

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-Q**

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(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended September 30, 2018  
OR
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number: 001-31719



**MOLINA HEALTHCARE, INC.**  
(Exact name of registrant as specified in its charter)

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Delaware (State or other jurisdiction of incorporation or organization)	13-4204626 (I.R.S. Employer Identification No.)
200 Oceangate, Suite 100 Long Beach, California (Address of principal executive offices)	90802 (Zip Code)
(562) 435-3666 (Registrant's telephone number, including area code)	

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

- |                         |  |                           |                          |
|-------------------------|--|---------------------------|--------------------------|
| Large accelerated filer | <input checked="" type="checkbox"/>                                    | Accelerated filer         | <input type="checkbox"/> |
| Non-accelerated filer   | <input type="checkbox"/> (Do not check if a smaller reporting company) | Smaller reporting company | <input type="checkbox"/> |
|                         |  | Emerging growth company   | <input type="checkbox"/> |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

The number of shares of the issuer's Common Stock, \$0.001 par value, outstanding as of October 26, 2018, was approximately 62,389,000.

# MOLINA HEALTHCARE, INC. FORM 10-Q

FOR THE QUARTERLY PERIOD ENDED September 30, 2018

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## CONSOLIDATED STATEMENTS OF OPERATIONS

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
(In millions, except per-share data) (Unaudited)				
Revenue:				
Premium revenue	\$ 4,337	\$ 4,777	\$ 13,174	\$ 14,165
Service revenue	130	130	391	390
Premium tax revenue	110	106	320	331
Health insurer fees reimbursed	83	—	248	—
Investment income and other revenue	37	18	93	48
<b>Total revenue</b>	<b>4,697</b>	<b>5,031</b>	<b>14,226</b>	<b>14,934</b>
Operating expenses:				
Medical care costs	3,790	4,220	11,362	12,822
Cost of service revenue	111	123	349	369
General and administrative expenses	311	383	998	1,227
Premium tax expenses	110	106	320	331
Health insurer fees	87	—	261	—
Depreciation and amortization	25	33	76	109
Restructuring and separation costs	5	118	38	161
Impairment losses	—	129	—	201
<b>Total operating expenses</b>	<b>4,439</b>	<b>5,112</b>	<b>13,404</b>	<b>15,220</b>
Gain on sale of subsidiary	37	—	37	—
<b>Operating income (loss)</b>	<b>295</b>	<b>(81)</b>	<b>859</b>	<b>(286)</b>
Other expenses, net:				
Interest expense	26	32	91	85
Other expenses (income), net	10	—	25	(75)
<b>Total other expenses, net</b>	<b>36</b>	<b>32</b>	<b>116</b>	<b>10</b>
Income (loss) before income tax expense (benefit)	259	(113)	743	(296)
Income tax expense (benefit)	62	(16)	237	(46)
<b>Net income (loss)</b>	<b>\$ 197</b>	<b>\$ (97)</b>	<b>\$ 506</b>	<b>\$ (250)</b>
Net income (loss) per share:				
Basic	\$ 3.22	\$ (1.70)	\$ 8.32	\$ (4.44)
Diluted	\$ 2.90	\$ (1.70)	\$ 7.60	\$ (4.44)

## CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
(In millions) (Unaudited)				
Net income (loss)	\$ 197	\$ (97)	\$ 506	\$ (250)
Other comprehensive income (loss):				
Unrealized investment gain (loss)	1	1	(5)	2
Less: effect of income taxes	—	1	(1)	1
<b>Other comprehensive income (loss), net of tax</b>	<b>1</b>	<b>—</b>	<b>(4)</b>	<b>1</b>
<b>Comprehensive income (loss)</b>	<b>\$ 198</b>	<b>\$ (97)</b>	<b>\$ 502</b>	<b>\$ (249)</b>

See accompanying notes.

**CONSOLIDATED BALANCE SHEETS**

	September 30, 2018	December 31, 2017
	(In millions, except per-share data)	
	(Unaudited)	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 2,814	\$ 3,186
Investments	1,812	2,524
Restricted investments	—	169
Receivables	1,346	871
Prepaid expenses and other current assets	486	239
Derivative asset	843	522
Total current assets	<u>7,301</u>	<u>7,511</u>
Property, equipment, and capitalized software, net	264	342
Goodwill and intangible assets, net	195	255
Restricted investments	118	119
Deferred income taxes	143	103
Other assets	30	141
	<u>\$ 8,051</u>	<u>\$ 8,471</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Medical claims and benefits payable	\$ 2,042	\$ 2,192
Amounts due government agencies	1,030	1,542
Accounts payable and accrued liabilities	824	366
Deferred revenue	178	282
Current portion of long-term debt	296	653
Derivative liability	843	522
Total current liabilities	<u>5,213</u>	<u>5,557</u>
Long-term debt	1,019	1,318
Lease financing obligations	198	198
Other long-term liabilities	60	61
Total liabilities	<u>6,490</u>	<u>7,134</u>
Stockholders' equity:		
Common stock, \$0.001 par value, 150 shares authorized; outstanding: 62 shares at September 30, 2018 and 60 shares at December 31, 2017	—	—
Preferred stock, \$0.001 par value; 20 shares authorized, no shares issued and outstanding	—	—
Additional paid-in capital	760	1,044
Accumulated other comprehensive loss	(10)	(5)
Retained earnings	811	298
Total stockholders' equity	<u>1,561</u>	<u>1,337</u>
	<u>\$ 8,051</u>	<u>\$ 8,471</u>

See accompanying notes.

## CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total
	Outstanding	Amount				
(In millions)						
(Unaudited)						
Balance at January 1, 2018	60	\$ —	\$ 1,044	\$ (5)	\$ 298	\$ 1,337
Net income	—	—	—	—	107	107
Adoption of Topic 606	—	—	—	—	6	6
Adoption of ASU 2018-02	—	—	—	(1)	1	—
Exchange of 1.625% Notes	2	—	108	—	—	108
Other comprehensive loss, net	—	—	—	(6)	—	(6)
Share-based compensation	—	—	1	—	—	1
Balance at March 31, 2018	62	—	1,153	(12)	412	1,553
Net income	—	—	—	—	202	202
Partial termination of 1.125% Warrants	—	—	(113)	—	—	(113)
Other comprehensive income, net	—	—	—	1	—	1
Share-based compensation	—	—	15	—	—	15
Balance at June 30, 2018	62	—	1,055	(11)	614	1,658
Net income	—	—	—	—	197	197
Partial termination of 1.125% Warrants	—	—	(306)	—	—	(306)
Conversion of 1.625% Notes	—	—	4	—	—	4
Other comprehensive income, net	—	—	—	1	—	1
Share-based compensation	—	—	7	—	—	7
Balance at September 30, 2018	62	\$ —	\$ 760	\$ (10)	\$ 811	\$ 1,561

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Total
	Outstanding	Amount				
(In millions)						
(Unaudited)						
Balance at January 1, 2017	57	\$ —	\$ 841	\$ (2)	\$ 810	\$ 1,649
Net income	—	—	—	—	77	77
Other comprehensive income, net	—	—	—	1	—	1
Balance at March 31, 2017	57	—	841	(1)	887	1,727
Net loss	—	—	—	—	(230)	(230)
Share-based compensation	—	—	24	—	—	24
Balance at June 30, 2017	57	—	865	(1)	657	1,521
Net loss	—	—	—	—	(97)	(97)
Share-based compensation	—	—	5	—	—	5
Balance at September 30, 2017	57	\$ —	\$ 870	\$ (1)	\$ 560	\$ 1,429

See accompanying notes.

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Nine Months Ended September 30,	
	2018	2017
	(In millions) (Unaudited)	
Operating activities:		
Net income (loss)	\$ 506	\$ (250)
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities:		
Depreciation and amortization	104	139
Deferred income taxes	(32)	(68)
Share-based compensation	20	38
Non-cash restructuring costs	17	49
Amortization of convertible senior notes and lease financing obligations	18	24
Gain on sale of subsidiary	(37)	—
Loss on debt extinguishment	25	—
Impairment losses	—	201
Other, net	6	13
Changes in operating assets and liabilities:		
Receivables	(507)	(28)
Prepaid expenses and other current assets	(117)	(53)
Medical claims and benefits payable	(144)	549
Amounts due government agencies	(511)	122
Accounts payable and accrued liabilities	398	90
Deferred revenue	(55)	153
Income taxes	118	(22)
Net cash (used in) provided by operating activities	<u>(191)</u>	<u>957</u>
Investing activities:		
Purchases of investments	(1,202)	(1,894)
Proceeds from sales and maturities of investments	2,070	1,536
Purchases of property, equipment and capitalized software	(24)	(85)
Other, net	(23)	(33)
Net cash provided by (used in) investing activities	<u>821</u>	<u>(476)</u>
Financing activities:		
Repayment of credit facility	(300)	—
Repayment of principal amount of 1.125% Notes	(236)	—
Cash paid for partial settlement of 1.125% Conversion Option	(477)	—
Cash received for partial termination of 1.125% Call Option	477	—
Cash paid for partial termination of 1.125% Warrants	(419)	—
Repayment of principal amount of 1.625% Notes	(64)	—
Proceeds from senior notes offerings, net of issuance costs	—	325
Proceeds from borrowings under credit facility	—	300
Other, net	7	7
Net cash (used in) provided by financing activities	<u>(1,012)</u>	<u>632</u>
Net (decrease) increase in cash, cash equivalents, and restricted cash and cash equivalents	(382)	1,113
Cash, cash equivalents, and restricted cash and cash equivalents at beginning of period	3,290	2,912
Cash, cash equivalents, and restricted cash and cash equivalents at end of period	<u>\$ 2,908</u>	<u>\$ 4,025</u>

## CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)

	Nine Months Ended September 30,	
	2018	2017
	(In millions) (Unaudited)	
Supplemental cash flow information:		
Schedule of non-cash investing and financing activities:		
Common stock used for share-based compensation	\$ (6)	\$ (21)
Details of sale of subsidiary:		
Decrease in carrying amount of assets	\$ (243)	\$ —
Decrease in carrying amount of liabilities	59	—
Transaction costs	(12)	—
Receivable from buyer - recorded in prepaid expenses and other current assets	233	—
Gain on sale of subsidiary	\$ 37	\$ —
Details of change in fair value of derivatives, net:		
Gain on 1.125% Call Option	\$ 321	\$ 158
Loss on 1.125% Conversion Option	(321)	(158)
Change in fair value of derivatives, net	\$ —	\$ —
1.625% Notes exchange transaction:		
Common stock issued in exchange for 1.625% Notes	\$ 131	\$ —
Component of 1.625% Notes allocated to additional paid-in capital, net of income taxes	(23)	—
Net increase to additional paid-in capital	\$ 108	\$ —

See accompanying notes.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

September 30, 2018

### 1. Organization and Basis of Presentation

#### **Organization and Operations**

Molina Healthcare, Inc. provides quality managed health care to people receiving government assistance. We offer cost-effective Medicaid-related solutions to meet the health care needs of low-income families and individuals, and to assist government agencies in their administration of the Medicaid program. We have three reportable segments, consisting of our Health Plans segment, which constitutes the vast majority of our operations; our Molina Medicaid Solutions segment; and our Other segment.

The Health Plans segment consists of health plans operating in 13 states and the Commonwealth of Puerto Rico. As of September 30, 2018, these health plans served approximately 4.0 million members eligible for Medicaid, Medicare, and other government-sponsored health care programs for low-income families and individuals. This membership includes Affordable Care Act Marketplace (Marketplace) members, most of whom receive government premium subsidies. The health plans are operated by our respective wholly owned subsidiaries in those states, each of which is licensed as a health maintenance organization (HMO).

Our health plans' state Medicaid contracts generally have terms of three to five years. These contracts typically contain renewal options exercisable by the state Medicaid agency, and allow either the state or the health plan to terminate the contract with or without cause. Such contracts are subject to risk of loss in states that issue requests for proposal (RFP) open to competitive bidding by other health plans. If one of our health plans is not a successful responsive bidder to a state RFP, its contract may not be renewed.

In addition to contract renewal, our state Medicaid contracts may be periodically amended to include or exclude certain health benefits (such as pharmacy services, behavioral health services, or long-term care services); populations such as the aged, blind or disabled (ABD); and regions or service areas.

The Molina Medicaid Solutions segment provides support to state government agencies' administration of their Medicaid programs, including business processing, information technology development and administrative services. The Other segment includes primarily our behavioral health and social services provider subsidiary (Pathways), and corporate amounts not allocated to other reportable segments.

#### **Recent Developments – Health Plans Segment**

*New Mexico Health Plan.* In our Annual Report on Form 10-K for 2017, we reported that we were notified by the New Mexico Medicaid agency that we had not been selected for a tentative award of a 2019 Medicaid contract. A hearing was held on our judicial protest on October 17, 2018, with a decision expected in the fourth quarter of 2018. Regardless of the court's decision on our protest, we would have further rights of appeal. We are continuing to manage the business in run-off until such time as a different outcome is determined. As of September 30, 2018, we served approximately 206,000 Medicaid members in New Mexico, which represented premium revenue of \$891 million for the nine months ended September 30, 2018.

*Puerto Rico Health Plan.* In July 2018, our Puerto Rico health plan was selected by the Puerto Rico Health Insurance Administration to be one of the organizations to administer the Commonwealth's new Medicaid Managed Care contract. We expect to serve approximately 290,000 members under the new contract. The base contract runs for a period of three years with an optional one-year extension. As of September 30, 2018, we served approximately 320,000 Medicaid members in the East and Southwest regions of Puerto Rico, which represented premium revenue of \$549 million for the nine months ended September 30, 2018.

*Florida Health Plan.* In June 2018, our Florida health plan was awarded comprehensive Medicaid Managed Care contracts by the Florida Agency for Health Care Administration (AHCA) in Regions 8 and 11 of the Florida Statewide Medicaid Managed Care Invitation to Negotiate. As of September 30, 2018, we served approximately 96,000 Medicaid members in those regions, which represented premium revenue of approximately \$346 million for the nine months ended September 30, 2018. Services under the new contract are expected to begin on January 1, 2019. We will be serving both the Medicaid and long-term care populations in the two regions.

*Washington Health Plan.* In May 2018, our Washington health plan was selected by the Washington State Health Care Authority (HCA) to enter into a managed care contract for the eight remaining regions of the state's Apple Health Integrated Managed Care program, in addition to the two regions previously awarded to us. We were



selected by HCA for the following regions: Greater Columbia, King, North Sound, Pierce, and Spokane beginning January 1, 2019; and Salish, Thurston-Mason, and Great Rivers beginning January 1, 2020. As of September 30, 2018, we served approximately 738,000 Medicaid members in Washington, which represented premium revenue of \$1,558 million for the nine months ended September 30, 2018.

#### **Recent Developments – Molina Medicaid Solutions Segment**

We closed on the sale of Molina Medicaid Solutions (MMS) to DXC Technology Company on September 30, 2018. The net cash selling price for the equity interests of MMS was \$233 million, which we received on October 1, 2018. As a result of this transaction, we recognized a pretax gain, net of transaction costs, of \$37 million. Refer to Note 11, “Segments,” for further information.

#### **Subsequent Event – Other Segment**

On October 19, 2018, we sold our Pathways subsidiary to Pyramid Health Holdings, LLC for a nominal purchase price. We expect to record a loss on sale of subsidiary amounting to approximately \$40 million, net of income tax benefits.

#### **Presentation and Reclassification**

We have reclassified certain amounts in the 2017 consolidated statement of cash flows to conform to the 2018 presentation, relating to the presentation of restricted cash and cash equivalents. The reclassification is a result of our adoption of Accounting Standards Update (ASU) 2016-18, *Restricted Cash* effective January 1, 2018. See Note 2, “Significant Accounting Policies,” for further information, including the amount reclassified.

We have combined certain line items in the accompanying consolidated balance sheets. For all periods presented, we have combined the presentation of:

- Income taxes refundable with “Prepaid expenses and other current assets;”
- Income taxes payable with “Accounts payable and accrued liabilities;”
- Goodwill, and intangible assets, net to a single line; and
- Deferred contract costs with “Other assets.”

#### **Consolidation and Interim Financial Information**

The consolidated financial statements include the accounts of Molina Healthcare, Inc., its subsidiaries, and variable interest entities (VIEs) in which Molina Healthcare, Inc. is considered to be the primary beneficiary. Such VIEs are insignificant to our consolidated financial position and results of operations. In the opinion of management, all adjustments considered necessary for a fair presentation of the results as of the date and for the interim periods presented have been included; such adjustments consist of normal recurring adjustments. All significant intercompany balances and transactions have been eliminated. The consolidated results of operations for the nine months ended September 30, 2018 are not necessarily indicative of the results for the entire year ending December 31, 2018.

The unaudited consolidated interim financial statements have been prepared under the assumption that users of the interim financial data have either read or have access to our audited consolidated financial statements for the fiscal year ended December 31, 2017. Accordingly, certain disclosures that would substantially duplicate the disclosures contained in our December 31, 2017 audited consolidated financial statements have been omitted. These unaudited consolidated interim financial statements should be read in conjunction with our audited consolidated financial statements for the fiscal year ended December 31, 2017.

## 2. Significant Accounting Policies

#### **Cash and Cash Equivalents**

Cash and cash equivalents consist of cash and short-term, highly liquid investments that are both readily convertible into known amounts of cash and have a maturity of three months or less on the date of purchase. The following table provides a reconciliation of cash, cash equivalents, and restricted cash and cash equivalents reported within the accompanying consolidated balance sheets that sum to the total of the same such amounts presented in the accompanying consolidated statements of cash flows. The restricted cash and cash equivalents presented below are included in non-current “Restricted investments” in the accompanying consolidated balance sheets.

	Nine Months Ended September 30,	
	2018	2017
	(In millions)	
Cash and cash equivalents	\$ 2,814	\$ 3,934
Restricted cash and cash equivalents	94	91
Total cash, cash equivalents, and restricted cash and cash equivalents presented in the statements of cash flows	<u>\$ 2,908</u>	<u>\$ 4,025</u>

### Revenue Recognition

We adopted ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)* effective January 1, 2018, using the modified retrospective approach. The insurance contracts of our Health Plans segment, which segment constitutes the vast majority of our operations, are excluded from the scope of Topic 606 because the recognition of revenue under these contracts is dictated by other accounting standards governing insurance contracts. The cumulative effect of initially applying the guidance, relating entirely to our Molina Medicaid Solutions segment contracts, resulted in an immaterial impact to beginning retained earnings, as presented in the accompanying consolidated statement of stockholders' equity. Topic 606 was only applied to service contracts that were not completed as of December 31, 2017. Refer to "Other segment" below for further information.

### Health Plans segment

Premium revenue is fixed in advance of the periods covered and, except as described below, is not generally subject to significant accounting estimates. Premium revenues are recognized in the month that members are entitled to receive health care services, and premiums collected in advance are deferred. Certain components of premium revenue are subject to accounting estimates and fall into two broad categories discussed in further detail below: 1) "Contractual Provisions That May Adjust or Limit Revenue or Profit;" and 2) "Quality Incentives." Liabilities recorded for such provisions are included in "Amounts due government agencies" in the accompanying consolidated balance sheets.

#### 1) Contractual Provisions That May Adjust or Limit Revenue or Profit:

##### Medicaid

- *Medical Cost Floors (Minimums), and Medical Cost Corridors:* Pursuant to certain contract provisions, a portion of our premium revenue may be returned if certain minimum amounts are not spent on defined medical care costs. In the aggregate, we recorded a liability under the terms of such contract provisions of \$198 million and \$135 million at September 30, 2018 and December 31, 2017, respectively. Approximately \$144 million and \$96 million of this liability accrued at September 30, 2018 and December 31, 2017, respectively, relates to our participation in Medicaid Expansion programs. Refer to Note 12, "Commitments and Contingencies," for further information regarding the California Medicaid Expansion program.
- *Retroactive Premium Adjustments:* State Medicaid programs periodically adjust premium rates on a retroactive basis. In these cases, we must adjust our premium revenue in the period in which we learn of the adjustment, rather than in the months of service to which the retroactive adjustment applies.

##### Medicare

- *Minimum MLR:* The Affordable Care Act (ACA) has established a minimum annual medical loss ratio (Minimum MLR) of 85% for Medicare. The medical loss ratio represents medical costs as a percentage of premium revenue. Federal regulations define what constitutes medical costs and premium revenue. If the Minimum MLR is not met, we may be required to pay rebates to the federal government. We recognize estimated rebates under the Minimum MLR as an adjustment to premium revenue in our consolidated statements of operations. The payable for the Medicare Minimum MLR was not significant at September 30, 2018 and December 31, 2017.

##### Marketplace

- *Risk adjustment:* Under this program, our health plans' composite risk scores are compared with the overall average risk score for the relevant state and market pool. Generally, our health plans will make a risk adjustment payment into the pool if their composite risk scores are below the average risk score, and will receive a risk adjustment payment from the pool if their composite risk scores are above the average risk score. We estimate our ultimate premium based on insurance policy year-to-date experience, and recognize estimated premiums relating to the risk adjustment program as an adjustment to premium

revenue in our consolidated statements of operations. As of September 30, 2018, and December 31, 2017, the Marketplace risk adjustment payable amounted to \$390 million and \$912 million, respectively.

- **Minimum MLR:** The ACA has established a Minimum MLR of 80% for the Marketplace. If the Minimum MLR is not met, we may be required to pay rebates to our Marketplace policyholders. The Marketplace risk adjustment program is taken into consideration when computing the Minimum MLR. We recognize estimated rebates under the Minimum MLR as an adjustment to premium revenue in our consolidated statements of operations. The payable for the Marketplace Minimum MLR was not significant at September 30, 2018 and December 31, 2017.

## 2) Quality Incentives:

At many of our health plans, revenue ranging from approximately 1% to 3% of certain health plan premiums is earned only if certain performance measures are met.

The following table quantifies the quality incentive premium revenue recognized for the periods presented, including the amounts earned in the periods presented and prior periods. Although the reasonably possible effects of a change in estimate related to quality incentive premium revenue as of September 30, 2018 are not known, we have no reason to believe that the adjustments to prior years noted below are not indicative of the potential future changes in our estimates as of September 30, 2018.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
	(Dollars in millions)			
Maximum available quality incentive premium - current period	\$ 48	\$ 36	\$ 135	\$ 113
Quality incentive premium revenue recognized in current period:				
Earned current period	\$ 39	\$ 24	\$ 97	\$ 72
Earned prior periods	9	3	32	9
Total	\$ 48	\$ 27	\$ 129	81
Quality incentive premium revenue recognized as a percentage of total premium revenue	1.1%	0.6%	1.0%	0.6%

## Other segment

Our Pathways subsidiary's revenue is all variable, and generally invoiced after services are rendered; customer payment follows invoicing. We concluded that there is no change to revenue recognition under Topic 606 for Pathways, and therefore no impact to retained earnings effective January 1, 2018. As discussed in Note 1, "Organization and Basis of Presentation," we sold Pathways on October 19, 2018.

## Medical Care Costs - Marketplace Cost Share Reduction (CSR) Update

In the nine months ended September 30, 2018, we recognized a benefit of approximately \$81 million in reduced medical expense related to 2017 dates of service, including \$5 million in the third quarter of 2018, as a result of the federal government's confirmation that the reconciliation of 2017 Marketplace CSR subsidies would be performed on an annual basis. In the fourth quarter of 2017, we had assumed a nine-month reconciliation of this item pending confirmation of the time period to which the 2017 reconciliation would be applied.

## Concentrations of Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk consist primarily of cash and cash equivalents, investments, receivables, and restricted investments. Our investments and a portion of our cash equivalents are managed by professional portfolio managers operating under documented investment guidelines. Our portfolio managers must obtain our prior approval before selling investments where the loss position of those investments exceeds certain levels. Our investments consist primarily of investment-grade debt securities with a maximum maturity of 10 years and an average duration of three years or less. Restricted investments are invested principally in certificates of deposit and U.S. treasury securities. Concentration of credit risk with respect to accounts receivable is generally limited because our payors consist principally of the governments of each state in which our health plan subsidiaries operate.

## **Income Taxes**

The provision for income taxes is determined using an estimated annual effective tax rate, which generally differs from the U.S. federal statutory rate primarily because of state taxes, nondeductible expenses such as the Health Insurer Fee (HIF), certain compensation, and other general and administrative expenses. The effective tax rate was not impacted by HIF in 2017 given the 2017 HIF moratorium.

The effective tax rate may be subject to fluctuations during the year as new information is obtained. Such information may affect the assumptions used to estimate the annual effective tax rate, including projected pretax earnings, the mix of pretax earnings in the various tax jurisdictions in which we operate, valuation allowances against deferred tax assets, the recognition or the reversal of the recognition of tax benefits related to uncertain tax positions, and changes in or the interpretation of tax laws in jurisdictions where we conduct business. We recognize deferred tax assets and liabilities for temporary differences between the financial reporting basis and the tax basis of our assets and liabilities, along with net operating loss and tax credit carryovers.

The Tax Cuts and Jobs Act (TCJA) was enacted on December 22, 2017. The TCJA, in part, reduced the U.S. federal statutory corporate income tax rate from 35% to 21% effective January 1, 2018. Accounting guidance allows filers a measurement period of one year from the enactment date to finalize the provisional valuation of deferred tax assets and liabilities. During the third quarter of 2018, we recognized approximately \$4 million in adjustments to our provisional valuation of our deferred tax assets and liabilities recorded at December 31, 2017, and included these adjustments as a component of income tax expense from continuing operations, which decreased our effective tax rate by 150 basis points in the quarter. At September 30, 2018, we had not completed our accounting for the tax effects resulting from enactment of TCJA with respect to valuation of our deferred tax assets and liabilities. We will continue to refine our calculations as additional analysis is completed. In addition, our estimates may also be affected by expected future guidance on the tax law from the Internal Revenue Service and U.S. Treasury.

## **Recent Accounting Pronouncements Adopted**

*Revenue Recognition (Topic 606)*. See discussion above, in "Revenue Recognition."

*Comprehensive Income*. In February 2018, the Financial Accounting Standards Board (FASB) issued ASU 2018-02, *Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*, which allows a reclassification from accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the TCJA. ASU 2018-02 is effective beginning January 1, 2019; we early adopted this ASU effective January 1, 2018. The effect of applying the guidance resulted in an immaterial impact to beginning retained earnings, as presented in the accompanying consolidated statement of stockholders' equity.

*Restricted Cash*. In November 2016, the FASB issued ASU 2016-18, *Restricted Cash*, which requires us to include in our consolidated statements of cash flows the changes in the balances of cash, cash equivalents, restricted cash and restricted cash equivalents. We adopted ASU 2016-18 on January 1, 2018. We have applied the guidance retrospectively to all periods presented. Such retrospective adoption resulted in a \$91 million reclassification of restricted cash and cash equivalents from "Investing activities," to the beginning and ending balances of cash and cash equivalents in our consolidated statements of cash flows for the nine months ended September 30, 2017. There was no impact to our consolidated statements of operations, balance sheets, or stockholders' equity. The reconciliation of cash and cash equivalents to cash, cash equivalents, and restricted cash and cash equivalents is presented at the beginning of this note.

## **Recent Accounting Pronouncements Not Yet Adopted**

*Software Licenses*. In August 2018, the FASB issued ASU 2018-15, *Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*, which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. ASU 2018-15 is effective beginning January 1, 2020, and can be applied either retrospectively or prospectively to all implementation costs incurred after the date of adoption; early adoption is permitted. We are evaluating the effect of this guidance.

*Callable Debt Securities*. In March 2017, the FASB issued ASU 2017-08, *Premium Amortization on Purchased Callable Debt Securities*, which shortens the amortization period for certain callable debt securities held at a premium. Specifically, the amendments require the premium to be amortized to the earliest call date. ASU 2017-08 is effective beginning January 1, 2019, and must be adopted as a cumulative effect adjustment to retained earnings; early adoption is permitted. We are evaluating the effect of this guidance.

*Credit Losses*. In June 2016, the FASB issued ASU 2016-13, *Measurement of Credit Losses on Financial Instruments*. Rather than generally recognizing credit losses when it is probable that the loss has been incurred, the

revised guidance requires companies to recognize an allowance for credit losses for the difference between the amortized cost basis of a financial instrument and the amount of amortized cost that the company expects to collect over the instrument's contractual life. ASU 2016-13 is effective beginning January 1, 2020, and must be adopted as a cumulative effect adjustment to retained earnings; early adoption is permitted. We are evaluating the effect of this guidance.

*Leases*. In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, as modified by:

- ASU 2017-03, *Transition and Open Effective Date Information*;
- ASU 2018-01, *Leases (Topic 842): Land Easement Practical Expedient for Transition to Topic 842*;
- ASU 2018-10, *Codification Improvements to Topic 842, Leases*; and
- ASU 2018-11, *Leases (Topic 842): Targeted Improvements*.

Under Topic 842, an entity will be required to recognize assets and liabilities for the rights and obligations created by leases on the entity's balance sheet for both financing and operating leases. Topic 842 also requires new disclosures that depict the amount, timing, and uncertainty of cash flows pertaining to an entity's leases. We will adopt Topic 842 effective January 1, 2019, using the modified retrospective method. Under this method, we will recognize the cumulative effect of initially applying the standard as an adjustment to the opening balance of retained earnings on January 1, 2019. In addition, we have elected the transition option provided under ASU 2018-11, which allows entities to continue to apply the legacy guidance in Topic 840, *Leases*, including its disclosure requirements, in the comparative periods presented in the year of adoption.

Under Topic 842, we will record right-of-use assets and liabilities relating primarily to our long-term office operating leases. We have substantially completed the configuration of our lease database management system for the adoption of Topic 842. We do not currently expect the adoption of this guidance to have a material effect on our consolidated results of operations, financial condition or cash flows.

### 3. Net Income (Loss) per Share

The following table sets forth the calculation of basic and diluted net income (loss) per share:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
(In millions, except net income per share)				
<b>Numerator:</b>				
Net income (loss)	\$ 197	\$ (97)	\$ 506	\$ (250)
<b>Denominator:</b>				
Shares outstanding at the beginning of the period	61.3	56.5	59.3	55.8
Weighted-average number of shares issued:				
Exchange of 1.625% Notes <sup>(1)</sup>	—	—	1.3	—
Stock-based compensation	—	—	0.2	0.4
Denominator for basic net income per share	61.3	56.5	60.8	56.2
Effect of dilutive securities:				
1.125% Warrants <sup>(1)</sup>	5.6	—	5.0	—
1.625% Notes <sup>(1)</sup>	0.6	—	0.5	—
Stock-based compensation	0.4	—	0.3	—
Denominator for diluted net income per share	67.9	56.5	66.6	56.2
Net income (loss) per share: <sup>(2)</sup>				
Basic	\$ 3.22	\$ (1.70)	\$ 8.32	\$ (4.44)
Diluted	\$ 2.90	\$ (1.70)	\$ 7.60	\$ (4.44)
Potentially dilutive common shares excluded from calculations:				
1.125% Warrants <sup>(1)</sup>	—	2.3	—	1.3
1.625% Notes <sup>(1)</sup>	—	0.6	—	0.3
Stock-based compensation	—	0.2	—	0.3

(1) For more information and definitions regarding the 1.625% Notes, refer to Note 7, "Debt." For more information and definitions regarding the 1.125% Warrants, refer to Note 9, "Stockholders' Equity." The dilutive effect of all potentially dilutive common shares is calculated using the treasury stock method. Certain potentially dilutive common shares issuable are not included in the computation of diluted net income (loss) per share because to do so would be anti-dilutive.

(2) Source data for calculations in thousands.

### 4. Fair Value Measurements

We consider the carrying amounts of cash, cash equivalents and other current assets and current liabilities (not including derivatives and the current portion of long-term debt) to approximate their fair values because of the relatively short period of time between the origination of these instruments and their expected realization or payment. For our financial instruments measured at fair value on a recurring basis, we prioritize the inputs used in measuring fair value according to the three-tier fair value hierarchy. For a description of the methods and assumptions that we use to a) estimate the fair value; and b) determine the classification according to the fair value hierarchy for each financial instrument, see Note 4, "Fair Value Measurements," in our 2017 Annual Report on Form 10-K.

Derivative financial instruments include the 1.125% Call Option derivative asset and the 1.125% Conversion Option derivative liability (see Note 8 "Derivatives," for definitions and further information). These derivatives are not actively traded and are valued based on an option pricing model that uses observable and unobservable market data for inputs. Significant market data inputs used to determine fair value as of September 30, 2018, included the price of our common stock, the time to maturity of the derivative instruments, the risk-free interest rate, and the implied volatility of our common stock. The 1.125% Call Option derivative asset and the 1.125% Conversion Option

derivative liability were designed such that changes in their fair values would offset, with minimal impact to the consolidated statements of operations. Therefore, the sensitivity of changes in the unobservable inputs to the option pricing model for such derivative instruments is mitigated.

The net changes in fair value of Level 3 financial instruments were insignificant to our results of operations for the nine months ended September 30, 2018.

Our financial instruments measured at fair value on a recurring basis at September 30, 2018, were as follows:

	Total	Quoted Market Prices (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
	(In millions)			
Corporate debt securities	\$ 1,191	\$ —	\$ 1,191	\$ —
U.S. treasury notes	221	221	—	—
Government-sponsored enterprise securities (GSEs)	170	170	—	—
Municipal securities	119	—	119	—
Asset-backed securities	92	—	92	—
Certificate of deposit	15	—	15	—
Other	4	—	4	—
Subtotal - current investments	1,812	391	1,421	—
1.125% Call Option derivative asset	843	—	—	843
Total assets	\$ 2,655	\$ 391	\$ 1,421	\$ 843
1.125% Conversion Option derivative liability	\$ 843	\$ —	\$ —	\$ 843
Total liabilities	\$ 843	\$ —	\$ —	\$ 843

Our financial instruments measured at fair value on a recurring basis at December 31, 2017, were as follows:

	Total	Quoted Market Prices (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
	(In millions)			
Corporate debt securities	\$ 1,588	\$ —	\$ 1,588	\$ —
U.S. treasury notes	388	388	—	—
GSEs	253	253	—	—
Municipal securities	141	—	141	—
Asset-backed securities	117	—	117	—
Certificates of deposit	37	—	37	—
Subtotal - current investments	2,524	641	1,883	—
Corporate debt securities	101	—	101	—
U.S. treasury notes	68	68	—	—
Subtotal - current restricted investments	169	68	101	—
1.125% Call Option derivative asset	522	—	—	522
Total assets	\$ 3,215	\$ 709	\$ 1,984	\$ 522
1.125% Conversion Option derivative liability	\$ 522	\$ —	\$ —	\$ 522
Total liabilities	\$ 522	\$ —	\$ —	\$ 522

### Fair Value Measurements – Disclosure Only

The carrying amounts and estimated fair values of our senior notes are classified as Level 2 financial instruments. Fair value for these securities is determined using a market approach based on quoted market prices for similar securities in active markets or quoted prices for identical securities in inactive markets.

	September 30, 2018		December 31, 2017	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In millions)			
5.375% Notes	\$ 693	\$ 711	\$ 692	\$ 730
1.125% Notes <sup>(1)</sup>	295	1,142	496	1,052
4.875% Notes	326	325	325	329
1.625% Notes <sup>(2)</sup>	—	—	157	220
Credit Facility <sup>(2)</sup>	—	—	300	300
	<u>\$ 1,314</u>	<u>\$ 2,178</u>	<u>\$ 1,970</u>	<u>\$ 2,631</u>

(1) The fair value of the 1.125% Conversion Option (the embedded cash conversion option), which is included in the fair value amounts presented above, amounted to \$843 million and \$522 million as of September 30, 2018, and December 31, 2017, respectively. See further discussion at Note 7, “Debt,” and Note 8, “Derivatives.”

(2) For more information on debt repayments in the nine months ended September 30, 2018, refer to Note 7, “Debt.”

## 5. Investments

### Available-for-Sale Investments

We consider all of our investments classified as current assets to be available-for-sale. The following tables summarize our investments as of the dates indicated:

	September 30, 2018			
	Amortized Cost	Gross Unrealized		Estimated Fair Value
		Gains	Losses	
	(In millions)			
Corporate debt securities	\$ 1,197	\$ 1	\$ 7	\$ 1,191
U.S. treasury notes	222	—	1	221
GSEs	172	—	2	170
Municipal securities	121	—	2	119
Asset backed securities	93	—	1	92
Certificates of deposit	15	—	—	15
Other	4	—	—	4
	<u>\$ 1,824</u>	<u>\$ 1</u>	<u>\$ 13</u>	<u>\$ 1,812</u>



	December 31, 2017			
	Amortized Cost	Gross Unrealized		Estimated Fair Value
		Gains	Losses	
(In millions)				
Corporate debt securities	\$ 1,591	\$ 1	\$ 4	\$ 1,588
U.S. treasury notes	389	—	1	388
GSEs	255	—	2	253
Municipal securities	142	—	1	141
Asset-backed securities	117	—	—	117
Certificates of deposit	37	—	—	37
Subtotal - current investments	2,531	1	8	2,524
Corporate debt securities	101	—	—	101
U.S. treasury notes	68	—	—	68
Subtotal - current restricted investments	169	—	—	169
	<u>\$ 2,700</u>	<u>\$ 1</u>	<u>\$ 8</u>	<u>\$ 2,693</u>

The contractual maturities of our available-for-sale investments as of September 30, 2018 are summarized below:

	Amortized Cost	Estimated Fair Value
	(In millions)	
Due in one year or less	\$ 1,025	\$ 1,023
Due after one year through five years	799	789
	<u>\$ 1,824</u>	<u>\$ 1,812</u>

As discussed further in Note 7, "Debt," the 4.875% Notes' indenture required us to hold a portion of the net proceeds from their issuance in a segregated account to be used to settle the conversion of the 1.625% Notes. Prior to September 30, 2018, this account was reported as a current asset, entitled "Restricted investments," in the accompanying consolidated balance sheets. Because this account was used to settle the conversion of the 1.625% Notes in the third quarter of 2018, current restricted investments, as of September 30, 2018, was reduced to zero.

Gross realized gains and losses from sales of available-for-sale securities are calculated under the specific identification method and are included in investment income. Gross realized investment gains and losses for the three and nine months ended September 30, 2018 and 2017 were insignificant.

We have determined that unrealized losses at September 30, 2018 and December 31, 2017, are temporary in nature, because the change in market value for these securities has resulted from fluctuating interest rates, rather than a deterioration of the creditworthiness of the issuers. So long as we maintain the intent and ability to hold these securities to maturity, we are unlikely to experience losses. In the event that we dispose of these securities before maturity, we expect that realized losses, if any, will be insignificant.

