

## TRADEMARK ASSIGNMENT COVER SHEET

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Stylesheet Version v1.2

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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Alliance Health Networks, LLC		11/03/2017	Limited Liability Company: UTAH
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Upwell Holding, Inc.		
<b>Street Address:</b>	2855 E. Cottonwood Parkway, Suite 400		
<b>City:</b>	Cottonwood Heights		
<b>State/Country:</b>	UTAH		
<b>Postal Code:</b>	84121		
<b>Entity Type:</b>	Corporation: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	5256812	UPWELL	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2124796275		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
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<b>ATTORNEY DOCKET NUMBER:</b>	332610.20000		
<b>NAME OF SUBMITTER:</b>	Mihaela Nair		
<b>SIGNATURE:</b>	/Mihaela Nair/		
<b>DATE SIGNED:</b>	08/02/2018		
<b>Total Attachments: 29</b>			
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**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**UPWELL HOLDING, INC.,  
A DELAWARE CORPORATION, AND**

**ALLIANCE MEDICAL HOLDINGS LLC, A DELAWARE LIMITED LIABILITY  
COMPANY, AND ITS AFFILIATES**

November 3, 2017

## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “**Agreement**”) is entered into as of November 3, 2017 (“**Effective Date**”), by and among Alliance Medical Holdings LLC, each of its affiliates listed on Schedule 1 hereto (each affiliate and Alliance Health Networks LLC shall be referred to individually as a “**Seller**,” and collectively as the “**Sellers**”), and UpWell Holding, Inc., a Delaware corporation (“**Buyer**”).

### RECITALS

**WHEREAS**, the Sellers currently own and operate retail and mail order pharmacies in several states, a lead generation call center, and a tele-health and wellness platform (the “**Business**”);

**WHEREAS**, between April 7 and 9, 2017, Alliance Health Networks LLC and certain of its affiliates Sellers filed a voluntary petition for relief in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”), commencing voluntary proceedings (collectively, the “**Bankruptcy Cases**”) pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “**Bankruptcy Code**”), which Bankruptcy Cases are jointly administered under Case No. 17-32186 (MI);

**WHEREAS**, Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to acquire and assume from Sellers, pursuant to Sections 363 and 365 of the Bankruptcy Code, the Assets (as defined herein) and the Assumed Liabilities (as defined herein), as more specifically provided herein;

**WHEREAS**, the board of managers, directors, or chapter 11 trustee, as applicable, of each of the Sellers has determined that it is advisable and in the best interests of its estate and the constituents of such estate to consummate the Contemplated Transactions (as defined herein) pursuant to the Bid Procedures Order (as defined herein) and the Sale Order (as defined herein) and has approved this Agreement;

**WHEREAS**, the Contemplated Transactions are subject to the approval of the Bankruptcy Court and shall be consummated only pursuant to the Sale Order to be entered in the Bankruptcy Cases; and

**WHEREAS**, pursuant to the Bid Procedures Order, the Sellers shall conduct an Auction (as defined herein), if necessary, to determine the highest and/or otherwise best offer for the Assets.

**NOW, THEREFORE**, in consideration of the above and the mutual representations, warranties, covenants and agreements set forth herein, the parties hereby agree as follows:

### ARTICLE 1 DEFINITIONS

#### 1.1. Certain Definitions

In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1, which shall be equally applicable to both the singular and plural forms.

**“Accounts Receivable”** means all accounts, notes, interest and other receivables of the Sellers, and all claims, rights, interests and proceeds related thereto, including all accounts and other receivables, in any case arising from the rendering of services to patients of the Business, billed and unbilled, recorded and unrecorded, for services provided by the Sellers whether payable by private pay patients, private insurance, third party payors, Medicare, Medicaid, or by any other source.

**“Acquired Pharmacies”** means the retail and mail order pharmacies owned and operated by the Sellers other than those that are Excluded Assets.

**“Affiliate”** means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person. For purposes of this definition, **“control”** means the possession, directly or indirectly, of the power to elect at least 50% of the governing board of such Person or to direct or cause the direction of the management and policies of the Person, whether through ownership of voting securities, partnership or limited liability interests, nonprofit membership, contract or otherwise.

