC, voted to approve the Resolution;
- Linda Muller, on behalf of Cornerstone, voted to approve the Resolution;
- Neil Calman, on behalf of The Institute, voted NOT to approve the Resolution;
- Mari Millet, on behalf of MHHC, voted to approve the Resolution; and
- Brian McIndoe, on behalf of Ryan Health, voted to approve the Resolution.

Ms. Hernandez asked Ms. Sherman to tally the vote and announce the results of the vote.

- Ms. Sherman announced that there were 5 votes in favor, and 1 vote not in favor. The Resolution was approved by the members.

The meeting was then opened up for any additional questions or comments.

- Neil Calman, on behalf of The Institute, requested that the letter he delivered to Affinity on the evening of August 30, 2020 be added to the minutes of the meeting. The letter is attached hereto as Exhibit A.

Ms. Hernandez requested that the Resolution be executed by Ms. Sherman as Secretary of the meeting and filed with the minutes of the meeting, and that a copy of the Resolution be delivered to the Affinity board of directors.

There being no other business to consider, the meeting was adjourned at 10:44 a.m. on August 31, 2020.

[SIGNATURE PAGE FOLLOWS]

*Lynn D. Sherman*  
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Lynn D. Sherman, as Secretary of the meeting

Exhibit A

Letter from The Institute for Family Health

Attached.