The following table segregates those available-for-sale investments that have been in a continuous loss position for less than 12 months, and those that have been in a continuous loss position for 12 months or more as of September 30, 2018:

	In a Continuous Loss Position for Less than 12 Months			In a Continuous Loss Position for 12 Months or More		
	Estimated Fair Value	Unrealized Losses	Total Number of Positions	Estimated Fair Value	Unrealized Losses	Total Number of Positions
(Dollars in millions)						
Corporate debt securities	\$ 727	\$ 4	460	\$ 186	\$ 3	127
U.S. Treasury notes	—	—	—	94	1	31
GSEs	—	—	—	127	2	68
Municipal securities	63	1	63	55	1	57
Asset backed securities	72	1	41	—	—	—
	<u>\$ 862</u>	<u>\$ 6</u>	<u>564</u>	<u>\$ 462</u>	<u>\$ 7</u>	<u>283</u>

The following table segregates those available-for-sale investments that have been in a continuous loss position for less than 12 months, and those that have been in a continuous loss position for 12 months or more as of December 31, 2017:

	In a Continuous Loss Position for Less than 12 Months			In a Continuous Loss Position for 12 Months or More		
	Estimated Fair Value	Unrealized Losses	Total Number of Positions	Estimated Fair Value	Unrealized Losses	Total Number of Positions
(Dollars in millions)						
Corporate debt securities	\$ 1,297	\$ 3	561	\$ 94	\$ 1	69
U.S. Treasury Notes	470	1	89	—	—	—
GSEs	173	1	69	95	1	47
Municipal securities	—	—	—	38	1	48
	<u>\$ 1,940</u>	<u>\$ 5</u>	<u>719</u>	<u>\$ 227</u>	<u>\$ 3</u>	<u>164</u>

### Held-to-Maturity Investments

Pursuant to the regulations governing our Health Plans segment subsidiaries, we maintain statutory deposits and deposits required by government authorities primarily in certificates of deposit and U.S. treasury securities. We also maintain restricted investments as protection against the insolvency of certain capitated providers. The use of these funds is limited as required by regulations in the various states in which we operate, or as needed in the event of insolvency of capitated providers. Therefore, such investments are reported as non-current "Restricted investments" in the accompanying consolidated balance sheets. We have the ability to hold these restricted investments until maturity, and as a result, we would not expect the value of these investments to decline significantly due to a sudden change in market interest rates.

Our held-to-maturity restricted investments are carried at amortized cost, which approximates fair value. Held-to-maturity restricted investments as of September 30, 2018, are summarized below:

	Amortized Cost	Estimated Fair Value
	(In millions)	
Due in one year or less	\$ 111	\$ 111
Due after one year through five years	7	7
	<u>\$ 118</u>	<u>\$ 118</u>

## 6. Medical Claims and Benefits Payable

The following table provides the details of our medical claims and benefits payable (including amounts payable for the provision of long-term services and supports, or LTSS) as of the dates indicated:

	September 30, 2018	December 31, 2017
	(In millions)	
Fee-for-service claims incurred but not paid (IBNP)	\$ 1,609	\$ 1,717
Pharmacy payable	121	112
Capitation payable	48	67
Other	264	296
	<u>\$ 2,042</u>	<u>\$ 2,192</u>

"Other" medical claims and benefits payable includes amounts payable to certain providers for which we act as an intermediary on behalf of various government agencies without assuming financial risk. Such receipts and payments do not impact our consolidated statements of operations. Non-risk provider payables amounted to \$158 million and \$122 million as of September 30, 2018 and December 31, 2017, respectively.

The following table presents the components of the change in our medical claims and benefits payable for the periods indicated. The amounts presented for "Components of medical care costs related to: Prior periods" represent the amounts by which our original estimate of medical claims and benefits payable at the beginning of the

period were (more) less than the actual amount of the liability based on information (principally the payment of claims) developed since that liability was first reported.

	Nine Months Ended September 30,	
	2018	2017
	(In millions)	
Medical claims and benefits payable, beginning balance	\$ 2,192	\$ 1,929
Components of medical care costs related to:		
Current period	11,589	12,813
Prior periods	(227)	9
Total medical care costs	11,362	12,822
Change in non-risk provider payables	60	172
Payments for medical care costs related to:		
Current period	9,866	10,944
Prior periods	1,706	1,501
Total paid	11,572	12,445
Medical claims and benefits payable, ending balance	\$ 2,042	\$ 2,478

The differences between our original estimates and the amounts ultimately paid out for the most part relate to IBNP. Assuming that our initial estimate of IBNP is accurate, we believe that amounts ultimately paid would generally be between 8% and 10% less than the IBNP liability recorded at the end of the period as a result of the inclusion in that liability of the provision for adverse claims deviation and the accrued cost of settling those claims. Because we establish the provision for adverse claims deviation and the accrued cost of settling claims on a consistent basis every quarter, the lower cost recognized in a subsequent period if such a provision proved unnecessary would be offset by the establishment of a similar provision during that same period.

Because the amount of our initial liability is an estimate, we will always experience variability in that estimate as new information becomes available with the passage of time. Therefore, there can be no assurance that amounts ultimately paid out will fall within the range of 8% to 10% lower than the liability that was initially recorded.

Further, because our initial estimate of IBNP is derived from many factors, some of which are qualitative in nature rather than quantitative, we are seldom able to assign specific values to the reasons for a change in estimate—we will only be able to identify specific factors if they represent a significant departure from expectations. As a result, we do not expect to be able to fully quantify the impact of individual factors on changes in estimates.

We believe that the most significant uncertainties surrounding our IBNP estimates at September 30, 2018 are as follows:

- Across all of our health plans, the inventory of unpaid claims increased significantly during the first half of 2017, then decreased in the last half of 2017 and into 2018. Changes in claims inventories impact the timing between date of service and the date of claim payment, increasing the volatility of our liability estimates.
- In June 2018, our Puerto Rico health plan implemented state prescribed claim billing requirements to ensure more accurate claims submissions. The billing requirements were more stringent and caused a significant number of claim denials. Although we expect providers to ultimately submit updated claims with the required information, the impact of the new billing requirements creates more uncertainty in our liability estimates.
- At our Florida health plan, a new clinical service system was implemented in the first quarter of 2018. This system impacted the reporting of inpatient authorizations used in our development of claims liabilities, which makes our liability estimates subject to more than the usual amount of uncertainty.
- We recently implemented a new process for increased quality review of claims payments in 11 of our health plans. While we do not anticipate this new process will impact the percentage of claims paid within the timely turnaround requirements, we believe it will have a minor impact on the timing of some paid claims. For this reason, our liability estimates in these 11 health plans are subject to more than the usual amount of uncertainty.

We recognized favorable prior period claims development in the amount of \$227 million for the nine months ended September 30, 2018. This amount represents our estimate as of September 30, 2018, of the extent to which our initial estimate of medical claims and benefits payable at December 31, 2017, was more than the amount that will ultimately be paid out in satisfaction of that liability. We believe these differences were due primarily to the following factors:

- The impact of the provision for adverse claims deviation and the accrued cost of settling claims as discussed above. Because we re-establish the provision for adverse claims deviation and the accrued cost of settling claims on a consistent basis every quarter, the impact of this item to medical care costs in the nine months ended September 30, 2018, results was minimal.
- Across all of our health plans, the inventory of unpaid claims increased significantly during the first half of 2017, then decreased in the last half of 2017. In hindsight, the impact of the changes in claims processing timing reduced our liabilities more than we had anticipated.
- December 2017 data from The Centers for Disease Control and Prevention indicated widespread influenza activity in several states in which we operate health plans. The additional liabilities established in consideration of increased claims related to a more severe influenza season turned out to be higher than our actual experience.
- In establishing our liability at December 31, 2017, we anticipated an increase in the utilization of medical services by Marketplace members concerned about the future of their healthcare coverage as a result of uncertainties related to high premium increases and issuer exits. This induced demand did not materialize to the degree we expected.

## 7. Debt

As of September 30, 2018, contractual maturities of debt were as follows. All amounts represent the principal amounts of the debt instruments outstanding.

	Total	2019	2020	2021	2022	2023	Thereafter
	(In millions)						
5.375% Notes	\$ 700	\$ —	\$ —	\$ —	\$ 700	\$ —	\$ —
4.875% Notes	330	—	—	—	—	—	330
1.125% Notes	314	—	314	—	—	—	—
	<u>\$ 1,344</u>	<u>\$ —</u>	<u>\$ 314</u>	<u>\$ —</u>	<u>\$ 700</u>	<u>\$ —</u>	<u>\$ 330</u>

All of our debt is held at the parent, which is reported in the Other segment. The following table summarizes our outstanding debt obligations and their classification in the accompanying consolidated balance sheets:

	September 30, 2018	December 31, 2017
(In millions)		
<b>Current portion of long-term debt:</b>		
1.125% Notes, net of unamortized discount of \$18 at September 30, 2018, and \$51 at December 31, 2017	\$ 296	\$ 499
1.625% Notes, net of unamortized discount of \$3 at December 31, 2017	—	157
Lease financing obligations	1	1
Debt issuance costs	(1)	(4)
	<u>296</u>	<u>653</u>
<b>Non-current portion of long-term debt:</b>		
5.375% Notes	700	700
4.875% Notes	330	330
Credit Facility	—	300
Debt issuance costs	(11)	(12)
	<u>1,019</u>	<u>1,318</u>
Lease financing obligations	198	198
	<u>\$ 1,513</u>	<u>\$ 2,169</u>

Interest cost recognized relating to our convertible senior notes for the periods presented was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
(In millions)				
Contractual interest at coupon rate	\$ 1	\$ 3	\$ 5	\$ 9
Amortization of the discount	5	8	18	24
	<u>\$ 6</u>	<u>\$ 11</u>	<u>\$ 23</u>	<u>\$ 33</u>

### **Credit Facility**

In January 2017, we entered into an amended unsecured \$500 million revolving credit facility (the Credit Facility). The Credit Facility has a term of five years and all amounts outstanding will be due and payable on January 31, 2022. In May 2018, we repaid the \$300 million outstanding borrowings under the Credit Facility. As of September 30, 2018, no amounts were outstanding under the Credit Facility, and outstanding letters of credit amounting to \$6 million reduced our borrowing capacity under the Credit Facility to \$494 million.

Borrowings under our Credit Facility bear interest based, at our election, on a base rate or an adjusted London Interbank Offered Rate (LIBOR), plus in each case the applicable margin. In addition to interest payable on the principal amount of indebtedness outstanding from time to time under the Credit Facility, we are required to pay a quarterly commitment fee. Certain of our wholly owned subsidiaries guarantee our obligations under the Credit Facility. The Credit Facility contains customary non-financial and financial covenants, including a net leverage ratio and an interest coverage ratio. As of September 30, 2018, we were in compliance with all financial and non-financial covenants under the Credit Facility and other long-term debt.

### **Bridge Credit Agreement**

In January 2018, we entered into a bridge credit agreement with several banks, which was subsequently terminated in August 2018.

### **5.375% Notes due 2022**

We have \$700 million aggregate principal amount of senior notes (the 5.375% Notes) outstanding as of September 30, 2018, which are due November 15, 2022, unless earlier redeemed. Interest on the 5.375% Notes is payable semiannually in arrears on May 15 and November 15. Certain of our wholly owned subsidiaries guarantee our obligations under the 5.375% Notes; such guarantees mirror those of the Credit Facility. See Note 13,

“Supplemental Condensed Consolidating Financial Information,” for more information on the guarantors. The 5.375% Notes contain customary non-financial covenants and change in control provisions.

#### **4.875% Notes due 2025**

We have \$330 million aggregate principal amount of senior notes (the 4.875% Notes) outstanding as of September 30, 2018, which are due June 15, 2025, unless earlier redeemed. Interest on the 4.875% Notes is payable semiannually in arrears on June 15 and December 15. Certain of our wholly owned subsidiaries guarantee our obligations under the 4.875% Notes; such guarantees mirror those of the Credit Facility. The 4.875% Notes contain customary non-financial covenants and change of control provisions.

#### **1.125% Cash Convertible Senior Notes due 2020**

In the second and third quarters of 2018, we entered into privately negotiated note purchase agreements with certain holders of our outstanding 1.125% cash convertible senior notes due January 15, 2020 (the 1.125% Notes).

In the third quarter of 2018, we repaid \$140 million aggregate principal amount of the 1.125% Notes, plus accrued interest, for a total cash payment of \$483 million. The \$343 million difference between the principal amount extinguished and our cash payment primarily represents the settlement of the 1.125% Notes' embedded cash conversion option feature at fair value (which is a derivative liability we refer to as the 1.125% Conversion Option).

In the second quarter of 2018, we repaid \$96 million aggregate principal amount of the 1.125% Notes, plus accrued interest, for a total cash payment of \$228 million. As noted above, the \$132 million difference between the principal amount extinguished and our cash payment primarily represents the settlement of the embedded cash conversion option feature at fair value.

In the nine months ended September 30, 2018, we have recorded a loss on debt extinguishment of \$15 million for the 1.125% Notes purchases, including \$10 million in the third quarter of 2018, primarily relating to the acceleration of the debt discount. This loss is reported in “Other expenses (income), net” in the accompanying consolidated statements of operations. No common shares were issued in connection with these transactions.

In connection with the 1.125% Notes purchases, we also entered into privately negotiated termination agreements with each of the counterparties in the second and third quarters of 2018, to partially terminate the Call Spread Overlay, defined and further discussed in Notes 8, “Derivatives,” and 9, “Stockholders' Equity.” The net cash proceeds from the Call Spread Overlay partial termination transactions partially offset the cash paid to settle the 1.125% Notes.

Following the transactions described above, we have \$314 million aggregate principal amount of the 1.125% Notes outstanding at September 30, 2018. Interest is payable semiannually in arrears on January 15 and July 15. The 1.125% Notes are convertible only into cash, and not into shares of our common stock or any other securities. The initial conversion rate for the 1.125% Notes is 24.5277 shares of our common stock per \$1,000 principal amount, or approximately \$40.77 per share of our common stock. Upon conversion, in lieu of receiving shares of our common stock, a holder will receive an amount in cash, per \$1,000 principal amount of 1.125% Notes, equal to the settlement amount, determined in the manner set forth in the indenture. We may not redeem the 1.125% Notes prior to the maturity date. The 1.125% Notes are convertible by the holders within one year of the current balance sheet date until they mature; therefore, they are reported in current portion of long-term debt.

Concurrent with the issuance of the 1.125% Notes, the 1.125% Conversion Option was separated from the 1.125% Notes and accounted for separately as a derivative liability, with changes in fair value reported in our consolidated statements of operations until the 1.125% Conversion Option fully settles or expires. This initial liability simultaneously reduced the carrying value of the 1.125% Notes' principal amount (effectively an original issuance discount), which is amortized to the principal amount through the recognition of non-cash interest expense over the expected life of the debt. The effective interest rate approximating what we would have incurred had nonconvertible debt with otherwise similar terms been issued is approximately 6%. As of September 30, 2018, the 1.125% Notes had a remaining amortization period of 1.3 years, and their ‘if-converted’ value exceeded their principal amount by approximately \$626 million and \$406 million as of September 30, 2018 and December 31, 2017, respectively.

#### **1.625% Convertible Senior Notes due 2044**

*Conversion.* On July 11, 2018, we announced notice of our election to redeem the remaining \$64 million aggregate principal amount of the 1.625% convertible senior notes due 2044 (the 1.625% Notes) on August 20, 2018 (the Redemption Date), pursuant to the terms of the indenture. Also pursuant to the indenture, the 1.625% Notes were convertible until August 17, 2018, at a conversion rate of 17.2157 shares of our common stock per \$1,000 principal amount equal to the settlement amount (as defined in the related indenture), or approximately \$58.09 per share of our common stock.

Through August 17, 2018, we received conversion notices from substantially all of the remaining holders of the 1.625% Notes outstanding. Under the conversions, we paid cash for the remaining \$64 million aggregate principal amount and delivered 0.6 million shares of our common stock to the converting holders on the settlement dates in September 2018.

**Exchange.** In March 2018, we entered into separate, privately negotiated, synthetic exchange agreements with certain holders of our outstanding 1.625% Notes, under which we exchanged \$97 million aggregate principal amount and accrued interest for 1.8 million shares of our common stock. We recorded a loss on debt extinguishment, including transaction fees, of \$10 million, primarily relating to the inducement premium paid to the bondholders, which is recorded in "Other expenses (income), net" in the accompanying consolidated statements of operations. We did not receive any proceeds from the transaction.

#### **Cross-Default Provisions**

The indentures governing the 4.875% Notes, the 5.375% Notes and the 1.125% Notes contain cross-default provisions that are triggered upon default by us or any of our subsidiaries on any indebtedness in excess of the amount specified in the applicable indenture.

## 8. Derivatives

The following table summarizes the fair values and the presentation of our derivative financial instruments (defined and discussed individually below) in the accompanying consolidated balance sheets:

	Balance Sheet Location	September 30,	December 31,
		2018	2017
(In millions)			
<b>Derivative asset:</b>			
1.125% Call Option	Current assets: Derivative asset	\$ 843	\$ 522
<b>Derivative liability:</b>			
1.125% Conversion Option	Current liabilities: Derivative liability	\$ 843	\$ 522

Our derivative financial instruments do not qualify for hedge treatment; therefore, the change in fair value of these instruments is recognized immediately in our consolidated statements of operations, and reported in "Other expenses (income), net." Gains and losses for our derivative financial instruments are presented individually in the accompanying consolidated statements of cash flows, "Supplemental cash flow information."

**1.125% Notes Call Spread Overlay.** Concurrent with the issuance of the 1.125% Notes in 2013, we entered into privately negotiated hedge transactions (collectively, the 1.125% Call Option) and warrant transactions (collectively, the 1.125% Warrants), with certain of the initial purchasers of the 1.125% Notes (the Counterparties). We refer to these transactions collectively as the Call Spread Overlay. Under the Call Spread Overlay, the cost of the 1.125% Call Option we purchased to cover the cash outlay upon conversion of the 1.125% Notes was reduced by proceeds from the sale of the 1.125% Warrants. Assuming full performance by the Counterparties (and 1.125% Warrants strike prices in excess of the conversion price of the 1.125% Notes), these transactions are intended to offset cash payments in excess of the principal amount of the 1.125% Notes due upon any conversion of such notes.

In the second and third quarters of 2018, in connection with the 1.125% Notes purchases (described in Note 7, "Debt"), we entered into privately negotiated termination agreements with each of the Counterparties to partially terminate the Call Spread Overlay, in notional amounts corresponding to the aggregate principal amount of the 1.125% Notes purchased. In the third quarter of 2018, this resulted in our receipt of \$343 million for the settlement of the 1.125% Call Option (which is a derivative asset), and the payment of \$306 million for the partial termination of the 1.125% Warrants, for an aggregate net cash receipt of \$37 million from the Counterparties.

In the second quarter of 2018, this resulted in our receipt of \$134 million for the settlement of the 1.125% Call Option, and the payment of \$113 million for the partial termination of the 1.125% Warrants, for an aggregate net cash receipt of \$21 million from the Counterparties.

**1.125% Call Option.** The 1.125% Call Option, which is indexed to our common stock, is a derivative asset that requires mark-to-market accounting treatment due to cash settlement features until the 1.125% Call Option settles or expires. For further discussion of the inputs used to determine the fair value of the 1.125% Call Option, refer to Note 4, "Fair Value Measurements."

**1.125% Conversion Option.** The embedded cash conversion option within the 1.125% Notes is accounted for separately as a derivative liability, with changes in fair value reported in our consolidated statements of operations until the cash conversion option settles or expires. For further discussion of the inputs used to determine the fair value of the 1.125% Conversion Option, refer to Note 4, "Fair Value Measurements."

As of September 30, 2018, the 1.125% Call Option and the 1.125% Conversion Option were classified as a current asset and current liability, respectively, because the 1.125% Notes may be converted within twelve months of September 30, 2018, as described in Note 7, "Debt."

## 9. Stockholders' Equity

### **1.625% Notes**

**Conversion.** As described in Note 7, "Debt," we issued 0.6 million shares of our common stock in connection with the conversion of the 1.625% Notes in the third quarter of 2018.

**Exchange.** As described in Note 7, "Debt," we issued 1.8 million shares of our common stock in connection with the exchange of the 1.625% Notes in March 2018.

### **1.125% Warrants**

In connection with the Call Spread Overlay transaction described in Note 8, "Derivatives," in 2013, we issued 13.5 million warrants with a strike price of \$53.8475 per share. Under certain circumstances, beginning in April 2020, if the price of our common stock exceeds the strike price of the 1.125% Warrants, we will be obligated to issue shares of our common stock subject to a share delivery cap. The 1.125% Warrants could separately have a dilutive effect to the extent that the market value per share of our common stock exceeds the applicable strike price of the 1.125% Warrants. Refer to Note 3, "Net Income (Loss) per Share," for dilution information for the periods presented. We will not receive any additional proceeds if the 1.125% Warrants are exercised. Following the transactions described below, 7.7 million of the 1.125% Warrants remain outstanding.

As described in Note 8, "Derivatives," in the second and third quarters of 2018, we entered into privately negotiated termination agreements with each of the Counterparties to partially terminate the Call Spread Overlay, in notional amounts corresponding to the aggregate principal amount of the 1.125% Notes purchased. In the third quarter of 2018, we paid \$306 million to the Counterparties for the termination of 3.4 million of the 1.125% Warrants outstanding, which resulted in a reduction of additional paid-in-capital for the same amount.

In the second quarter of 2018, we paid \$113 million to the Counterparties for the termination of 2.4 million of the 1.125% Warrants outstanding, which resulted in a reduction of additional paid-in capital for the same amount.

### **Share-Based Compensation**

In connection with our equity incentive plans and employee stock purchase plan, approximately 281,000 shares of common stock vested or were purchased, net of shares used to settle employees' income tax obligations, during the nine months ended September 30, 2018.

Share-based compensation is generally recorded to "General and administrative expenses" in the accompanying consolidated statements of operations. Total share-based compensation expense for the three and nine months ended September 30, 2018, amounted to \$7 million and \$20 million, respectively. Total share-based compensation expense for the three months ended September 30, 2017, amounted to \$3 million. Total share-based compensation expense for the nine months ended September 30, 2017, amounted to \$38 million, of which \$23 million was recorded to "Restructuring and separation costs" in the accompanying consolidated statements of operations.

As of September 30, 2018, there was \$41 million of total unrecognized compensation expense related to unvested restricted stock awards (RSAs), performance stock awards (PSAs), and performance stock units (PSUs), which we expect to recognize over a remaining weighted-average period of 2.8 years, 0.4 years and 2.3 years, respectively. This unrecognized compensation cost assumes an estimated forfeiture rate of 12.1% for non-executive employees as of September 30, 2018.

Also as of September 30, 2018, there was \$11 million of total unrecognized compensation expense related to unvested stock options, which we expect to recognize over a weighted-average period of 2.0 years. No stock options were granted or exercised in the nine months ended September 30, 2018.



Activity for RSAs, PSAs and PSUs, for the nine months ended September 30, 2018, is summarized below:

	Restricted Stock Awards	Performance Stock Awards	Performance Stock Units	Total	Weighted Average Grant Date Fair Value
Unvested balance, December 31, 2017	401,804	84,762	91,828	578,394	\$ 58.35
Granted	353,618	—	212,926	566,544	73.85
Vested	(188,954)	(32,929)	—	(221,883)	57.87
Forfeited	(152,243)	(48,701)	(104,527)	(305,471)	63.67
Unvested balance, September 30, 2018	414,225	3,132	200,227	617,584	70.11

The aggregate fair values of RSAs, PSAs and PSUs granted and vested are presented in the following table:

	Nine Months Ended September 30,	
	2018	2017
	(In millions)	
Granted:		
Restricted stock awards	\$ 26	\$ 19
Performance stock units	16	16
	<u>\$ 42</u>	<u>\$ 35</u>
Vested:		
Restricted stock awards	\$ 14	\$ 21
Performance stock awards	3	15
Performance stock units	—	9
	<u>\$ 17</u>	<u>\$ 45</u>

## 10. Restructuring and Separation Costs

Restructuring and separation costs are reported by the same name in the accompanying consolidated statements of operations.

### IT Restructuring

Following the 2017 Restructuring Plan noted below, our new executive team has focused on a margin recovery plan that includes identification and implementation of various profit improvement initiatives. To that end, we have begun to implement a plan to restructure our information technology department (the IT Restructuring) in the third quarter of 2018.

#### Expected Costs

In addition to \$3 million incurred in the third quarter of 2018, we expect to incur approximately \$6 million for the IT Restructuring in the fourth quarter of 2018. We expect such costs to consist primarily of one-time termination benefits and other costs in the Other segment. We will update the total estimated costs for the IT Restructuring in our 2018 Annual Report on Form 10-K.

#### Costs Incurred

We have incurred expenses under the IT Restructuring as follows:

	Three and Nine Months Ended September 30, 2018			
	One-Time Termination Benefits	Other Restructuring Costs		Total
		Consulting Fees	Contract Termination Costs	
	(In millions)			
Other	\$ 2	\$ 1	\$ —	\$ 3

### Reconciliation of Liability

For those restructuring and separation costs that require cash settlement (one-time termination benefits and consulting fees), the following table presents a roll-forward of the accrued liability, which is reported in "Accounts payable and accrued liabilities" in the accompanying consolidated balance sheets.

	One-Time Termination Benefits	Other Restructuring Costs	Total
Accrued as of December 31, 2017	\$ —	\$ —	\$ —
Charges	2	1	3
Cash payments	—	—	—
Accrued as of September 30, 2018	<u>\$ 2</u>	<u>\$ 1</u>	<u>\$ 3</u>

### 2017 Restructuring Plan

Following a management-initiated, broad operational assessment in early 2017, our board of directors approved, and we committed to, a comprehensive restructuring and profitability improvement plan in June 2017 (the 2017 Restructuring Plan). Key activities under this plan to date have included:

- Streamlining of our organizational structure to eliminate redundant layers of management, consolidate regional support services, and other staff reductions to improve efficiency and the speed and quality of decision making;
- Re-design of core operating processes such as provider payment, utilization management, quality monitoring and improvement, and information technology, to achieve more effective and cost-efficient outcomes;
- Remediation of high-cost provider contracts and enhancement of high quality, cost-effective networks;
- Restructuring, including selective exits, of direct delivery operations; and
- Partnering with the lowest-cost, most effective vendors.

### Costs Incurred

In our 2017 Annual Report on Form 10-K, we reported that we had incurred substantially all of the costs associated with the 2017 Restructuring Plan in 2017, amounting to \$234 million. In the nine months ended September 30, 2018, we incurred an additional \$35 million in such costs, primarily as a result of our further evaluation and write-off of a utilization and care management project terminated because of its inconsistency with the goals of the 2017 Restructuring Plan. We also recorded nominal amounts for one-time termination benefits, true-ups of certain lease contract termination costs, and consulting fees recorded in 2017. As of September 30, 2018, we had incurred \$269 million in total costs under the 2017 Restructuring Plan. We expect to complete all activities under the 2017 Restructuring Plan in 2018, with the exception of the cash settlement of lease termination liabilities. We expect to continue to settle those liabilities through 2025, unless the leases are terminated sooner.

The following tables present the major types of such costs by segment. Current and long-lived assets include current and non-current capitalized project costs, and capitalized software determined to be unrecoverable.

	Three Months Ended September 30, 2018				Total
	One-Time Termination Benefits	Other Restructuring Costs		Contract Termination Costs	
		Write-offs of Current and Long- lived Assets	Consulting Fees		
(In millions)					
Health Plans	\$ —	\$ —	\$ —	\$ 2	\$ 2
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2</u>	<u>\$ 2</u>

**Nine Months Ended September 30, 2018**

	One-Time Termination Benefits	Other Restructuring Costs			Total
		Write-offs of Current and Long-lived Assets	Consulting Fees	Contract Termination Costs	
(In millions)					
Health Plans	\$ —	\$ (1)	\$ —	\$ 10	\$ 9
Other	5	20	1	—	26
	<u>\$ 5</u>	<u>\$ 19</u>	<u>\$ 1</u>	<u>\$ 10</u>	<u>\$ 35</u>

**Three Months Ended September 30, 2017**

	Separation Costs - Former Executives	One-Time Termination Benefits	Other Restructuring Costs			Total
			Write-offs of Current and Long-lived Assets	Consulting Fees	Contract Termination Costs	
(In millions)						
Health Plans	\$ —	\$ 27	\$ 6	\$ —	\$ —	\$ 33
Molina Medicaid Solutions	—	—	8	—	—	8
Other	—	23	35	16	3	77
	<u>\$ —</u>	<u>\$ 50</u>	<u>\$ 49</u>	<u>\$ 16</u>	<u>\$ 3</u>	<u>\$ 118</u>

**Nine Months Ended September 30, 2017**

	Separation Costs - Former Executives	One-Time Termination Benefits	Other Restructuring Costs			Total
			Write-offs of Current and Long-lived Assets	Consulting Fees	Contract Termination Costs	
(In millions)						
Health Plans	\$ —	\$ 27	\$ 6	\$ —	\$ —	\$ 33
Molina Medicaid Solutions	—	—	8	—	—	8
Other	35	23	35	24	3	120
	<u>\$ 35</u>	<u>\$ 50</u>	<u>\$ 49</u>	<u>\$ 24</u>	<u>\$ 3</u>	<u>\$ 161</u>

As of September 30, 2018, we had incurred cumulative restructuring costs under the 2017 Restructuring Plan as follows:

	Separation Costs - Former Executives	One-Time Termination Benefits	Other Restructuring Costs			Total
			Write-offs of Current and Long-lived Assets	Consulting Fees	Contract Termination Costs	
(In millions)						
Health Plans	\$ —	\$ 33	\$ 15	\$ —	\$ 34	\$ 82
Molina Medicaid Solutions	—	—	8	—	—	8
Other	36	39	57	45	2	179
	<u>\$ 36</u>	<u>\$ 72</u>	<u>\$ 80</u>	<u>\$ 45</u>	<u>\$ 36</u>	<u>\$ 269</u>

**Reconciliation of Liability**

For those restructuring and separation costs that require cash settlement (primarily separation costs, one-time termination benefits, consulting fees and contract termination costs), the following table presents a roll-forward of the accrued liability, which is reported in "Accounts payable and accrued liabilities" in the accompanying

consolidated balance sheets. The adjustments are due to true-ups of costs recorded in 2017.

	Separation Costs - Former Executives	One-Time Termination Benefits	Other Restructuring Costs	Total
(In millions)				
Accrued as of December 31, 2017	\$ 2	\$ 11	\$ 35	\$ 48
Adjustments	—	(1)	10	9
Charges	—	6	2	8
Cash payments	(2)	(15)	(15)	(32)
Accrued as of September 30, 2018	\$ —	\$ 1	\$ 32	\$ 33

## 11. Segments

We have three reportable segments, consisting of our Health Plans segment, which constitutes the vast majority of our operations; our Molina Medicaid Solutions segment; and our Other segment. Our reportable segments are consistent with how we currently manage the business and view the markets we serve. Refer to Note 1, "Organization and Basis of Presentation," for a discussion of our recent divestiture of Pathways.

### Recent Developments – Molina Medicaid Solutions Segment

We closed on the sale of MMS to DXC Technology Company on September 30, 2018. The net cash selling price for the equity interests of MMS was \$233 million, which we received on October 1, 2018. As a result of this transaction, we recognized a pretax gain, net of transaction costs, of \$37 million.

### Description of Earnings Measures for Reportable Segments

Margin is the appropriate earnings measure for our reportable segments, based on how our chief operating decision maker currently reviews results, assesses performance, and allocates resources.

Margin for our Health Plans segment is referred to as "Medical margin," and for our Molina Medicaid Solutions and Other segments, as "Service margin." Medical margin represents the amount earned by the Health Plans segment after medical care costs are deducted from premium revenue. The medical care ratio represents medical care costs as a percentage of premium revenue, and is one of the key metrics used to assess the performance of the Health Plans segment. Therefore, the underlying medical margin is the most important measure of earnings reviewed by the chief operating decision maker. The service margin is equal to service revenue minus cost of service revenue.

The following table presents total revenue by segment. Inter-segment revenue was insignificant for all periods presented.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
(In millions)				
Total revenue:				
Health Plans	\$ 4,565	\$ 4,899	\$ 13,826	\$ 14,538
Molina Medicaid Solutions	53	47	152	140
Other	79	85	248	256
Consolidated	\$ 4,697	\$ 5,031	\$ 14,226	\$ 14,934

The following table reconciles margin by segment to consolidated income (loss) before income taxes:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
(In millions)				
Margin:				
Health Plans	\$ 547	\$ 557	\$ 1,812	\$ 1,343
Molina Medicaid Solutions	14	5	26	13
Other	5	2	16	8
Total margin	566	564	1,854	1,364
Add: other operating revenues <sup>(1)</sup>	230	124	661	379
Add: gain on sale of subsidiary	37	—	37	—
Less: other operating expenses <sup>(2)</sup>	(538)	(769)	(1,693)	(2,029)
Operating income (loss)	295	(81)	859	(286)
Other expenses, net	36	32	116	10
Income (loss) before income taxes	\$ 259	\$ (113)	\$ 743	\$ (296)

(1) Other operating revenues include premium tax revenue, health insurer fees reimbursed, and investment income and other revenue.

(2) Other operating expenses include general and administrative expenses, premium tax expenses, health insurer fees, depreciation and amortization, restructuring and separation costs, and impairment losses.

## 12. Commitments and Contingencies

### **California Medicaid Expansion Risk Corridor**

In October 2018, we entered into contract amendments with the California Department of Health Care Services that retroactively reinstated the Medicaid Expansion risk corridor requirement for the state fiscal year ended June 2017. This risk corridor mandates a minimum medical loss ratio (MLR) of 85% and a maximum MLR of 95%. The estimated impact of such requirement resulted in a reduction to 2016 and 2017 premium revenue totaling approximately \$57 million, which we recognized in the quarter ended September 30, 2018.

### **Regulatory Capital Requirements and Dividend Restrictions**

Our health plans are subject to state laws and regulations that, among other things, require the maintenance of minimum levels of statutory capital, as defined by each state. Regulators in some states may also attempt to enforce capital requirements that require the retention of net worth in excess of amounts formally required by statute or regulation. Such statutes, regulations, and informal capital requirements also restrict the timing, payment, and amount of dividends and other distributions that may be paid to us as the sole stockholder. To the extent our subsidiaries must comply with these regulations, they may not have the financial flexibility to transfer funds to us. Based on current statutes and regulations, the net assets in these subsidiaries (after intercompany eliminations) which may not be transferable to us in the form of loans, advances, or cash dividends was approximately \$2,041 million at September 30, 2018, and \$1,691 million at December 31, 2017. Because of the statutory restrictions that inhibit the ability of our health plans to transfer net assets to us, the amount of retained earnings readily available to pay dividends to our stockholders is generally limited to cash, cash equivalents and investments held by the parent company—Molina Healthcare, Inc.

As of September 30, 2018, our health plans had aggregate statutory capital and surplus of approximately \$2,125 million compared with the estimated required minimum aggregate statutory capital and surplus of approximately \$1,138 million. All of our health plans were in compliance with the minimum capital requirements at September 30, 2018. We have the ability, and have committed to provide, additional capital to each of our health plans as necessary to ensure compliance with statutory capital and surplus requirements.

### **Legal Proceedings**

The health care industry is subject to numerous laws and regulations of federal, state, and local governments. Penalties associated with violations of these laws and regulations include significant fines, exclusion from participating in publicly funded programs, and the repayment of previously collected revenues.

In the ordinary course of business we are involved in legal actions, some of which seek monetary damages, including claims for punitive damages, which are not covered by insurance. We have accrued liabilities for certain matters for which we deem the loss to be both probable and reasonably estimable, but the outcome of legal actions is inherently uncertain and our estimates of such losses could change as a result of further developments of these matters. For certain pending matters, accruals have not been established because such matters have not progressed sufficiently through discovery or factual development to enable us to reasonably estimate a range of possible loss. An adverse determination in one or more of these pending matters could have a material adverse effect on our consolidated financial position, results of operations, or cash flows.

*Steamfitters Local 449 Pension Plan v. Molina Healthcare, Inc., et al.* On October 5, 2018, the Steamfitters Local 449 Pension Plan filed its first amended class action securities complaint in the Central District Court of California against the Company and its former executive officers, J. Mario Molina, John C. Molina, Terry P. Bayer, and Rick Hopfer, Case 2:18-cv-03579. The amended complaint purports to seek recovery on behalf of all persons or entities who purchased Molina common stock between October 31, 2014, and August 2, 2017, for alleged violations under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. The plaintiff alleges the defendants misled investors regarding the scalability of the Company's administrative infrastructure during the identified class period. The Company believes it has meritorious defenses to the alleged claims and intends to defend the matter vigorously.

#### **States' Budgets**

Nearly all of our premium revenues come from the joint federal and state funding of the Medicaid and Children's Health Insurance Program (CHIP) programs. The states and Commonwealth in which we operate our health plans regularly face significant budgetary pressures.

### **13. Supplemental Condensed Consolidating Financial Information**

As discussed in Note 7, "Debt," we have outstanding \$700 million aggregate principal amount of 5.375% Notes due November 15, 2022, unless earlier redeemed. At September 30, 2018, the 5.375% Notes were fully and unconditionally guaranteed by certain of our wholly owned subsidiaries on a joint and several basis, with exceptions considered customary for such guarantees.

For all periods presented, the following condensed consolidating financial statements present Molina Healthcare, Inc. (as "Parent Guarantor"), the subsidiary guarantors (as "Other Guarantors"), the subsidiary non-guarantors (as "Non-Guarantors") and "Eliminations", according to the guarantor structure as assessed as of and for the nine months ended September 30, 2018.

In connection with the divestiture of MMS described in Note 11, "Segments," MMS was released as an "Other Guarantor" effective September 30, 2018, and is reported in "Non-Guarantors" for all periods presented.

In connection with the sale of all of the membership interests of our wholly owned subsidiary Pathways Health and Community Support LLC (Pathways) described in Note 1, "Organization and Basis of Presentation," Pathways was released as an "Other Guarantor" effective October 19, 2018, leaving our wholly owned subsidiary Molina Pathways, LLC as the sole subsidiary guarantor as of that date.