**“Assets”** means the assets and properties of every kind, character and description used in or for the benefit of the Business, whether tangible, intangible, real, personal or mixed, and wherever located, but excluding the Excluded Assets.

**“Assumed Contracts and Leases”** (or **“Assumed Contracts”**) means all Contracts and all Leases that are specifically assumed pursuant to this Agreement.

**“Auction”** means the auction for the sale and assumption of the Assets and Assumed Liabilities conducted by Sellers pursuant to the Bid Procedures Order.

**“Benefit Plan”** means any (a) bonus, stock option, stock purchase, phantom stock, incentive compensation, deferred compensation, pension, profit sharing, thrift, savings, retirement, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, hospitalization, dental, workmen’s compensation or other insurance, severance, separation, voluntary employees’ beneficiary association or trust, tuition, company car, club dues, income tax preparation, sick leave, maternity, paternity or other family leave or other employee benefit, welfare or fringe benefit plan, practice, policy, agreement or arrangement, whether qualified or nonqualified, whether or not in writing and whether or not considered legally binding, including, but not limited to, any “employee benefit plan” within the meaning of Section 3(3) of ERISA or a multiemployer plan within the meaning of Section 3(37) of ERISA or (b) any employment, supplemental unemployment, layoff, consulting, “golden parachute,” engagement or retainer agreement or arrangement.

**“Bid Procedures Order”** means the order issued by the Bankruptcy Court on October 18, 2017, that among other things, establishes procedures for an Auction process to solicit bids.

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

**“Buyer Related Parties”** means Buyer, Mercato Partners, L.P., Mercato Partners Ingram, LLC, Mercato Partners Ingram Co-Invest, LLC, Mercato Partners Growth II, L.P., Mercato Partners Growth AI, L.P., Mercato Partners Growth Affiliates II, L.P., and each of their current or former

directors, officers, shareholders, owners, employees, agents, Affiliates, subsidiaries, partners, administrators, executors, predecessors, transferees, attorneys, successors, personal representatives, heirs, estates, and assigns.

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

“**Contemplated Transactions**” means the sale by Sellers to Buyer, and the purchase by Buyer from Sellers, of the Assets, including the assumption, assignment and sale by Sellers to Buyer, and the acceptance by Buyer, of the Assumed Contracts and Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order.

“**Contracts**” means all contracts relating to the Business, whether written or oral.

“**Cure Amounts**” means the amounts, not to exceed the Cure Cap, required to be paid to the third parties of Assumed Contracts and Leases in order to cure the monetary defaults and satisfy any pecuniary losses of third-parties (or obtain waivers with respect thereto).

“**Cure Cap**” means one and a half million dollars (\$1,500,000).

“**Deposit**” means the deposit in the amount of one-million four-hundred and fifty thousand dollars (\$1,450,000) that was remitted by Buyer to the Sellers on or about October 25, 2017.

“**Deposit Stipulation**” means the *Stipulation Between the Debtors and Upwell Holding, Inc. Regarding Extension of Bid Deadline, Auction, and Sale Hearing*, filed in the Bankruptcy Cases on October 25, 2017, docket number 637.

“**Employees**” means all of the employees of the Sellers.

“**Environmental Requirements**” means all laws, orders, permits, agreements and other restrictions and requirements in effect as of the date hereof of any Governmental Entity, relating to the regulation of, imposing standards of conduct or liability regarding, the storage, treatment, disposal, transportation, handling, or other management of Materials of Environmental Concern.

“**Equipment**” means all of the tangible personal property used or held for use in the conduct of the Business, including, without limitation, medical equipment (including infusion pumps and IV hoods), furniture, furnishings, machinery, computers and equipment, wherever located (including at the Leased Real Property).

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

“**Excluded Assets Schedule**” means Schedule 2.2 hereto.