**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**

	Three Months Ended September 30, 2018				
	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
	(In millions)				
<b>Revenue:</b>					
Total revenue	\$ 273	\$ —	\$ 4,695	\$ (271)	\$ 4,697
<b>Expenses:</b>					
Medical care costs	(11)	—	3,801	—	3,790
Cost of service revenue	—	—	111	—	111
General and administrative expenses	243	1	338	(271)	311
Premium tax expenses	—	—	110	—	110
Health insurer fees	—	—	87	—	87
Depreciation and amortization	17	—	8	—	25
Restructuring and separation costs	3	—	2	—	5
Total operating expenses	252	1	4,457	(271)	4,439
Gain on sale of subsidiary	37	—	—	—	37
Operating income (loss)	58	(1)	238	—	295
Interest expense	26	—	—	—	26
Other expenses, net	10	—	—	—	10
Income (loss) before income taxes	22	(1)	238	—	259
Income tax (benefit) expense	(6)	—	68	—	62
Net income (loss) before equity in net earnings (losses) of subsidiaries	28	(1)	170	—	197
Equity in net earnings (losses) of subsidiaries	169	(2)	—	(167)	—
Net income (loss)	\$ 197	\$ (3)	\$ 170	\$ (167)	\$ 197

**CONDENSED CONSOLIDATING STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**

	Three Months Ended September 30, 2018				
	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
	(In millions)				
Net income (loss)	\$ 197	\$ (3)	\$ 170	\$ (167)	\$ 197
Other comprehensive gain, net of tax	1	—	1	(1)	1
Comprehensive income (loss)	\$ 198	\$ (3)	\$ 171	\$ (168)	\$ 198

**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**
**Three Months Ended September 30, 2017**

	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
(In millions)					
<b>Revenue:</b>					
Total revenue	\$ 380	\$ (1)	\$ 5,031	\$ (379)	\$ 5,031
<b>Expenses:</b>					
Medical care costs	3	—	4,217	—	4,220
Cost of service revenue	—	—	123	—	123
General and administrative expenses	244	—	518	(379)	383
Premium tax expenses	—	—	106	—	106
Depreciation and amortization	23	—	10	—	33
Restructuring and separation costs	77	—	41	—	118
Impairment losses	—	—	129	—	129
Total operating expenses	347	—	5,144	(379)	5,112
Operating income (loss)	33	(1)	(113)	—	(81)
Interest expense	32	—	—	—	32
Income (loss) before income taxes	1	(1)	(113)	—	(113)
Income tax expense (benefit)	9	(1)	(24)	—	(16)
Net loss before equity in net (losses) earnings of subsidiaries	(8)	—	(89)	—	(97)
Equity in net (losses) earnings of subsidiaries	(89)	(86)	8	167	—
Net loss	\$ (97)	\$ (86)	\$ (81)	\$ 167	\$ (97)

**CONDENSED CONSOLIDATING STATEMENTS OF COMPREHENSIVE LOSS**
**Three Months Ended September 30, 2017**

	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
(In millions)					
Net loss	\$ (97)	\$ (86)	\$ (81)	\$ 167	\$ (97)
Other comprehensive income, net of tax	—	—	—	—	—
Comprehensive loss	\$ (97)	\$ (86)	\$ (81)	\$ 167	\$ (97)



**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**

	Nine Months Ended September 30, 2018				
	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
	(In millions)				
<b>Revenue:</b>					
Total revenue	\$ 867	\$ 2	\$ 14,220	\$ (863)	\$ 14,226
<b>Expenses:</b>					
Medical care costs	(4)	—	11,366	—	11,362
Cost of service revenue	—	—	349	—	349
General and administrative expenses	762	3	1,096	(863)	998
Premium tax expenses	—	—	320	—	320
Health insurer fees	—	—	261	—	261
Depreciation and amortization	53	—	23	—	76
Restructuring and separation costs	28	—	10	—	38
Total operating expenses	839	3	13,425	(863)	13,404
Gain on sale of subsidiary	37	—	—	—	37
Operating income (loss)	65	(1)	795	—	859
Interest expense	90	—	1	—	91
Other expenses, net	25	—	—	—	25
(Loss) income before income taxes	(50)	(1)	794	—	743
Income tax expense	4	—	233	—	237
Net (loss) income before equity in net earnings (losses) of subsidiaries	(54)	(1)	561	—	506
Equity in net earnings (losses) of subsidiaries	560	(6)	—	(554)	—
Net income (loss)	\$ 506	\$ (7)	\$ 561	\$ (554)	\$ 506

**CONDENSED CONSOLIDATING STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**

	Nine Months Ended September 30, 2018				
	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
	(In millions)				
Net income (loss)	\$ 506	\$ (7)	\$ 561	\$ (554)	\$ 506
Other comprehensive loss, net of tax	(4)	—	(4)	4	(4)
Comprehensive income (loss)	\$ 502	\$ (7)	\$ 557	\$ (550)	\$ 502

**CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS**

	Nine Months Ended September 30, 2017				
	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
	(In millions)				
<b>Revenue:</b>					
Total revenue	\$ 1,010	\$ 1	\$ 14,937	\$ (1,014)	\$ 14,934
<b>Expenses:</b>					
Medical care costs	10	—	12,812	—	12,822
Cost of service revenue	—	—	369	—	369
General and administrative expenses	799	2	1,440	(1,014)	1,227
Premium tax expenses	—	—	331	—	331
Depreciation and amortization	75	—	34	—	109
Restructuring and separation costs	120	—	41	—	161
Impairment losses	—	—	201	—	201
Total operating expenses	1,004	2	15,228	(1,014)	15,220
Operating income (loss)	6	(1)	(291)	—	(286)
Interest expense	85	—	—	—	85
Other income, net	(75)	—	—	—	(75)
Loss before income taxes	(4)	(1)	(291)	—	(296)
Income tax expense (benefit)	26	(1)	(71)	—	(46)
Net loss before equity in net (losses) earnings of subsidiaries	(30)	—	(220)	—	(250)
Equity in net (losses) earnings of subsidiaries	(220)	(152)	8	364	—
Net loss	\$ (250)	\$ (152)	\$ (212)	\$ 364	\$ (250)

**CONDENSED CONSOLIDATING STATEMENTS OF COMPREHENSIVE LOSS**

	Nine Months Ended September 30, 2017				
	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
	(In millions)				
Net loss	\$ (250)	\$ (152)	\$ (212)	\$ 364	\$ (250)
Other comprehensive income, net of tax	1	—	1	(1)	1
Comprehensive loss	\$ (249)	\$ (152)	\$ (211)	\$ 363	\$ (249)

**CONDENSED CONSOLIDATING BALANCE SHEETS**
**September 30, 2018**

	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
(In millions)					
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 399	\$ 2	\$ 2,413	\$ —	\$ 2,814
Investments	106	—	1,706	—	1,812
Receivables	2	—	1,344	—	1,346
Due from (to) affiliates	63	(4)	(59)	—	—
Prepaid expenses and other current assets	293	—	193	—	486
Derivative asset	843	—	—	—	843
Total current assets	1,706	(2)	5,597	—	7,301
Property, equipment, and capitalized software, net	187	—	77	—	264
Goodwill and intangible assets, net	14	—	181	—	195
Restricted investments	—	—	118	—	118
Investment in subsidiaries, net	2,578	74	—	(2,652)	—
Deferred income taxes	48	—	95	—	143
Other assets	40	—	6	(16)	30
	<u>\$ 4,573</u>	<u>\$ 72</u>	<u>\$ 6,074</u>	<u>\$ (2,668)</u>	<u>\$ 8,051</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Medical claims and benefits payable	\$ 4	\$ —	\$ 2,038	\$ —	\$ 2,042
Amounts due government agencies	—	—	1,030	—	1,030
Accounts payable and accrued liabilities	635	—	189	—	824
Deferred revenue	—	—	178	—	178
Current portion of long-term debt	296	—	—	—	296
Derivative liability	843	—	—	—	843
Total current liabilities	1,778	—	3,435	—	5,213
Long-term debt and lease financing obligations	1,217	—	16	(16)	1,217
Other long-term liabilities	17	—	43	—	60
Total liabilities	3,012	—	3,494	(16)	6,490
Total stockholders' equity	1,561	72	2,580	(2,652)	1,561
	<u>\$ 4,573</u>	<u>\$ 72</u>	<u>\$ 6,074</u>	<u>\$ (2,668)</u>	<u>\$ 8,051</u>

**CONDENSED CONSOLIDATING BALANCE SHEETS**

December 31, 2017

	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
(In millions)					
<b>ASSETS</b>					
Current assets:					
Cash and cash equivalents	\$ 504	\$ —	\$ 2,682	\$ —	\$ 3,186
Investments	192	—	2,332	—	2,524
Restricted investments	169	—	—	—	169
Receivables	2	—	869	—	871
Due from (to) affiliates	148	(5)	(143)	—	—
Prepaid expenses and other current assets	103	16	136	(16)	239
Derivative asset	522	—	—	—	522
Total current assets	1,640	11	5,876	(16)	7,511
Property, equipment, and capitalized software, net	223	—	119	—	342
Goodwill and intangible assets, net	15	—	240	—	255
Restricted investments	—	—	119	—	119
Investment in subsidiaries, net	2,306	82	—	(2,388)	—
Deferred income taxes	17	—	101	(15)	103
Other assets	32	—	110	(1)	141
	<u>\$ 4,233</u>	<u>\$ 93</u>	<u>\$ 6,565</u>	<u>\$ (2,420)</u>	<u>\$ 8,471</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>					
Current liabilities:					
Medical claims and benefits payable	\$ 3	\$ —	\$ 2,189	\$ —	\$ 2,192
Amounts due government agencies	—	—	1,542	—	1,542
Accounts payable and accrued liabilities	178	14	174	—	366
Deferred revenue	—	—	282	—	282
Current portion of long-term debt	653	—	16	(16)	653
Derivative liability	522	—	—	—	522
Total current liabilities	1,356	14	4,203	(16)	5,557
Long-term debt and lease financing obligations	1,516	—	—	—	1,516
Deferred income taxes	—	—	15	(15)	—
Other long-term liabilities	24	1	37	(1)	61
Total liabilities	2,896	15	4,255	(32)	7,134
Total stockholders' equity	1,337	78	2,310	(2,388)	1,337
	<u>\$ 4,233</u>	<u>\$ 93</u>	<u>\$ 6,565</u>	<u>\$ (2,420)</u>	<u>\$ 8,471</u>

**CONDENSED CONSOLIDATING STATEMENTS OF CASH FLOWS**

Nine Months Ended September 30, 2018

	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
(In millions)					
<b>Operating activities:</b>					
Net cash provided by (used in) operating activities	\$ 451	\$ 1	\$ (643)	\$ —	\$ (191)
<b>Investing activities:</b>					
Purchases of investments	(136)	—	(1,066)	—	(1,202)
Proceeds from sales and maturities of investments	383	—	1,687	—	2,070
Purchases of property, equipment and capitalized software	(16)	—	(8)	—	(24)
Capital contributions to subsidiaries	(122)	—	122	—	—
Dividends from subsidiaries	268	—	(268)	—	—
Change in amounts due to/from affiliates	70	1	(71)	—	—
Other, net	—	—	(23)	—	(23)
Net cash provided by investing activities	447	1	373	—	821
<b>Financing activities:</b>					
Repayment of credit facility	(300)	—	—	—	(300)
Repayment of principal amount of 1.125% Notes	(236)	—	—	—	(236)
Cash paid for partial settlement of 1.125% Conversion Option	(477)	—	—	—	(477)
Cash received for partial termination of 1.125% Call Option	477	—	—	—	477
Cash paid for partial termination of 1.125% Warrants	(419)	—	—	—	(419)
Repayment of principal amount of 1.625% Notes	(64)	—	—	—	(64)
Other, net	7	—	—	—	7
Net cash used in financing activities	(1,012)	—	—	—	(1,012)
Net (decrease) increase in cash, cash equivalents, and restricted cash and cash equivalents	(114)	2	(270)	—	(382)
Cash, cash equivalents, and restricted cash and cash equivalents at beginning of period	513	—	2,777	—	3,290
Cash, cash equivalents, and restricted cash and cash equivalents at end of period	\$ 399	\$ 2	\$ 2,507	\$ —	\$ 2,908

## Nine Months Ended September 30, 2017

	Parent Guarantor	Other Guarantors	Non-Guarantors	Eliminations	Consolidated
(In millions)					
<b>Operating activities:</b>					
Net cash provided by operating activities	\$ 215	\$ —	\$ 742	\$ —	\$ 957
<b>Investing activities:</b>					
Purchases of investments	(331)	—	(1,563)	—	(1,894)
Proceeds from sales and maturities of investments	148	—	1,388	—	1,536
Purchases of property, equipment and capitalized software	(67)	—	(18)	—	(85)
Capital contributions to subsidiaries	(363)	2	361	—	—
Dividends from subsidiaries	136	—	(136)	—	—
Change in amounts due to/from affiliates	(100)	—	100	—	—
Other, net	—	—	(33)	—	(33)
Net cash (used in) provided by investing activities	(577)	2	99	—	(476)
<b>Financing activities:</b>					
Proceeds from senior notes offerings, net of issuance costs	325	—	—	—	325
Proceeds from borrowings under credit facility	300	—	—	—	300
Other, net	7	—	—	—	7
Net cash provided by financing activities	632	—	—	—	632
Net increase in cash, cash equivalents, and restricted cash and cash equivalents	270	2	841	—	1,113
Cash, cash equivalents, and restricted cash and cash equivalents at beginning of period	86	—	2,826	—	2,912
Cash, cash equivalents, and restricted cash and cash equivalents at end of period	\$ 356	\$ 2	\$ 3,667	\$ —	\$ 4,025

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (MD&A)

### FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q contains forward-looking statements regarding our business, financial condition, and results of operations within the meaning of Section 27A of the Securities Act of 1933, or Securities Act, and Section 21E of the Securities Exchange Act of 1934, or Securities Exchange Act. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, and we are including this statement for purposes of complying with these safe harbor provisions. All statements included in this quarterly report, other than statements of historical fact, may be deemed to be forward-looking statements for purposes of the Securities Act and the Securities Exchange Act. Without limiting the foregoing, we use the words "anticipate(s)," "believe(s)," "estimate(s)," "expect(s)," "intend(s)," "may," "plan(s)," "project(s)," "will," "would," "could," "should" and similar expressions to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We cannot guarantee that we will actually achieve the plans, intentions, or expectations disclosed in our forward-looking statements and, accordingly, you should not place undue reliance on our forward-looking statements. We caution you that we do not undertake any obligation to update forward-looking statements made by us. Forward-looking statements involve known and unknown risks and uncertainties that may cause our actual results in future periods to differ materially from those projected, estimated, or expected. Those known risks and uncertainties include, but are not limited to, the following:

- *the success of the Company's profit improvement and maintenance initiatives, including the timing and amounts of the benefits realized, and administrative and medical cost savings achieved;*
- *the numerous political and market-based uncertainties associated with the Affordable Care Act (the "ACA") or "Obamacare;"*
- *the market dynamics surrounding the ACA Marketplaces, including but not limited to uncertainties associated with risk adjustment requirements, the potential for disproportionate enrollment of higher acuity members, the discontinuation of premium tax credits, and the adequacy of agreed rates;*
- *subsequent adjustments to reported premium revenue based upon subsequent developments or new information, including changes to estimated amounts payable or receivable related to Marketplace risk adjustment;*
- *effective management of the Company's medical costs;*
- *the Company's ability to predict with a reasonable degree of accuracy utilization rates, including utilization rates associated with seasonal flu patterns or other newly emergent diseases;*
- *significant budget pressures on state governments and their potential inability to maintain current rates, to implement expected rate increases, or to maintain existing benefit packages or membership eligibility thresholds or criteria;*
- *the full reimbursement of the ACA health insurer fee, or HIF;*
- *the success of the Company's efforts to retain existing or awarded government contracts, including the success of any protest filings or defenses;*
- *the Company's ability to manage its operations, including maintaining and creating adequate internal systems and controls relating to authorizations, approvals, provider payments, and the overall success of its care management initiatives;*
- *the Company's ability to consummate and realize benefits from divestitures and acquisitions, including the recently consummated MMS and Pathways divestitures;*
- *the Company's receipt of adequate premium rates to support increasing pharmacy costs, including costs associated with specialty drugs and costs resulting from formulary changes that allow the option of higher-priced non-generic drugs;*
- *the Company's ability to operate profitably in an environment where the trend in premium rate increases lags behind the trend in increasing medical costs;*
- *the interpretation and implementation of federal or state medical cost expenditure floors, administrative cost and profit ceilings, premium stabilization programs, profit sharing arrangements, and risk adjustment provisions and requirements;*
- *the Company's estimates of amounts owed for such cost expenditure floors, administrative cost and profit ceilings, premium stabilization programs, profit-sharing arrangements, and risk adjustment provisions;*
- *the Medicaid expansion medical cost corridors in California, New Mexico, and Washington, and any other retroactive adjustment to revenue where methodologies and procedures are subject to interpretation or dependent upon information about the health status of participants other than Molina members;*

- *the interpretation and implementation of at-risk premium rules and state contract performance requirements regarding the achievement of certain quality measures, and the Company's ability to recognize revenue amounts associated therewith;*
- *cyber-attacks or other privacy or data security incidents resulting in an inadvertent unauthorized disclosure of protected health information;*
- *the success of the Company's health plan in Puerto Rico, including the resolution of the debt crisis and the effect of the PROMESA law, and the impact of any future significant weather events;*
- *the success and renewal of the Company's dual demonstration programs in California, Illinois, Michigan, Ohio, South Carolina, and Texas;*
- *the accurate estimation of incurred but not reported or paid medical costs across the Company's health plans;*
- *efforts by states to recoup previously paid and recognized premium amounts;*
- *complications, member confusion, or enrollment backlogs related to the annual renewal of Medicaid coverage;*
- *government audits and reviews, or potential investigations, and any fine, sanction, enrollment freeze, monitoring program, or premium recovery that may result therefrom;*
- *changes with respect to the Company's provider contracts and the loss of providers;*
- *approval by state regulators of dividends and distributions by the Company's health plan subsidiaries;*
- *changes in funding under the Company's contracts as a result of regulatory changes, programmatic adjustments, or other reforms;*
- *high dollar claims related to catastrophic illness;*
- *the favorable resolution of litigation, arbitration, or administrative proceedings, including litigation involving the ACA to which we ourselves are not a direct party;*
- *the relatively small number of states in which we operate health plans, including the greater scale and revenues of the Company's California, Ohio, Texas, and Washington health plans;*
- *the availability of adequate financing on acceptable terms to fund and capitalize the Company's expansion and growth, repay the Company's outstanding indebtedness at maturity and meet its liquidity needs, including the interest expense and other costs associated with such financing;*
- *the Company's failure to comply with the financial or other covenants in its credit agreement or the indentures governing its outstanding notes;*
- *the sufficiency of the Company's funds on hand to pay the amounts due upon conversion or maturity of its outstanding notes;*
- *the failure of a state in which we operate to renew its federal Medicaid waiver;*
- *changes generally affecting the managed care or Medicaid management information systems industries;*
- *increases in government surcharges, taxes, and assessments, including but not limited to the deductibility of certain compensation costs;*
- *newly emergent viruses or widespread epidemics, public catastrophes or terrorist attacks, and associated public alarm;*
- *the unexpected loss of the leadership of one or more of our senior executives; and*
- *increasing competition and consolidation in the Medicaid industry;*

Readers should refer to the section entitled "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2017 for a discussion of certain risk factors that could materially affect our business, financial condition, cash flows, or results of operations. Given these risks and uncertainties, we can give no assurance that any results or events projected or contemplated by our forward-looking statements will in fact occur.

This Quarterly Report on Form 10-Q and the following discussion of our financial condition and results of operations should be read in conjunction with the accompanying consolidated financial statements and the notes to those statements appearing elsewhere in this report, and the audited financial statements and Management's Discussion and Analysis appearing in our Annual Report on Form 10-K for the year ended December 31, 2017.

## ABOUT MOLINA HEALTHCARE

OUR MISSION IS TO PROVIDE QUALITY HEALTHCARE TO PEOPLE RECEIVING GOVERNMENT ASSISTANCE.

Molina Healthcare, Inc. provides quality managed health care to people receiving government assistance. We offer cost-effective Medicaid-related solutions to meet the health care needs of low-income families and individuals, and to assist government agencies in their administration of the Medicaid program. We have three reportable segments,



consisting of our Health Plans segment, which constitutes the vast majority of our operations; our Molina Medicaid Solutions segment; and our Other segment.

## OVERVIEW - FINANCIAL SUMMARY

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
<i>(In millions, except per-share amounts)</i>				
<b>Revenue:</b>				
Premium revenue	\$ 4,337	\$ 4,777	\$ 13,174	\$ 14,165
Premium tax revenue	110	106	320	331
Health insurer fees reimbursed	83	—	248	—
Investment income and other revenue	37	18	93	48
<b>Operating expenses:</b>				
Medical care costs	3,790	4,220	11,362	12,822
General and administrative expenses	311	383	998	1,227
Premium tax expenses	110	106	320	331
Health insurer fees	87	—	261	—
Gain on sale of subsidiary	37	—	37	—
Operating income (loss)	295	(81)	859	(286)
Interest expense	26	32	91	85
Other expenses (income), net	10	—	25	(75)
Income tax expense (benefit)	62	(16)	237	(46)
Net income (loss)	197	(97)	506	(250)
<b>Operating Statistics:</b>				
Ending total membership	4.0	4.5	4.0	4.5
MCR <sup>(1)</sup>	87.4%	88.3 %	86.2%	90.5 %
G&A ratio <sup>(2)</sup>	6.6%	7.6 %	7.0%	8.2 %
Premium tax ratio <sup>(1)</sup>	2.5%	2.2 %	2.4%	2.3 %
Effective income tax rate	24.0%	14.6 %	31.9%	15.5 %
Net profit (loss) margin <sup>(2)</sup>	4.2%	(1.9)%	3.6%	(1.7)%
Net income (loss) per diluted share	\$ 2.90	\$ (1.70)	\$ 7.60	\$ (4.44)

(1) MCR represents medical care costs as a percentage of premium revenue; premium tax ratio represents premium tax expenses as a percentage of premium revenue plus premium tax revenue.

(2) Net profit margin represents net income as a percentage of total revenue. G&A ratio represents general and administrative expenses as a percentage of total revenue.

## CONSOLIDATED RESULTS

See tables below, under "Summary of Significant Items," for details relating to significant non-run rate items, such as impairment losses, restructuring costs and material out of period adjustments to premiums or medical care costs.

### NET INCOME AND OPERATING INCOME

Net income for the third quarter of 2018 amounted to \$197 million, or \$2.90 per diluted share, compared with a net loss of \$97 million, or \$1.70 per diluted share for the third quarter of 2017. Operating income for the third quarter of 2018 amounted to \$295 million, compared with an operating loss of \$81 million in the third quarter of 2017. The

year-over-year improvement is mainly driven by a decline in the medical care ratio (MCR). Additionally, results for the third quarter of 2017 reflect \$247 million in impairment and restructuring charges, or \$3.16 per diluted share.

Net income for the nine months ended September 30, 2018 was \$506 million, or \$7.60 per diluted share, compared with a net loss of \$250 million, or \$4.44 per diluted share for the nine months ended September 30, 2017. Operating income for the nine months ended September 30, 2018 amounted to \$859 million, compared with an operating loss of \$286 million for the nine months ended September 30, 2017. The year-over-year improvement is mainly driven by a decline in the MCR. Additionally, results for the nine months ended September 30, 2017 reflect \$362 million in impairment and restructuring charges, or \$4.69 per diluted share.

## PREMIUM REVENUE

Premium revenue decreased \$440 million in the third quarter of 2018, when compared with the third quarter of 2017. Member months declined 11%, partially offset by a per-member per-month (PMPM) revenue increase of 2%. Lower premium revenue was driven by a decrease in Marketplace membership, partially offset by Marketplace premium rate increases. In addition, we recognized a \$57 million reduction in revenues for a retroactive California Medicaid Expansion risk corridor for the state's 2017 fiscal year in the third quarter of 2018.

Premium revenue decreased \$991 million in the nine months ended September 30, 2018, when compared with the nine months ended September 30, 2017. Member months declined 13%, partially offset by a revenue PMPM increase of 6%, primarily relating to Marketplace membership as noted above.

## PREMIUM TAX REVENUE AND EXPENSES

The premium tax ratio (premium tax expense as a percentage of premium revenue plus premium tax revenue) was 2.5% for the third quarter of 2018 compared with 2.2% for the third quarter of 2017; and 2.4% compared with 2.3% for the nine months ended September 30, 2018 and 2017, respectively. At our California health plan, the premium tax rate is based on the prior state fiscal year enrollment. Because the California health plan's enrollment and premium revenue have declined in 2018, premium taxes recognized in 2018 have driven a higher premium tax ratio in 2018.

## INVESTMENT INCOME AND OTHER REVENUE

Investment income and other revenue increased to \$37 million for the third quarter of 2018, compared with \$18 million for the third quarter of 2017, and increased to \$93 million for the nine months ended September 30, 2018, compared with \$48 million for the nine months ended September 30, 2017. The current quarter and year-to-date increases were a result of two factors. First, investment income improved due to annualized portfolio yields, and, for the nine months ended September 30, 2018, we had higher average invested assets. In addition, other revenue increased in the third quarter and nine months ended September 30, 2018, due to administrative services fees earned in our Washington health plan following that state's decision to transition the management of Medicaid pharmacy benefits to an administrative services-based arrangement in 2018.

## MEDICAL CARE RATIO (MCR)

Overall, the MCR decreased to 87.4% in the third quarter of 2018, from 88.3% in the third quarter of 2017. Excluding the retroactive California Medicaid Expansion risk corridor adjustment and a small benefit from the 2017 Marketplace cost sharing reduction (CSR), the MCR would have been 86.4% in the third quarter of 2018. Excluding the change in Marketplace premium deficiency reserve for 2017 dates of service, the MCR for the third quarter of 2017 would have been 89.0%. The improvement was mainly due to a decrease in the Medicaid and Marketplace MCRs, partially offset by an increase in the Medicare MCR.

Overall, the MCR improved to 86.2% for the nine months ended September 30, 2018, from 90.5% in the nine months ended September 30, 2017. Excluding adjustments for the retroactive California Medicaid Expansion risk corridor, and the combined benefit of the 2017 Marketplace risk adjustment and CSR reimbursement, the MCR for the nine months ended September 30, 2018 would have been 86.9%. Excluding the change in Marketplace premium deficiency reserve for 2017 dates of service, the MCR for the nine months ended September 30, 2017 would have been 90.2%. The improvement was due to a decrease in the MCRs across our Medicaid, Medicare and Marketplace plans.

## GENERAL AND ADMINISTRATIVE (G&A) EXPENSES

The general and administrative (G&A) expense ratio decreased to 6.6% for the third quarter of 2018, from 7.6% for the third quarter of 2017, and decreased to 7.0% for the nine months ended September 30, 2018, from 8.2% for the

nine months ended September 30, 2017. This year-over-year improvement was primarily the result of continued G&A cost containment.

## HEALTH INSURER FEES (HIF)

Health insurer fees amounted to \$87 million and \$261 million, and health insurer fees reimbursed amounted to \$83 million and \$248 million, in the third quarter of 2018 and the nine months ended September 30, 2018, respectively.

There were no HIF expensed or reimbursed in 2017 due to the HIF moratorium under the Consolidated Appropriations Act of 2016.

## GAIN ON SALE OF SUBSIDIARY

We closed on the sale of Molina Medicaid Solutions (MMS) to DXC Technology Company on September 30, 2018. The net cash selling price for the equity interests of MMS was \$233 million, which we received on October 1, 2018. As a result of this transaction, we recognized a pretax gain, net of transaction costs, of \$37 million, or \$0.42 per diluted share in the third quarter of 2018.

## INTEREST EXPENSE

Interest expense was \$26 million for the third quarter of 2018, compared with \$32 million for the third quarter of 2017. Interest expense was \$91 million for the nine months ended September 30, 2018, compared with \$85 million for the nine months ended September 30, 2017. As further described below in "Liquidity," year to date we have reduced the principal amount of outstanding debt by \$697 million.

Interest expense includes non-cash interest expense relating primarily to the amortization of the discount on convertible senior notes, which amounted to \$5 million and \$8 million in the third quarter of 2018 and 2017, respectively and \$18 million and \$24 million in the nine months ended September 30, 2018 and 2017, respectively. See further discussion in Notes to Consolidated Financial Statements, Note 7, "Debt."

## OTHER EXPENSES (INCOME), NET

In the three and nine months ended September 30, 2018, we recorded other expenses of \$10 million and \$25 million, respectively, due to the loss on debt extinguishment resulting from our 1.125% Notes repayments and the 1.625% Notes exchange. These transactions are described further in Notes to Consolidated Financial Statements, Note 7, "Debt." In early 2017, we received a \$75 million fee in connection with a terminated Medicare acquisition.

## INCOME TAXES

The provision for income taxes was recorded at an effective rate of 24.0% for the third quarter of 2018, compared with a benefit of 14.6% for the third quarter of 2017, and 31.9% for the nine months ended September 30, 2018, compared with a benefit of 15.5% for the nine months ended September 30, 2017. The effective tax rate for 2018 differs from 2017 as a result of the reduction in the federal statutory rate from 35% to 21% under the TCJA and higher non-deductible expenses in 2018, primarily related to the non-deductible HIF, as a percentage of pre-tax income (loss). The HIF was not applicable in 2017 due to the 2017 HIF moratorium.

## SUMMARY OF SIGNIFICANT ITEMS

The tables below summarize the impact of certain items significant to our financial performance in the periods presented. The individual items presented below increase (decrease) income (loss) before income tax expense (benefit).

	Three Months Ended September 30, 2018		Nine Months Ended September 30, 2018	
	Amount	Per Diluted Share <sup>(1)</sup>	Amount	Per Diluted Share <sup>(1)</sup>
Retroactive California Medicaid Expansion risk corridor for the state fiscal year ended June 30, 2017	\$ (57)	\$ (0.65)	\$ (57)	\$ (0.67)
Marketplace risk adjustment, for 2017 dates of service	—	—	56	0.66
Marketplace CSR subsidies, for 2017 dates of service	5	0.06	81	0.95
Gain on sale of subsidiary	37	0.42	37	0.43
Restructuring costs <sup>(2)</sup>	(5)	(0.06)	(38)	(0.45)
Loss on debt extinguishment	(10)	(0.12)	(25)	(0.33)
	<u>\$ (30)</u>	<u>\$ (0.35)</u>	<u>\$ 54</u>	<u>\$ 0.59</u>
	Three Months Ended September 30, 2017		Nine Months Ended September 30, 2017	
	Amount	Per Diluted Share <sup>(1)</sup>	Amount	Per Diluted Share <sup>(1)</sup>
Restructuring costs <sup>(2)</sup>	\$ (118)	\$ (1.39)	\$ (161)	\$ (1.92)
Impairment losses <sup>(3)</sup>	(129)	(1.77)	(201)	(2.77)
Change in Marketplace premium deficiency reserve for 2017 service dates	30	0.33	(40)	(0.45)
Termination fee received for terminated Medicare acquisition	—	—	75	0.84
	<u>\$ (217)</u>	<u>\$ (2.83)</u>	<u>\$ (327)</u>	<u>\$ (4.30)</u>

(1) Except for certain items that are not deductible for tax purposes, per diluted share amounts are generally calculated at the statutory income tax rates of 22% for 2018, and 37% for 2017.

(2) For more information, refer to Notes to Consolidated Financial Statements, Note 10, "Restructuring and Separation Costs."

(3) In the nine months ended September 30, 2017, we recorded non-cash impairment losses for goodwill and intangibles, primarily relating to our Pathways subsidiary.

## REPORTABLE SEGMENTS

### HOW WE ASSESS PERFORMANCE

We derive our revenues primarily from health insurance premiums, and our primary customers are state Medicaid agencies and the federal government.

One of the key metrics used to assess the performance of our most significant segment, the Health Plans segment, is the MCR, which represents medical care costs as a percentage of premium revenue. Therefore, the underlying margin, or the amount earned by the Health Plans segment after medical costs are deducted from premium revenue, is the most important measure of earnings reviewed by management.

Margin for our Health Plans segment is referred to as "Medical margin," and for our Molina Medicaid Solutions and Other segments, as "Service margin." The service margin is equal to service revenue minus cost of service revenue. Management's discussion and analysis of the changes in the individual components of medical margin and service margin follows.

## SEGMENT SUMMARY

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
	(In millions)			
Health Plans segment medical margin <sup>(1)</sup>	\$ 547	\$ 557	\$ 1,812	\$ 1,343
Molina Medicaid Solutions segment service margin <sup>(2)</sup>	14	5	26	13
Other segment service margin <sup>(2)</sup>	5	2	16	8
Total margin	\$ 566	\$ 564	\$ 1,854	\$ 1,364
Health Plans segment medical care ratio	87.4%	88.3%	86.2%	90.5%

(1) Represents premium revenue minus medical care costs.

(2) Represents service revenue minus cost of service revenue.

## HEALTH PLANS

The Health Plans segment consists of health plans operating in 13 states and the Commonwealth of Puerto Rico. As of September 30, 2018, these health plans served approximately 4.0 million members eligible for Medicaid, Medicare, and other government-sponsored health care programs for low-income families and individuals. This membership includes Marketplace members, most of whom receive government premium subsidies.

## RECENT DEVELOPMENTS

**Renewal of Medicaid Contracts**

Year to date in 2018, we renewed Medicaid contracts in Washington, Florida and Puerto Rico as follows:

- In May 2018, our Washington health plan was selected by the Washington State Health Care Authority (HCA) to enter into a managed care contract for the eight remaining regions of the state's Apple Health Integrated Managed Care program, in addition to the two regions previously awarded to us. We were selected by HCA for the following regions: Greater Columbia, King, North Sound, Pierce, and Spokane beginning January 1, 2019; and Salish, Thurston-Mason, and Great Rivers beginning January 1, 2020. As of September 30, 2018, we served approximately 738,000 Medicaid members in Washington, which represented premium revenue of \$1,558 million for the nine months ended September 30, 2018.
- In June 2018, our Florida health plan was awarded comprehensive Medicaid Managed Care contracts by the Florida Agency for Health Care Administration (AHCA) in Regions 8 and 11 of the Florida Statewide Medicaid Managed Care Invitation to Negotiate. As of September 30, 2018, we served approximately 96,000 Medicaid members in those regions, which represented premium revenue of approximately \$346 million for the nine months ended September 30, 2018. Services under the new contract are expected to begin on January 1, 2019. We will be serving both the Medicaid and long-term care populations in the two regions.
- In July 2018, our Puerto Rico health plan was selected by the Puerto Rico Health Insurance Administration to be one of the organizations to administer the Commonwealth's new Medicaid Managed Care contract. We expect to serve approximately 290,000 members under the new contract. The base contract runs for a period of three years with an optional one-year extension. As of September 30, 2018, we served approximately 320,000 Medicaid members in the East and Southwest regions of Puerto Rico, which represented premium revenue of \$549 million for the nine months ended September 30, 2018.

## TRENDS AND UNCERTAINTIES

### Upcoming Contract Re procurements

The following table illustrates Health Plans segment Medicaid contracts scheduled for re-procurement in the near term. While we have been notified of the Medicaid regulators' intention to re-procure the contracts, the anticipated award dates and effective dates are management's current best estimates; such dates are subject to change. Premium revenue is stated in millions.

State Health Plan	Medicaid Program(s)	Membership as of September 30, 2018	Premium Revenue		Anticipated	
			Nine Months Ended September 30, 2018		Award Date	Effective Date
Texas	ABD, MMP	99,000	\$	1,460	Q2 2019	6/1/2020
Texas	TANF, CHIP	124,000		236	Q3 2019	9/1/2020

**New Mexico Health Plan Update.** In our Annual Report on Form 10-K for 2017, we reported that we were notified by the New Mexico Medicaid agency that we had not been selected for a tentative award of a 2019 Medicaid contract. A hearing was held on our judicial protest on October 17, 2018, with a decision expected in the fourth quarter of 2018. Regardless of the court's decision on our protest, we would have further rights of appeal. We are continuing to manage the business in run-off until such time as a different outcome is determined. As of September 30, 2018, we served approximately 206,000 Medicaid members in New Mexico, which represented premium revenue of \$891 million for the nine months ended September 30, 2018.

**Medicare-Medicaid Plans (MMP) Update.** The current authority for three of our MMP programs, in California, Illinois and Ohio, ends December 31, 2019. In July 2018, the Ohio Medicaid agency submitted a request to Centers for Medicare and Medicaid Services (CMS) for a three-year extension of its duals demonstration program, through December 31, 2022. We estimate annualized premium revenues of approximately \$690 million in 2018 under our Ohio MMP program.

In June 2018, the California Medicaid agency submitted a request to CMS for a one-year extension of its duals demonstration program, through December 31, 2020. We estimate annualized premium revenues of approximately \$180 million in 2018 under our California MMP program.

As of October 31, 2018, the Illinois Medicaid agency had not yet submitted an extension request to CMS for its duals demonstration program. We estimate annualized premium revenues of approximately \$80 million in 2018 under our Illinois MMP program.

### Pressures on Medicaid Funding

Currently, there are a number of different legislative proposals being considered, some of which would involve significantly reduced federal spending on the Medicaid program and constitute a fundamental change in the federal role in health care. These proposals include elements such as the following:

- Ending the entitlement nature of Medicaid by capping future increases in federal health spending for these programs, and shifting more of the risk for health costs in the future to states and consumers;
- Reversing the ACA's expansion of Medicaid that enables states to cover low-income childless adults;
- Changing Medicaid to a state block grant program, including potentially capping spending on a per-enrollee basis (a "per capita cap");
- Requiring Medicaid beneficiaries to work;
- Limiting the amount of lifetime benefits for Medicaid beneficiaries; and
- Numerous other potential changes and reforms.

### ACA and the Marketplace

The future of the Affordable Care Act (ACA) and its underlying programs, including the Marketplace, are subject to substantial uncertainty. While we continue to monitor the current political and programmatic developments pertaining to the Marketplace, in 2018 we have taken various actions to improve our Marketplace operating performance. The action with the greatest impact to year-to-date results, effective January 1, 2018, was the significant increase to premium rates (averaging 58%).

We have entered into contracts to participate in nine Marketplace states, including the Utah and Wisconsin Marketplaces, effective January 2019.

## MEMBERSHIP

The following tables set forth our Health Plans membership as of the dates indicated:

	September 30, 2018	December 31, 2017	September 30, 2017
<b>Ending Membership by Program:</b>			
Temporary Assistance for Needy Families (TANF) and Children's Health Insurance Program (CHIP)	2,436,000	2,457,000	2,451,000
Medicaid Expansion	664,000	668,000	662,000
Aged, Blind or Disabled (ABD)	415,000	412,000	411,000
Total Medicaid	3,515,000	3,537,000	3,524,000
Medicare-Medicaid Plan (MMP) – Integrated <sup>(1)</sup>	55,000	57,000	58,000
Medicare Special Needs Plans (Medicare)	45,000	44,000	44,000
Total Medicare	100,000	101,000	102,000
Total Medicaid and Medicare	3,615,000	3,638,000	3,626,000
Marketplace	384,000	815,000	877,000
	<u>3,999,000</u>	<u>4,453,000</u>	<u>4,503,000</u>

<b>Ending Membership by Health Plan:</b>			
California	623,000	746,000	751,000
Florida	395,000	625,000	641,000
Illinois	223,000	165,000	163,000
Michigan	394,000	398,000	399,000
New Mexico	234,000	253,000	256,000
Ohio	315,000	327,000	343,000
Puerto Rico	320,000	314,000	306,000
South Carolina	117,000	116,000	113,000
Texas	436,000	430,000	444,000
Washington	770,000	777,000	770,000
Other <sup>(2)</sup>	172,000	302,000	317,000
	<u>3,999,000</u>	<u>4,453,000</u>	<u>4,503,000</u>

(1) MMP members receive both Medicaid and Medicare coverage from Molina Healthcare.

(2) "Other" includes the Idaho, New York, Utah and Wisconsin health plans, which are not individually significant to our consolidated operating results.

### Premiums by Program

The amount of the premiums paid to our health plans vary substantially between states and among various government programs. The following table sets forth the ranges of premiums paid to our state health plans by program on a PPM basis, for the nine months ended September 30, 2018. The "Consolidated" column represents the weighted-average amounts for our total membership by program.

	PPM Premiums		
	Low	High	Consolidated
TANF and CHIP	\$ 120.00	\$ 340.00	\$ 190.00
Medicaid Expansion	300.00	510.00	360.00
ABD	520.00	1,530.00	1,030.00
MMP – Integrated	1,360.00	3,190.00	2,170.00
Medicare	600.00	1,270.00	1,170.00
Marketplace	250.00	650.00	380.00

## FINANCIAL PERFORMANCE BY PROGRAM

The following tables summarize member months, premium revenue, medical care costs, MCR and medical margin by program for the periods indicated (PMPM amounts are in whole dollars; member months and other dollar amounts are in millions):

Three Months Ended September 30, 2018							
	Member Months <sup>(1)</sup>	Premium Revenue		Medical Care Costs		MCR <sup>(2)</sup>	Medical Margin
		Total	PMPM	Total	PMPM		
TANF and CHIP	7.4	\$ 1,379	\$ 187.03	\$ 1,228	\$ 166.41	89.0%	\$ 151
Medicaid Expansion	2.0	671	333.11	640	317.62	95.3	31
ABD	1.2	1,322	1,054.92	1,186	946.38	89.7	136
Total Medicaid	10.6	3,372	316.86	3,054	286.86	90.5	318
MMP	0.2	353	2,159.72	323	1,981.45	91.7	30
Medicare	0.1	156	1,157.71	121	895.25	77.3	35
Total Medicare	0.3	509	1,706.95	444	1,490.63	87.3	65
Total Medicaid and Medicare	10.9	3,881	354.70	3,498	319.63	90.1	383
Marketplace	1.2	456	394.02	292	252.61	64.1	164
	12.1	\$ 4,337	\$ 358.46	\$ 3,790	\$ 313.23	87.4%	\$ 547

Three Months Ended September 30, 2017							
	Member Months <sup>(1)</sup>	Premium Revenue		Medical Care Costs		MCR <sup>(2)</sup>	Medical Margin
		Total	PMPM	Total	PMPM		
TANF and CHIP	7.5	\$ 1,392	\$ 185.95	\$ 1,242	\$ 165.76	89.1%	\$ 150
Medicaid Expansion	2.0	773	385.58	667	332.99	86.4	106
ABD	1.2	1,288	1,038.85	1,259	1,016.06	97.8	29
Total Medicaid	10.7	3,453	321.77	3,168	295.23	91.8	285
MMP	0.2	378	2,263.07	336	2,013.67	89.0	42
Medicare	0.1	163	1,231.61	126	951.01	77.2	37
Total Medicare	0.3	541	1,806.26	462	1,543.05	85.4	79
Total Medicaid and Medicare	11.0	3,994	362.04	3,630	329.08	90.9	364
Marketplace	2.7	783	301.72	590	227.22	75.3	193
	13.7	\$ 4,777	\$ 350.55	\$ 4,220	\$ 309.68	88.3%	\$ 557

Nine Months Ended September 30, 2018							
	Member Months <sup>(1)</sup>	Premium Revenue		Medical Care Costs		MCR <sup>(2)</sup>	Medical Margin
		Total	PMPM	Total	PMPM		
TANF and CHIP	22.3	\$ 4,145	\$ 186.12	\$ 3,705	\$ 166.35	89.4%	\$ 440
Medicaid Expansion	6.1	2,184	359.37	1,957	322.01	89.6	227
ABD	3.7	3,864	1,034.25	3,550	950.11	91.9	314
Total Medicaid	32.1	10,193	317.70	9,212	287.10	90.4	981
MMP	0.5	1,077	2,173.90	941	1,899.26	87.4	136
Medicare	0.4	470	1,171.59	385	959.54	81.9	85
Total Medicare	0.9	1,547	1,725.71	1,326	1,479.06	85.7	221
Total Medicaid and Medicare	33.0	11,740	355.96	10,538	319.50	89.8	1,202
Marketplace	3.8	1,434	379.91	824	218.44	57.5	610
	36.8	\$ 13,174	\$ 358.42	\$ 11,362	\$ 309.12	86.2%	\$ 1,812



**Nine Months Ended September 30, 2017**

	Member Months <sup>(1)</sup>	Premium Revenue		Medical Care Costs		MCR <sup>(2)</sup>	Medical Margin
		Total	PMPM	Total	PMPM		
TANF and CHIP	22.8	\$ 4,185	\$ 183.69	\$ 3,861	\$ 169.44	92.2%	\$ 324
Medicaid Expansion	6.1	2,376	389.14	2,045	334.93	86.1	331
ABD	3.6	3,769	1,033.45	3,634	996.58	96.4	135
Total Medicaid	32.5	10,330	317.49	9,540	293.21	92.4	790
MMP	0.5	1,083	2,189.96	976	1,974.22	90.1	107
Medicare	0.4	449	1,142.68	369	939.21	82.2	80
Total Medicare	0.9	1,532	1,726.39	1,345	1,516.09	87.8	187
Total Medicaid and Medicare	33.4	11,862	354.88	10,885	325.66	91.8	977
Marketplace	8.4	2,303	276.27	1,937	232.31	84.1	366
	41.8	\$ 14,165	\$ 339.19	\$ 12,822	\$ 307.03	90.5%	\$ 1,343

(1) A member month is defined as the aggregate of each month's ending membership for the period presented.

(2) "MCR" represents medical costs as a percentage of premium revenue.

**Medicaid**

The Medicaid MCR decreased to 90.5% in the third quarter of 2018, from 91.8% in the third quarter of 2017, and decreased to 90.4% for the nine months ended September 30, 2018, from 92.4% for the nine months ended September 30, 2017. Excluding recognition of the \$57 million retroactive California Medicaid Expansion risk corridor adjustment, the Medicaid MCR would have been 89.0% in the third quarter of 2018, and 89.9% for the nine months ended September 30, 2018. The decreases were mainly due to improved performance for ABD and TANF and CHIP, partially offset by a decline in performance for Medicaid Expansion.

*TANF and CHIP.* The MCR for TANF and CHIP improved to 89.0% in the third quarter of 2018, from 89.1% in the third quarter of 2017; and improved to 89.4% for the nine months ended September 30, 2018, from 92.2% for the nine months ended September 30, 2017. The year over year improvement was primarily due to improved performance at our Illinois, California and Texas health plans, partially offset by a decline in performance at our New Mexico health plan.

*Medicaid Expansion.* The MCR for Medicaid Expansion was 95.3% in the third quarter of 2018, up from 86.4% in the third quarter of 2017, and was 89.6% for the nine months ended September 30, 2018, up from 86.1% for the nine months ended September 30, 2017. Excluding recognition of the \$57 million retroactive California Medicaid Expansion risk corridor adjustment, the Medicaid Expansion MCR would have been 87.9% in the third quarter of 2018, and 87.3% for the nine months ended September 30, 2018. These increases were primarily due to the premium reduction we received in California in July 2017. Medicaid Expansion has generally performed well because rate adequacy has trended favorably, and membership is concentrated in our higher performing health plans, particularly California, Michigan, and Washington.

*ABD.* The MCR for ABD improved to 89.7% in the third quarter of 2018, compared with 97.8% in the third quarter of 2017; and improved to 91.9% for the nine months ended September 30, 2018, from 96.4% for the nine months ended September 30, 2017. The year-over-year improvement can be attributed to a number of actions, including our management of high acuity members.

**Medicare and MMP**

The overall MCR for the combined Medicare programs increased to 87.3% in the third quarter of 2018, from 85.4% in the third quarter of 2017, but improved to 85.7% for the nine months ended September 30, 2018, from 87.8% for the nine months ended September 30, 2017. The MCR increase in the third quarter of 2018 is mainly due to certain premium transfers between the MMP and Medicaid programs that had no impact on consolidated results, and higher inpatient costs in our MMP program. The improvement for the nine months ended September 30, 2018 was partly driven by the recognition of additional MMP at-risk revenue for dates of service in 2016 and 2017, resulting from ultimate settlements with CMS that were higher than the original estimates recognized in those periods. The Medicare business also benefited from favorable medical care trends and improved medical management of inpatient utilization for this population. Accurate and complete risk score documentation and effective management of chronic and high acuity conditions are critical to the successful management of this program.

## Marketplace

Lower Marketplace premium revenue was driven by a decrease in membership of over 50%, partially offset by premium rate increases. As previously disclosed, we increased premium rates and reduced our Marketplace presence effective January 1, 2018, as part of our overall program to improve profitability.

The MCR for the Marketplace program decreased to 64.1% in the third quarter of 2018, from 75.3% in the third quarter of 2017; and improved to 57.5% in the nine months ended September 30, 2018, from 84.1% for the nine months ended September 30, 2017. Excluding the benefit of the 2017 Marketplace cost sharing reduction (CSR) reimbursement recognized in 2018, the MCR for the third quarter of 2018 would have been 65.3%. Excluding the combined benefit of the 2017 Marketplace risk adjustment and CSR reimbursement recognized in 2018, the MCR for the nine months ended September 30, 2018 would have been 65.7%. Excluding the changes in Marketplace premium deficiency reserves for 2017 dates of service, the MCR for the third quarter of 2017 would have been 79.1%, and 82.4% for the nine months ended September 30, 2017. The year over year improvement is mainly due to the overall program to improve profitability, as discussed above.

## FINANCIAL PERFORMANCE BY STATE

The following tables summarize member months, premium revenue, medical care costs, MCR, and medical margin by state health plan for the periods indicated (PMPM amounts are in whole dollars; member months and other dollar amounts are in millions):

### Health Plans Segment Financial Data — Medicaid and Medicare

Three Months Ended September 30, 2018							
	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	1.7	\$ 435	\$ 249.00	\$ 446	\$ 255.22	102.5%	\$ (11)
Florida	1.0	388	363.16	362	339.33	93.4	26
Illinois	0.7	207	312.72	182	274.98	87.9	25
Michigan	1.1	397	350.05	321	282.49	80.7	76
New Mexico	0.6	304	471.66	275	426.69	90.5	29
Ohio	0.9	584	624.84	532	568.93	91.1	52
Puerto Rico	1.0	179	189.65	162	171.96	90.7	17
South Carolina	0.4	124	354.53	112	318.56	89.9	12
Texas	0.7	577	848.47	525	772.14	91.0	52
Washington	2.3	511	226.77	444	197.04	86.9	67
Other <sup>(1)</sup>	0.5	175	334.29	137	261.49	78.2	38
	10.9	\$ 3,881	\$ 354.70	\$ 3,498	\$ 319.63	90.1%	\$ 383

Three Months Ended September 30, 2017							
	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	1.9	\$ 601	\$ 322.97	\$ 563	\$ 302.67	93.7%	\$ 38
Florida	1.0	388	355.59	390	356.83	100.3	(2)
Illinois	0.5	137	287.69	138	289.36	100.6	(1)
Michigan	1.2	390	337.17	345	298.83	88.6	45
New Mexico	0.7	304	429.07	277	390.91	91.1	27
Ohio	0.9	549	560.06	483	492.61	88.0	66
Puerto Rico	1.0	191	202.59	159	168.25	83.1	32
South Carolina	0.3	113	332.48	101	297.74	89.6	12
Texas	0.7	541	778.50	506	728.19	93.5	35
Washington	2.3	612	276.73	522	236.11	85.3	90
Other <sup>(1)</sup>	0.5	168	294.99	146	256.99	87.1	22
	11.0	\$ 3,994	\$ 362.04	\$ 3,630	\$ 329.08	90.9%	\$ 364

**Nine Months Ended September 30, 2018**

	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	5.3	\$ 1,446	\$ 270.63	\$ 1,299	\$ 243.14	89.8%	\$ 147
Florida	3.2	1,147	356.15	1,069	331.93	93.2	78
Illinois	1.8	551	308.45	474	265.47	86.1	77
Michigan	3.4	1,161	343.08	983	290.26	84.6	178
New Mexico	2.0	936	469.19	875	438.70	93.5	61
Ohio	2.8	1,670	590.71	1,474	521.26	88.2	196
Puerto Rico	2.9	549	190.34	501	173.83	91.3	48
South Carolina	1.1	369	350.94	323	306.76	87.4	46
Texas	2.1	1,715	831.21	1,554	753.31	90.6	161
Washington	6.8	1,666	245.40	1,544	227.41	92.7	122
Other <sup>(1)</sup>	1.6	530	323.84	442	269.98	83.4	88
	33.0	\$ 11,740	\$ 355.96	\$ 10,538	\$ 319.50	89.8%	\$ 1,202

**Nine Months Ended September 30, 2017**

	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	5.6	\$ 1,771	\$ 316.83	\$ 1,586	\$ 283.82	89.6%	\$ 185
Florida	3.2	1,132	347.41	1,112	341.15	98.2	20
Illinois	1.6	447	284.18	492	312.54	110.0	(45)
Michigan	3.5	1,162	332.60	1,035	296.28	89.1	127
New Mexico	2.2	933	431.70	887	410.24	95.0	46
Ohio	2.9	1,598	541.56	1,434	486.02	89.7	164
Puerto Rico	2.9	553	190.99	513	177.01	92.7	40
South Carolina	1.0	329	325.43	301	298.43	91.7	28
Texas	2.1	1,592	760.76	1,468	701.32	92.2	124
Washington	6.7	1,835	275.60	1,603	240.83	87.4	232
Other <sup>(1)</sup>	1.7	510	292.93	454	261.01	89.1	56
	33.4	\$ 11,862	\$ 354.88	\$ 10,885	\$ 325.66	91.8%	\$ 977

(1) "Other" includes the Idaho, New York, Utah and Wisconsin health plans, which are not individually significant to our consolidated operating results.

**Health Plans Segment Financial Data — Marketplace**
**Three Months Ended September 30, 2018**

	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	0.2	\$ 49	\$ 309.04	\$ 37	\$ 235.63	76.2%	\$ 12
Florida	0.2	66	548.60	45	362.39	66.1	21
Michigan	—	12	233.51	7	145.13	62.1	5
New Mexico	0.1	28	419.20	18	249.33	59.5	10
Ohio	0.1	27	485.08	18	336.86	69.4	9
Texas	0.6	228	357.54	134	209.80	58.7	94
Washington	—	44	656.70	34	518.75	79.0	10
Other <sup>(1)</sup>	—	2	NM	(1)	NM	NM	3
	1.2	\$ 456	\$ 394.02	\$ 292	\$ 252.61	64.1%	\$ 164

**Three Months Ended September 30, 2017**

	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	0.3	\$ 88	\$ 208.19	\$ 63	\$ 147.87	71.0%	\$ 25
Florida	0.9	260	313.36	235	283.13	90.4	25
Michigan	—	14	212.08	10	150.24	70.8	4
New Mexico	0.1	29	383.58	20	269.28	70.2	9
Ohio	0.1	23	386.09	20	364.31	94.4	3
Texas	0.7	183	291.14	109	172.70	59.3	74
Washington	0.1	42	327.40	33	256.52	78.3	9
Other <sup>(1)</sup>	0.5	144	375.83	100	259.15	69.0	44
	2.7	\$ 783	\$ 301.72	\$ 590	\$ 227.22	75.3%	\$ 193

**Nine Months Ended September 30, 2018**

	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	0.6	\$ 171	\$ 326.82	\$ 89	\$ 169.98	52.0%	\$ 82
Florida	0.5	211	491.13	67	155.24	31.6	144
Michigan	0.1	40	248.24	23	145.38	58.6	17
New Mexico	0.2	93	426.07	55	247.57	58.1	38
Ohio	0.2	84	466.75	58	324.91	69.6	26
Texas	2.0	679	330.92	440	214.65	64.9	239
Washington	0.2	139	654.78	105	497.00	75.9	34
Other <sup>(1)</sup>	—	17	NM	(13)	NM	NM	30
	3.8	\$ 1,434	\$ 379.91	\$ 824	\$ 218.44	57.5%	\$ 610

**Nine Months Ended September 30, 2017**

	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	1.2	\$ 241	\$ 193.33	\$ 156	\$ 124.32	64.3%	\$ 85
Florida	2.8	821	296.14	758	273.55	92.4	63
Michigan	0.2	41	187.96	27	126.76	67.4	14
New Mexico	0.2	82	338.18	62	256.05	75.7	20
Ohio	0.2	68	365.35	64	346.93	95.0	4
Texas	2.1	517	252.32	351	171.57	68.0	166
Washington	0.4	123	315.95	128	327.51	103.7	(5)
Other <sup>(1)</sup>	1.3	410	333.05	391	316.86	95.1	19
	8.4	\$ 2,303	\$ 276.27	\$ 1,937	\$ 232.31	84.1%	\$ 366

(1) "Other" includes the Utah and Wisconsin health plans, which are not individually significant to our consolidated operating results. We terminated Marketplace operations at these plans effective January 1, 2018, so the ratios for 2018 periods are not meaningful (NM).

**Health Plans Segment Financial Data — Total**

Three Months Ended September 30, 2018							
	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	1.9	\$ 484	\$ 253.96	\$ 483	\$ 253.60	99.9%	\$ 1
Florida	1.2	454	382.20	407	341.70	89.4	47
Illinois	0.7	207	312.72	182	274.98	87.9	25
Michigan	1.1	409	345.28	328	276.88	80.2	81
New Mexico	0.7	332	466.63	293	409.68	87.8	39
Ohio	1.0	611	616.95	550	555.83	90.1	61
Puerto Rico	1.0	179	189.65	162	171.96	90.7	17
South Carolina	0.4	124	354.53	112	318.56	89.9	12
Texas	1.3	805	611.01	659	500.14	81.9	146
Washington	2.3	555	239.25	478	206.38	86.3	77
Other <sup>(1)</sup>	0.5	177	336.18	136	260.19	77.4	41
	12.1	\$ 4,337	\$ 358.46	\$ 3,790	\$ 313.23	87.4%	\$ 547

Three Months Ended September 30, 2017							
	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	2.2	\$ 689	\$ 301.64	\$ 626	\$ 273.90	90.8%	\$ 63
Florida	1.9	648	337.40	625	325.09	96.4	23
Illinois	0.5	137	287.69	138	289.36	100.6	(1)
Michigan	1.2	404	330.27	355	290.63	88.0	49
New Mexico	0.8	333	424.61	297	378.98	89.3	36
Ohio	1.0	572	550.75	503	485.61	88.2	69
Puerto Rico	1.0	191	202.59	159	168.25	83.1	32
South Carolina	0.3	113	332.48	101	297.74	89.6	12
Texas	1.4	724	546.57	615	463.83	84.9	109
Washington	2.4	654	279.52	555	237.23	84.9	99
Other <sup>(1)</sup>	1.0	312	327.47	246	257.86	78.7	66
	13.7	\$ 4,777	\$ 350.55	\$ 4,220	\$ 309.68	88.3%	\$ 557

Nine Months Ended September 30, 2018							
	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	5.9	\$ 1,617	\$ 275.64	\$ 1,388	\$ 236.61	85.8%	\$ 229
Florida	3.7	1,358	372.07	1,136	311.09	83.6	222
Illinois	1.8	551	308.45	474	265.47	86.1	77
Michigan	3.5	1,201	338.83	1,006	283.77	83.7	195
New Mexico	2.2	1,029	464.92	930	419.78	90.3	99
Ohio	3.0	1,754	583.29	1,532	509.52	87.4	222
Puerto Rico	2.9	549	190.34	501	173.83	91.3	48
South Carolina	1.1	369	350.94	323	306.76	87.4	46
Texas	4.1	2,394	581.74	1,994	484.70	83.3	400
Washington	7.0	1,805	257.82	1,649	235.59	91.4	156
Other <sup>(1)</sup>	1.6	547	334.26	429	262.27	78.5	118
	36.8	\$ 13,174	\$ 358.42	\$ 11,362	\$ 309.12	86.2%	\$ 1,812

**Nine Months Ended September 30, 2017**

	Member Months	Premium Revenue		Medical Care Costs		MCR	Medical Margin
		Total	PMPM	Total	PMPM		
California	6.8	\$ 2,012	\$ 294.26	\$ 1,742	\$ 254.67	86.5%	\$ 270
Florida	6.0	1,953	323.86	1,870	310.09	95.7	83
Illinois	1.6	447	284.18	492	312.54	110.0	(45)
Michigan	3.7	1,203	324.12	1,062	286.35	88.3	141
New Mexico	2.4	1,015	422.25	949	394.66	93.5	66
Ohio	3.1	1,666	531.17	1,498	477.81	90.0	168
Puerto Rico	2.9	553	190.99	513	177.01	92.7	40
South Carolina	1.0	329	325.43	301	298.43	91.7	28
Texas	4.2	2,109	509.09	1,819	439.11	86.3	290
Washington	7.1	1,958	277.83	1,731	245.62	88.4	227
Other <sup>(1)</sup>	3.0	920	309.56	845	284.16	91.8	75
	41.8	\$ 14,165	\$ 339.19	\$ 12,822	\$ 307.03	90.5%	\$ 1,343

(1) "Other" includes the Idaho, New York, Utah and Wisconsin health plans, which are not individually significant to our consolidated operating results.

## MEDICAL CARE COSTS BY TYPE

The following table provides the details of consolidated medical care costs by category for the periods indicated (dollars in millions except PMPM amounts):

	Three Months Ended September 30,					
	2018			2017		
	Amount	PMPM	% of Total	Amount	PMPM	% of Total
Fee for service	\$ 2,865	\$ 236.74	75.6%	\$ 3,196	\$ 234.51	75.8%
Pharmacy	495	40.90	13.1	638	46.85	15.1
Capitation	297	24.52	7.8	342	25.07	8.1
Other	133	11.07	3.5	44	3.25	1.0
	\$ 3,790	\$ 313.23	100.0%	\$ 4,220	\$ 309.68	100.0%

	Nine Months Ended September 30,					
	2018			2017		
	Amount	PMPM	% of Total	Amount	PMPM	% of Total
Fee for service	\$ 8,471	\$ 230.46	74.6%	\$ 9,630	\$ 230.58	75.1%
Pharmacy	1,645	44.76	14.5	1,904	45.60	14.8
Capitation	891	24.23	7.8	1,022	24.47	8.0
Other	355	9.67	3.1	266	6.38	2.1
	\$ 11,362	\$ 309.12	100.0%	\$ 12,822	\$ 307.03	100.0%

## MOLINA MEDICAID SOLUTIONS

We closed on the sale of MMS to DXC Technology Company on September 30, 2018.

## FINANCIAL OVERVIEW

The Molina Medicaid Solutions segment service margin for the third quarter of 2018 and 2017 and for the nine months ended September 30, 2018 and 2017, was insignificant.

## OTHER

The Other segment includes primarily our Pathways behavioral health and social services provider, and corporate amounts not allocated to other reportable segments.

We sold our Pathways subsidiary on October 19, 2018. See further information in the Notes to Consolidated Financial Statements, Note 1. "Organization and Basis of Presentation."

## FINANCIAL OVERVIEW

The Other segment service margin for the third quarter of 2018 and 2017 and for the nine months ended September 30, 2018 and 2017, was insignificant.

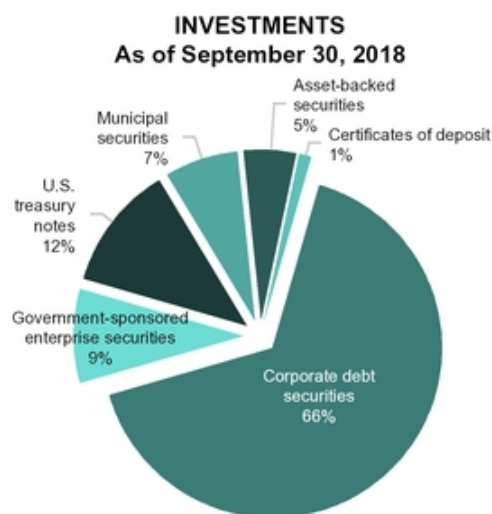
## LIQUIDITY AND FINANCIAL CONDITION

### INTRODUCTION

We manage our cash, investments, and capital structure to meet the short- and long-term obligations of our business while maintaining liquidity and financial flexibility. We forecast, analyze, and monitor our cash flows to enable prudent investment management and financing within the confines of our financial strategy.

A majority of the assets held by our Health Plans segment regulated subsidiaries is in the form of cash, cash equivalents, and investments. After considering expected cash flows from operating activities, we generally invest cash of regulated subsidiaries that exceeds our expected short-term obligations in longer term, investment-grade, and marketable debt securities to improve our overall investment return. These investments are made pursuant to board-approved investment policies that conform to applicable state laws and regulations.

Our investments are classified as current assets, except for our held-to-maturity restricted investments, which are classified as non-current assets, and which are not included in the totals below. Our held-to-maturity restricted investments are invested principally in certificates of deposit and U.S. treasury securities.



## MARKET RISK

Our earnings and financial position are exposed to financial market risk relating to changes in interest rates, and the resulting impact on investment income and interest expense.

Substantially all of our investments and restricted investments are subject to interest rate risk and will decrease in value if market interest rates increase. Assuming a hypothetical and immediate 1% increase in market interest rates at September 30, 2018, the fair value of our fixed income investments would decrease by approximately \$16 million. Declines in interest rates over time will reduce our investment income.

For further information on fair value measurements and our investment portfolio, please refer to Notes to Consolidated Financial Statements, Note 4, "Fair Value Measurements," and Note 5, "Investments."

Borrowings under our Credit Facility bear interest based, at our election, on a base rate or an adjusted London Interbank Offered Rate (LIBOR), plus in each case the applicable margin. As of September 30, 2018, no amounts were outstanding under the Credit Facility.

## LIQUIDITY

A condensed schedule of cash flows to facilitate our discussion of liquidity follows:

	Nine Months Ended September 30,		
	2018	2017	Change
	(In millions)		
Net cash (used in) provided by operating activities	\$ (191)	\$ 957	\$ (1,148)
Net cash provided by (used in) investing activities	821	(476)	1,297
Net cash (used in) provided by financing activities	(1,012)	632	(1,644)
Net (decrease) increase in cash, cash equivalents, and restricted cash and cash equivalents	<u>\$ (382)</u>	<u>\$ 1,113</u>	<u>\$ (1,495)</u>

### Operating Activities

We typically receive capitation payments monthly, in advance of payments for medical claims; however, state or federal payors may decide to adjust their payment schedules which could positively or negatively impact our reported cash flows from operating activities in any given period. State or federal payors may delay our premium payments, or they may prepay the following month's premium payment.

Net cash used in operations for the nine months ended September 30, 2018, was \$191 million, compared with \$957 million of net cash provided for the nine months ended September 30, 2017. The year over year decline was mainly due to the following:

- The timing effect of premium receipts and other revenues negatively impacted our cash flows from operating activities by \$687 million on a year-over-year comparative basis. This impact was mainly related to the timing of premiums received at our California, Florida, Ohio, and Washington health plans.
- The decline in medical claims and benefits payable, mainly resulting from reduced Marketplace membership in Florida, Utah, Washington and Wisconsin decreased cash flows from operations by \$693 million.
- Settlements with government agencies decreased our cash flows by \$633 million on a year-over-year comparative basis, primarily due to payments in the third quarter of 2018, including risk transfer payments associated with our Marketplace health plans.
- The declines discussed above were partially offset by favorable timing differences in the settlement of various operating expenses, including the health insurer fee (HIF). The HIF payable of \$348 million was paid on October 1, 2018, after receiving certain related state reimbursements. These favorable timing differences benefited our cash flows by \$308 million on a year-over-year comparative basis.

### Investing Activities

Net cash provided by investing activities was \$821 million for the nine months ended September 30, 2018, compared with \$476 million of net cash used in investing activities for the nine months ended September 30, 2017. The year over year improvement is primarily due to higher proceeds from sales and maturities of investments, net of purchases, for the nine months ended September 30, 2018, largely driven by cash flow needs associated with our financing activities, as described below.

### Financing Activities

Net cash used in financing activities was \$1,012 million for the nine months ended September 30, 2018, compared with \$632 million of net cash provided by financing activities for the nine months ended September 30, 2017. The year over year decline was mainly due to the following:

- \$300 million repayment of the Credit Facility in 2018;



- \$236 million partial principal repayment of the 1.125% Notes in 2018;
- \$477 million cash paid for partial settlement of the 1.125% Conversion Option in 2018;
- \$419 million cash paid for partial termination of the 1.125% Warrants in 2018;
- \$64 million principal repayment of 1.625% Notes in 2018; and
- \$625 million of proceeds from the sale of the 4.875% Notes and borrowings under the Credit Facility in 2017.

These uses of cash were partially offset by \$477 million of cash received in the nine months ended September 30, 2018 for a partial settlement of the 1.125% Call Option.

## FINANCIAL CONDITION

We believe that our cash resources, our borrowing capacity available under our Credit Facility as discussed further below in “Future Sources and Uses of Liquidity—Future Sources,” and internally generated funds will be sufficient to support operations, regulatory requirements, debt repayment obligations and capital expenditures for at least the next 12 months.

On a consolidated basis, at September 30, 2018, our working capital was \$2,088 million, compared with \$1,954 million at December 31, 2017. At September 30, 2018, our cash and investments amounted to \$4,746 million, compared with \$6,000 million at December 31, 2017.

Because of the statutory restrictions that inhibit the ability of our health plans to transfer net assets to us, the amount of retained earnings readily available to pay dividends to our stockholders is generally limited to cash, cash equivalents and investments held by the parent company—Molina Healthcare, Inc. Such cash, cash equivalents and investments amounted to \$505 million as of September 30, 2018, or \$390 million when adjusted for the timing of the HIF payment and the proceeds received from the sale of MMS, both of which occurred on October 1, 2018. Parent company cash, cash equivalents and investments amounted to \$696 million as of December 31, 2017. The decrease is mainly attributed to reductions in the principal amount of outstanding debt, partially offset by net cash paid to the parent company by our subsidiaries.

In the nine months ended September 30, 2018, the regulated health plan subsidiaries paid \$258 million in dividends to the parent, and our unregulated subsidiaries paid \$10 million in dividends to the parent. In the nine months ended September 30, 2018, the parent company contributed capital of \$122 million to our regulated health plan subsidiaries to satisfy statutory net worth requirements.

### Debt Ratings

Our 5.375% Notes are rated “BB-” by Standard & Poor’s, and “B3” by Moody’s Investor Service, Inc. A downgrade in our ratings could adversely affect our borrowing capacity and increase our borrowing costs.

### Financial Covenants

Our Credit Facility contains customary non-financial and financial covenants, including a net leverage ratio and an interest coverage ratio. Such ratios, presented below, are computed as defined by the terms of the Credit Facility.

Credit Facility Financial Covenants	Required Per Agreement	As of September 30, 2018
Net leverage ratio	<4.0x	1.2x
Interest coverage ratio	>3.5x	10.8x

In addition, the indentures governing the 4.875% Notes, the 5.375% Notes and the 1.125% Notes contain cross-default provisions that are triggered upon default by us or any of our subsidiaries on any indebtedness in excess of the amount specified in the applicable indenture. As of September 30, 2018, we were in compliance with all covenants under the Credit Facility and the indentures governing our outstanding notes.

### Capital Plan Progress

Year to date, we have reduced the principal amount of outstanding debt by \$697 million.

In the third quarter of 2018, we repaid \$140 million aggregate principal amount of our 1.125% Notes and entered into privately negotiated termination agreements to partially terminate the related 1.125% Call Option and 1.125% Warrants. In addition, we converted the remaining \$64 million aggregate principal amount of our 1.625% Notes for

cash and 0.6 million shares of our common stock. Additionally, we terminated our bridge credit agreement in the third quarter of 2018.

In the second quarter of 2018, we repaid \$300 million outstanding under our Credit Facility. In addition, we repaid \$96 million aggregate principal amount of our 1.125% Notes, and entered into privately negotiated termination agreements to partially terminate the related 1.125% Call Option and 1.125% Warrants.

In the first quarter of 2018, we exchanged \$97 million aggregate principal amount and accrued interest of our 1.625% Notes for 1.8 million shares of our common stock.

## FUTURE SOURCES AND USES OF LIQUIDITY

### **Future Sources**

Our Health Plans segment regulated subsidiaries generate significant cash flows from premium revenue, which we generally receive a short time before we pay for the related health care services. Such cash flows are our primary source of liquidity. Thus, any future decline in our profitability may have a negative impact on our liquidity.

*Dividends from Subsidiaries.* When available and as permitted by applicable regulations, cash in excess of the capital needs of our regulated health plans is generally paid in the form of dividends to our unregulated parent company to be used for general corporate purposes. For more information on our regulatory capital requirements and dividend restrictions, refer to Notes to Consolidated Financial Statements, Note 12, "Commitments and Contingencies—Regulatory Capital Requirements and Dividend Restrictions."

*Borrowing Capacity and Debt Financing.* We have available borrowing capacity of \$494 million under our Credit Facility. See further discussion in the Notes to Consolidated Financial Statements, Note 7, "Debt."

*Sale of MMS.* We closed on the sale of Molina Medicaid Solutions (MMS) to DXC Technology Company on September 30, 2018. The net cash selling price for the equity interests of MMS was \$233 million, which we received on October 1, 2018.

*Savings from Restructuring Plans.* Our new executive team has focused on a margin recovery plan that includes identification and implementation of various profit improvement initiatives. To that end, we have begun to implement a plan to restructure our information technology department (the IT Restructuring) in the third quarter of 2018. As we further implement the IT Restructuring in the fourth quarter of 2018, we will report estimates of anticipated future savings in our 2018 Annual Report on Form 10-K.

Under the restructuring plan we implemented in 2017 (the 2017 Restructuring Plan), we have achieved savings in our Health Plans and Other segments of approximately \$230 million since the plan's inception through September 30, 2018. These savings have reduced both "General and administrative expenses" and "Medical care costs" reported in our consolidated statements of operations.

Further details of our restructuring plans, including costs associated with such plans, are described in the Notes to Consolidated Financial Statements, Note 10, "Restructuring and Separation Costs."

*Shelf Registration Statement.* We have a shelf registration statement on file with the Securities and Exchange Commission to register an unlimited amount of any combination of debt or equity securities in one or more offerings. Specific information regarding the terms and securities being offered and the use of proceeds will be provided at the time of an offering.

### **Future Uses**

*Regulatory Capital Requirements and Dividend Restrictions.* We have the ability, and have committed to provide, additional capital to each of our health plans as necessary to ensure compliance with statutory capital and surplus requirements.

*1.125% Notes.* Refer to the Notes to Consolidated Financial Statements, Note 7, "Debt," for a detailed discussion of our convertible notes, including recent transactions. The principal amount of our 1.125% Notes is convertible into cash prior to its maturity date under certain circumstances, one of which relates to the closing price of our common stock over a specified period. We refer to this conversion trigger as the stock price trigger, which is \$53.00 per share. The 1.125% Notes met this trigger in the quarter ended September 30, 2018, and are convertible to cash through at least December 31, 2018. In addition, they are convertible by the holders within one year of the current balance sheet date until they mature; therefore, they are reported in current portion of long-term debt. If conversion requests are received, the settlement of the notes must be paid in cash pursuant to the terms of the relevant indentures. We have sufficient available cash, combined with borrowing capacity available under our Credit Facility, to fund conversions should they occur.

*HIF.* The HIF payable of \$348 million was paid on October 1, 2018.

## CONTRACTUAL OBLIGATIONS

A summary of future obligations under our various contractual obligations and commitments as of December 31, 2017, was disclosed in our 2017 Annual Report on Form 10-K.

As of September 30, 2018, the principal amount of debt outstanding was \$1,344 million, compared with \$2,041 million reported at December 31, 2017. Refer to the Notes to Consolidated Financial Statements, Note 7, "Debt," for a description of debt repayments in 2018.

As of December 31, 2017, we reported operating lease obligations of \$262 million. Of this total, approximately \$49 million related to the Molina Medicaid Solutions and Pathways subsidiaries. As noted in the Notes to Consolidated Financial Statements, Note 1, "Organization and Basis of Presentation," these subsidiaries were recently sold; therefore, such lease obligations are no longer obligations of Molina Healthcare.

Other than these items, there were no significant changes to this previously filed information outside the ordinary course of business during the nine months ended September 30, 2018.

## CRITICAL ACCOUNTING ESTIMATES

When we prepare our consolidated financial statements, we use estimates and assumptions that may affect reported amounts and disclosures; actual results could differ from these estimates. Our critical accounting estimates relate to:

- *Health Plans segment medical claims and benefits payable.* Refer to Notes to Consolidated Financial Statements, Note 6, "Medical Claims and Benefits Payable," for a table that presents the components of the change in medical claims and benefits payable, and for additional information regarding the factors used to determine our changes in estimates for all periods presented in the accompanying consolidated financial statements. Other than the discussion as noted above, there have been no significant changes during the nine months ended September 30, 2018, to our disclosure reported in "Critical Accounting Estimates" in our Annual Report on Form 10-K for the year ended December 31, 2017.
- *Health Plans segment contractual provisions that may adjust or limit revenue or profit.* For a discussion of this topic, including amounts recorded in our consolidated financial statements, refer to Notes to Consolidated Financial Statements, Note 2, "Significant Accounting Policies."
- *Health Plans segment quality incentives.* For a discussion of this topic, including amounts recorded in our consolidated financial statements, refer to Notes to Consolidated Financial Statements, Note 2, "Significant Accounting Policies."
- *Goodwill and intangible assets, net.* As result of the divestiture of MMS on September 30, 2018, the carrying amount of goodwill was reduced by \$43 million; therefore, goodwill and intangible assets, net, represented approximately 2% of total assets and 12% of stockholders' equity as of September 30, 2018, compared with 3% and 19%, respectively, at December 31, 2017. Other than the divestiture of MMS, there have been no significant changes during the nine months ended September 30, 2018, to our disclosure reported in "Critical Accounting Estimates" in our Annual Report on Form 10-K for the year ended December 31, 2017.

## CONTROLS AND PROCEDURES

*Evaluation of Disclosure Controls and Procedures.* Our management, with the participation of our chief executive officer and our chief financial officer, has concluded, based upon its evaluation as of the end of the period covered by this report, that the Company's "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), are effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms.

*Changes in Internal Control Over Financial Reporting.* There has been no change in our internal control over financial reporting during the fiscal quarter ended September 30, 2018 that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

## LEGAL PROCEEDINGS

For information regarding legal proceedings, see Notes to Consolidated Financial Statements, Note 12, "Commitments and Contingencies."

## RISK FACTORS

Certain risks may have a material adverse effect on our business, financial condition, cash flows, results of operations, or stock price, and you should carefully consider them before making an investment decision with respect to our securities. In addition to the other information set forth in this report, you should carefully consider the risk factors discussed in "Risk Factors," in our Annual Report on Form 10-K for the year ended December 31, 2017. The risk factors described in our 2017 Annual Report on Form 10-K are not the only risks that we face. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may also materially adversely affect our business, financial condition, cash flows, results of operations, or stock price.

## UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

### ISSUER PURCHASES OF EQUITY SECURITIES

Purchases of common stock made by us, or on our behalf during the quarter ended September 30, 2018, including shares withheld by us to satisfy our employees' income tax obligations, are set forth below:

	Total Number of Shares Purchased <sup>(1)</sup>	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares Authorized to Be Purchased Under the Plans or Programs
July 1 - July 31	105	\$ 97.94	—	\$ —
August 1 - August 31	243	\$ 134.01	—	\$ —
September 1 - September 30	—	\$ —	—	\$ —
Total	348	\$ 123.13	—	—

(1) During the three months ended September 30, 2018, we withheld 348 shares of common stock under our 2011 Equity Incentive Plan to settle employee income tax obligations.

## INDEX TO EXHIBITS

Exhibit No.	Title	Method of Filing
<a href="#">2.1</a>	Membership Interest Purchase Agreement, dated as of October 19, 2018, by and among Pyramid Health Holdings, LLC, Molina Pathways, LLC, and Molina Healthcare, Inc.*	Filed herewith.
<a href="#">31.1</a>	Section 302 Certification of Chief Executive Officer	Filed herewith.
<a href="#">31.2</a>	Section 302 Certification of Chief Financial Officer	Filed herewith.
<a href="#">32.1</a>	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	Filed herewith.
<a href="#">32.2</a>	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	Filed herewith.
101.INS	XBRL Taxonomy Instance Document.	Filed herewith.
101.SCH	XBRL Taxonomy Extension Schema Document.	Filed herewith.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.	Filed herewith.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.	Filed herewith.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.	Filed herewith.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	Filed herewith.