“**Excluded Liabilities**” means any and all debts, obligations or liabilities of the Sellers, any Affiliate of the Sellers, or the Business whether known or unknown, contingent, absolute or otherwise and whether or not they would be included or disclosed in financial statements prepared in accordance with GAAP, other than the Assumed Liabilities. Without limiting the foregoing, the Excluded Liabilities shall include debts, liabilities and obligations: (a) under any real estate lease or any contract or agreement to which any Seller is a party or by which any Seller or the Business is

bound that is not an Assumed Contract or Lease for any period either prior to or after the Effective Time; (b) under any Assumed Contract or Lease with respect to periods prior to the Effective Time, other than the Cure Amounts; (c) arising out of any collective bargaining agreement to which any Seller is a party; (d) for any obligation for Taxes; (e) for any damages or injuries to persons or property or for any tort or strict liability arising from events, actions or inactions in the Business or operation of the Business on or prior to the Effective Time; (f) arising out of any litigation based on occurrences, acts or omissions during the period prior to the Effective Time, whether or not threatened or pending before the Effective Time; (g) incurred by any Seller or by the Business for borrowed money; (h) for any accounts payable of the Sellers; (i) for amounts due or that may become due to Medicare, Medicaid or any other health care reimbursement or payment intermediary, or other third party payor on account of payment adjustments attributable to any period prior to the Effective Time, or any other form of Medicare or other health care reimbursement recapture, adjustment or overpayment whatsoever, including fines and penalties, with respect to any period ending prior to the Effective Time; (j) the debts, obligations or liabilities of any Seller pursuant to any of the Benefit Plans; (k) included in accounts payable that arose prior to the Effective Time; (l) all of the Sellers' accrued payroll, including vacation/paid time off pay with respect to Employees which are not Transferring Employees; and (m) under any capital lease to which any Seller is a party that is not an Assumed Contract or Lease.

**"GAAP"** means generally accepted accounting principles.

**"Governmental Entity"** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

**"Income Tax"** means any federal, state, local or foreign income tax measured by or imposed on net income, including any interest, penalties, or additions thereto, whether or not disputed.

**"Intangible Personal Property"** means all intangible personal property necessary for, related to, and held by any Seller in the operation of the Business, which shall include: (a) to the extent transferable and subject to applicable regulatory approvals, all Licenses and Permits; (b) all Proprietary Materials; and (c) the goodwill of the Business as a going concern.

**"Intellectual Property"** means all (i) patents, patent applications, patent disclosures and inventions, (ii) trademarks, service marks, trade dress, trade names, logos and corporate names (in each case, whether registered or unregistered) and registrations and applications for registration thereof together, to the extent applicable, with all of the goodwill associated therewith, (iii) copyrights (registered or unregistered) and registrations and applications for registration thereof, (iv) computer software, data, data bases and documentation thereof, (v) trade secrets and other confidential information (including, without limitation, ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial and marketing plans and customer and supplier lists and information), (vi) World Wide Web addresses and domain name registrations and (vii) works of authorship including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise,

documentation, designs, files, records, data and mask works and any rights in semiconductor masks, layouts, architectures or topography.

**“Inventory”** means all goods, merchantable, and saleable inventory (with no short dated or expired inventory) and materials used in the operation of the Business which (i) is in unopened containers, (ii) is not beyond expiration date, obsolete or unusable, (iii) consists of items of a quality and quantity usable and salable in the ordinary course of business of the Business, and (iv) conforms to generally acceptable quality standards in the Sellers’ industry.

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

**“Knowledge”** of Sellers (and other words of similar import) means, as applicable, the actual knowledge of (i) persons holding a position of senior vice president or senior thereto at Sellers, including the chief financial officer; (ii) Ronald Glass, solely in his capacity as chapter 11 trustee; and/or (iii) the Sellers’ professionals that have been retained by order of the Bankruptcy Court.

**“Leased Real Property”** means the premises leased by the Sellers as set forth on **Schedule 5.7** hereto.

**“Leases”** means all leases, subleases or other agreements under which a Seller is lessee or sublessor of any real or personal property or has any interest in real property, including any lease deposits and/or pre-paid rent paid in connection with such leases.

**“Licenses and Permits”** means all certificates, certificates of need, certificates of exemption, consents, accreditations, governmental approvals, licenses, permits, franchises, authorizations and approvals issued or granted to the Sellers by any Governmental Entity.

**“Liens”** means a charge against or interest in property to secure payment of a debt or performance of an obligation.

**“Losses”** means losses and out-of-pocket costs including, without limitation, reasonable legal fees, accounting costs, fines, penalties, compliance costs, investigation and remediation costs, and consultant, expert, and other professional fees, including any of the above incurred in enforcing a right to indemnification hereunder.