\* Certain schedules and exhibits to this agreement have been omitted in accordance with Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

MOLINA HEALTHCARE, INC.  
(Registrant)

Dated: November 1, 2018

/s/ JOSEPH M. ZUBRETSKY

**Joseph M. Zubretsky**  
**Chief Executive Officer**  
**(Principal Executive Officer)**

Dated: November 1, 2018

/s/ THOMAS L. TRAN

**Thomas L. Tran**  
**Chief Financial Officer and Treasurer**  
**(Principal Financial Officer)**

**MEMBERSHIP INTERESTS PURCHASE AGREEMENT**

**by and between**

**PYRAMID HEALTH HOLDINGS, LLC,**

**as Purchaser,**

**MOLINA PATHWAYS, LLC,**

**as Seller,**

**and**

**MOLINA HEALTHCARE, INC.,**

**as Parent,**

**October 19, 2018**

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#### **EXHIBITS**

Exhibit A – Form of Membership Interest Assignment and Assumption Agreement  
Exhibit B – Form of Mutual Release  
Exhibit C – Form of Transition Services Agreement  
Exhibit D – Adjusted Balance Sheet

#### **SCHEDULES**

Schedule 2.02 – Estimated Closing Cash  
Schedule 4.07(a) – Company Accounting Principles  
Schedule 6.04(d) – Section 336 Elections  
Company Disclosure Schedule

## MEMBERSHIP INTERESTS PURCHASE AGREEMENT

This **MEMBERSHIP INTERESTS PURCHASE AGREEMENT** (this "Agreement"), dated as of October 19, 2018, is made and entered into by and between Pyramid Health Holdings, LLC, a Delaware limited liability company ("Purchaser"), and Molina Pathways, LLC, a Delaware limited liability company ("Seller"). Molina Healthcare, Inc., a Delaware corporation ("Parent"), is a party hereto for purposes of Sections 6.02(b), 6.08, 6.10, 6.11, 6.12, 6.13, 6.15, 6.16 and 6.18 and Articles 8 and 9.

### RECITALS

**WHEREAS**, Seller owns beneficially and of record all of the issued and outstanding membership interests (the "Interests") of Pathways Health and Community Support LLC, a Delaware limited liability company (the "Company");

**WHEREAS**, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, all of the Interests upon the terms and subject to the conditions hereinafter set forth; and

**WHEREAS**, the parties hereto desire to enter into, or to cause their applicable Affiliates to enter into, the Transaction Documents, and to perform or cause such Affiliates to perform their obligations thereunder as further described herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

#### ARTICLE 1 CERTAIN DEFINITIONS

**Section 1.01 Certain Definitions**. As used in this Agreement, the following terms have the respective meanings set forth below.

"ACA" has the meaning ascribed thereto in Section 4.20(h).

"Accounts Receivable" means the accounts receivable of the Business in accordance with the Company Accounting Principles.

"Acquisition Proposal" means any offer, proposal or indication of interest (other than an offer, proposal or indication of interest by Purchaser or its Affiliates) contemplating or otherwise relating to any transaction or series of related transactions involving any:

(a) merger, consolidation, share exchange, business combination, issuance of securities, direct or indirect acquisition of securities, recapitalization, tender offer, exchange offer or other similar transaction (collectively, "Business Combinations") in which: (i) a Person or "group" (as defined in the Securities Exchange Act of 1934, as amended and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership

of securities representing more than 15% of the outstanding shares of any class of voting securities of the Company; or (ii) the Company issues securities representing more than 15% of the outstanding shares of any class of voting securities of the Company to any Person or “group” of Persons other than Parent or an Affiliate thereof, in each case, other than any Business Combination in which a Person or “group” of Persons directly acquires beneficial or record ownership of securities of Parent;

(b) sale, lease, license, exchange, transfer, acquisition or disposition of any assets by the Company or its Subsidiaries that constitute or account for: (i) 15% or more of the consolidated net revenues of the Company and its Subsidiaries, consolidated net income of the Company and its Subsidiaries or consolidated book value of the Company and its Subsidiaries; or (ii) 15% or more of the fair market value of the assets of the Company and its Subsidiaries, in each case, other than (x) in the ordinary course of business, or (y) pursuant to the express terms of this Agreement; or

(c) liquidation or dissolution of the Company.

“Adjusted Balance Sheet” shall have the meaning specified in Section 2.05.

“Affiliate” of any Person, means any other Person that, directly or indirectly, through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. As used in this definition, the term “control,” including the correlative terms “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of Equity Securities, by Contract or otherwise).

“Agreement” has the meaning ascribed thereto in the Preamble.

“Allocation Schedule” has the meaning ascribed thereto in Section 6.04(e).

“Assets” has the meaning ascribed thereto in Section 4.10(a).

“Balance Sheet” has the meaning ascribed thereto in Section 4.07(a).

“Business” means the business engaged in by the Company and its Subsidiaries as presently conducted.

“Business Day” means a day, other than a Saturday or Sunday or any other day on which commercial banking institutions in New York, New York are not open for the transaction of normal banking business.

“Closing” has the meaning ascribed thereto in Section 3.01.

“Closing Cash” means the cash and cash equivalents of the Company and its Subsidiaries as of the Closing Date, including any deposits in transit, less any outstanding checks, bank overdrafts, book overdrafts or other negative cash balances, calculated consistently with the Company Accounting Principles.

“Closing Date” has the meaning ascribed thereto in Section 3.01.

“Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder.

“Company” has the meaning ascribed thereto in the Recitals.

“Company Accounting Principles” has the meaning ascribed thereto in Section 4.07(a).

“Company Confidential Information” has the meaning ascribed thereto in Section 6.13(a).

“Company Disclosure Schedule” means the disclosure schedule and exhibits thereto that have been delivered to Purchaser concurrently with the execution and delivery of this Agreement.

“Confidentiality Agreement” means that certain Mutual Nondisclosure Agreement, dated May 3, 2018, by and between Parent and Atar Capital, LLC.

“Continuing Employees” has the meaning ascribed thereto in Section 6.05(a).

“Contract” means any written or oral agreement, contract, subcontract, lease, indenture, note, guaranty, option, warranty, purchase order, license, sublicense, insurance policy or legally binding arrangement, commitment, obligation or undertaking of any nature (and all amendments, modifications, restatements, or supplements thereto).

“Covered Entities” has the meaning ascribed thereto in Section 4.16(a).

“Data Room” has the meaning ascribed thereto in Section 9.04.

“Deductible” has the meaning ascribed thereto in Section 8.04(e).

“Dispute Accountant” means an independent accounting firm mutually selected by Purchaser and Seller.

“Employee Benefit Plan” means each (a) “employee benefit plan,” as defined in Section 3(3) of ERISA and (b) incentive, profit-sharing, stock option, stock purchase, equity-based, employment, consulting, vacation or other leave, change of control, transaction, retention, severance, deferred compensation, medical, dental, vision, retiree medical, disability, flexible spending, cafeteria, retirement, fringe benefit or other compensation or benefit plan, policy, program or agreement, in each case established, sponsored, maintained or contributed by the Company or its Subsidiaries, or with respect to which the Company or any of its Subsidiaries has or may have any actual or contingent liability or obligation, in each case with respect to its current or former employees, directors and/or independent contractors.

“End Date” has the meaning ascribed thereto in Section 7.01(b).

“Environmental Laws” means all Laws relating to pollution or protection of the environment (including ambient air, surface water, groundwater, soils or subsurface strata), the preservation or reclamation of natural resources, the protection of human health as it relates to exposure to Hazardous Materials or the use, generation, management, handling, transport, treatment, presence, disposal, storage or release of Hazardous Materials.

“Equity Securities” means, if a Person is a corporation, shares of capital stock of such corporation and, if a Person is a form of entity other than a corporation, ownership interests in such form of entity, whether membership interests, partnership interests or otherwise, and in either case any options, warrants, or any other interests convertible into or exchangeable or exercisable for the purchase of any such shares or ownership interests.

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

“ERISA Affiliate” of any entity means any trade or business that is, or at any relevant time was, together with such entity, treated as a “single employer” under Section 414(b), 414(c) or 414(m) of the Code and/or Section 4001(b)(1) of ERISA.

“Existing Performance Bonds” has the meaning ascribed thereto in Section 6.06.

“Federal Privacy Regulations” means the regulations contained in 45 C.F.R. §§ 160 and 164, as amended.

“Federal Security Regulations” means the regulations contained in 45 C.F.R. §§ 160 and 164, as amended.

“Federal Transaction Regulations” means the regulations contained in 45 C.F.R. §§ 160 and 162, as amended.

“Final Closing Cash” shall have the meaning specified in Section 2.03(b).

“Final Closing Cash Statement” shall have the meaning specified in Section 2.03(b).

“Financial Statements” has the meaning ascribed thereto in Section 4.07.

“Fraud” means (a) with respect to Seller, the actual fraud of Seller with respect to the representations and warranties made pursuant to Article 4 (as modified by the Company Disclosure Schedule), which involves a knowing and intentional misrepresentation of a fact material to the transactions contemplated by this Agreement, with the intent of deceiving Purchaser or its Affiliates and upon which Purchaser or such Affiliates has relied to its detriment (as opposed to any fraud claim based on constructive knowledge, negligent misrepresentation or a similar theory) under applicable tort laws and (b) with respect to Purchaser, the actual fraud of Purchaser with respect to the representations and warranties made pursuant to Article 5, which involves a knowing and intentional misrepresentation of a fact material to the transactions contemplated by this Agreement, with the intent of deceiving Seller or its Affiliates and upon which Seller or such Affiliates has relied to its detriment (as opposed to any fraud claim based on constructive knowledge, negligent misrepresentation or a similar theory) under applicable tort laws.

“Fraud Claims” has the meaning ascribed thereto in Section 4.27.

“Fundamental Purchaser Representations” means, collectively, the representations and warranties contained in Section 5.01 (Organization and Good Standing), Section 5.02 (Authority), clause (a) of Section 5.03 (No Conflicts), and Section 5.10 (Brokers).

“Fundamental Seller Representations” means, collectively, the representations and warranties contained in Section 4.01 (Organization and Good Standing), Section 4.02 (Authority), clause (a) of Section 4.03 (No Conflicts), Section 4.05 (Title to Interests), clauses (a) and (b) of Section 4.06 (Capitalization), and Section 4.25 (Brokers).

“GAAP” means generally accepted accounting principles as in effect in the United States on the date of this Agreement, applied in a manner consistent with the Company Accounting Principles.

“General Cap Amount” has the meaning ascribed thereto in Section 8.04(a).

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

“Government Program” means any Federal Healthcare Program or any health care program or health care reimbursement or participation agreement between the Company or any of its Subsidiaries and any Governmental Authority or any contractor of such Governmental Authority.

“Governmental Authority” means any federal, state or local government, court, tribunal or arbitral body (whether private or governmental) of competent jurisdiction, administrative agency, commission or board, or other governmental, quasi-governmental authority (including self-regulatory organization) or regulatory authority or instrumentality of the United States or any other country or any other state, county, municipality or other governmental division of any country.

“Hazardous Materials” means any chemical, material, substance, waste, pollutant or contaminant (a) that is regulated, defined, listed or identified under any Environmental Law as a “hazardous waste,” “hazardous substance” or “toxic substance” or (b) that is or contains petroleum or petroleum constituents or byproducts, toxic mold, biohazards, radioactive materials, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyl or radon gas.

“Health Plan” has the meaning ascribed thereto in Section 4.20(h).

“Healthcare Laws” means applicable Laws relating to or governing health care, insurance fraud or abuse or the licensure, certification, qualification or authority to provide healthcare items and services, including the following statutes: the Federal Anti-Kickback Statute (42

U.S.C. § 1320a-7b), the Stark Law (42 U.S.C. § 1395nn), the Federal False Claims Act (31 U.S.C. §§ 3729, et seq.), the Federal Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Federal Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.) and the Federal Health Care Fraud Law (18 U.S.C. § 1347); and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information Technology for Economic and Clinical Health Act (Pub. L. No. 111-5) and their implementing regulations (collectively, “HIPAA”).

“Indebtedness” means, with respect to the Company and each of its Subsidiaries, at any applicable date, (a) all obligations for borrowed money or extensions of credit of the Company or such Subsidiaries, (b) all obligations evidenced by bonds, debentures, notes or other similar instruments, commercial paper or debt securities of the Company or such Subsidiaries, (c) all obligations under interest rate or non-U.S. currency swaps, hedges, caps, collars, options, futures or similar instruments of the Company or such Subsidiaries for the purpose of managing interest rate and/or non-U.S. exchange rate, (d) all obligations of the Company or such Subsidiaries for the deferred purchase price of any property or services (other than trade accounts payable and accrued expenses reflected as accounts payable or accrued expenses in the Balance Sheet or incurred after the date thereof in the ordinary course of business), including earnouts, payments under non-compete agreements and seller notes owed by the Company or its Subsidiaries, (e) all obligations for borrowed money of the Company or such Subsidiaries secured by a Lien, (f) all obligations of the Company or such Subsidiaries under leases which are required to be, in accordance with GAAP, recorded as capital leases, and (g) all interest, principal, prepayment penalties, premiums, fees or expenses due or owing by the Company or such Subsidiaries in respect of any item listed in clauses (a) through (f) above.

“Indemnifying Party” has the meaning ascribed thereto in Section 8.01(a).

“Indemnity Notice” has the meaning ascribed thereto in Section 8.04(a).

“Insurance Policies” has the meaning ascribed thereto in Section 4.23.

“Intellectual Property” means all domestic and international intellectual property rights, whether registered or unregistered, including, without limitation (a) patents, applications for patents, patent disclosures and inventions, together with all reissues, continuations, continuations-in-part, revisions, divisional, extensions and re-examinations, (b) trade secrets and confidential, proprietary business and technical information, (c) copyright registrations, applications for copyright registrations and unregistered copyrights and works of authorship (including software), (d) trademarks and service marks, logos, business names, corporate names and trade names, together with all goodwill associated therewith and all registrations, applications for registration, and renewals for any of the foregoing, (e) trade secrets and other confidential information and know-how that derive economic value from not being generally known to, and not being readily available through lawful means by another Person, (f) Internet web site addresses, domain names and URLs and (g) any other proprietary or similar rights relating to any of the foregoing.

“Intercompany Accounts” means any intercompany accounts, balances, payables, receivables or indebtedness between Parent or any of its Subsidiaries (excluding the Company



and its Subsidiaries), on the one hand, and any of the Company or its Subsidiaries, on the other hand.

“Interests” has the meaning ascribed thereto in the Recitals.

“IRS” means the United States Internal Revenue Service.

“Laws” means all laws, statutes, acts, ordinances, rules, rules of common law, regulations, directives, legally binding policies or guidance, treaties, codes, rulings, Orders, certification standards, accreditation standards, Permits, decisions or other directives or requirements of any Governmental Authority.

“Lease” has the meaning ascribed thereto in Section 4.11(b).

“Leased Real Property” has the meaning ascribed thereto in Section 4.11(b).

“Liability” means any liability or obligation of any nature whatsoever, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due.

“Lien” means any mortgage, pledge, lien, charge, claim, equitable interest, option, proxy, pledge, right of first refusal or first offer, security interest, deed of trust, hypothecation, easement, encroachment, right of way, voting trust, voting agreement and any other encumbrance of any kind, including, without limitation, any restriction on voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“Loss” means all damages, awards, losses, Liabilities, obligations, claims, payments, fines, penalties, interest, costs and expenses (including reasonable attorneys’ fees, court costs and other reasonable professional fees and expenses and any amounts paid in settlement).

“Maple Star Colorado” means Maple Star Colorado, a non-profit corporation incorporated under the laws of the State of Colorado.

“Material Adverse Effect” means any event, change, circumstance, effect or other matter that has had or would reasonably be expected to have, with or without notice, lapse of time or both, (a) a material adverse effect on the business assets, properties, liabilities, condition (financial or otherwise), operating results or operations of the Company and its Subsidiaries, taken as a whole, or (b) the ability of Parent and the Seller to perform their respective obligations under this Agreement or to consummate the transactions contemplated by this Agreement; **provided**, that the impact of the following shall not be taken into account in determining whether there has been or would be a Material Adverse Effect: (a) changes in conditions in the industry in which the Company and its Subsidiaries operate; (b) changes in conditions in the United States or global economy, capital or financial markets generally, including, without limitation, changes in interest or exchange rates; (c) changes in legal, tax, accounting, regulatory, political or business conditions that, in each case, generally affect the industry in which the Company and its Subsidiaries participate; (d) acts of war, sabotage or terrorism (including any escalation or general worsening of any such acts of war, sabotage or terrorism) in the United States or any other country; (e) earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or

other natural disasters, weather conditions and other force majeure events in the United States or any other country; (f) any failure, in and of itself, by the Company or its Subsidiaries to meet any forecast, projection or estimate (it being understood that any material adverse effect giving rise to such failure may be taken into account in determining whether there has been a Material Adverse Effect); (g) acts by Parent, Seller, the Company or its Subsidiaries carried out at the express written request of Purchaser; (h) the taking of any action expressly required by the terms of this Agreement; or (i) the announcement, pendency or consummation of the transactions contemplated by this Agreement; except, with respect to clauses (a), (b), (c), (d), and (e), to the extent any such matter materially and disproportionately affects the Company and its Subsidiaries compared to other companies operating in the industries in which the Company and its Subsidiaries operate.

“Material Contracts” has the meaning ascribed thereto in Section 4.09(b).

“Membership Interest Assignment and Assumption Agreement” means the Membership Interest Assignment and Assumption Agreement, to be entered into as of the Closing Date, by and between Purchaser and Seller, substantially in the form attached hereto as Exhibit A.

“Mutual Release” means the Mutual Release, to be entered into as of the Closing Date, by and between Seller and the Company, substantially in the form attached hereto as Exhibit B.

“Order” means any judgment, award, decision, order, decree, writ, injunction, assessment, ruling, subpoena or verdict entered or issued by any Governmental Authority.

“Owned Real Property” has the meaning ascribed thereto in Section 4.11(a).

“Parent” has the meaning ascribed thereto in the Preamble.

“Parent Confidential Information” has the meaning ascribed thereto in Section 6.13(b).

“Per-Claim Basket” has the meaning ascribed thereto in Section 8.04(c).

“Permit” means any permit, license, franchise, qualification, certification, accreditation, approval, certificate, consent, provider number or other registration, authorization or exemption by or of a Governmental Authority.

“Permitted Liens” means (a) statutory mechanics’, carriers’, workmen’s, repairmen’s, vendors’, suppliers’, warehousemen’s or other like or statutory Liens arising or incurred in the ordinary course of business for amounts not yet due or which are being contested in good faith by appropriate Proceedings; (b) Liens for Taxes, special assessments and other governmental or quasi-governmental charges that are not yet delinquent or that are being contested in good faith by appropriate Proceedings and for which adequate reserves have been made with respect thereto in accordance with GAAP; (c) with respect to Real Property, easements, covenants, conditions, restrictions, reservations, rights of way, encroachments and/or other similar matters or imperfections affecting or encumbering title to any Real Property; **provided**, that no such item described in this clause (c) individually or in the aggregate materially impairs the current use or occupancy of the Real Property subject thereto; (d) Liens incurred or deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, workers’

compensation, unemployment insurance, old age pension programs mandated under applicable Laws or other social security regulations; (e) zoning, building and other land use entitlements, regulations or restrictions regulating the development, use or occupancy of Real Property; **provided**, that no such item described in this clause (e) materially impairs the current use or occupancy of the Real Property subject thereto; (f) the interests of, and Liens and encumbrances on the interests of, the lessors and sublessors of any Leased Real Property, and Liens and encumbrances on easements, licenses, rights of use, rights of access, rights of way and other non-fee estates, interests and/or rights in property arising from the provisions of such agreements or benefiting or created by any superior estate, right, or interest in such nonfee estates and (g) the Lien described on Section 1.01 of the Company Disclosure Schedule.

“Person” means an individual, sole proprietorship, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust, joint venture, association or other organization, whether or not a legal entity or a Governmental Authority.

“Pre-Closing Insurable Event” means any event or circumstance that occurred prior to the Closing and that was insurable under the Insurance Policies, but is not insured under the Insurance Policies because it was not properly reported to the applicable insurer prior to the Closing, and including without limitation, any and all related to general liability, workers compensation, property, umbrella liability and owned, hired, rented and/or other non-owned vehicles.

“Post-Closing Tax Period” means any Tax period beginning after the Closing Date and that portion of any Straddle Period beginning after the Closing Date.

“Pre-Closing Tax Period” means any Tax period ending on or prior to the Closing Date and that portion of any Straddle Period ending on (and including) the Closing Date.

“Proceeding” means any lawsuit, litigation, arbitration, mediation, action or other proceeding by or before any Governmental Authority.

“Proprietary Information” has the meaning ascribed thereto in Section 4.12(c).

“Protected Health Information” has the meaning ascribed thereto by HIPAA and the implementing rules found in 45 CFR § 160.103.

“Purchase Price” has the meaning ascribed thereto in Schedule 2.02.

“Purchaser” has the meaning ascribed thereto in the Preamble.

“Purchaser 401(k) Plan” has the meaning ascribed thereto in Section 6.05(a).

“Purchaser Indemnified Party” has the meaning ascribed thereto in Section 8.02.

“Real Property” means the Owned Real Property and the Leased Real Property.

“Reference Date” has the meaning ascribed thereto in Section 4.08.

“Related Person” has the meaning ascribed thereto in Section 4.27.

“Remedies Exception” means: (a) applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other Laws of general application, heretofore or hereafter enacted or in effect, affecting the rights and remedies of creditors generally; and (b) general principles of equity, including good faith and fair dealing, regardless of whether in a proceeding at equity or at Law.

“Representatives” means, with respect to a Person, the directors, officers, employees, agents, Affiliates and representatives of such Person.

“Restricted Names” has the meaning ascribed thereto in Section 6.10.

“Restricted Person” has the meaning ascribed thereto in Section 6.12(a).

“Retention Bonus Agreements” means those retention bonus letter agreements, dated December 29, 2017, by and between Seller, Parent and each of the Retention Bonus Holders.

“Retention Bonus Amounts” means the aggregate amounts payable to the Retention Bonus Holders under and pursuant to the Retention Bonus Agreements.

“Retention Bonus Holders” has the meaning ascribed thereto in Section 6.05(c).

“Section 336 Elections” has the meaning ascribed thereto in Section 6.04(e).

“Section 336 Forms” means all returns, documents, statements, and other forms that are required to be submitted to any federal, state, local or foreign Tax Authority in connection with a Section 336 Election (including, without limitation, any “statement of section 336 election” and IRS Form 8023, together with any schedules or attachments thereto, that are required pursuant to Treasury Regulations under Code Section 336(e), as applicable).

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

“Seller” has the meaning ascribed thereto in the Preamble.

“Seller 401(k) Plan” has the meaning ascribed thereto in Section 4.20(c).

“Seller Group” has the meaning ascribed thereto in Section 9.15.

“Seller Indemnified Party” has the meaning ascribed thereto in Section 8.03.

“Seller’s Knowledge” means, when referring to the “knowledge” of Seller or the Company, or any similar phrase or qualification based on knowledge of Seller or the Company, the present, actual knowledge of any of Craig Bass, Allen Wolfenbarger and/or Bart Beattie, after reasonable inquiry of their direct reports.

“Solvent” means, with respect to any Person, that: (a) the assets of such Person, at a present fair saleable valuation, exceeds the sum of its debts (including contingent and unliquidated debts); (b) the present fair saleable value of the assets of such Person exceeds the

amount that will be required to pay such Person's probable Liability on its existing debts as they become absolute and matured; (c) such Person has adequate capital to carry on its business; and (d) such Person does not intend or believe it will incur debts beyond its ability to pay as such debts mature. In computing the amount of contingent or unliquidated Liabilities at any time, such Liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become actual or matured Liabilities.

"Straddle Period" means any Tax period beginning on or prior to and ending after the Closing Date.

"Subsidiary" means, with respect to any Person, as of the date of any determination, any other Person as to which such Person owns, directly or indirectly, or otherwise controls, more than fifty percent (50%) of the voting shares or other similar interests or the sole general partner interest or managing member or similar interest. For purposes of this Agreement, "Subsidiary" shall include, Maple Star Colorado, College Community Services, a California nonprofit corporation, and Maple Star Oregon, Inc., an Oregon nonprofit corporation.

"Substitute Performance Bonds" has the meaning ascribed thereto in Section 6.06.

"Surviving Seller Representations" means, collectively, the Fundamental Seller Representations and the representations and warranties contained in Section 4.19 (Taxes).

"Target Closing Cash" shall have the meaning specified in Schedule 2.02.

"Tax" or "Taxes" means (a) any federal, state, local or foreign income, gross receipts, property, sales, use, license, franchise, employment, severance, stamp, occupation, windfall profits, environmental, customs duties, capital stock, profits, social security (or similar, including FICA), unemployment, sales, use, disability, real property, personal property, escheat, unclaimed property, registration, value added, estimated, payroll, premium, withholding, alternative or added minimum, ad valorem, transfer or excise tax, or any other tax of any kind or any fee or charge in the nature of (or similar to) taxes (including any of the foregoing), together with any interest or penalty or addition to tax, whether disputed or not and (b) any liability for the payment of any amounts of the type described in clause (a) as a result of being a member of an affiliated, consolidated, combined or unitary group, as a result of any tax sharing, tax allocation or tax indemnity agreement, arrangement or understanding, as a result of entity level taxes on entities which are disregarded entities or passthrough entities for federal income tax purposes or as a result of being liable for another Person's taxes as a transferee or successor, by Contract or otherwise.

"Tax Authority" shall mean any Governmental Authority, having or purporting to exercise jurisdiction with respect to any Tax.

"Tax Matter" has the meaning ascribed thereto in Section 6.04(j).

"Tax Purchase Price" has the meaning ascribed thereto in Section 6.04(d).

"Tax Refunds" has the meaning ascribed thereto in Section 6.04(c).

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

“Third Party Claim” has the meaning ascribed thereto in Section 8.04(b).

“Transaction Documents” means the Membership Interest Assignment and Assumption Agreement, the Mutual Release, the Transition Services Agreement and each other document to be executed by the parties hereto at the Closing.

“Transfer Taxes” has the meaning ascribed thereto in Section 6.03.

“Transition Services Agreement” means that certain Transition Services Agreement, to be entered into as of the Closing Date, by and between Parent and Purchaser, substantially in the form attached hereto as Exhibit C.

“Treasury Regulations” means the Treasury Regulations promulgated under the Code.

“United States” means the United States of America.

## ARTICLE 2 PURCHASE AND SALE

**Section 2.01 Purchase and Sale of the Interests.** Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller agrees to sell, convey, assign and transfer to Purchaser, and Purchaser agrees to purchase from Seller, all right, title and interest in and to the Interests, free and clear of all Liens (except for restrictions on transfer imposed by federal or state securities Laws).

**Section 2.02 Purchase Price.** Upon the terms and subject to the conditions of this Agreement, in consideration of the sale, conveyance, assignment and transfer of all right, title and interest in and to the Interests to Purchaser pursuant to Section 2.01 and the rights and benefits conferred herein, at the Closing, (a) Purchaser will pay or cause to be paid to Seller the Purchase Price in immediately available funds, and (b) Seller shall leave an estimated amount of Closing Cash equal to the Target Closing Cash on the Adjusted Balance Sheet.

**Section 2.03 Cash Reconciliation.**

(a) Final Closing Cash. By no later than October 26, 2018, Purchaser shall deliver to Seller a statement (the “Final Closing Cash Statement”) of the amount of the Closing Cash (the “Final Closing Cash”).

(b) Review by Seller; Dispute Resolution.

(i) Seller will be afforded a period of ten (10) Business Days to review the Final Closing Cash Statement and the calculation of the Final Closing Cash during which period Seller and its advisors shall have reasonable access, during normal business hours, to the relevant personnel and books and records of the Company and its Subsidiaries

related to the Final Closing Cash Statement and calculation of the Final Closing Cash. At or before the end of such ten (10) Business Day period, Seller will either accept the Final Closing Cash Statement and the calculation of the Final Closing Cash (in which case the calculation of the Final Closing Cash delivered by Purchaser above will be final, conclusive and binding on the parties), or notify Purchaser in writing that Seller disputes the Final Closing Cash Statement and the calculation of the Final Closing Cash. Within a further period of another five (5) Business Days, the parties will attempt to resolve in good faith any disputed items.

(ii) Failing such resolution, either Seller or Purchaser may refer the disputed items for resolution by the Dispute Accountant. The parties hereto shall direct the Dispute Accountant to deliver to Purchaser and Seller, within fifteen (15) days after reference of the matter, a written report setting forth its calculation of the Final Closing Cash, which shall be consistent with the terms of this Agreement and final, conclusive and binding upon the parties. The costs and expenses of the Dispute Accountant shall be allocated evenly between Purchaser and Seller.

(c) **Adjustment Payment.** After the Final Closing Cash Statement and the calculation of the Final Closing Cash become final, conclusive and binding upon the parties as provided above, then, within five (5) Business Days:

(i) If the Final Closing Cash is greater than the Target Closing Cash, then Purchaser will wire transfer to Seller the difference in immediately available funds.

(ii) If the Final Closing Cash is less than the Target Closing Cash, then Seller will wire transfer to Purchaser the difference in immediately available funds.

**Section 2.04 Withholding.** Purchaser or the Company, as applicable, shall be entitled to deduct and withhold, or cause to be deducted and withheld, from any amounts payable pursuant to this Agreement such amounts as are required to be deducted and withheld under the Code or any other applicable Law with respect to the making of such payment; **provided, however,** that (a) before making any such deduction or withholding, Purchaser or the Company, as applicable, shall give Seller notice of the intention to make such deduction or withholding (such notice, which shall include the authority, basis and method of calculation for the proposed deduction or withholding, shall be given at least a commercially reasonable period of time before such deduction or withholding), (b) Purchaser or the Company, as applicable, shall cooperate with Seller to the extent reasonable in efforts to obtain reduction of or relief from such deduction or withholding and (c) Purchaser or the Company, as applicable, shall timely remit to the appropriate Tax Authority any and all amounts so deducted or withheld and timely file all Tax Returns and provide to Seller such information statements and other documents required to be filed or provided under applicable Tax law. To the extent that amounts are so withheld and paid over or deposited with the relevant Tax Authority by Purchaser or the Company in accordance with the foregoing, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. Notwithstanding the foregoing, no deduction or withholding under the Code shall be made from the consideration otherwise payable to Seller pursuant to this Agreement if Seller provides to

Purchaser at the Closing a complete IRS Form W-9 and a statement made in accordance with Treasury Regulations Section 1.1445-2(b).

**Section 2.05 Adjusted Balance Sheet.** Attached as Exhibit D is an unaudited consolidated balance sheet of the Company and its Subsidiaries as of September 30, 2018, as adjusted to give effect to (a) the distribution of Cash by the Company to Seller at or on the day prior to the Closing, and (b) the settlement or cancellation of Intercompany Accounts, deferred tax liabilities and deferred tax assets at Closing (the "Adjusted Balance Sheet").

### ARTICLE 3 CLOSING

**Section 3.01 Closing.** Upon the terms and subject to the satisfaction or waiver of the conditions contained in this Agreement, the closing of the transactions contemplated hereby (the "Closing") shall be effected (a) by electronic mail and overnight courier service, or by physical exchange of documentation at the offices of Latham & Watkins LLP, located at 355 South Grand Avenue, Suite 100, Los Angeles, CA 90071, on October 19, 2018, or (b) at such other time and place as the parties hereto shall mutually agree. The date on which the Closing occurs is referred to as the "Closing Date".

**Section 3.02 Delivery and Actions by Seller at Closing.** At or prior to the Closing, Seller shall deliver, or shall cause to be delivered, to Purchaser:

(a) a certificate in form and substance reasonably satisfactory to Purchaser, dated as of the Closing Date and duly executed and delivered by Seller, certifying as to Seller's, Parent's and the Company's satisfaction of the conditions set forth in Sections 3.05(a) and 3.05(b).

(b) a completed IRS Form W-9 for Parent duly executed by Parent and accompanied by an affidavit dated as of the Closing Date from Parent, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code stating that Parent is not a "foreign person" as defined in Section 1445 of the Code;

(c) written resignations in form and substance reasonably acceptable to Purchaser effective as of the Closing from each director of the Company and each of its Subsidiaries in their capacity as such;

(d) an executed signature page of Seller or its Affiliates, as the case may be, of each Transaction Document to which Seller or such Affiliates, as the case may be, is a party; and

(e) a certificate, dated as of the Closing Date, signed by the Secretary or other authorized officer of Seller, attesting and certifying to the completion of all necessary limited liability company action by Seller to execute and deliver this Agreement and the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby, and including copies of all resolutions required in connection with this Agreement and the Transaction Documents.

**Section 3.03 Delivery and Actions by Purchaser at Closing.** At or prior to the Closing, Purchaser shall deliver, or shall cause to be delivered, to Seller:



(a) an executed signature page of Purchaser or its Affiliates, as the case may be, of each Transaction Document to which Purchaser or such Affiliates, as the case may be, is a party;

(b) the Purchase Price in accordance with Section 2.02; and

(c) a certificate, dated as of the Closing Date, signed by the Secretary or other authorized officer of Purchaser, attesting to the completion of all necessary limited liability company action by Purchaser to execute and deliver this Agreement and the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby, and including all limited liability company resolutions required in connection with this Agreement and the Transaction Documents.

**Section 3.04 Conditions to Obligations of Seller.** The obligations of Seller under this Agreement to sell the Interests and to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing, of the following conditions, unless waived (to the extent such conditions can be waived) in writing by Seller:

(a) Accuracy of Representations and Warranties. Each of (i) the representations and warranties of Purchaser contained in Article 5 (other than the Fundamental Purchaser Representations) shall be true and correct in all material respects (without giving effect to any limitation as to materiality or material adverse effect set forth therein) on and as of the date of this Agreement and as of the Closing, as though made at and as of Closing (other than such representations and warranties expressly made as of an earlier date, which representations and warranties shall be true and correct as of such earlier date), except where the failure of such representations and warranties to be so true and correct, individually or in aggregate with other such failures, has had or would reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby and (ii) the Fundamental Purchaser Representations shall be true and correct in all material respects on and as of the date of this Agreement and as of the Closing, as though made at and as of Closing.

(b) Performance of Obligations. Purchaser shall have performed or complied in all material respects with all agreements, obligations and covenants required to be performed by it under this Agreement on or as of the Closing Date.

(c) No Restraint. No provisions of any applicable Law or Order shall be in effect, and no Proceeding shall be pending or overtly threatened by or before any Governmental Authority, that would reasonably be expected to enjoin, prevent, restrain or delay consummation of any of the transactions contemplated hereby or by the Transaction Documents, declare unlawful any of the transactions contemplated hereby or by the Transaction Documents or cause any of the transactions contemplated hereby or by the Transaction Documents to be rescinded following consummation.

(d) Deliveries. Purchaser shall have delivered, or caused to be delivered, to Seller the funds, documents, certificates and other instruments required under Section 3.03.

**Section 3.05 Conditions to Obligations of Purchaser.** The obligations of Purchaser under this Agreement to purchase the Interests and to consummate the transactions contemplated

hereby are subject to the satisfaction, on or prior to the Closing, of the following conditions, unless waived (to the extent such conditions can be waived) in writing by Purchaser:

(a) Accuracy of Representations and Warranties. Each of (i) the representations and warranties of Seller contained in Article 4 (other than the Fundamental Seller Representations) shall be true and correct in all respects (without giving effect to any limitation as to materiality or Material Adverse Effect set forth therein) on and as of the date of this Agreement and as of the Closing, as though made at and as of Closing (other than such representations and warranties expressly made as of an earlier date, which representations and warranties shall be true and correct as of such earlier date), except where the failure of such representations and warranties to be so true and correct, individually or in the aggregate with any other such failures, have not had, and would not reasonably be expected to have, a Material Adverse Effect, and (ii) the Fundamental Seller Representations shall be true and correct in all material respects on and as of the date of this Agreement and as of the Closing, as though made at and as of Closing.

(b) Performance of Obligations. Each of Seller, Parent and the Company shall have performed or complied in all material respects with all agreements, obligations and covenants required to be performed by it under this Agreement on or as of the Closing Date.

(c) No Material Adverse Effect. From the date of this Agreement through the Closing Date, no event, occurrence, change, development, effect, condition, state of facts or circumstance shall have occurred or arisen that, individually or in combination with any other event, occurrence, change, development, effect, condition, state of facts or circumstance, has had or would reasonably be expected to have a Material Adverse Effect.

(d) No Restraint. No provisions of any applicable Law or Order shall be in effect, and no Proceeding shall be pending or overtly threatened by or before any Governmental Authority, that would reasonably be expected to enjoin, prevent, restrain or delay consummation of any of the transactions contemplated hereby or by the Transaction Documents, declare unlawful any of the transactions contemplated hereby or by the Transaction Documents or cause any of the transactions contemplated hereby or by the Transaction Documents to be rescinded following consummation.

(e) Deliveries. Seller shall have delivered, or caused to be delivered, to Purchaser the documents, certificates and other instruments required under Section 3.02.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER**

Subject to the qualifications set forth in the applicable sections or subsections of the Company Disclosure Schedule (it being understood and agreed that the disclosure of any item in the Company Disclosure Schedule shall be deemed to have been disclosed with respect to other representations or warranties in this Article 4 if the relevance of such disclosure to such other representations or warranties in this Article 4 is readily apparent on its face), Seller hereby represents and warrants to Purchaser as of the date hereof and as of the Closing as follows:

**Section 4.01 Organization and Good Standing.** Seller is a limited liability company, duly formed, validly existing and in good standing under the Laws of the State of Delaware. Each of the Company and its Subsidiaries is a corporation or limited liability company, duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization, which jurisdiction is listed on Section 4.01 of the Company Disclosure Schedule, and has the requisite corporate or limited liability company power and authority to carry on its business as presently conducted and to own, lease and operate its properties. Each of the Company and its Subsidiaries is duly qualified to do business and is in good standing in each jurisdiction listed on Section 4.01 of the Company Disclosure Schedule, which are all of the jurisdictions in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification and good standing necessary, except where the failure to be so qualified and in good standing has not had a Material Adverse Effect. The Company has made available to Purchaser correct and complete copies of the Governing Documents of the Company and each of its Subsidiaries. Section 4.01 of the Company Disclosure Schedule sets forth a true, complete and accurate list of all of the Company's Subsidiaries.

**Section 4.02 Authority.** Each of Seller and the Company has the requisite limited liability company power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Seller and the Company of this Agreement and the Transaction Documents to which it is party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary limited liability company action on the part of Seller and the Company. Each of this Agreement and the Transaction Documents to which Seller or the Company is a party has been, or will be as of the Closing, duly executed and delivered by Seller or the Company, as applicable, and, assuming the due authorization, execution and delivery by the other parties hereto or thereto, constitutes or will constitute a legal, valid and binding obligation of Seller or the Company, as applicable, enforceable against Seller or the Company, as applicable, in accordance with its terms, subject to the Remedies Exception.

**Section 4.03 No Conflicts.** Assuming the consents, approvals, Orders and authorizations of, and registrations, declarations and filings with, and notices to, the Governmental Authorities and other Persons referenced on Section 4.04 of the Company Disclosure Schedule are obtained, given, and made at the time required under applicable Law or applicable Material Contract, neither the execution or delivery of this Agreement nor any Transaction Document by Seller or the Company, nor the consummation by Seller or the Company of the transactions contemplated hereby and thereby will: (a) conflict with, contravene or constitute a violation of (whether after the giving of notice, lapse of time or both) the Governing Documents of Seller, the Company or any of its Subsidiaries; (b) contravene, conflict with or constitute a material violation or breach of the terms or conditions of, or constitute (whether after the giving of notice, lapse of time or both) a material default under, any Material Contract; (c) contravene, conflict with or constitute a violation of (whether after the giving of notice, lapse of time or both) any Law or Order to which Seller, the Company or its Subsidiaries are subject in any material respect; or (d) result in the creation or imposition of any Lien (other than a Permitted Lien) upon any Interests or any Assets.

**Section 4.04 Consents.** No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or any other Person or under any Material Contract is required to be obtained or made by Seller, the Company or any of its Subsidiaries in connection with the authorization, execution, delivery and performance of this Agreement or any Transaction Document to which it is a party, as applicable, or in connection with the consummation of the transactions contemplated hereby and thereby, other than as set forth on Section 4.04 of the Company Disclosure Schedule.