**“Material Adverse Effect”** means any unexpected change in circumstances that is reasonably anticipated to have a materially adverse effect to the financial condition, properties, assets, liabilities, businesses, operations or results of operations of the Sellers, but does not include, (i) any investigation by a Governmental Entity (including the United States Department of Justice and state boards of pharmacy) solely with respect to the prepetition purchase or sale of diabetic test strips; and (ii) claims by non-Governmental Entity third parties with respect to the Sellers’ sales practices based upon publicly available information or information previously disclosed by the Sellers.

**“Materials of Environmental Concern”** means (i) any “hazardous substance” as defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time (42 U.S.C. §§ 9601 et seq.) (“**CERCLA**”) or any regulations



promulgated thereunder; (ii) petroleum and petroleum by-products; (iii) asbestos or asbestos-containing material; (iv) any chemical, material or substance defined as, or included in the definition of, "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous waste" or "toxic substances" or words of similar import under any applicable federal, state or local law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, under any Environmental Requirements; or (v) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Governmental Entity.

**"Person"** means an association, a corporation, an individual, a partnership, a limited liability company, a trust or any other entity or organization, including a Governmental Entity.

**"Pharmacy Records"** means all files, prescription records, customer records, lists and profiles, documents, instruments, papers, books, in-store computer files and records and all other records of Sellers and in any media, relating to the patients and doctors, and pharmaceuticals, devices, supplies, controlled substances and prescriptions dispensed or filled by the Sellers.

**"Proprietary Materials"** means all proprietary materials owned by the Sellers and used in the conduct of the Business including, but not limited to, any telephone numbers, facsimile numbers, domain names, email addresses, web-sites, copyrights, patents, marketing materials, Intellectual Property.

**"Sale Order"** means an Order issued by the Bankruptcy Court approving this Agreement and the Contemplated Transactions, which Sale Order shall be satisfactory to Buyer in its sole and absolute discretion.

**"Seller Intellectual Property"** means Intellectual Property owned or used by the Sellers.

**"Straddle Period"** means any Tax year or taxable period beginning before the Closing Date and ending on or after the Closing Date.

**"Tax Returns"** means any return, report, statement, information return or other document (including any related or supporting information) filed or required to be filed with any Governmental Entity in connection with the determination, assessment, collection or administration of any Taxes or the administration of any laws, regulations, or administrative requirements relating to any Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**"Taxes"** means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, unclaimed property, environmental (including taxes under Code § 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other taxes, charges, fees imposts, levies of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

“**Unassigned Accounts Receivable**” means that portion of the Accounts Receivable (if any) that is retained by the Sellers because it is not legally assignable (e.g., Medicare or Medicaid accounts receivable).

1.2. Other Defined Terms

The following terms have the meanings defined for such terms in the locations set forth below:

<u>Term</u>	<u>Location</u>
Agreement	Introductory Paragraph
Assumed Liabilities	Section 2.3
Bill of Sale	Section 2.5
Buyer	Introductory Paragraph
Closing	Article 3
Closing Date	Article 3
Purchase Price	Section 4.1
Sellers	Introductory Paragraph
Effective Date	Introductory Paragraph
Effective Time	Article 3
Excluded Assets	Section 2.2
Financial Statements	Section 5.4
HIPAA	Section 5.13
HITECH	Section 5.13
Interim Financial Statements	Section 5.4
Purchase Price Allocation	Section 4.4
Transferring Employees	Section 10.10
Year End Financial Statements	Section 5.4

**ARTICLE 2**  
**SALE AND PURCHASE OF ASSETS**

2.1. Assets to be Sold

Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, subject to the terms and conditions set forth in this Agreement and on the basis of the representations, warranties, covenants and agreements herein, at the Closing, but effective as of the Effective Time, the Sellers shall sell, convey, transfer, assign and deliver to Buyer and Buyer shall purchase, receive and accept from the Sellers all right, title and interest in and to the Assets (other than the Excluded Assets). The Sellers shall convey the Assets (other than the Excluded Assets) to Buyer free and clear of any Liens. Without limiting the foregoing, the Assets shall include:

2.1.1. All furniture, fixtures, Equipment, Inventory, Intangible Personal Property, goods, Licenses and Permits, warranties, and goodwill;

2.1.2. the Accounts Receivable (other than the Unassigned Accounts Receivable);

2.1.3. cash or cash equivalents; and

2.1.4. claims and causes of action, (i) arising out of the Assumed Contracts and Leases, including causes of action under Chapter 5 of the Bankruptcy Code solely to the extent they relate to Assumed Contracts; (ii) against customers, suppliers, vendors, and contract counterparties related to or involved with the operation of the Business by the Buyer, on a go-forward basis, including causes of action under Chapter 5 of the Bankruptcy Code; (iii) against the Buyer Related Parties, including causes of action under Chapter 5 of the Bankruptcy Code; and (iv) against the Transferring Employees, including causes of action under Chapter 5 of the Bankruptcy Code.

## 2.2. Excluded Assets

Notwithstanding anything contained in Section 2.1 or elsewhere in this Agreement, Buyer is not purchasing (i) the assets of Sellers listed on Schedule 2.2 (“**Excluded Assets**”); (ii) any Contracts or Leases that are not Assumed Contracts and Leases, (iii) any claims or causes of action not listed in Section 2.1; or (iv) any claims of Sellers to funds seized by the United States Department of Justice. Buyer, in its sole and absolute discretion, may modify the Excluded Assets at any time prior to Closing, but such modifications shall not in any way reduce the Purchase Price payable hereunder.

## 2.3. Liabilities to be Assumed

As of the Closing Date, Buyer shall assume (i) all of the Sellers’ obligations arising and accruing after the Effective Time under the Assumed Contracts and Leases, which Buyer chooses to have Sellers assume and then assign to Buyer in Buyer’s sole discretion, (ii) accrued liabilities with respect to the Assets (other than the Assumed Contracts and Leases), and (iii) ordinary course accrued liabilities with respect to retail and mail order pharmacies owned and operated by the Sellers as set forth on Schedule 2.3 (“**Assumed Liabilities**”).

## 2.4. Excluded Liabilities

**EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER DOES NOT ASSUME AND SHALL NOT BE LIABLE FOR ANY OF THE DEBTS, OBLIGATIONS OR LIABILITIES OF THE SELLERS, THE BUSINESS, OR ANY AFFILIATE OF THE SELLERS, WHENEVER ARISING AND OF WHATEVER TYPE OR NATURE.** In particular, but without limiting the foregoing, Buyer shall not assume, and shall not be deemed by anything contained in this Agreement to have assumed and shall not be liable for the Excluded Liabilities or Liens. The intent and objective of Buyer and the Sellers is that, except for liabilities explicitly assumed by Buyer hereunder, Buyer does not assume any of the Excluded Liabilities or Liens.

## 2.5. Instrument of Transfer

The sale of the Assets and the assumption of the Assumed Liabilities as herein provided shall be effected at the Closing by the Assignment, Assumption and Bill of Sale Agreement in the form attached hereto as Exhibit 2.5 (“**Bill of Sale**”).

### **ARTICLE 3 CLOSING(S)**

Unless the parties hereto otherwise agree in writing, subject to entry of the Sale Order, the actions contemplated to consummate the transactions under this Agreement, with respect to each Asset (the “**Closing(s)**”) shall take place no later than November 15, 2017 (the “**Closing Date**”), or such later date upon which the conditions set forth in Articles 8, 9, 10.12, and 10.13 of the Agreement have been satisfied. The Closing shall occur at a time and place mutually determined by the parties, and shall be deemed effective at 11:59 p.m. Central Time on the Closing Date (the “**Effective Time**”). The Closing Date shall refer to the first Closing under this Agreement. This Agreement contemplates multiple Closings and Effective Times, if elected by the Buyer, with regard to the Acquired Pharmacies. For the avoidance of doubt, (a) the Closing for the Assets associated with each of the Acquired Pharmacies shall not occur until the conditions set forth in Articles 8, 9, 10.12, and 10.13 of the Agreement, including the issuance of Pharmacy Licenses by the applicable Governmental Entities, have been satisfied, but (b) the Buyer shall pay the entire Purchase Price without proration on the Closing Date notwithstanding that the conditions in sections 8.7, 10.12, and 10.13 will not have been satisfied on the Closing Date.