**Section 4.05 Title to Interests.** Seller is the sole record and beneficial owner of the Interests free and clear of all Liens other than restrictions on transfer arising under applicable federal and state securities Laws.

**Section 4.06 Capitalization.**

(a) Section 4.06(a)(i) of the Company Disclosure Schedule sets forth (i) the number of authorized Equity Securities of the Company and each of its Subsidiaries, and (ii) a complete and correct list of the issued and outstanding Equity Securities of the Company and each of its Subsidiaries, including the name of the record and beneficial owner thereof and the number of Equity Securities held thereby. Except as set forth on Section 4.06(a)(i) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries owns or otherwise holds, directly or indirectly, any Equity Securities in any Person. All of the outstanding Equity Securities of each of the Company's Subsidiaries are owned by the Company or another Subsidiary free and clear of all Liens (other than Liens arising under applicable securities Laws that are released no later than the Closing).

(b) All of the Equity Securities of the Company and each of its Subsidiaries have been duly authorized and validly issued, and are fully paid and non-assessable. All of the Interests are owned beneficially and of record by Seller and all of the Equity Securities of each Subsidiary of the Company are directly or indirectly owned beneficially and of record by the Company. There are no outstanding (i) Equity Securities or other securities of the Company or any of its Subsidiaries directly or indirectly convertible into or exchangeable for Equity Securities of the Company or any of its Subsidiaries; (ii) options, warrants, calls, subscriptions or other rights to directly or indirectly acquire from the Company or any of its Subsidiaries or other obligations of the Company or any of its Subsidiaries to issue, any Equity Securities of the Company or any of its Subsidiaries; or (iii) agreements to which Parent or any of its Subsidiaries (including the Company or any of its Subsidiaries) is a party containing profit participation or phantom equity features with respect to the Company or any of its Subsidiaries. There are no outstanding obligations (contingent or otherwise) of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire or retire any of its Equity Securities or any warrants or option or other rights to acquire any Equity Securities of the Company or any of its Subsidiaries. There are no statutory or contractual equityholder preemptive or similar rights, rights of first refusal or registration rights with respect to the Equity Securities of the Company or any of its Subsidiaries. There are no agreements, commitments or understandings with respect to the voting or transfer of the Equity Securities or other securities of the Company or any of its Subsidiaries.

(c) Neither the Company nor any of its Subsidiaries has violated any applicable federal or state securities Laws or any preemptive or similar rights created by statute, organizational document or agreement in connection with the offer, sale or issuance of any of the Equity Securities of the Company or any of its Subsidiaries. There is no Liability for, or obligation with respect to, the payment of dividends, distributions or similar participation interests declared or accumulated but unpaid with respect to any Equity Securities of the Company or any of its Subsidiaries, and there are no restrictions of any kind which prevent the payment of the foregoing by the Company or any of its Subsidiaries.

**Section 4.07 Financial Statements.**

(a) Annexed to Section 4.07(a)(i) of the Company Disclosure Schedule are true, correct and complete copies of (i) the unaudited consolidated balance sheets of the Company and its Subsidiaries, as of December 31, 2017 and 2016 and the related unaudited consolidated statements of income for the years then ended and (ii) the unaudited consolidated balance sheet of the Company and its Subsidiaries, as of September 30, 2018 (the "Balance Sheet") and the related unaudited consolidated statement of income for the nine (9) months then ended (collectively, the "Financial Statements"). Except as set forth therein and except as set forth on Section 4.07(a) of the Company Disclosure Schedule, the Financial Statements (x) have been prepared in accordance with the accounting principles set forth on Schedule 4.07(a) (the "Company Accounting Principles") and consistent with past practices, except that the interim Financial Statements described in clause (ii) immediately above are subject to the absence of footnotes and to normal year-end adjustments (which will not be material individually or in the aggregate), (y) fairly present, in all material respects, the consolidated financial position and results of operations of the Company and its Subsidiaries in accordance with the Company Accounting Principles at the respective dates set forth therein and for the respective periods covered thereby, and (z) are consistent with the books and records of the Company and its Subsidiaries. Since December 31, 2017, there has been no change in any accounting principles, policies, methods or practices of the Company and its Subsidiaries except as set forth on Section 4.07(a)(ii) of the Company Disclosure Schedule.

(b) Neither the Company nor any of its Subsidiaries has any Liabilities required to be accrued on a balance sheet in accordance with GAAP, except (i) as and to the extent specifically accrued for or reserved against in the Balance Sheet, (ii) Liabilities which have arisen after the date of the Balance Sheet in the ordinary course of business consistent with past practice (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement or violation of Law), (iii) executory obligations under Contracts (other than Liabilities relating to any breach, or any fact or circumstance that, with notice, lapse of time or both, would result in a breach, thereof by the Company or any of its Subsidiaries), (iv) Liabilities that would not reasonably be expected to be material to the Company and its Subsidiaries taken as a whole and (v) Liabilities specifically set forth on Section 4.07(b) of the Company Disclosure Schedule.

(c) Neither the Company nor any of its Subsidiaries is responsible for any of the obligations or Liabilities of Maple Star Colorado that are specified in detail on Section 4.07(c) of the Company Disclosure Schedule.

**Section 4.08 Absence of Certain Developments.** Except as set forth on Section 4.08 of the Company Disclosure Schedule, since December 31, 2017 (the “Reference Date”) through the date of this Agreement, (a) the Company and its Subsidiaries have conducted their business in all material respects in the ordinary course of business consistent with past practice, (b) there has not been a Material Adverse Effect, and (c) none of Parent, Seller, the Company nor any of the Company’s Subsidiaries has taken any action that, if taken after the date of this Agreement, would constitute a breach of any of the covenants set forth in Section 6.15.

**Section 4.09 Material Contracts.**

(a) Section 4.09(a) of the Company Disclosure Schedule sets forth, as of the date of this Agreement, a true, complete and accurate list (by reference to the applicable subsection hereof) of the following types of undischarged Contracts to which the Company or any of its Subsidiaries are bound or are a party (excluding any Employee Benefit Plan):

(i) indentures, credit agreements, security agreements, mortgages, guarantees, promissory notes and Contracts relating to or evidencing Indebtedness of the Company or any of its Subsidiaries;

(ii) each Contract that contains a covenant not to compete or a material exclusivity requirement or otherwise prohibits the Company or its Subsidiaries or any of their respective present or future Affiliates from competing with or engaging in any business activity anywhere in the world or soliciting for employment, hiring or employing any Person in any geographic location;

(iii) all partnership agreements, limited liability company agreements, joint venture agreements or similar Contracts;

(iv) each Contract relating to the acquisition or sale of a business (or all or substantially all of the assets thereof) by the Company or any of its Subsidiaries;

(v) each Contract involving the settlement of any Proceeding or threatened Proceeding involving payments by the Company or any of its Subsidiaries in excess of Three Hundred Thousand Dollars (\$300,000);

(vi) except for indemnity Contracts (or other similar contracts) relating to the Existing Performance Bonds, any Contract the primary purpose of which is to provide for the indemnification of a third party by any of the Company and its Subsidiaries;

(vii) each Contract that contains a most favored nation or similar provision in favor of any counterparty or that obliges the Company to purchase or otherwise obtain any product or service exclusively from a single party;

(viii) each Contract involving or expected to involve payments of more than Three Hundred Thousand Dollars (\$300,000), in the aggregate, in any calendar year to or by the Company or any of its Subsidiaries; and

(ix) each Contract not required to be disclosed pursuant to any of the other subsections of this Section 4.09(a) that provided for revenue (on a consolidated basis) to the Company and its Subsidiaries in excess of Three Hundred Thousand Dollars (\$300,000) for the twelve (12) month period ended on the date hereof.

(b) Each Contract listed or required to be listed on Section 4.09(a) of the Company Disclosure Schedule (collectively, the “Material Contracts”) is, in all material respects, in full force and effect, is valid, binding and enforceable in accordance with its terms, subject in each case to the Remedies Exception and any termination of such Material Contracts expressly provided under this Agreement or the Transaction Documents. Neither the Company or its Subsidiaries nor, to Seller’s Knowledge, any other party to any Material Contract has materially violated or breached, or committed any material default under, nor, to Seller’s Knowledge, has any event occurred within the last three (3) years which with the giving of notice or the passage of time or both would constitute a material breach or default by the Company or any of its Subsidiaries or any other party under any Material Contract. True, complete and accurate copies of the Material Contracts, together with all modifications and amendments thereto, previously have been delivered or made available to Purchaser, or, to the extent any of such Material Contracts are oral, Section 4.09(a) of the Company Disclosure Schedule contains a description of the material terms thereof. Neither Seller, the Company nor any of its Subsidiaries has, in the last three (3) years, received any written notice regarding any material violation or breach of, or material default under, any such Material Contract.

**Section 4.10 Title to Assets; No Liens.**

(a) Except as set forth on Section 4.10(a) of the Company Disclosure Schedule, each of the Company and its Subsidiaries has good and marketable title to, or a valid leasehold interest in or the right to use, all of the tangible assets and property used or held in and necessary for the conduct of the Business, as presently conducted (collectively, the “Assets”), free and clear of all Liens (except Permitted Liens). The Assets, together with the services to be provided pursuant to the Transition Services Agreement, the insurance policies of Parent or its Subsidiaries, the two (2) servers to be delivered by Seller to Purchaser pursuant to Section 6.10, the “Pathways” name and logo and the name “Pathways by Molina”, are all of the assets and property that are necessary to enable the Business of the Company and its Subsidiaries to be conducted immediately after the Closing in the same manner as the Business of the Company and its Subsidiaries have been conducted since the Reference Date and in accordance with the terms of their Contracts.

(b) All material items of tangible personal property owned or leased by the Company or any its Subsidiaries are in good operating condition and repair, ordinary wear and tear excepted, and are suitable for the purposes for which they are presently being used.

**Section 4.11 Real Property.**

(a) Section 4.11(a)(i) of the Company Disclosure Schedule sets forth, as of the date of this Agreement, a complete list of the addresses of all real property owned in fee by the Company or any of its Subsidiaries as of the date of this Agreement (the “Owned Real Property”). With respect to each Owned Real Property: (i) either the Company or one (1) of its

Subsidiaries has good and insurable title in fee simple to each parcel of Owned Real Property, free and clear of all Liens except for Permitted Liens; (ii) there are no outstanding options, rights of first offer or rights of first refusal to purchase the Owned Real Property or any portion thereof or interest therein; and (iii) except as set forth on Section 4.11(f) of the Company Disclosure Schedule, no Person other than the Company or its Subsidiaries, as applicable, has any right to use, occupy or lease any of the Owned Real Property (other than any right pursuant to a Permitted Lien). Seller has made available to Purchaser copies of all material reports, surveys, plans, books, and records relating to the business of owning, operating, maintaining and/or managing the Owned Real Property, including, but not limited to, all accounting, financial, tax, sales, maintenance and similar records, each of which pertain to Owned Real Property, in each case to the extent in Seller's and/or its Affiliates' possession or control (the "Real Property Documents"). The Real Property Documents constitute all material documents which are in Seller's and its Affiliates' possession or control. For purposes of the preceding representation, "material documents" means one (1) or more documents which would put a reasonable person on notice that a material defective condition, violation of or termination of an easement or other material adverse impact on appurtenant rights, land use change, claim or potential claim, or other material problem with the ownership, use, operation or management of the Owned Real Property exists or is threatened and such material problem is reasonably estimated to cost One Hundred Thousand Dollars (\$100,000.00) or more to repair or remediate or correct.

(b) Section 4.11(b) of the Company Disclosure Schedule sets forth, as of the date of this Agreement, a complete list of all leases of real property (such real property, the "Leased Real Property") to which the Company or any of its Subsidiaries is currently a party as a tenant or occupant (together with all amendments, extensions, and renewals with respect thereto, each a "Lease"). A true, correct and complete copy of each such written Lease (including all amendments and other modifications), as in the Company's possession, has been made available to Purchaser prior to the date hereof. With respect to each Leased Real Property, the Company's or its applicable Subsidiary's possession and quiet enjoyment under the applicable Lease has not been disturbed.

(c) The Real Property comprises all of the real property that is used by the Company or its Subsidiaries in the Business. No condemnation Proceeding or similar Proceeding is pending or, to Seller's Knowledge, threatened in writing with respect to any part or interest in any Owned Real Property or, to Seller's Knowledge, Leased Real Property. Except as set forth on Section 4.11(c) of the Company Disclosure Schedule, to Seller's Knowledge, all of the Real Property is in good operating condition and repair, subject only to ordinary wear and tear, and is sufficient for the operation of the Business as currently conducted. To Seller's Knowledge, there are no facts or conditions affecting the Real Property that would reasonably be expected to materially interfere with the current use and occupancy of such Real Property or the operation of the Business as currently conducted. To Seller's Knowledge, there are no material violations of any Laws, Permits or certificates of occupancy affecting any of the Real Property. During the last three (3) years, neither the Company nor any of its Subsidiaries has received any notice from any insurance company or board of fire underwriters of any defects or inadequacies that would reasonably be expected to materially adversely affect the insurability of any Real Property or requesting the performance of any material work or alteration with respect to any Real Property. To Seller's Knowledge, no event has occurred that would reasonably be expected to result in the termination or material impairment of presently available access from adjoining public or private



streets or ways or in the discontinuation of presently available sewer, water, electric, gas, telephone or other utilities or services for any Real Property. The Company and/or the Subsidiaries have all certificates of occupancy, licenses, and Permits as necessary for the lawful operation of the Real Property in the manner as currently operated.

(d) Each Lease is legal, valid and binding on the Company or its applicable Subsidiary and, to Seller's Knowledge, on the other parties thereto, and, to Seller's Knowledge, is in full force and effect, in accordance with its terms (subject to the Remedies Exception). The Leased Real Property is (i) used in a manner which is consistent and permitted by applicable zoning ordinances and other applicable Laws or regulations, (ii) is served by all water, sewer, electrical, telephone, drainage and other utilities required for normal operations of the business of the Company and its Subsidiaries, and (iii) is equipped with building systems which are adequate for the conduct of the business of the Company and its Subsidiaries as it presently is or has been conducted. During the last three (3) years, neither the Company nor any of its Affiliates has received written notice of any uncured violation of any Laws affecting any of the Leased Real Property, including any zoning regulation or ordinance (with respect to parking), building, fire, health or other Law. During the last three (3) years, neither the Company nor any of its Affiliates has received any written notice of any uncured violation of any declarations, restrictive covenants, or easements with respect to any Leased Real Property.

(e) The Company or its applicable Subsidiary has paid all rent and other amounts heretofore due and payable under each Lease (including any utility charges, common area maintenance charges, real property taxes or assessments payable by the Company or such Subsidiary under each Lease).

(f) Except as otherwise set forth in Section 4.11(f) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has leased, subleased, licensed or otherwise granted any Person the right to use or occupy the Real Property or any portion thereof.

(g) To Seller's Knowledge, no party is in breach or default under any Lease in any material respect and no event has occurred which, with notice or lapse of time, would constitute a breach or default under any Lease in any material respect.

#### **Section 4.12 Intellectual Property.**

(a) Section 4.12(a) of the Company Disclosure Schedule sets forth, as of the date of this Agreement, a true, complete and accurate list of the (i) patents and patent applications; (ii) trademark and service mark registrations and applications for registration thereof; (iii) copyright registrations and applications for registration thereof; and (iv) internet domain name registrations, in each case that are owned by the Company or any of its Subsidiaries, including for each item listed, as applicable, the owner, the jurisdiction, the application/serial number, the patent/registration number, the filing date, and the issuance/registration date. All such registrations and applications are valid and in full force and effect and the Company and its Subsidiaries have taken all reasonable actions required to maintain their validity and effectiveness.

(b) Except as set forth on Section 4.12(b) of the Company Disclosure Schedule, (i) there are no written and outstanding claims or allegations of infringement or unauthorized use of any third party Intellectual Property or technology that has been sent to the Company or any of its Subsidiaries, (ii) there have been no written and outstanding claims made against the Company or any of its Subsidiaries asserting the invalidity, misuse or unenforceability of any of the Intellectual Property owned by the Company or any of its Subsidiaries, (iii) during the three (3) years preceding the date of this Agreement, neither the Company nor any of its Subsidiaries has received any written notices of any infringement or misappropriation by, or conflict with, any third party with respect to any Intellectual Property (including any demand or request in writing that the Company or any of its Subsidiaries license any Intellectual Property rights from a third party in order to avoid infringement or misappropriation), (iv) during the three (3) years preceding the date of this Agreement, to Seller's Knowledge, the conduct of the Company's Business and that of its Subsidiaries have not materially infringed, misappropriated or conflicted with and does not materially infringe, misappropriate or conflict with any Intellectual Property rights of other Persons, (v) to Seller's Knowledge, the Company and all of its Subsidiaries has the right to use and license the Intellectual Property material to their Business, and (vi) to Seller's Knowledge, no third party is currently infringing, misappropriating, diluting or otherwise violating any Intellectual Property owned by the Company or any of its Subsidiaries that is material to the Business. To Seller's Knowledge, the transactions contemplated by this Agreement will not have an adverse effect on the Company's or any of its Subsidiaries right, title or interest in and to the Intellectual Property listed on Section 4.12(a) of the Company Disclosure Schedule and all of such Intellectual Property shall be owned or available for use by the Company and its Subsidiaries on identical terms and conditions immediately after the Closing.

(c) The Company and its Subsidiaries have taken all industry standard and commercially reasonable security measures (i) to safeguard and maintain the secrecy and confidentiality of the Intellectual Property owned by the Company and/or its Subsidiaries that comprises trade secrets or other confidential information that is material to the Business ("Proprietary Information") and, to Seller's Knowledge, there has not been any release, publication, disclosure or other dissemination of such Proprietary Information except as permitted under agreements between the Company (or any of its Subsidiaries) or third parties that contain confidentiality or non-disclosure provisions with respect to such Proprietary Information.

**Section 4.13 Litigation.** Except as set forth on Section 4.13 of the Company Disclosure Schedule, there is no material Proceeding pending, or to Seller's Knowledge, threatened against the Company or any of its Subsidiaries. Except as set forth on Section 4.13 of the Company Disclosure Schedule, there are no material Proceedings pending or threatened by the Company or any of its Subsidiaries that would reasonably be expected to result in a material Liability or obligation of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries, nor any of their businesses or assets, is subject to any outstanding Order.

**Section 4.14 Compliance with Laws.**

(a) The Company and each of its Subsidiaries are, and have been during the last three (3) years, in compliance in all material respects with all Laws related to the conduct, ownership, use, occupancy or operation of its Business and the Assets.

(b) Except as set forth on Section 4.14(b)(i) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has received any written notice or other communication from a Governmental Authority during the last three (3) years or, to Seller's Knowledge, been subject to any audit or investigation by a Governmental Authority which alleges or asserts that the Company or any such Subsidiary has violated any Laws in any material respect. There is no material audit, claim, action, suit, investigation or administrative or other legal Proceeding pending or, to Seller's Knowledge, threatened against the Company or any of its Subsidiaries relating to the Company's or such Subsidiary's participation in any Government Program or private third party payment program. Except as forth on Section 4.14(b)(ii) of the Company Disclosure Schedule, during the last three (3) years, no single Government Program or single private third party payment program has requested or, to Seller's Knowledge, threatened any recoupment, refund or set-off from the Company or any of its Subsidiaries in excess of One Hundred Thousand Dollars (\$100,000) in the aggregate other than in the ordinary course of business.

**Section 4.15 Healthcare Matters.**

(a) The Company and its Subsidiaries are, and have been during the last three (3) years, in compliance in all material respects with all Healthcare Laws. During the last three (3) years, neither the Company nor any of its Subsidiaries has received any written notice from any Governmental Authority regarding any actual or alleged violation in any material respect of, or failure to be in compliance in any material respect with, any Healthcare Laws.

(b) (i) The Company and each of its Subsidiaries possesses all material Permits required by applicable Healthcare Laws necessary for the operation of the Business; (ii) the Company and each of its Subsidiaries has been, during the last three (3) years, in compliance in all material respects with such Permits, and all of such Permits are valid and in full force and effect; (iii) there is no action or investigation by or before any Governmental Authority pending or, to Seller's Knowledge, threatened against the Company or any of its Subsidiaries to revoke, suspend, or otherwise materially restrict any such Permit; (iv) neither the Company nor any of its Subsidiaries has received, during the last three (3) years, any written notice from any Governmental Authority regarding any actual or alleged material violation of, or failure to be in compliance in all material respects with, any such Permit or any revocation, withdrawal, suspension, cancellation or termination of any such Permit; and (v) the Company and each of its Subsidiaries has filed all material reports (or corrected in or supplemented such reports by a subsequent filing) and maintained and retained all records required by applicable Healthcare Laws pertaining to all of its respective material Permits. The Permits are renewable by their terms or in the ordinary course of business consistent with past practice, without the need to comply with any special qualification procedures or to pay any material fines or penalties other than routine filing fees.

(c) None of the Company, any of the Company's Subsidiaries, or any of their respective directors, officers or managing employees has been during the last three (3) years or is currently suspended, excluded or debarred from contracting with any Governmental Authority or from participating in any Federal Health Care Program (as defined in 42 USC § 1320a-7b(f)) or, to Seller's Knowledge, is subject to an investigation or Proceeding by any Governmental Authority that has resulted in or would reasonably be expected to result in such suspension,

exclusion, or debarment; nor has the Company or any of its Subsidiaries or, to Seller's Knowledge, any of their respective directors, officers or managing employees, received written notice of any impending or potential exclusion or listing. Neither the Company nor any of its Subsidiaries has been, during the last three (3) years, subject to sanction pursuant to 15 U.S.C. § 41 et seq. or 42 U.S.C. § 1320a-7a or 1320a-8, or been charged with or convicted of a crime described at 42 U.S.C. § 1320a-7b, and no such sanction or Proceeding is pending or, to Seller's Knowledge, threatened.

(d) To Seller's Knowledge, none of the Company's or any of its Subsidiaries' respective professionals and personnel have, during the last three (3) years: (i) been excluded, suspended, debarred, or terminated from participation in any Government Program or prohibited from contracting with the federal government, (ii) been included on any federal or state exclusion list, including the Office of Inspector General's List of Excluded Individuals (LEIE), the System Award Management (SAM) excluded parties list, and any state Medicaid exclusion list, (iii) had a professional license or certification, Drug Enforcement Administration registration (as applicable), Government Program provider status, suspended, terminated, restricted or revoked, or (iv) had staff privileges at any health care facility suspended, restricted, terminated, or revoked for a reason relating to patient care.

(e) The Company has conducted all billing and collection practices in material compliance with all Healthcare Laws and the conditions for participation, contracts, rules, regulations, and requirements of all Government Programs in all material respects.

(f) There is no material Proceeding, investigation or survey pending or, to Seller's Knowledge, threatened by any third-party payor programs with respect to any program conducted by the Company or its Subsidiaries.

#### **Section 4.16 HIPAA Matters.**

(a) Each business, entity or component of any entity owned or controlled by the Company or any of its Subsidiaries that is a health plan, healthcare clearinghouse or healthcare provider, as such terms are defined in the Federal Privacy Regulations (collectively, the "Covered Entities") or is a Business Associate (as such term is defined in the Federal Privacy Regulations), is, and during the last three (3) years has been, in compliance in all material respects with the administrative simplification section of HIPAA, the Federal Privacy Regulations, the Federal Security Regulations, the Breach Notification Rule, the Federal Electronic Transaction Regulations, or applicable state privacy laws. Without limiting the generality of the foregoing, each of the Company and its Subsidiaries is, and during the last three (3) years has been, in compliance in all material respects with 45 C.F.R. § 164.308(a)(1)(ii)(A).

(b) Except to the extent listed on Section 4.16(b) of the Company Disclosure Schedule, neither Company nor any of its Subsidiaries has received during the last three (3) years any written notice or communication alleging any non-compliance, unauthorized use or disclosure, successful security incident or breach of Protected Health Information under HIPAA or any state law and has not notified any person or any Governmental Authority with respect to such incident or breach. The Company has not previously been and is not currently subject to

any audit, inquiry, proceeding, investigation or enforcement action by any Governmental Authority related to Protected Health Information.

(c) To Seller's Knowledge, there has been no material breach by a Business Associate of any Business Associate Agreement or any violation by a Business Associate of HIPAA, the Federal Transaction Regulations, the Federal Privacy Regulations, the Federal Security Regulations, or corresponding state Laws.

(d) Except as set forth on Section 4.16(d) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has experienced a Breach of Unsecured Protected Health Information as defined by HIPAA, for which Breach notification was required under HIPAA.

**Section 4.17 Permits.** The Company and its Subsidiaries hold and have at all times during the last three (3) years held, and are operating and have at all times during the last three (3) years been operating in compliance in all material respects with, all Permits necessary for the conduct, ownership, use, occupancy or operation of their Business and/or the Assets, including all Permits required pursuant to the Material Contracts. Section 4.17 of the Company Disclosure Schedule sets forth, as of the date of this Agreement, a correct and complete list of all such material Permits of the Company and its Subsidiaries and complete and correct copies thereof have been made available to Purchaser. Such material Permits are in full force and effect and have not been revoked, suspended, canceled or terminated.

**Section 4.18 Environmental Matters.** Each of the Company and its Subsidiaries have at all times been in material compliance with all applicable Environmental Law. Neither the Company nor any of its Subsidiaries has received, during the last three (3) years, any written notice of any material violation of, or material Liability under, any Environmental Laws. The Company and its Subsidiaries have all material Permits which are required to be held by them under applicable Environmental Laws for the operation of the Business and has made available to Purchaser true and complete copies of all such Permits. To Seller's Knowledge, there are no material Proceedings or investigations by any Governmental Authority pending or threatened against or affecting the Company or its Subsidiaries related to Environmental Laws. Neither the Company nor any of its Subsidiaries has treated, stored, disposed of, arranged for the disposal of, transported, handled, or released any Hazardous Materials in violation of or in a manner which would reasonably be expected to form the basis of material Liability under any applicable Environmental Laws. To Seller's Knowledge, other than as could not reasonably be expected to result in a material Liability of the Company or its Subsidiaries, there has been no release, spill, emission, dumping, injection, pouring, deposit, disposal, discharge, dispersal or leaching into or through the environment or within any building, structure, facility or fixture, of any Hazardous Materials, at, on or under the Owned Real Property or any other property currently or previously owned, leased or operated by the Company or its Subsidiaries. Neither the Company nor any of its Subsidiaries has entered into any consent decree or agreement or is subject to any Order imposing any material Liability or material requirement under any applicable Environmental Law. All environmental assessments, studies or compliance audits which contain material information relating to the Company or its Subsidiaries including, without limitation, with respect to its or their current or former operations, the Owned Real Property or any other property currently or previously owned, leased or operated by the Company or its Subsidiaries

and are in the possession of or, to Seller's Knowledge, were initiated by Seller or the Company, have been made available to Purchaser. Except for the representations and warranties contained in this Section 4.18 and Section 4.17, Seller makes no representations or warranties relating to Environmental Laws or Hazardous Materials.

**Section 4.19 Employee Matters.**

(a) No collective bargaining agreement or similar agreement with any labor union is currently in effect with respect to any employee of the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries is presently negotiating any collective bargaining agreement in respect of any employee of the Company or any of its Subsidiaries. No organizational effort is presently being made or, to Seller's Knowledge, threatened by or on behalf of any labor union with respect to employees of the Company or any of its Subsidiaries. No strike, lockout, shutdown, slowdown, picketing or unfair labor practice charge (whether or not resolved) has occurred at any time during the last three (3) years or is pending or threatened against the Company or any of its Subsidiaries.

(b) Except as set forth on Section 4.19(b) of the Company Disclosure Schedule, each of the Company and its Subsidiaries is and has been in compliance in all material respects with all Laws which relate to employment matters, employment practices and terms and conditions of employment, including without limitation wages, benefits, hours, overtime, discrimination, equal opportunity, harassment, immigration, disability, affirmative action, leaves of absence, rest periods, meal breaks, workers' compensation, unemployment insurance, occupational health and safety and the collection and payment of withholding and/or social contribution Taxes and similar Taxes, plant closings, mass layoffs and relocations. During the last three (3) years, (i) there has been no claim, arbitration, mediation, charge, or litigation against the Company or any of its Subsidiaries relating to any employment or labor matter, and (ii) there has been no audit, investigation, or examination of the Company or any of its Subsidiaries by any Governmental Authority regarding any employment or labor matter. Neither the Company nor any of its Subsidiaries is, and has ever been, a party to or otherwise bound by any judgment, citation, decree or Order by any Governmental Authority relating to employees or employment practices. Each of the Company and each of its Subsidiaries has timely paid in full to each current or former employee or, if not past due, adequately accrued in accordance with GAAP all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees. Except as would not reasonably be expected to have a Material Adverse Effect, each of the Company and each of its Subsidiaries has during the last three (3) years properly classified in accordance with the requirements of all applicable Laws all of its service providers either as an "employee" or "independent contractor" and as exempt or non-exempt from overtime requirements and has made all appropriate filings in connection with services provided by, and compensation paid to, such service providers. Further, to Seller's Knowledge, no employee of the Company and its Subsidiaries is in any respect in violation of any term of any employment agreement, nondisclosure agreement, common law nondisclosure obligation, fiduciary duty, noncompetition agreement, restrictive covenant or similar obligation with or to the Company or any Subsidiary.

(c) During the ninety (90) days prior to the date of this Agreement, neither the Company nor any of its Subsidiaries has engaged in or effectuated any "plant closing" or

employee “mass layoff” (in each case, as defined in the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar state or local statute, rule or regulation) affecting any site of employment or one (1) or more facilities or operating units within any site of employment or facility of the Company or any of its Subsidiaries.

**Section 4.20 Employee Benefit Plans.**

(a) Section 4.20(a) of the Company Disclosure Schedule lists, as of the date of this Agreement, all Employee Benefit Plans. With respect to each Employee Benefit Plan, the Company has made available to Purchaser correct, current and complete copies, as applicable, of (i) each written plan document (including any amendments thereto) and descriptions of all material terms of any such plan that is not in writing; (ii) the most recent summary plan description; (iii) any trust documents or funding arrangements relating thereto (including group insurance contracts); (iv) the three (3) most recent annual reports with accompanying schedules and attachments, filed with the IRS; (v) the nondiscrimination testing results for the last three (3) plan years; and (vi) material correspondence from any Governmental Authority with respect to any Employee Benefit Plan within the past three (3) years.

(b) Except as set forth on Section 4.20(b) of the Company Disclosure Schedule, with respect to each Employee Benefit Plan: (i) such Employee Benefit Plan has been operated and administered in compliance, in all material respects, with its terms and all applicable Law (including but not limited to ERISA and the Code); (ii) there are no pending or, to Seller’s Knowledge, threatened claims against, by or on behalf of any Employee Benefit Plan (other than routine claims for benefits); (iii) no audits, inquiries, reviews, Proceedings, claims, or demands are pending with any Governmental Authority; (iv) all premiums, contributions, or other payments required to have been made by Law or under the terms of any Employee Benefit Plan or any contract or agreement relating thereto as of the Closing Date have been made (or, to the extent not yet due, properly accrued on the Balance Sheet in accordance with the terms of the Employee Benefit Plan and all applicable Laws); and (v) there have been no acts or omissions by the Company, any Subsidiary or any ERISA Affiliate that have given or would give rise to any material fines, penalties, Taxes or related charges under Sections 502(c), 502(i), 502(l), 502(m) or 4071 of ERISA or Section 511 or Chapter 43 of the Code, or under any other applicable Law, for which the Company, any Subsidiary or any ERISA Affiliate may be liable.

(c) Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code and in which any employee of the Company or any of its Subsidiaries participates (each, a “Seller 401(k) Plan”) (i) has received a favorable determination or opinion letter or advisory letter from the IRS; (ii) has pending or has time remaining in which to file an application for such a determination from the IRS; or (iii) may rely upon a prototype opinion letter or a volume submitter advisory letter from the IRS. To Seller’s Knowledge, no event has occurred that would reasonably be expected to cause the loss of such qualified status.

(d) Except as would not reasonably be expected to result in material liability to Seller or the Company, no non-exempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) has occurred with respect to any Employee Benefit Plan.

(e) No Employee Benefit Plan is or was, and none of the Company, any of its Subsidiaries or any of their respective ERISA Affiliates contributes to, has within the preceding six (6) years contributed to, or has any obligation or Liability with respect to, (i) a “multiemployer plan” (within the meaning of Section 3(37) of ERISA); (ii) a pension plan subject to Title IV or Section 302 of ERISA or Section 412 of the Code; (iii) a “multiple employer plan” (within the meaning of Section 413(c) of the Code); or (iv) a “multiple employer welfare arrangement” (within the meaning of Section 3(40) of ERISA).

(f) Neither Seller, the Company nor any of its Subsidiaries is obligated under any Employee Benefit Plan or otherwise to provide medical or death benefits with respect to any current or former employee of the Company, any Subsidiary or their predecessors after termination of employment, except as required under Section 4980B of the Code or Part 6 of Title I of ERISA or other applicable law.

(g) Seller, the Company and their ERISA Affiliates have each complied in all material respects with the notice and continuation coverage requirements, and all other requirements, of Section 4980B of the Code and Parts 6 and 7 of Title I of ERISA, and the regulations thereunder.

(h) Seller, the Company and each Employee Benefit Plan that is a “group health plan” as defined in Section 733(a)(1) of ERISA (each, a “Health Plan”) is and has at all times been in compliance, in all material respects, with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (“ACA”), and to Seller’s Knowledge no condition or circumstance exists, that would reasonably be expected to subject Seller, the Company or any Health Plan to penalties or excise taxes under Code Section 4980D or 4980H or any other provision of the ACA.

(i) Each Employee Benefit Plan that is a “nonqualified deferred compensation plan” (within the meaning of Section 409A(d)(1) of the Code) subject to Section 409A of the Code satisfies, in all material respects, in form and operation the requirements of Sections 409A(a)(2), 409A(a)(3) and 409A(a)(4) of the Code and the guidance thereunder (and has satisfied such requirements over the past three (3) years or, if later, for the entire period during which Section 409A of the Code has applied to such Employee Benefit Plan), and no additional material Tax under Section 409A(a)(1)(B) of the Code has been or would reasonably be expected to be incurred by a participant in any such Employee Benefit Plan.

(j) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise) (i) will give rise to any “excess parachute payment” under Section 280G of the Code; or (ii) except as set forth on Section 4.20(j) of the Company Disclosure Schedule, (x) will accelerate the vesting, funding or time of payment of any compensation or other benefit due by the Company or any of its Subsidiaries to any employee, director or individual independent contractor of the Company or any of its Subsidiaries or (y) will increase the amount or value of any payment, compensation or benefit to any employee, director or individual independent contractor of the Company or any of its Subsidiaries.

(k) Except with respect to any Employee Benefit Plan listed on Section 4.20(a) of the Company Disclosure Schedule, there are no obligations of the Company or its Subsidiaries under



any deferred compensation arrangement or phantom stock arrangement or any “success fees” or bonuses, or severance payments or employee change of control payments payable or to be payable to employees of the Company or its Subsidiaries arising solely from or otherwise triggered solely by the closing of the transactions contemplated hereby (including the employer portion of employment Taxes imposed on the Company or its Subsidiaries with respect to such payments).

(l) Except as set forth on Section 4.20(l) of the Company Disclosure Schedule, there are no obligations of the Company or its Subsidiaries with respect to any Employee Benefit Plan that is subject to Title IV of ERISA and not funded in accordance with ERISA.

(m) Neither the Company nor its Subsidiaries is party to, nor is it otherwise obligated under, any contract, plan or arrangement that provides for a “gross-up,” make-whole or similar payment in respect of any Taxes that may become payable under Section 409A or Section 4999 of the Code.

#### **Section 4.21 Taxes.**

Except as set forth on Section 4.21 of the Company Disclosure Schedule:

(a) Each of the Company and its Subsidiaries has duly and timely filed or caused to be timely filed with the appropriate Tax Authority all material Tax Returns required to be filed by, or with respect to, each such entity. All such Tax Returns are true, correct and complete in all material respects. All material Taxes due and owing by any of the Company or its Subsidiaries (whether or not shown on any Tax Return) have been timely paid in full. There are no Liens for material Taxes on any asset of any of the Company or any of its Subsidiaries, other than Permitted Liens. No written claim has ever been made by a Governmental Authority in which the Company or any of its Subsidiaries does not file Tax Returns that the Company or such Subsidiary, as applicable, is or may be subject to taxation by, or required to file Tax Returns in, such jurisdiction. Each of the Company and its Subsidiaries has timely withheld and paid to the appropriate Governmental Authority all material Taxes required to have been withheld and paid in connection with amounts owing to any employee, independent contractor, creditor, stockholder, limited liability company member, or other third party.

(b) No deficiencies for material Taxes with respect to the Company or its Subsidiaries have been claimed, proposed or assessed in writing by any Tax Authority, which deficiencies have not yet been finally settled. There are no audits, investigations, assessments, Proceedings, claims or other actions by a Tax Authority for or relating to any material Liability in respect of Taxes of the Company or its Subsidiaries in process, pending or threatened in writing.

(c) No extension or waiver of the statute of limitations in respect of any material Taxes is currently in effect, nor has any request been made in writing for any such extension or waiver.

(d) None of the Company or any of its Subsidiaries is a party to any Tax sharing, Tax allocation, Tax indemnity or similar agreement, other than customary commercial Contracts entered into in the ordinary course of business the primary purpose of which does not relate to the sharing, allocation or indemnification of any Tax.

(e) Except as set forth on Section 4.21(e) of the Company Disclosure Schedules, from and after January 1, 2014, none of the Company or any of its Subsidiaries (i) has been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code or a member of or participant in any group or fiscal unity within the meaning of any similar provision of Law to which the Company or any of its Subsidiaries may be subject, other than the affiliated group of which Parent is the common parent or (ii) has any Liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of Law) as a transferee or successor, by Contract or otherwise.

(f) Neither the Company nor any of its Subsidiaries has participated in any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4.

(g) Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) beginning after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax law) executed on or prior to the Closing Date; (iii) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax law); (iv) any use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (v) installment sale or open transaction disposition made on or prior to the Closing Date; (vi) prepaid amount or deferred revenue received on or prior to the Closing Date; (vii) election under Section 108(i) of the Code; or (viii) election under Section 965(h) of the Code (or any similar provision of any Legal Requirement) or otherwise pursuant to Section 965 of the Code.

(h) Within the past three (3) years, none of the Company or any of its Subsidiaries has distributed stock of another Person nor had its stock distributed by another Person in a transaction that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(i) Notwithstanding anything herein to the contrary, (i) no representations or warranties are made with respect to Taxes for any Post-Closing Tax Period and (ii) no representation or warranty is made by Seller, the Company or its Subsidiaries with respect to the existence, amount, usability or any other aspect of any Tax attributes of the Company and its Subsidiaries, including net operating losses, capital loss carryforwards, Tax credit carryforwards, asset bases or depreciation periods.

(j) Neither the Company nor any Subsidiary has (i) a permanent establishment or otherwise has an office or fixed place of business outside of the United States or (ii) a source of income in a jurisdiction other than the country in which it is organized. Each of the Company and each of its Subsidiaries has correctly classified those individuals performing services as common law employees, leased employees, independent contractors or agents of the Company outside of the United States.