### **ARTICLE 4 PURCHASE PRICE**

#### 4.1. Purchase Price.

The amount payable in consideration for the sale by the Sellers of the Assets (the “**Purchase Price**”) shall be a cash payment of fourteen-million five-hundred thousand dollars (\$14,500,000) plus the Cure Amounts; provided that all Cure Amounts in excess of the Cure Cap shall be borne by the Sellers.

#### 4.2. Payment of Purchase Price.

At the Closing, or as otherwise provided by order of the Bankruptcy Court, following the receipt of the items listed in Section 8.5, the Buyer shall pay (i) to the Sellers, in immediately available funds to an account or accounts designated by the Sellers, an amount equal to the Purchase Price less the Deposit, and (ii) the Cure Amounts to the counterparties of the Assumed Contracts.

#### 4.3. Form of Payments.

All payments shall be made in immediately available funds via wire transfer to an account designated by the Sellers.

#### 4.4. Purchase Price Allocation

Buyer and Sellers agree that the Purchase Price shall be allocated for Tax and financial accounting purposes in a manner consistent with the fair market values as set forth in the allocation

schedule (“**Purchase Price Allocation**”), to be prepared by the Buyer and Seller within a reasonable time following Closing. Buyer and Sellers shall file all required Tax Returns (including, amended returns and claims for refund) and information reports, including the reports required to be filed under Section 1060 of the Code, including Form 8594, *Asset Acquisition Statement under Section 1060*, in a manner consistent with the Purchase Price Allocation.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES CONCERNING THE SELLERS**

The Sellers hereby jointly and severally represent and warrant to Buyer that, as of the date hereof and at the Closing Date:

### 5.1. Organization and Good Standing

Each of the Sellers is duly organized, validly existing and in good standing under the laws of the state of its formation. Subject to any restriction of a Chapter 11 debtor in possession under the Bankruptcy Code, each Seller has the full corporate power and authority and all licenses, permits and authorizations necessary to carry on its business as now presently conducted and presently proposed to be conducted and to own, lease and operate the properties and assets it now owns or leases.

### 5.2. Authorization; No Breach; Obligations

Subject to entry of a Sale Order, and authorization as required by the Bankruptcy Court, each Seller has full organizational power and authority necessary to execute, deliver and perform its obligations under the terms of this Agreement and all documents and agreements reasonably necessary to give effect to the provisions of this Agreement. Subject to obtaining approval of the Bankruptcy Court, each Seller has duly authorized, executed and delivered this Agreement, and each Seller’s execution, delivery and consummation of this Agreement and the transactions contemplated hereby shall not result in (a) any conflict, breach or violation of or default under any articles of incorporation, bylaw, articles of organization, operating agreement, statute, judgment, order, decree, license, law or regulation; or (b) any conflict, breach or violation of or default under any judgment, order, decree, license, law or regulation applicable to the Sellers. All corporate actions and other corporate authorizations prerequisite to each Seller’s execution of this Agreement and the consummation of the transactions contemplated by this Agreement have been taken or obtained by each Seller. This Agreement and all other documents and instruments required to be signed by the Sellers hereunder constitute the legal, valid and binding obligations of each Seller enforceable against it in accordance with their respective terms, except insofar as enforcement hereof may be limited by bankruptcy, insolvency or other similar laws.

### 5.3. [Reserved]

### 5.4. Financial Statements

5.4.1. Attached hereto as Schedule 5.4 are the audited financial statements of the Sellers for the fiscal years ended 2014 and 2015 (“**Year End Financial Statements**”), and for the interim period ended August 31, 2017 (“**Interim Financial Statements**”). All of the foregoing financial statements are herein sometimes called the “**Financial Statements**.”

The Financial Statements have been prepared in accordance with GAAP to the extent noted therein; they have otherwise been prepared using the Debtor's customary accounting practices. To the best of each of the Sellers' Knowledge, the Financial Statements present fairly the financial position of the Sellers, including, without limitation, its cost of goods, as of the dates indicated and present fairly the financial condition, results of the operations and cash flows of the Sellers for their respective periods and on their respective dates. Notwithstanding the foregoing, the Financial Statements do not include allowances with respect to claims raised by third party payors and government investigations related to the sale of diabetic test strips and / or collection of patient co-pay and deductibles.

5.5. Assets and Property

Except as set forth on Schedule 5.5, the Sellers have valid title to, or a valid leasehold interest in, all of the Assets, and Buyer shall be vested, to the maximum extent permitted by Sections 363 and 365 of the Bankruptcy Code, with valid title to the Assets free and clear of all Liens, claims, encumbrances and interests as set forth in the Sale Order.

5.6. Necessary Property

The Assets constitute all property (of any type, whether tangible or intangible) and property rights now used in or otherwise necessary for the conduct of the Business in the manner and to the extent presently conducted by the Sellers.

5.7. Leased Real Property

The Leased Real Property constitutes all of the real property leased by the Sellers. Schedule 5.7 sets forth a description of all of the Leases for the Leased Real Property and such Leases have not been amended, modified, supplemented, extended, renewed or assigned except as set forth on such Schedule or the docket of the Bankruptcy Court. Upon payment of the Cure Amounts Buyer shall receive a valid leasehold interest in its Leased Real Property free and clear of any Liens.

5.8. Owned Real Property

5.8.1. The Sellers do not own any real property.

5.9. Environmental Laws and Regulations

(i) Each Seller, to its Knowledge, is in compliance with all applicable Environmental Requirements relating to the Business and its use of the Leased Real Property including, but not limited to, any Environmental Requirements relating to the use, storage, treatment, disposal, including any arrangement thereof, or transportation of any Materials of Environmental Concern; (ii) during the each Seller's occupancy and operation of the Leased Real Property, no release, leak, discharge, spill, disposal, or emission of any Materials of Environmental Concern has occurred in, on, or under the Leased Real Property as a result of any act or omission of Sellers in a quantity or manner that violates Environmental Requirements; (iii) none of the Sellers use, treat, store, dispose or transport any Materials of Environmental Concern in a quantity that reasonably could be expected to have a Material Adverse Effect; (iv) there is no pending against Sellers or, to the Knowledge of any Seller, threatened litigation or administrative proceeding or investigation (whether

civil, criminal or administrative) concerning the Leased Real Property involving any Materials of Environmental Concern or Environmental Requirements; (v) to the Sellers' Knowledge, there is no material quantity of asbestos or asbestos-containing material within the Leased Real Property; (vi) to the Knowledge of each of the Sellers, there are no above-ground or underground storage tank systems located in the Leased Real Property; (vii) to the Sellers' Knowledge, there are no liabilities or obligations of the Sellers of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise arising under or relating to any Environmental Requirements and there is no condition, situation or set of circumstances that could reasonably be expected to result in or be the basis for any such liability or obligation; and (viii) no material expenditure shall be required in order for the Buyer to comply with any environmental laws in effect at the time of the Closing in connection with the operation or continued operation of the Business or any facility or property now owned or operated by the Sellers in a manner consistent with the current operation thereof by the Sellers.

#### 5.10. Compliance with Law

To the best of each Seller's Knowledge the operations of each Seller have been conducted substantially in accordance with all laws, regulations, orders and other applicable legal requirements of all courts and other governmental bodies having jurisdiction over each Seller or its employees, assets, properties and operations, except where the failure to do so would not have a material adverse impact on Sellers. No Seller is in default with respect to any order, writ, judgment, award, injunction or decree of any governmental body or arbitrator, domestic or foreign, applicable to any Seller or any of its assets, properties or operations with respect thereto. No current employee or independent contractor of any Seller, to Sellers' Knowledge, is excluded from participating in Medicare, Medicaid or any other federal health care program (as defined in 42 U.S.C. §§ 1320a-7b(f)).

#### 5.11. Litigation or Claims

5.11.1. Except as disclosed on Schedule 5.11.1 and in the schedules or other papers filed by the Debtors in the Bankruptcy Case, there are no claims, actions, suits, proceedings, labor disputes or investigations pending or, to the Knowledge of any Seller, threatened before any governmental body, or before any arbitrator or mediator of any nature, brought by or against any Seller or any of its officers, members, managers, directors, employees, or agents involving, affecting or relating to the Business or its Assets or the transactions contemplated by this Agreement, nor is any basis known to any Seller for any such action, suit, proceeding or investigation. Except as disclosed on Schedule 5.11.1 and in the schedules or other papers filed by the Debtors in the Bankruptcy Case, none of the Sellers is subject to any order, writ, judgment, award, injunction or decree of any governmental body or arbitrator, domestic or foreign, that affects the Business or Assets, or that could reasonably be expected to interfere with the transactions contemplated by this Agreement. Except as disclosed herein and in the schedules or other papers filed by the Debtors in the Bankruptcy Case, none of the Sellers is in violation of any regulation, law or order of any court or federal, state, municipal or other governmental agency or instrumentality, nor has any Seller received any notice of any alleged noncompliance with any such matter.