**Section 4.22 Intercompany Obligations.** Except as set forth on Section 4.22(a) of the Company Disclosure Schedule or otherwise expressly permitted by this Agreement, (a) neither Parent nor any of its Subsidiaries (excluding the Company and its Subsidiaries) is a party to any Contract with the Company or any of its Subsidiaries and (b) since December 31, 2017, neither the Company nor any of its Subsidiaries has made any payment to or received any payment from Parent or any of its Subsidiaries (other than the Company or any of its Subsidiaries). Neither Parent nor any of its Subsidiaries (excluding the Company and its Subsidiaries) has any direct or indirect interest in (i) any customer, supplier or other business relationship of the Company or any of its Subsidiaries or (ii) any assets or property used by the Company or any of its Subsidiaries (including any Intellectual Property).

**Section 4.23 Insurance Policies.** Section 4.23 of the Company Disclosure Schedule sets forth, as of the date of this Agreement, a true, complete and accurate (a) list of all insurance policies to which the Company or any of its Subsidiaries is a party, including those which provide coverage to or for the benefit of or with respect to the Company or any of its Subsidiaries or any director, officer, employee, manager, independent contractor, consultant, leased employee or other service provider of the Company or any of its Subsidiaries in his or her capacity as such (the "Insurance Policies"), indicating in each case the type of coverage, name of the insured, the insurer, the expiration date of each policy and the amount of coverage, and (b) list of any and all claims that have been submitted under any of the Insurance Policies at any time during the last three (3) years (the "Claims History"). True, complete and accurate copies of all such Insurance Policies and the Claims History have been provided or made available to Purchaser. Each Insurance Policy is in full force and effect and shall remain in full force and effect in accordance with its terms and following the Closing as respects accidents, events, happenings, injuries, claims, conduct and occurrences relating to the businesses of the Company and its Subsidiaries prior to the Closing, is provided by a financially solvent carrier and has not been subject to any lapse in coverage. The Company and each of its Subsidiaries are current in all premiums or other payments due under the Insurance Policies and have otherwise complied in all material respects with all of their obligations under each Insurance Policy. The Company and each of its Subsidiaries have given timely notice to the insurer of all claims that may be insured thereby under any Insurance Policy. During the last three (3) years, neither the Company nor any of its Subsidiaries has been refused any insurance by, nor has coverage been limited by, any insurance carrier with which the Company or any of its Subsidiaries has carried insurance or any other insurance carrier to which the Company or any of its Subsidiaries has applied for insurance.

**Section 4.24 Bank Accounts.** Section 4.24 of the Company Disclosure Schedule is a true, complete and accurate list of each bank or financial institution in which the Company or any of its Subsidiaries has an account, safe deposit box or lockbox, or maintains a banking, custodial, trading or similar relationship, the number of each such account or box, and the names of all persons authorized to draw thereon or having signatory power or access thereto.

**Section 4.25 Brokers.** No Person is or will be entitled to a broker's, finder's, investment banker's, financial advisor's or similar fee from the Company or its Subsidiaries in connection with this Agreement or any of the transactions contemplated hereby.

**Section 4.26 Accounts Receivable.** All Accounts Receivable reflected on the Balance Sheet, and all Accounts Receivable of the Business acquired by the Company and its Subsidiaries or arising subsequent to September 30, 2018, but before the date hereof, (a) have been acquired or have arisen only in the ordinary course of business, and (b) to Seller's Knowledge, are collectible in the face value thereof using normal collection procedures (net of the reserve for doubtful accounts set forth in the Balance Sheet). The reserve for doubtful accounts contained in the Balance Sheet has been determined consistent with past practices of the Company and in conformity with the Company Accounting Principles. This Section 4.26 is not intended as a warranty of collectability of any Account Receivable reflected on the Balance Sheet or that Purchaser will realize any minimum amount from collection of the Accounts Receivable.

**Section 4.27 Exclusivity of Representations.** Except for the representations and warranties contained in Article 4 (as modified by the Company Disclosure Schedule) or Section 9.16, none of the Company, Parent, Seller or any other Person makes or has made any other representation or warranty, expressed or implied, at law or in equity, with respect to Parent, Seller, the Company, its Subsidiaries, the Interests or any of the Company's or its Subsidiaries' respective businesses, assets, liabilities, operations, prospects, or condition (financial or otherwise), and each of Parent and Seller disclaims any other representations or warranties, whether made by Parent, Seller, the Company, its Subsidiaries or any of their respective Affiliates, direct or indirect equityholders, officers, directors, employees, agents or Representatives (collectively, "Related Persons"), and no Related Person has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in this Agreement and subject to the limited remedies herein provided. Except for the representations and warranties contained in this Article 4 (as modified by the Company Disclosure Schedule) or in Section 9.16, each of Parent and Seller (directly and on behalf of all Related Persons) hereby disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (whether orally or in writing, in any data room relating to the transactions contemplated hereby, in management presentations, functional "break-out" discussions, responses to questions or requests submitted by or on behalf of Purchaser or in any other form in consideration or investigation of the transactions contemplated hereby) to Purchaser or its Affiliates or Representatives (including any opinion, information, forecast, projection, or advice that may have been or may be provided to Purchaser or its Affiliates or Representatives by Parent, Seller, the Company or any Related Person). Except for the representations and warranties contained in this Article 4 (as modified by the Company Disclosure Schedule) or in Section 9.16, none of Parent, Seller, the Company or any Related Person has made or makes any representation or warranty to Purchaser or its Affiliates or Representatives regarding: (a) merchantability or fitness of any assets of the Company or its Subsidiaries for any particular purpose; (b) the nature or extent of any liabilities of the Company or its Subsidiaries; (c) the prospects of the business of the Company and its Subsidiaries; (d) the probable success or profitability of the Company or its Subsidiaries; or (e) the accuracy or completeness of any confidential information memoranda, documents, projections, material, statement, data, or other information (financial or otherwise) provided to Purchaser or its Affiliates or made available to Purchaser and its Representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the transactions contemplated hereby, or in respect of any other matter or thing whatsoever. Notwithstanding anything herein or in any Transaction

Document to the contrary, (i) nothing in this Section 4.27 or any other provision of this Agreement or any Transaction Document shall limit or modify the representations and warranties set forth in this Article 4 or Section 9.16 or the right of Purchaser to rely thereon, and (ii) Purchaser retains all rights and remedies with respect to claims based on Fraud (“Fraud Claims”).

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PURCHASER**

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

**Section 5.01 Organization and Good Standing.** Purchaser is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware.

**Section 5.02 Authority.** Purchaser has the requisite limited liability company power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and the Transaction Documents to which it is party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary limited liability company action on the part of Purchaser. Each of this Agreement and the Transaction Documents to which Purchaser is a party has been, or will be as of the Closing, duly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery by the other parties hereto or thereto, constitutes or will constitute a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to the Remedies Exception.

**Section 5.03 No Conflict.** Assuming the consents, approvals, Orders and authorizations of, and registrations, declarations and filings with, and notices to, the Governmental Authorities and other Persons referenced in Section 5.04 are obtained, given, and made at the time required under applicable Law, neither the execution or delivery of this Agreement nor any Transaction Document by Purchaser, nor the consummation by Purchaser of the transactions contemplated hereby or thereby will: (a) conflict with, contravene or constitute a violation of (whether after the giving of notice, lapse of time or both) the Governing Documents of Purchaser; (b) constitute a material default under, or an event which would (or would reasonably be expected to) result in, any right of notice, modification, acceleration, payment, suspension, withdrawal, cancellation or termination under, or release any party thereto from its obligations under, or otherwise materially affect the rights or benefits of Purchaser under, any material contract to which Purchaser is a party or material Permit; or (c) contravene, conflict with or constitute a violation of (whether after the giving of notice, lapse of time or both) any Law or Order to which Purchaser is subject in any material respect.

**Section 5.04 Consents.** No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or under any material contract to which Purchaser is a party is required to be obtained or made by Purchaser in

connection with the execution and delivery of this Agreement or any Transaction Document or in connection with the consummation of the transactions contemplated hereby and thereby, other than consents, notifications or filings which, if not obtained or made, would not reasonably be expected to prevent Purchaser from consummating the transactions contemplated by this Agreement.

**Section 5.05 Litigation.** There are no Proceedings pending or, to the knowledge of Purchaser, threatened against or affecting Purchaser, which would reasonably adversely affect the ability of Purchaser to consummate the transactions contemplated by this Agreement.

**Section 5.06 Investment.** Purchaser is purchasing the Interests for investment for its own account and not with a view to, or for sale in connection with, any distribution of the Interests in violation of federal and state securities Laws. Purchaser is an “accredited investor” as defined in Regulation D promulgated under the Securities Act and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Interests and is capable of bearing the economic risks of such investment. Purchaser acknowledges that the Interests have not been registered under the Securities Act or any state or foreign securities Laws and that the Interests may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless such sale, transfer, offer, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act and are registered under any applicable state or foreign securities Laws or pursuant to an exemption from registration under the Securities Act and any applicable state or foreign securities Laws.

**Section 5.07 Solvency.** Purchaser is not entering the transactions contemplated by this Agreement with actual intent to hinder, delay or defraud either present or future creditors. Assuming (a) the accuracy of the representations and warranties set forth in Article 4, (b) that any estimates or projections of the Company and its Subsidiaries provided to Purchaser have been prepared in good faith based upon assumptions that were and continue to be reasonable and (c) compliance by Seller of its obligations set forth herein and in the Transaction Documents immediately after giving effect to the transactions contemplated by this Agreement, each of Purchaser and its Subsidiaries will be Solvent.

**Section 5.08 Brokers.** No Person is or will be entitled to a broker’s, finder’s, investment banker’s, financial advisor’s or similar fee from Purchaser in connection with this Agreement or any of the transactions contemplated hereby.

**Section 5.09 Acknowledgement.** Except for the specific representations and warranties expressly made by Seller in Article 4 (as modified by the Company Disclosure Schedule) or by Parent in Section 9.16: (a) Purchaser acknowledges and agrees that (i) none of the Company, Seller, Parent or any other Person is making or has made any representation or warranty, expressed or implied, at law or in equity, in respect of the Company, its Subsidiaries, or any of the Company’s or its Subsidiaries’ respective businesses, assets, liabilities, operations, prospects, or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any liabilities, the prospects of the business of the Company and its Subsidiaries, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda,

documents, projections, material or other information (financial or otherwise) regarding the Company or any of its Subsidiaries furnished to Purchaser or its Representatives or made available to Purchaser and its Representatives in any “data rooms,” “virtual data rooms,” management presentations or in any other form in expectation of, or in connection with, the transactions contemplated hereby, or in respect of any other matter or thing whatsoever, and (ii) no Representative of Seller, Parent the Company, any of its Subsidiaries or any other Person has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in this Agreement and subject to the limited remedies herein provided; (b) Purchaser specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Company, Seller, Parent and each of their Representatives have specifically disclaimed and do hereby specifically disclaim any such other representation or warranty made by any Person; (c) Purchaser specifically disclaims any obligation or duty by Seller, Parent, the Company or any other Person to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties set forth in Article 4 or Section 9.16 (either as information expressly required to be provided by such representations or warranties or as qualifications to such representations and warranties required to make them accurate statements); and (d) Purchaser is acquiring the Company subject only to the specific representations and warranties set forth in Article 4 and Section 9.16. Notwithstanding anything expressed or implied herein or in any Transaction Document to the contrary, (i) nothing in this Section 5.09 or any other provision of this Agreement or any Transaction Document shall limit or modify the representations and warranties set forth in Article 4 and Section 9.16 of the Agreement or the right of Purchaser to rely thereon, and (ii) Purchaser retains all rights and remedies with respect to Fraud Claims.

## ARTICLE 6 COVENANTS AND AGREEMENTS

### **Section 6.01 [Reserved].**

### **Section 6.02 Post-Closing Access; Preservation of Records.**

(a) From and after the Closing until the seventh (7<sup>th</sup>) anniversary of the Closing Date, Purchaser will make or cause to be made available to Seller and its Representatives (i) at Seller’s sole cost and expense, all books, records and documents (including, for purposes of this Section 6.02(a), Tax Returns) of the Company and its Subsidiaries, and (ii) access to the management team and all facilities of the Company, in each case to the extent relating to the conduct of the ongoing business and operations of the Company and its Subsidiaries, and (iii) any and all incident reports relating to claims that have been filed or could be filed under any of the Company’s Insurance Policies, in each case upon reasonable written request, during regular business hours, as may be reasonably necessary for, among other things: (A) investigating, settling, preparing for the defense or prosecution of, defending or prosecuting any Proceeding by or before any court or other Governmental Authority; (B) preparing reports to Governmental Authorities; or (C) such other purposes for which access to such documents is believed in good faith by Seller to be reasonably necessary, including preparing and delivering any accounting or other statement provided for under this Agreement or otherwise, preparing Tax Returns or responding to or disputing any Tax inquiry, audit or assessment; **provided, however**, that such

access will not interfere with the normal operations of the Company and its Subsidiaries. Notwithstanding anything in this Agreement to the contrary, none of Purchaser, the Company or any of its Subsidiaries shall be under any obligation under this Section 6.02(a) to disclose to Seller or its Representatives (A) any information the disclosure of which is restricted by Law, (B) any information that would result in the disclosure of any trade secrets or competitively sensitive information, or (C) any information that would adversely affect the attorney-client privilege or other evidentiary privileges of the Company or any of its Subsidiaries or (D) any information related to or requested in connection with any dispute related to, or indemnification claim under, this Agreement or the Transaction Documents (in which event the provisions of Section 8.05 and/or the applicable rules of discovery will apply in lieu of this Section 6.02(a)); provided, however, that, in the case of foregoing clauses (A) or (C), Purchaser and Seller shall use commercially reasonable efforts to enter into common interest or other arrangements to allow for the disclosure of such information in compliance with this Section 6.02(a). For a period of seven (7) years after the Closing Date, Purchaser will use commercially reasonable efforts to cause the Company and its Subsidiaries to maintain and preserve all such Tax Returns, books, records and documents relating to the conduct of the business and operations of the Company and its Subsidiaries prior to the Closing Date, in each case, in the ordinary course consistent with the past practices of the Company and its Subsidiaries.

(b) From and after the Closing until the seventh (7<sup>th</sup>) anniversary of the Closing Date, Seller and Parent will make or cause to be made available to Purchaser, its Affiliates and their respective Representatives (at Purchaser's sole cost and expense), all books, records and documents (including, for purposes of this Section 6.02(b), Tax Returns but only to the extent such Tax Returns relate to the Company and its Subsidiaries and are not the consolidated income Tax Returns of Seller, Parent or their Affiliates) of the Company and its Subsidiaries to the extent relating to the conduct of the business and operations of the Company and its Subsidiaries prior to the Closing Date solely upon reasonable written request, during regular business hours, as may be reasonably necessary for: (i) investigating, settling, preparing for the defense or prosecution of, defending or prosecuting any Proceeding by or before any court or other Governmental Authority; (ii) preparing reports to Governmental Authorities; or (iii) such other purposes for which access to such documents is believed in good faith by Purchaser to be reasonably necessary, including preparing and delivering any accounting or other statement provided for under this Agreement or otherwise, preparing Tax Returns or responding to or disputing any Tax inquiry, audit or assessment; provided, however, that (x) access to such books, records, and documents will not interfere with the normal operations of Seller or Parent and (y) Seller and Parent shall be entitled, in their respective sole discretion, to redact or otherwise withhold any such books, records, documents or other information that is not related solely to the business and operations of the Company and its Subsidiaries. Notwithstanding anything in this Agreement to the contrary, neither Seller nor Parent shall be under any obligation under this Section 6.02(b) to disclose to Purchaser or its Representatives (A) any information the disclosure of which is restricted by Law, (B) any information that would result in the disclosure of any trade secrets or competitively sensitive information, (C) any information that would adversely affect the attorney-client privilege or other evidentiary privileges of Purchaser or Parent or (D) any information related to or requested in connection with any dispute related to, or indemnification claim under, this Agreement or the Transaction Documents (in which event the provisions of Section 8.05 and/or the applicable rules of discovery will apply in lieu of this Section 6.02(b)); provided, however, that, in the case of foregoing clauses (A) or (C), Seller and Purchaser shall



use commercially reasonable efforts to enter into common interest or other arrangements to allow for the disclosure of such information in compliance with this Section 6.02(b). For a period of seven (7) years after the Closing Date, Seller and Parent will use commercially reasonable efforts to maintain and preserve all such Tax Returns, books, records and documents relating to the conduct of the business and operations of the Company and its Subsidiaries prior to the Closing Date, in each case, in the ordinary course consistent with the past practices of Seller and Parent.

**Section 6.03 Transfer Taxes.** All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement (“Transfer Taxes”) shall be split equally by Seller and Purchaser. Seller and Purchaser (and their respective Affiliates) shall reasonably cooperate in preparing and filing all Tax Returns relating to such Taxes, fees and charges.

**Section 6.04 Tax Matters.**

(a) Tax Periods Ending on or Prior to the Closing Date and Straddle Periods – Tax Returns.

(i) Seller shall prepare or cause to be prepared and file or cause to be filed all income Tax Returns of the Company and its Subsidiaries for all periods ending on or prior to the Closing Date that are required to be filed after the Closing Date and all income Tax Returns of the Company and its Subsidiaries for any Straddle Period, and the Company shall pay or cause to be paid all Taxes due with respect to such Tax Returns to the extent such Taxes relate to Pre-Closing Tax Periods. All such Tax Returns shall be prepared in a manner consistent with the past practice of the Company and its Subsidiaries; **provided**, that such Tax Returns shall, as applicable, reflect the Section 336 Elections and the allocation of the Tax Purchase Price as required pursuant to this Section 6.04. With respect to any income Tax Returns for a Straddle Period, Seller shall provide a copy of such Tax Return to Purchaser for its review at least ten (10) days prior to the due date (taking into account any extension) for the filing of such Tax Returns and shall make any changes reasonably requested by Purchaser.

(ii) Purchaser shall file all other Tax Returns, and shall pay or cause to be paid all Taxes due with respect to such Tax Returns and any Taxes related to the Post-Closing Tax Period of any Tax Returns relating to the Straddle Period prepared pursuant to clause (i) above. All Tax Returns relating to a Straddle Period shall be prepared in a manner consistent with the past practice of the Company and its Subsidiaries; **provided**, that such Tax Returns shall, as applicable, reflect the Section 336 Elections and the allocation of the Tax Purchase Price as required pursuant to this Section 6.04. Purchaser shall provide a copy of such Tax Returns to Seller for Seller’s review at least ten (10) days prior to the due date (taking into account any extension) for the filing of such Tax Returns and shall make any changes reasonably requested by Purchaser.

(b) Limitation on Actions. Without the prior written consent of Seller, which consent shall not be unreasonably withheld, neither Purchaser nor any of its Affiliates (including after

Closing, the Company or its Subsidiaries) shall (i) make, revoke or amend any election relating to Taxes of the Company or its Subsidiaries with respect to or relating to a Pre-Closing Tax Period or Straddle Period, (ii) take any action outside the ordinary course of business on the Closing Date after the Closing that would result in any increased liability for Taxes for Seller or Parent, (iii) file, re-file or amend any Tax Return relating to any Pre-Closing Tax Period, (iv) waive or extend the statute of limitations relating to any Pre-Closing Tax Period or (v) make any voluntary disclosure, amnesty or similar filing in respect of Taxes relating to any Pre-Closing Tax Period.

(c) Tax Refunds. Any Tax refunds with respect to income Taxes that are received by Purchaser, the Company or its Subsidiaries and any amounts credited or applied against any income Tax (including any interest paid or credited by a Governmental Authority with respect thereto) to which Purchaser, the Company, or its Subsidiaries becomes entitled that relate to a Pre-Closing Tax Period ("Tax Refunds") shall be for the account of Seller, and Purchaser shall pay to Seller any such Tax Refund within ten (10) days after receipt or entitlement thereto.

(d) Section 336 Elections. Purchaser (and to the extent necessary, the Company) and Seller (and its Affiliates) jointly shall make timely and irrevocable elections under either Section 336 of the Code or Section 336(e) of the Code with respect to Purchaser's acquisition of the Company and the Subsidiaries listed on Schedule 6.04(d) and, if permissible, similar elections under any applicable state and local Tax laws (collectively, the "Section 336 Elections"). Purchaser and Seller shall not take any action that would cause the Section 336 Elections to be invalid, and shall take no position contrary thereto unless required pursuant to a determination as defined in Section 1313(a) of the Code or any similar provision of any state, foreign or local Law. Purchaser shall deliver to Seller all the Section 336 Forms properly completed in accordance with all applicable Laws no less than fifteen (15) days before the date such Section 336 Forms are required to be filed and Seller shall duly execute and timely file such forms. Seller and Purchaser agree that the Tax Purchase Price as defined in Section 6.04(e) for each applicable Subsidiary of the Company (plus other relevant items) will be allocated to the assets of such Subsidiary for which a Section 338 Election is made in accordance with Section 6.04(e). Seller and Purchaser shall file (and Purchaser shall cause the Company and its Subsidiaries to file and Seller shall cause its applicable Affiliates to file) all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation.

(e) Allocation of Tax Purchase Price. Purchaser and Seller acknowledge that the purchase and sale of the Interests will be treated as a purchase and sale of the assets of the Company for federal and state income tax purposes. The Purchase Price and any liability or other amount included in the amount realized by Seller or cost basis to Purchaser with respect to the transactions contemplated by this Agreement (the "Tax Purchase Price") shall be allocated as set forth in the schedule described below (the "Allocation Schedule"). Within seventy-five (75) days following the Closing Date, Purchaser shall deliver to Seller the Purchaser's proposed Allocation Schedule with respect to the Company and each applicable Subsidiary of the Company that is eligible for a Section 336 Election or is treated as disregarded as a pass-through or disregarded entity for federal income tax purposes. The Allocation Schedule shall specify Purchaser's determination of how the Tax Purchase Price allocated to the Company and each applicable Subsidiary shall be allocated among each designated class of assets of such applicable

Subsidiary as defined in Treasury Regulation Section 1.338-6(b)(2) and/or in accordance with Treasury Regulation Section 1.1060-1 and applicable Law. Purchaser shall reflect any reasonable comments made by Seller within fifteen (15) days after the receipt of the draft Allocation Schedule. Seller and Purchaser shall work together in good faith to resolve any disputes regarding the Allocation Schedule. If the Purchaser and Seller are unable to agree on the Allocation Schedule within thirty (30) days after the delivery by Seller of its comments to the Allocation Schedule, then each of Purchaser and Seller may prepare its own Allocation Schedule in a manner each believes appropriate. Any adjustment to or redetermination of the Tax Purchase Price shall be made consistently with the Allocation Schedule and shall be taken into account by Purchaser and Seller in carrying out the provisions of this Section 6.04(e). The parties shall make consistent use of the allocation per the Allocation Schedule (to the extent the parties agree on the Allocation Schedule) for all Tax purposes and in all filings, declarations and reports with the IRS and other Tax Authorities in respect thereof except pursuant to a final determination (within the meaning of Section 1313(a) of the Code or corresponding provision of state, local or foreign Tax law). In any Proceeding involving a Tax Authority related to the determination of any Tax, neither Purchaser nor Seller shall contend or represent that such agreed upon allocation is not correct.

(f) Certain Elections. Seller shall not make an election pursuant to Treasury Regulation Section 1.1502-36(d)(6)(i)(A).

(g) Tax Contests. (a) Purchaser, the Company and its Subsidiaries, on the one hand, and Seller and its Affiliates, on the other hand, shall promptly notify each other upon receipt by such party of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes relating to a Pre-Closing Tax Period (any such inquiry, claim, assessment, audit or similar event, a "Tax Matter"). Any failure to so notify the other party of any Tax Matter shall not relieve such other party of any liability with respect to such Tax Matters except to the extent such party was actually prejudiced as a result thereof.

(h) Seller shall have sole control of the conduct of all Tax Matters, including any settlement or compromise thereof, **provided, however**, that Seller shall keep Purchaser reasonably informed of the progress of any Tax Matter relating to a Straddle Period and shall consult with Purchaser in the settlement of any Tax Matter that would reasonably be expected to impact the Taxes of the Companies or its Subsidiaries in a Post-Closing Tax Period.

#### **Section 6.05 Employee Matters**

(a) Effective as of the Closing and thereafter, Purchaser and its Affiliates shall recognize, or shall cause the Company or its Subsidiaries to recognize, each Continuing Employee's employment or service with the Company and its Subsidiaries (including any current or former Affiliate or any predecessor) prior to the Closing for purposes of determining eligibility for participation, vesting and entitlement of the Continuing Employee under all employee benefit plans maintained by the Company, its Subsidiaries, Purchaser or an Affiliate of Purchaser, including vacation plans or arrangements, 401(k) or other retirement plans and any severance or welfare plans (excluding equity compensation arrangements and benefit accrual under any defined benefit plan), except to the extent such recognition would result in a duplication of benefits. In addition, and without limiting the generality of the foregoing,

Purchaser shall (or shall cause one (1) of its Affiliates to) use commercially reasonable efforts to: (i) cause each Continuing Employee to be immediately eligible to participate, without any waiting time, in any and all such plans; (ii) cause any pre-existing conditions or limitations, eligibility waiting periods, actively at work requirements, evidence of insurability requirements or required physical examinations under any health or similar plan of the Company, its Subsidiaries, Purchaser or an Affiliate of Purchaser to be waived with respect to Continuing Employees and their eligible dependents, except to the extent that any waiting period, exclusions or requirements still applied to such Continuing Employee under the comparable Employee Benefit Plan in which such Continuing Employee participated immediately before the Closing; and (iii) credit each Continuing Employee with all deductible payments, co-payments and other out-of-pocket expenses incurred by such Continuing Employee and his or her covered dependents under the medical, dental, pharmaceutical or vision benefit plans of the Company or its Subsidiaries prior to the Closing during the plan year in which the Closing occurs for the purpose of determining the extent to which such Continuing Employee has satisfied the deductible, co-payments, or maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for such plan year under any medical, dental, pharmaceutical or vision benefit plan of the Company, its Subsidiaries, Purchaser or an Affiliate of Purchaser, as if such amounts had been paid in accordance with such plan.

(b) Effective as of the Closing Date, each employee of the Company or its Subsidiaries shall cease to be participating employees in the Seller 401(k) Plan, and each employee of the Company or its Subsidiaries who continues in employment with Purchaser or any of its Affiliates after the Closing Date (collectively, the “Continuing Employees”) shall cease to participate in the Seller 401(k) Plan and, as soon as practicable after the Closing Date, Purchaser shall establish or designate a defined contribution retirement plan which is qualified or eligible for qualification under Section 401(a) of the Code (the “Purchaser 401(k) Plan”). Each Continuing Employee shall become eligible to participate, as soon as practicable after the Closing Date, in the Purchaser 401(k) Plan. Purchaser agrees that each Continuing Employee who receives an “eligible rollover distribution” (within the meaning of Section 402(c)(4) of the Code) from the Seller 401(k) Plan shall be eligible to rollover such distribution (including loans) to the Purchaser 401(k) Plan.

(c) At or following the Closing, Seller or an Affiliate of Seller shall pay to the Company, and the Company shall pay to each of the individuals listed on Section 6.05(c) of the Company Disclosure Schedule (the “Retention Bonus Holders”), the Retention Bonus Amounts in accordance with the terms and conditions set forth in the applicable Retention Bonus Agreement (including, without limitation, any requirement that the applicable Retention Bonus Holder timely execute and deliver, and not revoke, a release of claims against the Company, Seller and each of their respective Affiliates).

(d) Notwithstanding anything herein to the contrary, Purchaser and Seller acknowledge and agree that all provisions contained in this Section 6.05 are included for the sole benefit of Purchaser and the Company, and that nothing in this Agreement, whether express or implied, (i) shall be treated as an amendment or other modification of any Employee Benefit Plan; (ii) shall limit the right of Purchaser, the Company or any of their respective Affiliates to amend, terminate or otherwise modify any Employee Benefit Plan or other employee benefit plan, agreement or other arrangement following the Closing Date; or (iii) shall confer upon any

Person who is not a party to this Agreement (including any current or former director, officer, employee or independent contractor of the Company or any of its Subsidiaries, or any participant in any Employee Benefit Plan or other employee benefit plan, agreement or other arrangement (or any dependent or beneficiary thereof)), any right to continued or resumed employment or recall, any right to compensation or benefits, or any third-party beneficiary or other right of any kind or nature whatsoever.

**Section 6.06 Performance Bonds.** On the Closing Date, Purchaser shall obtain performance bonds or letters of credit on behalf of the Company and its Subsidiaries (collectively, the “Substitute Performance Bonds”), which Substitute Performance Bonds will be effective as of Closing, in full substitute for all performance bonds or letters of credit listed in Section 6.06 of the Company Disclosure Schedule (collectively, the “Existing Performance Bonds”), and Seller shall obtain the release of the Company from any and all obligations under any of the Existing Performance Bonds and related contractual obligations in connection therewith. In the event Purchaser does not obtain any Substitute Performance Bond by the Closing Date, Purchaser shall indemnify and hold the Seller Indemnified Parties harmless from and against any and all Losses based upon or arising from the related Existing Performance Bond to the extent the matter or occurrence giving rise to such Loss occurred after the Closing.

**Section 6.07 Use of Names.** Except as provided in Section 6.14, as soon as reasonably practicable (and in no event more than ninety (90) days) after the Closing, Purchaser shall cause the Company and each of its Subsidiaries to cease any and all usage of the names of Seller or its Affiliates in their respective businesses and to remove and cease to use all of the signage, logos, trademarks and service marks of Seller or such Affiliates. Purchaser shall cause the Company and each of its Subsidiaries not to use any business name that is confusingly similar with any trademarks, trade names, brand names, logos, slogans or domain names of Seller or its Affiliates.

**Section 6.08 Termination of Intercompany Accounts.** At or prior to the Closing, Parent and Seller shall cause all Intercompany Accounts to be, at Parent and Seller’s option, settled and/or cancelled without any further Liability or any adverse Tax consequences to the Company or any of its Subsidiaries.

**Section 6.09 Servers.** At Closing, Seller shall make available to Purchaser for transportation the servers and related infrastructure dedicated to the Company and its Subsidiaries that are located at Seller or its Affiliates’ facility in Albuquerque, New Mexico, and the co-location center used by Seller or its Affiliates in Richardson, Texas, and which shall not contain any Protected Health Information that is not related solely to the business of the Company and its Subsidiaries. Within ninety (90) days of Closing, Purchaser shall, at its cost, transport such servers and related infrastructure to a location of its choice.

**Section 6.10 Restricted Names.** Parent shall not, and shall cause its Subsidiaries not to, use, license or permit any third party to use, any name, slogan, logo or trademark which is the same as or confusingly similar to any of the names, trademarks or service marks included in the Intellectual Property owned or used by the Company and/or any Subsidiary (“Restricted Names”). Notwithstanding anything in this Agreement to the contrary, Purchaser agrees that Seller may continue to use the Restricted Names for the following purposes: (a) for reference to the historical relationship between Seller and its Affiliates, on the one hand, and the Company

and/or any Subsidiary, on the other hand, (b) for retention of any books, records or other materials for internal archival purposes only, and (c) for compliance with applicable Laws including in connection with any corporate filings and documents filed by Seller or any of its Affiliates with any Governmental Authority on or after the Closing Date.

**Section 6.11 Payment of Certain Amounts.** In the event Seller, Parent or any of their respective Affiliates shall receive any instruments of payment of any accounts receivable, notes receivable or other receivables of the Company and/or any of its Subsidiaries, such Person shall forthwith deliver such instruments to Purchaser, endorsed where necessary, without recourse, in favor of Purchaser.

**Section 6.12 Non-Solicitation.**

(a) In order to protect the value of the Company and its Subsidiaries, for a period of twenty four (24) months after the Closing, Parent shall not, and shall cause its Subsidiaries not to, without the prior written consent of Purchaser, directly or indirectly, solicit to employ or engage or actually employ any individual that served as an employee of the Company or any of its Subsidiaries at any time during the twelve (12) month period prior to the Closing Date, other than any of the individuals listed on Section 6.12 of the Company Disclosure Schedule (each, a “Restricted Person”); **provided**, that this Section 6.12(a) shall not be construed to prohibit Seller, Parent or any of Parent’s Subsidiaries from (i) engaging in general solicitations for employees in the ordinary course of business, including placing general advertisements for employees in newspapers, periodicals or other media of general circulation, so long as such solicitations are not directed toward Restricted Persons, (ii) soliciting to employ employees, including Restricted Persons, through recruiting firms, placement agencies, and similar businesses so long as such recruiting firms, placement agencies, and similar businesses are not instructed by Seller, Parent or any of Parent’s Subsidiaries to target Restricted Persons, or (iii) soliciting to employ or actually employing any Restricted Person more than six (6) months after such Restricted Person’s employment or engagement with the Company or any of its Subsidiaries is terminated.

(b) Acknowledgements; Remedies. Each of Seller and Parent acknowledges and agrees that (i) the covenants and agreements set forth in this Section 6.12 were a material inducement to Purchaser to enter into this Agreement and to perform its obligations hereunder, (ii) Purchaser and its stakeholders would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the parties hereto if Seller, Parent or any of their respective Subsidiaries breached any provisions of this Section 6.12 (iii) the Purchase Price is sufficient consideration to make the covenants and agreements set forth herein enforceable, (iv) the length of time and scope of the covenants set forth in this Section 6.12 are reasonable given the benefits Seller and Parent will directly or indirectly receive hereunder, (v) each of Seller and Parent are familiar with all the non-solicitation provisions contained in this Section 6.12 and are fully aware of their respective obligations hereunder, and (vi) neither Seller nor Parent will challenge the reasonableness of the time, scope or other provisions of this Section 6.12 in any Proceeding, regardless of who initiates such Proceeding. Each of Seller and Parent further acknowledges and agrees that irreparable injury would result to Purchaser if Seller, Parent or any of their respective Subsidiaries breaches any of the terms of this Section 6.12, and that in the event of an actual or threatened breach by Seller, Parent or any of their respective Subsidiaries of any of the provisions contained in this Section 6.12, Purchaser may have no adequate remedy at

Law. Each of Seller and Parent accordingly agrees that in the event of any actual or threatened breach by Seller, Parent or any of their respective Subsidiaries of any of the provisions contained in this Section 6.12, Purchaser shall be entitled to seek injunctive and other equitable relief without (A) posting any bond or other security and (B) showing that monetary damages are an inadequate remedy. Nothing contained herein shall be construed as prohibiting Purchaser from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages that it is able to prove. Each of Seller and Parent shall cause its Subsidiaries to comply with this Section 6.12, and shall be liable for any breach by any of its Subsidiaries of this Section 6.12.

### **Section 6.13 Confidentiality.**

(a) Except as otherwise provided herein or in the Transaction Documents, after the Closing Date, Parent shall, and shall cause its Subsidiaries to, keep secret and retain in confidence, and Parent shall not, and shall cause its Subsidiaries not to, use for the benefit of Parent or any of Parent's Subsidiaries, or others, all confidential or proprietary information exclusively relating to the Company or its Subsidiaries and that is not already generally available to the public, including, without limitation, trade secrets, pricing policies, marketing plans or strategies, business acquisition plans, and inventions and research projects, in each case, exclusively relating to the Company and its Subsidiaries (the "Company Confidential Information"). Notwithstanding, the foregoing, the Company Confidential Information shall not include information (i) that is or becomes generally available to the public other than as a result of a disclosure by Parent or any Subsidiary of Parent in breach of this Section 6.13(a), (ii) used or disclosed by Parent or any Subsidiary of Parent in connection with a bona fide dispute with Purchaser or its Affiliates, and (iii) lawfully acquired by Parent or any Subsidiary of Parent after the Closing from sources that were not known by Parent or any Subsidiary of Parent to be prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Parent or any Subsidiary of Parent is requested or required (by Law or stock exchange requirement or by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Company Confidential Information, to the extent reasonably practicable, such Person shall notify Purchaser promptly of the request or requirement so that Purchaser may seek, at its sole cost and expense, an appropriate protective order or waive compliance with the provisions of this Section 6.13(a). If, in the absence of a protective order or the receipt of a waiver hereunder, Parent or any Subsidiary of Parent is, on the advice of counsel, compelled to disclose any Company Confidential Information to any tribunal or other Person, such Person may disclose the Company Confidential Information to the tribunal or other Person, provided that such disclosing Person shall use its commercially reasonable efforts to obtain, at the request and expense of Purchaser, an order or other assurance that confidential treatment shall be accorded to such portion of the Company Confidential Information required to be disclosed as Purchaser shall designate.

(b) Except as otherwise provided herein or in the Transaction Documents, after the Closing Date, Purchaser shall, and shall cause its Subsidiaries to, keep secret and retain in confidence, and Purchaser shall not, and shall cause its Subsidiaries not to, use for the benefit of Purchaser or any of its Subsidiaries, or others, all confidential or proprietary information exclusively relating to Parent or its Subsidiaries (other than the Company and its Subsidiaries) and that is not already generally available to the public, including, without limitation, trade

secrets, pricing policies, marketing plans or strategies, business acquisition plans, and inventions and research projects, in each case, exclusively relating to Parent and its Subsidiaries (other than the Company and its Subsidiaries) (the “Parent Confidential Information”). Notwithstanding, the foregoing, the Parent Confidential Information shall not include information (i) that is or becomes generally available to the public other than as a result of a disclosure by Purchaser or any of its Subsidiaries in breach of this Section 6.13(b), (ii) used or disclosed by Purchaser or its Subsidiaries in connection with a bona fide dispute with Seller or its Affiliates, and (iii) lawfully acquired by Purchaser or its Subsidiaries after the Closing from sources that were not known by Purchaser or such Subsidiaries to be prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Purchaser or any of its Subsidiaries is requested or required (by Law or stock exchange requirement or by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Parent Confidential Information, to the extent reasonably practicable, such Person shall notify Parent promptly of the request or requirement so that Parent may seek, at its sole cost and expense, an appropriate protective order or waive compliance with the provisions of this Section 6.13(b). If, in the absence of a protective order or the receipt of a waiver hereunder, Purchaser or any of its Subsidiaries is, on the advice of counsel, compelled to disclose any Parent Confidential Information to any tribunal or other Person, such Person may disclose the Parent Confidential Information to the tribunal or other Person, provided that such disclosing Person shall use its commercially reasonable efforts to obtain, at the request and expense of Parent, an order or other assurance that confidential treatment shall be accorded to such portion of the Parent Confidential Information required to be disclosed as Parent shall designate.

**Section 6.14 Regulatory Approvals; Consents; Notices; Filings.**

(a) Each of Purchaser and Seller shall use its commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under any applicable Law to consummate and make effective the transactions contemplated by this Agreement as promptly as reasonably practicable, (ii) obtain from Governmental Authorities any consents or Orders required to be obtained or made by Purchaser, Seller or any of their respective Affiliates in connection with the authorization, execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby, (iii) provide the notices required to be made by Purchaser, Seller or any of their respective Affiliates under or with respect to any Laws in connection with the authorization, execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby or thereby, and to pay any fees due of it in connection with such applications or filings, as promptly as is reasonably practicable, (iv) comply at the earliest practicable date with any request under or with respect to any Laws for additional information, documents or other materials received by Purchaser, Seller or any of their respective Affiliates from any Governmental Authority in connection with such applications or filings or the other transactions contemplated by this Agreement and (v) coordinate and cooperate with, and give due consideration to, all reasonable additions, deletions or changes suggested in connection with, making any filing under or with respect to any Laws. Each of Purchaser and Seller shall, and shall cause its respective Affiliates to, furnish to the other party all information reasonably necessary for any such filing to be made in connection with the transactions contemplated by this Agreement. Seller shall, or shall cause



the Company and its Subsidiaries to, give promptly such notice to third parties and use commercially reasonable efforts to obtain such third party consents as are required under Material Contracts or material Permits held by the Company or its Subsidiaries in connection with the transactions contemplated by this Agreement.

(b) For a period ending upon the earlier of (i) the ninety (90) day anniversary of the Closing, and (ii) the date on which all such notices have been filed and such consents have been obtained, Purchaser shall be permitted to use the “Molina” name solely as reasonably necessary in connection with Purchaser’s efforts to file the notices and obtain the consents identified in Part I(a) (Pre-Closing Consents) and Part I(c) (Pre-Closing Notice) in Section 4.04 of the Company Disclosure Schedule, and Parent shall reasonably cooperate with Purchaser and its Subsidiaries in connection with making such filings and obtaining such consents.

(c) Notwithstanding anything to the contrary contained herein, (i) except for routine filing fees, nothing in this Agreement shall require Purchaser or Seller to expend money to a third party in exchange for any consent or approval, and (ii) any consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or any other Person or under any Material Contract required to be obtained or made by Seller, the Company, any of its Subsidiaries or Purchaser in connection with the Closing, including, without limitation, those notices and consents set forth on Section 4.04 of the Company Disclosure Schedule, is at Purchaser’s own risk, and none of Parent, Seller or their respective Affiliates shall be responsible for any Losses or any disruption to the operation of the Business resulting therefrom.

**Section 6.15 Conduct of the Business.**

(a) Except (x) as otherwise contemplated by this Agreement, (y) as consented to in writing by Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned) or (z) as provided on Section 6.15 of the Company Disclosure Schedule, from and after the date hereof until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller and Parent shall cause each of the Company and its Subsidiaries to (i) use commercially reasonable efforts to conduct the Business only in the ordinary course of business consistent with past practice, (ii) pay all Indebtedness, Taxes and other obligations when due, except for amounts subject to a *bona fide* dispute by the Company or its Subsidiaries, (iii) make purchases of goods and services required for the normal operation of the Business in the ordinary course of business consistent with past practice, (iv) pay for payables and other Liabilities in the ordinary course of business consistent with past practice, and (v) use commercially reasonable efforts to collect receivables in the ordinary course of business consistent with past practice.

(b) Without limiting the generality of Section 6.15(a), and except (i) as otherwise contemplated by this Agreement or the Transaction Documents, (ii) as otherwise required by Contract or applicable Law, (iii) as consented to by Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned) or (iv) as provided on Section 6.15 of the Company Disclosure Schedule, from the date of this Agreement and until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller and Parent shall cause the Company and each of its Subsidiaries not to:

- (i) make any material change in any method of accounting or accounting practice, policy or procedure, other than as required by GAAP;
- (ii) amend its Governing Documents;
- (iii) (A) declare, set aside, make or pay any dividend or other distribution or payments (whether in cash, stock or property or any combination thereof) in respect of any of its Equity Securities (except for the distribution of cash referenced in the Adjusted Balance Sheet); or (B) redeem or otherwise acquire any of its Equity Securities, issue, sell or otherwise dispose any of its Equity Securities or grant any Person any right or option to acquire (including upon conversion, exchange, or exercise) any Equity Securities;
- (iv) merge or consolidate with any business or any corporation, partnership, limited liability company, association or other business organization or division thereof, acquire all or substantially all of the assets of any Person or make any loans, advances or capital contributions to, or any investments in, any Persons;
- (v) sell, lease, license or otherwise transfer any material assets or properties of the Company or any of its Subsidiaries, other than in the ordinary course of business consistent with past practice;
- (vi) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, recapitalization or other reorganization, or taken any action for the appointment of a receiver, administrator, trustee or similar officer;
- (vii) enter into, amend or terminate a Material Contract other than (A) in order to comply with applicable Law, (B) any termination at the expiration of its stated term, or (C) in the ordinary course of business consistent with past practice;
- (viii) except as required by the terms of any Employee Benefit Plan in existence on the date of this Agreement, increase the compensation or benefits of any employee, director or individual independent contractor of the Company or any of its Subsidiaries (other than, in each case, in the ordinary course of business consistent with past practice);
- (ix) enter into, adopt or amend, in any material respect, any Employee Benefit Plan in any manner except as required by applicable Law;
- (x) authorize, or make any commitment with respect to, any capital expenditures that are, in the aggregate, in excess of Two Hundred Fifty Thousand Dollars (\$250,000), or fail to make capital expenditures consistent with the budget set forth in Section 6.15(b)(x) of the Company Disclosure Schedule;
- (xi) make any capital investment in, any loan to, or any acquisition of the securities or assets of, any Person or business;
- (xii) (A) create, incur, assume, forgive, guarantee or modify any Indebtedness (other than draws under revolving lines of credit existing on the date hereof in the ordinary course of business consistent with past practice), (B) enter into any off-balance sheet

financing arrangement, or (C) make any loans or advances of money other than to employees of the Company or its Subsidiaries in the ordinary course of business consistent with past practice;

(xiii) settle any Proceeding involving payment by the Company or any of its Subsidiaries in an amount in excess of One Hundred Thousand Dollars (\$100,000);

(xiv) transfer, assign, or grant any license or sublicense of any rights under or with respect to any Intellectual Property other than in the ordinary course of business consistent with past practice;

(xv) permit the lapse of any existing insurance policy relating to the Business or Assets;

(xvi) except for the settlement or cancellation of Intercompany Accounts as provided in Section 6.08, make any payment to (whether as a distribution, fee, expense reimbursement or otherwise) or on behalf of Parent or any of its Subsidiaries (other than the Company or any of its Subsidiaries);

(xvii) make any material Tax election, prepare any Tax Returns in a manner which is materially inconsistent with the past practices of the Company or such Subsidiary of the Company with respect to the treatment of items on such Tax Returns, incur any material Liability for Taxes other than in the ordinary course of business consistent with past practice, file an amended Tax Return, file a claim for refund of material Taxes of the Company or such Subsidiary of the Company outside of the ordinary course of business, make any voluntary disclosure regarding Taxes to any Governmental Authority, or settle any claim relating to Taxes; or

(xviii) enter into any agreement, understanding or commitment by the Company or any of its Subsidiaries to do any of the foregoing.

**Section 6.16 Notification of Certain Matters.** Each of Seller and Purchaser hereto shall promptly notify the other party hereto in writing upon the occurrence of any event that has caused: (a) any representation or warranty of the notifying party or its Affiliates contained in this Agreement to be untrue or inaccurate in any material respect as of the time made under this Agreement; or (b) any failure of the notifying party to comply with or satisfy any covenant or agreement to be complied with or satisfied by it under this Agreement, in each case, if such failure to be true or accurate or failure to comply has caused or would reasonably be expected to cause any condition to the obligations of the notified party to effect the transactions contemplated by this Agreement not to be satisfied.

**Section 6.17 Access to Information; Confidentiality.**

(a) From and after the date hereof until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Seller, upon request, shall permit Purchaser and its Representatives to have reasonable access during normal business hours upon reasonable notice to the Company's and its Subsidiaries' facilities, the individual listed on Section 6.17 of the Company Disclosure Schedule and the business, financial, legal, tax, compensation and other data and information solely concerning the Company's and its

Subsidiaries' affairs and operations as Purchaser deems reasonably necessary or advisable; provided that (i) such access does not unreasonably interfere with normal operations or customer or employee relations of the Company and its Subsidiaries or Affiliates, (ii) access to such data and information may be provided by making such data and information available in the Data Room and (iii) such access shall be at Purchaser's sole cost and expense. All requests for such access shall be made to such Representatives of Seller as Seller shall designate. It is further agreed that neither Purchaser nor its Representatives shall (and Purchaser shall not permit any of its Representatives to) contact any of the employees, customers or other material business relations of the Company or its Subsidiaries in connection with the transactions contemplated by this Agreement, whether in person or by telephone, mail or other means of communication, without the specific prior authorization of Seller. Any such access shall be subject to the following additional limitations: (x) such access shall be subject to restrictions under applicable Law; and (y) such access shall not require disclosure of information that is a trade secret or competitively sensitive or subject to attorney-client or other evidentiary privilege.

(b) The parties acknowledge that an Affiliate of Purchaser and Parent have previously executed the Confidentiality Agreement, which Confidentiality Agreement shall continue to be in full force and effect in accordance with its terms, and Purchaser shall hold, and cause its Representatives to hold, any Evaluation Material (as defined in the Confidentiality Agreement) confidential in accordance with the terms of the Confidentiality Agreement. Effective upon the Closing, the Confidentiality Agreement shall terminate.

**Section 6.18 Exclusivity.** From and after the date hereof until the earlier of the Closing or the termination of this Agreement, neither Seller nor Parent shall (and Seller and Parent shall cause their respective Affiliates, officers, directors, managers, employees, attorneys, accountants, consultants, financial advisors, and other agents not to), directly or indirectly: (a) solicit, initiate or knowingly encourage (including by way of furnishing any information relating to the Company and its Subsidiaries), or knowingly induce or knowingly take any other action which would reasonably be expected to lead to the making, submission or announcement of, any proposal or inquiry that constitutes, or would reasonably be likely to lead to, an Acquisition Proposal; (b) other than informing Persons of the provisions contained in this Section 6.18, enter into, continue or participate in any discussions or any negotiations regarding any Acquisition Proposal or otherwise take any action to knowingly facilitate or knowingly induce any effort or attempt to make or implement an Acquisition Proposal; (c) approve, endorse, recommend or enter into any Acquisition Proposal or any letter of intent, memorandum of understanding or Contract contemplating an Acquisition Proposal or requiring the Company or Seller or Parent to abandon or terminate its obligations under this Agreement; or (d) agree, resolve or commit to do any of the foregoing. Seller and Parent agree to notify Purchaser within two (2) Business Days if any Person makes any proposal, offer, inquiry or contact with respect to an Acquisition Proposal and provide Purchaser with a description of the material terms and conditions thereof, including the identity of such Person. Seller and Parent shall immediately cease and cause to be terminated any existing discussions with any Person (other than Purchaser) concerning any proposal relating to an Acquisition Proposal. With respect to the Persons with whom discussions or negotiations have been terminated, Seller and Parent shall use their respective reasonable best efforts to obtain the return or destruction of, in accordance with the terms of any applicable confidentiality agreement, any confidential information previously furnished to any such Person by Seller or

Parent or any of their respective officers, directors, managers, employees, attorneys, accountants, consultants, financial advisors or other agents.

**Section 6.19 Lease Guarantees.** After the Closing, (a) Purchaser shall reasonably cooperate with Parent and Seller to cause Parent to be released from all obligations arising after the Closing under any guarantees entered into by Parent in connection with a Lease as soon as reasonably practicable after the Closing and (b) Purchaser shall indemnify and hold the Seller Indemnified Parties harmless from and against any and all Losses based upon or arising from any such guarantee to the extent the matter or occurrence giving rise to such Loss occurred after the Closing.

## ARTICLE 7 TERMINATION

**Section 7.01 Termination.** This Agreement may be terminated and the transactions contemplated by this Agreement abandoned at any time prior to the Closing:

- (a) by mutual written consent of Purchaser and Seller;
- (b) by either Purchaser or Seller, if the Closing shall not have been consummated on or before October 19, 2018 (the “End Date”); **provided, however**, that the right to terminate this Agreement under this Section 7.01(b) shall not be available to any such 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 the End Date;
- (c) by Purchaser, if at any time there is a breach of or inaccuracy in any representation or warranty set forth in Article 4 (and including specifically any of those contained in Section 4.08) or any failure to perform in any respect any covenant or agreement to be complied with or performed by Seller, Parent or the Company pursuant to the terms of this Agreement such that the conditions set forth in Sections 3.05(a) or 3.05(b) would not be satisfied (treating such time as if it were the Closing for purposes of this Section 7.01(c)), which breach, inaccuracy or failure to perform cannot be cured by the End Date or has not been cured within fifteen (15) days following the receipt by Seller of written notice thereof from Purchaser or any shorter period of time that remains between the date Purchaser delivers written notice of such breach and the End Date; **provided, however**, that Purchaser may not terminate this Agreement pursuant to this Section 7.01(c) if such inaccuracy or breach was primarily caused by the failure of Purchaser to perform in any material respect any of the covenants or agreements to be performed by it prior to the Closing; or
- (d) by Seller, if at any time there is a breach of or inaccuracy in any representation or warranty set forth in Article 5 or any failure to perform in any respect any covenant or agreement to be complied with or performed by Purchaser pursuant to the terms of this Agreement such that the conditions set forth in Sections 3.04(a) or 3.04(b) would not be satisfied (treating such time as if it were the Closing for purposes of this Section 7.01(d)), which breach, inaccuracy or failure to perform cannot be cured by the End Date or has not been cured within fifteen (15) days following the receipt by Purchaser of written notice thereof from Seller or any shorter period of time that remains between the date Seller delivers written notice of such

breach and the End Date; **provided, however**, that Seller may not terminate this Agreement pursuant to this Section 7.01(d) if such inaccuracy or breach was primarily caused by the failure Seller, Parent, or the Company to perform in any material respect any of the covenants or agreements to be performed by it prior to the Closing; or

(e) by either Purchaser or Seller, if any Governmental Authority shall have issued a permanent injunction or other Order prohibiting the consummation of the transactions contemplated by this Agreement and such permanent injunction or other Order shall have become final and non-appealable.

**Section 7.02 Effect of Termination.** If this Agreement is terminated pursuant to Section 7.01 by a party hereto, written notice thereof shall be given by such party to the other party or parties, specifying the provision pursuant to which such termination is made and, upon delivery thereof, all rights, and obligations of the parties hereunder shall terminate and no party hereto shall have any Liability to the other party or parties, except for obligations of the parties hereto in Section 6.01 (Public Announcements), Section 7.02 (Effect of Termination) and Article 9 (Miscellaneous), and the Confidentiality Agreement, which shall survive the termination of this Agreement in accordance with their terms. Notwithstanding anything to the contrary contained in this Agreement or the Transaction Documents, termination of this Agreement pursuant to Section 7.01 shall not release any party hereto from any Liability for any willful breach by such party of the terms and provisions of this Agreement prior to such termination or limit or restrict the availability of specific performance or other injunctive relief to the extent that specific performance or such other relief is available to a party hereunder.

## **ARTICLE 8 SURVIVAL; INDEMNIFICATION**

### **Section 8.01 Survival of Representations and Warranties.**

(a) The representations and warranties contained in Section 9.16 and Articles 4 and 5 shall survive the Closing and shall terminate on January 19, 2020; **provided**, that the Surviving Seller Representations and the Fundamental Purchaser Representations shall survive the Closing until the expiration of the applicable statute of limitations. Any written claim for indemnification under Section 8.02(b), Section 8.02(c) or Section 8.03(b) may be given at any time prior to January 19, 2020, and, from and after such date, no claim for such indemnification may be made hereunder. Any written claim for indemnification under Section 8.02(d) may be given at any time prior to the date that all of the Proceedings subject to such indemnification have been resolved, and, from and after such date, no claim for such indemnification may be made hereunder. Notwithstanding the foregoing, if a written claim for indemnification is made hereunder prior to the end of the applicable survival period, such indemnification shall survive, solely in relation to such claim, until such claim is resolved. Any party providing indemnification pursuant to this Article 8 is referred to herein as an “Indemnifying Party” and any Person entitled to indemnification pursuant to Section 8.02 or Section 8.03 is referred to herein as an “Indemnified Party”.

(b) It is the express intent of the parties to this Agreement that, to the extent the survival of the representations and warranties in this Agreement (and the associated right to bring

a claim for a breach of such representations and warranties) is shorter than the statute of limitations that would otherwise have been applicable to such representations or warranties, by contract, the applicable statute of limitations with respect to such representations or warranties (and the associated right to bring a claim for a breach of such representations and warranties) are hereby reduced so they end at the end of the applicable survival period specified in Section 8.01(a).

**Section 8.02 Indemnification by Parent.** Effective as of the Closing, Parent and Seller, jointly and severally, shall indemnify and hold Purchaser, its Affiliates (including, after the Closing, the Company and its Subsidiaries) and each of their respective Representatives (each such Person, a "Purchaser Indemnified Party") harmless from and against any and all Losses based upon or arising from:

- (a) any breach of any representation or warranty made by Seller pursuant to Article 4 or by Parent pursuant to Section 9.16;
- (b) any failure by Seller or Parent to perform any of its respective covenants or agreements contained herein (and including in particular those contained in Section 6.15);
- (c) any Pre-Closing Insurable Event; and
- (d) any Proceedings pending against the Company or any of its Subsidiaries as of the Closing, and including without limitation those matters described in Section 4.13, Section 4.14(b), Section 4.16(b) and Section 4.20(b) of the Company Disclosure Schedule.

**Section 8.03 Indemnification by Purchaser.** Effective as of the Closing, Purchaser shall indemnify and hold Seller, its Affiliates and each of their respective Representatives (each such Person, a "Seller Indemnified Party") harmless from and against any and all Losses based upon or arising from:

- (a) any breach of any representation or warranty made by Purchaser pursuant to Article 5; and
- (b) any failure by Purchaser to perform any of its covenants or agreements contained herein.

**Section 8.04 Additional Provisions Regarding Indemnification and Insurance Obligations.** Notwithstanding Section 8.02 and Section 8.03, the rights to indemnification pursuant to the provisions of Section 8.02 and Section 8.03 are subject to the following limitations:

- (a) The maximum aggregate Liability of Parent and Seller to all Purchaser Indemnified Parties taken together for Losses for any claims for indemnification pursuant to Section 8.02 (other than Section 8.02(d)) shall be limited to an amount equal to Ten Million Dollars (\$10,000,000) (collectively, the "General Cap Amount"). For purposes of clarification, in no event shall any Losses for which the Purchaser Indemnified Parties are indemnified pursuant to Section 8.02(d) count against the General Cap Amount.

(b) The maximum aggregate Liability of Purchaser to all Seller Indemnified Parties taken together for Losses for any claims for indemnification pursuant to Section 8.03 shall be limited to an amount equal to the General Cap Amount.

(c) Parent and Seller shall not be liable for Losses for any individual claim for indemnification pursuant to Section 8.02(a) (other than as a result of breaches of the Surviving Seller Representations) unless the amount of Losses for such claim for indemnification against Seller pursuant to Section 8.02(a) (other than as a result of breaches of the Surviving Seller Representation) shall exceed Fifty Thousand Dollars (\$50,000) (the “Per-Claim Basket”), and then for such Losses from the first dollar. For purposes of the preceding sentence, multiple claims for indemnification based upon the same act, event, omission or set of facts shall be deemed a single individual claim.

(d) Purchaser shall not be liable for Losses for any individual claim for indemnification pursuant to Section 8.03(a) (other than as a result of a breach of a Fundamental Purchaser Representation) unless the amount of Losses for such claim for indemnification against Purchaser pursuant to Section 8.03(a) (other than as a result of a breach of a Fundamental Purchaser Representation) shall exceed the Per-Claim Basket, and then for such Losses from the first dollar. For purposes of the preceding sentence, multiple claims for indemnification based upon the same act, event, omission or set of facts shall be deemed a single individual claim.

(e) Parent and Seller shall not be liable for Losses for any claims for indemnification pursuant to Section 8.02(a) (other than as a result of breaches of the Surviving Seller Representations) unless the total of all Losses for claims for indemnification against Parent pursuant to Section 8.02(a) (other than as a result of a breach of a Surviving Seller Representation and Losses excluded under Section 8.04(c)) shall exceed Five Hundred Thousand Dollars (\$500,000) in the aggregate (the “Deductible”), and then only for such Losses to the extent they exceed such amount.

(f) Purchaser shall not be liable for Losses for any claims for indemnification pursuant to Section 8.03(a) (other than as a result of breach of the Fundamental Purchaser Representations) unless the total of all Losses for claims for indemnification against Seller pursuant to Section 8.03(a) (other than as a result of a breach of a Fundamental Purchaser Representation and Losses excluded under Section 8.04(d)) shall exceed the Deductible, and then only for such Losses to the extent they exceed such amount.

(g) No Indemnifying Party shall be liable to an Indemnified Party hereunder for (i) any punitive damages, except where such damages are recovered by a third party from an Indemnified Party in connection with Losses indemnified hereunder or (ii) any lost profits, diminution of value, consequential damages, special damages, incidental damages, indirect damages, exemplary damages or other unforeseen damages, except where such damages are recovered by a third party from an Indemnified Party in connection with Losses indemnified hereunder. In no event shall any multiples or similar valuation methodology (whether based on “multiple of profits,” “multiple of earnings,” “multiple of cash flows” or similar terms) be used in calculating the amount of any Losses.



(h) No Indemnified Party shall be entitled to recover for a Loss under Section 8.02 or Section 8.03 to the extent that such Indemnified Party has recovered such Loss under (i) unaffiliated third-party insurance held by, or for the benefit of, such Indemnified Party, or (ii) the Insurance Policies. In the event that an Indemnified Party receives insurance proceeds from unaffiliated third-party insurance with respect to any matter for which it was previously indemnified pursuant to this Article 8, such Indemnified Party shall promptly remit such insurance proceeds to the Indemnifying Party. Each Indemnified Party covenants and agrees to use commercially reasonable efforts to seek recovery of any amounts available under (A) third-party insurance held by, or for the benefit of, such Indemnified Party and (B) any other insurance applicable to Indemnified losses, including, but without limitation, the Insurance Policies.

(i) For the avoidance of doubt, and notwithstanding any term or provision to the contrary, (i) effective as of the Closing, all insurance coverage owned or held by Parent or its Subsidiaries, including but without limitation the Insurance Policies, shall be cancelled and terminated in respect of all accidents, events, happenings, injuries, claims, conduct and occurrences relating to the Business commencing or taking place after the Closing, and (ii) this Agreement is not intended as an assignment or attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of Parent or its Subsidiaries in respect of any insurance policy or any other contract or policy of insurance, except to the extent such assignment is permitted by the terms of such policy in accordance with applicable Law and Parent has agreed to such assignment. Notwithstanding the foregoing, this Agreement is intended as an assignment of insurance rights to Company and its Subsidiaries and each of their insured persons and entities and their successors-in-interest and respective permitted assignees under the Insurance Policies, and otherwise in respect of insurance applicable to any Losses indemnified hereunder, to the extent allowed by applicable Law and as necessary to fully establish their rights to obtain coverage under the such insurance as respects accidents, events, happenings, injuries, claims, conduct and occurrences relating to the Business prior to the Closing.

(j) Upon and after becoming aware of any event which is reasonably likely to give rise to Losses subject to indemnification hereunder, each Indemnified Party shall use commercially reasonable efforts to mitigate the Losses arising from such events, including incurring costs only to the minimum extent necessary to remedy the event which gives rise to Losses.

(k) Parent and Seller shall have no obligation under this Article 8 to indemnify any Purchaser Indemnified Party with respect to (i) any Loss that is a Liability to the extent reflected the calculation of the Purchase Price; or (ii) any Loss to the extent such Loss does not exceed the amount of any reserves for such Loss as reflected in the Balance Sheet.

(l) The amount of any recovery by the Indemnified Party pursuant to this Article 8 shall be reduced by any foreign, federal, state and/or local Tax benefits actually realized by such Indemnified Party.

(m) Notwithstanding anything to the contrary in this Agreement, no Purchaser Indemnified Party shall have any claim for indemnification (and no Purchaser Indemnified Party

shall be indemnified) for Loss under this Article 8 to the extent such Loss relates to Taxes attributable to a Post-Closing Tax Period.

(n) For Tax purposes, the parties agree to treat all payments made under this Article 8 as adjustments to the Purchase Price.

**Section 8.05 Indemnification Procedures; Third Party Claims; Tax Claims.**

(a) An Indemnified Party shall give the Indemnifying Party prompt written notice of any matter which an Indemnified Party has determined has given or would give rise to a right of indemnification under this Agreement (other than a Third Party Claim), within twenty (20) Business Days of such determination (an “Indemnity Notice”); **provided, however**, that the failure to give an Indemnity Notice shall not waive an Indemnified Party’s right to indemnification, except to the extent the Indemnifying Party is prejudiced by the Indemnified Party’s failure to give notice or such Indemnity Notice is given after the expiration of the applicable survival period.

(b) If any claim, demand or Proceeding is brought by a Person who is not a party to this Agreement or an Affiliate thereof (a “Third Party Claim”) against an Indemnified Party, and if such party intends to seek indemnification with respect thereto pursuant to this Article 8, such Indemnified Party shall promptly, but in any event within twenty (20) Business Days after the Indemnified Party learns of the existence of the Third Party Claim, notify the Indemnifying Party in writing of the Third Party Claim; **provided, however**, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation hereunder except to the extent the Indemnifying Party is prejudiced by the Indemnified Party’s failure to give notice or such Indemnity Notice is given after the expiration of the applicable survival period. The Indemnified Party will deliver to the Indemnifying Party, promptly after the Indemnified Party’s receipt thereof, copies of all documents relating to the Third Party Claim and notices and documents relating to the Third Party Claim received by the Indemnified Party.

(c) The Indemnifying Party will have the right to participate in or assume the defense of the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party, so long as the Indemnifying Party delivers written notice to the Indemnified Party of its election to assume the defense of the Third Party Claim; **provided, however**, that Parent shall be deemed to have delivered such notice with respect to Proceedings indemnified under Section 8.02(d). Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with the provisions above, the Indemnified Party, at its sole cost and expense, may retain separate counsel, and participate in the defense of the Third Party Claim, it being understood that the Indemnifying Party will control such defense. To the extent the Indemnifying Party has not assumed the defense of such Third Party Claim pursuant to this Section 8.05(c), the Indemnified Party will (upon delivering written notice to such effect to the Indemnifying Party) have the right to undertake the defense of such Third Party Claim. Each party shall fully cooperate with the other party in such defense and make available to the party undertaking the defense of the Third

Party Claim employees, witnesses, pertinent records, materials and information in such party's possession or under such party's control relating to such Third Party Claim as may be requested by the party undertaking the defense of the Third Party Claim. If an Indemnified Party fails to comply with the immediately preceding sentence, such Indemnified Party's right to indemnification under this Article 8 shall be waived to the extent such failure prejudices the Indemnifying Party.

(d) Notwithstanding anything in this Section 8.05 to the contrary, neither the Indemnifying Party nor the Indemnified Party shall, without the written consent of the other party (which consent shall not be unreasonably delayed, withheld or conditioned), settle, compromise or discharge any Third-Party Claim or admit any Liability or permit a default or consent to entry of any judgment with respect to any Third Party Claim; **provided** that if the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall be permitted to settle, compromise or discharge such Third Party Claim without the Indemnified Party's consent if such settlement, compromise or discharge (i) by its terms unconditionally releases the Indemnified Party from all Liability (other than an amount equal to the Deductible) in connection with such Third Party Claim, (ii) does not include an admission of wrongdoing or misconduct by the Indemnified Party, and (iii) does not impose any injunctive against the Indemnified Party.

(e) Notwithstanding anything in this Section 8.05 to the contrary, the foregoing provisions of Section 8.05 shall not apply to claims for indemnification for Losses pursuant to Section 8.02 solely with respect to breaches of the representations, warranties and covenants set forth in Section 4.19 (Taxes), Section 6.03 (Transfer Taxes) and Section 6.04 (Tax Matters). Parent shall have the sole right to control, defend and settle any audit, other administrative proceeding or inquiry or judicial proceeding involving the income Tax Return of Parent or its Subsidiaries. Except as otherwise provided in this Section 8.05(e), if a claim for Taxes is made against Purchaser by any Tax Authority and if Purchaser intends to seek indemnity with respect thereto under Section 8.02, Purchaser shall promptly furnish written notice to Parent of such claim. Parent shall have thirty (30) days after receipt of such notice to notify Purchaser of its intent to undertake, conduct, and control (through counsel of its own choosing and at its own expense) the settlement or defense thereof, and Purchaser and the Company and their respective Affiliates shall cooperate in connection therewith. If Purchaser or the Company fails to comply with the immediately preceding sentence, Purchaser and the Company's right to indemnification under this Article 8 shall be waived to the extent such failure prejudices the Parent. If within thirty (30) days after the receipt of Purchaser's notice of a claim of indemnity hereunder, Parent does not notify Purchaser that Parent elects (at its cost and expense) to undertake the defense thereof, or gives such notice and thereafter fails to contest such claim in good faith, Purchaser shall have the right to contest, settle, or compromise such claim and Purchaser shall not thereby waive any right to indemnification for such claim under this Agreement; **provided, however**, that neither Purchaser nor the Company shall pay or settle any such claim without the prior written consent of Parent, which consent shall not be unreasonably withheld. Nothing contained herein shall compel Parent or Seller to disclose any of its income Tax Returns to Purchaser or provide Purchaser the right to see or review such income Tax Returns.

**Section 8.06 Exclusive Remedy.** Subject to Section 9.10 and except for claims based on Fraud, notwithstanding anything to the contrary contained in this Agreement, the remedies

expressly set forth in this Article 8 shall be the sole and exclusive remedy for the parties hereto and the other Indemnified Parties for any breach of any representation, warranty, covenant or other provision contained in this Agreement or otherwise relating to the subject matter of this Agreement. In furtherance of the foregoing, each party hereto (on behalf of itself and the other Indemnified Parties) hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or provision set forth herein or otherwise relating to the subject matter of this Agreement such party or other Indemnified Parties may have against the other party and each of its Affiliates and Representatives arising under or based upon any Law, except in the case of Fraud, pursuant to the express indemnification provisions set forth in this Article 8 or pursuant to the provisions of Section 9.10.

## ARTICLE 9 MISCELLANEOUS

**Section 9.01 Entire Agreement; Assignment.** This Agreement, together with the Transaction Documents, contains the entire agreement of the parties hereto with respect to the subject matter hereof and the Confidentiality Agreement and supersedes all other prior agreements between such parties and their respective Representatives in respect of such subject matter. Neither this Agreement nor any rights or obligations hereunder may be assigned by any party hereto without the prior written consent of the other parties hereto. Notwithstanding the foregoing: (a) Seller may assign all of its rights and obligations hereunder to Parent without the consent of Purchaser; **provided**, that such assignment shall not relieve Seller of any of its obligations hereunder; and (b) Purchaser may, without the consent of Seller or Parent, assign (by operation of law or otherwise) or otherwise transfer its rights and obligations hereunder to any Affiliate of Purchaser; **provided**, that such assignment shall not relieve Purchaser of any of its obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, permitted assigns and legal representatives.

**Section 9.02 Notices.** All notices, consents, requests, instructions, approvals and other communications provided for in this Agreement shall be in writing and shall be deemed validly given upon personal delivery or one (1) Business Day after being sent by nationally recognized overnight courier service or on the date of transmission if sent by e-mail (subject to automated confirmation of receipt), at the following address or e-mail address, or at such other address or e-mail address as a party may designate to the other parties:

If to Purchaser:

Pyramid Health Holdings, LLC  
c/o Atar Capital, LLC  
1999 Avenue of the Stars, Suite 2810  
Los Angeles, CA 90067  
Attention: Cyrus Nikou  
E-mail: cnikou@atarcapital.com

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

Dykema Gossett LLP  
333 South Grand Avenue, Suite 2100  
Los Angeles, CA 90071  
Attn: Thomas M. Cleary  
E-mail: [tcleary@dykema.com](mailto:tcleary@dykema.com)

If to Seller:

Molina Pathways, LLC  
200 Oceangate, Suite 100  
Long Beach, CA 90802  
Attn: Jeff Barlow and Burt Park  
E-mail: [jeffrey.barlow@molinahealthcare.com](mailto:jeffrey.barlow@molinahealthcare.com);  
[burt.park@molinahealthcare.com](mailto:burt.park@molinahealthcare.com)

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

Latham & Watkins LLP  
355 South Grand Avenue, Suite 101  
Los Angeles, CA 90071-1560  
Attn: David A. Zaheer  
E-mail: [david.zaheer@lw.com](mailto:david.zaheer@lw.com)

or to such other address as the Person to whom notice is given may have previously furnished to the other in writing in the manner set forth above.

**Section 9.03 Governing Law.** This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed by the internal Laws of the State of Delaware, without giving effect to any Law that would cause the Laws of any jurisdiction other than the State of Delaware to be applied.

**Section 9.04 Construction; Interpretation.** The name assigned to this Agreement and the article and section captions used herein are for convenience of reference only and shall not affect the interpretation or construction hereof. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. All references to Articles and Sections refer to articles and sections of this Agreement. The terms “herein”, “hereunder”, “hereof” and words of like import refer to this entire Agreement instead of just the provision in which they are found. Unless the context otherwise requires: (a) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document; (b) the use of the term “including” means “including, without limitation”; (c) the word “or” shall be disjunctive but not be exclusive; (d) unless expressly provided otherwise, the measure of a period of one (1) month or year for purposes of this Agreement shall be that date of the following month or year corresponding to the starting date; **provided**, that if no corresponding date exists, the measure shall be that date of the following month or year

corresponding to the next day following the starting date (for example, one (1) month following February 18 is March 18, and one (1) month following March 31 is May 1); (e) a reference to an entity includes any successor entity, whether by way of merger, amalgamation, consolidation or other business combination; (f) reference to a word defined hereunder shall apply equally to both the singular and plural forms of the term defined; and (g) a reference to “\$” or “dollars” means the lawful currency of the United States. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party hereto. For purposes of Article 4, information shall be deemed to have been “made available” to Purchaser only if such information was posted to the electronic data room maintained by Cain Brothers & Company, LLC in connection with the transactions contemplated hereby (the “Data Room”) in a manner accessible and reviewable by Purchaser at least one (1) Business Day prior to the date of this Agreement.

**Section 9.05 Company Disclosure Schedule.** Neither the specification of any dollar amount in the representations or warranties contained in this Agreement nor the inclusion of any specific item in the Company Disclosure Schedule hereto is intended to imply that such amounts, or higher or lower amounts of the items so included or other items, are or are not material or that such fact or matter would with any other fact or matter, individually or in the aggregate, have a Material Adverse Effect.

**Section 9.06 Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party hereto and its successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

**Section 9.07 Severability.** If any term or other provision of this Agreement is invalid, illegal or unenforceable, all other provisions of this Agreement shall remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto.

**Section 9.08 Counterparts; Signatures.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one (1) and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by scanned pages shall be effective as delivery of a manually executed counterpart to this Agreement.

**Section 9.09 Jurisdiction; Venue; Waiver of Jury Trial.** ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT (INCLUDING PURSUANT TO SECTION 9.10) SHALL BE BROUGHT IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE AND ANY STATE APPELLATE COURT THEREFROM WITHIN THE STATE OF DELAWARE (OR, IF THE COURT OF CHANCERY OF THE STATE OF DELAWARE DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, ANY FEDERAL COURT WITHIN THE STATE OF DELAWARE OR, IN THE EVENT FEDERAL COURT WITHIN THE STATE OF DELAWARE DECLINES TO ACCEPT JURISDICTION OVER A PARTICULAR MATTER, ANY STATE COURT WITHIN THE STATE OF DELAWARE). BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY,

GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF TO SUCH PARTY BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO SUCH PARTY AT ITS ADDRESS SPECIFIED IN SECTION 9.02, OR BY ANY OTHER METHOD PERMITTED BY LAW. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF, AND EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

**Section 9.10 Remedies.** The parties hereto agree that irreparable damage could occur if any provision of this Agreement were not performed in accordance with the terms hereof and that such parties shall be entitled, without posting a bond or similar indemnity, to seek an injunction to prevent breaches of this Agreement, or specific performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 9.11 Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, each party hereto shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and such transactions.

**Section 9.12 Failure or Indulgence Not Waiver.** No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**Section 9.13 Amendments.** This Agreement may not be amended, supplemented or otherwise modified except in a written instrument executed by Purchaser and Seller. No provision of this Agreement may be waived except in a written instrument executed by the party waiving such provision. Any written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, expressly set forth therein.

**Section 9.14 Fees and Expenses.** Except as otherwise expressly provided in this Agreement, all fees, charges and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees, charges or expenses.

**Section 9.15 Provision Respecting Legal Representation.** Each of the parties to this Agreement hereby agrees, on its own behalf and on behalf of its Representatives, that Latham & Watkins LLP may serve as counsel to Seller and its Affiliates (individually and collectively, the “Seller Group”), on the one hand, and the Company or its Subsidiaries, on the other hand, in connection with the negotiation, preparation, execution and delivery of this Agreement, the Transaction Documents and the consummation of the transactions contemplated hereby or thereby, and that, following consummation of such transactions, Latham & Watkins LLP may serve as counsel to the Seller Group or any Representative of the Seller Group, in connection with any litigation, claim or obligation arising out of or relating to this Agreement, the Transaction Documents or the transactions contemplated hereby or thereby notwithstanding such prior representation of the Company or its Subsidiaries and each of the parties hereto hereby consents thereto and waives any conflict of interest arising therefrom, and each of such parties shall cause any Affiliate thereof to consent to waive any conflict of interest arising from such representation.

**Section 9.16 Parent Representations.** Parent hereby represents and warrants to Purchaser as of the date hereof and as of the Closing as follows:

(a) Parent is a corporation, duly formed, validly existing and in good standing under the Laws of the State of Delaware.

(b) Parent has the requisite corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby.

[Signature page follows.]



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**PYRAMID HEALTH HOLDINGS, LLC**

By: /s/ Cyrus Nikou  
Cyrus Nikou  
Manager

**MOLINA PATHWAYS, LLC**

By: /s/ Thomas L. Tran  
Name: Thomas L. Tran  
Title: Chief Financial Officer

**FOR PURPOSES OF SECTIONS 6.02(b), 6.08, 6.10, 6.11, 6.12, 6.13, 6.15, 6.16 AND SECTION 6.18 AND ARTICLES 8 AND 9:**

**MOLINA HEALTHCARE, INC.**

By: /s/ Thomas L. Tran  
Name: Thomas L. Tran  
Title: Chief Financial Officer



**CERTIFICATION PURSUANT TO  
RULES 13a-14(a)/15d-14(a)  
UNDER THE SECURITIES EXCHANGE  
ACT OF 1934, AS AMENDED**

I, Joseph M. Zubretsky, certify that:

1. I have reviewed the report on Form 10-Q for the period ended September 30, 2018 of Molina Healthcare, Inc.;

2. Based on my knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

3. Based on my knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in the report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended), and internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934, as amended), for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period for which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in the report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by the report based on such evaluation; and

(d) Disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and to the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 1, 2018

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/s/ Joseph M. Zubretsky

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**Joseph M. Zubretsky**

**Chief Executive Officer, President and Director**

**CERTIFICATION PURSUANT TO  
RULES 13a-14(a)/15d-14(a)  
UNDER THE SECURITIES EXCHANGE  
ACT OF 1934, AS AMENDED**

I, Thomas L. Tran, certify that:

1. I have reviewed the report on Form 10-Q for the period ended September 30, 2018 of Molina Healthcare, Inc.;

2. Based on my knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;

3. Based on my knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in the report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended), and internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934, as amended), for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period for which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in the report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by the report based on such evaluation; and

(d) Disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and to the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 1, 2018

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/s/ Thomas L. Tran

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**Thomas L. Tran**  
**Chief Financial Officer and Treasurer**

**CERTIFICATE PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the report of Molina Healthcare, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2018 (the "Report"), I, Joseph M. Zubretsky, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 1, 2018

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/s/ Joseph M. Zubretsky

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**Joseph M. Zubretsky**

**Chief Executive Officer, President and Director**

**CERTIFICATE PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the report of Molina Healthcare, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2018 (the "Report"), I, Thomas L. Tran, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 1, 2018

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/s/ Thomas L. Tran

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**Thomas L. Tran**  
**Chief Financial Officer and Treasurer**