5.12. Insurance

5.12.1. Schedule 5.12.1 lists all policies of insurance to which any Seller is a party or under which any Seller, or any director, member, manager, or officer of a Seller, is or has been covered at any time within the two (2) years preceding the date of this Agreement, and all pending applications for policies of insurance and describes any self-insurance arrangement by or affecting the Sellers, including any reserves established thereunder, and describes any contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk by any Seller. Each Seller has maintained, at all times since its formation, insurance coverage for professional liability, general liability and workers' compensation.

5.12.2. Each Seller has paid all premiums due, and has otherwise performed all of its obligations, under each policy to which Seller is a party or that provides coverage to Seller or any director thereof.

5.12.3. Each Seller has given notice to the insurer of all claims of which they have Knowledge that may be insured thereby.

5.13. HIPAA.

Each of the Sellers (i) is in material compliance with the requirements for health information privacy and security established by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH") provisions of the American Reinvestment and Recovery Act of 2009, including the HIPAA and HITECH privacy and security regulations, and (ii) has developed and implemented appropriate policies and procedures and training programs for compliance with the HIPAA and HITECH privacy and security laws, regulations, and guidance promulgated by the U.S. Department of Health and Human Services.

5.14. Intellectual Property.

5.14.1. Schedule 5.14.1 hereto contains a complete and accurate list of all Seller Intellectual Property included in clauses (i) – (iii) and (vi) of the definition of Intellectual Property. Schedule 5.14 contains a complete and accurate list of all licenses and other rights granted by any Seller to any Person with respect to any Seller Intellectual Property and all licenses and other rights granted by any Person to any Seller with respect to any Seller Intellectual Property (excluding "off-the-shelf" programs or products or other "shrink wrap" software licensed in the ordinary course of business) identifying the subject Seller Intellectual Property.

5.14.2. To the Knowledge of each seller, the Sellers own or possess sufficient legal rights to all Intellectual Property necessary for or used in the Business without any infringement of the rights of others. To the Knowledge of each Seller, the Sellers are not infringing upon any Intellectual Property of any other Person, and each Seller has no Knowledge of any violation by any Person of any Seller Intellectual Property. None of the Sellers has received any written notice from any Person claiming infringement of a



Person's Intellectual Property rights, nor has any Seller received any written communication inviting any Seller to negotiate for a license under any Person's Intellectual Property.

5.14.3. Each registration of a trade name of Seller owned by a Seller is valid and subsisting, and all necessary registration, maintenance and renewal fees in connection with such Seller Intellectual Property have been paid and all necessary documents and certificates in connection with such Seller Intellectual Property have been filed with the relevant authorities in the United States for the purposes of maintaining such Seller Intellectual Property.

5.15. Bankruptcy Notices.

To the Knowledge of Sellers, Sellers have provided notice to all persons who are entitled to receive notice of the Bankruptcy Case by virtue of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the local rules of the Bankruptcy Court, any order of the Bankruptcy Court, and/or any other applicable law, rule or regulation, or which Sellers reasonably believes have or may assert a "claim" (as defined in the Bankruptcy Code) against or related to the Sellers or the Assets (collectively, the "Notice Parties"), in each case, within the time periods required by, and otherwise in accordance with the provisions of, applicable law.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Sellers as of the date hereof and as of the Closing Date that:

6.1. Organization in Good Standing.

Buyer is a corporation and is duly organized, validly existing and in good standing under the laws of Delaware. Buyer has the full corporate power and authority to carry on its business as presently conducted and to own and lease the properties and assets that it now owns and leases. Buyer is qualified to conduct business and is in good standing in all states or other jurisdictions where the nature of the business transacted or properties owned by it makes such qualification necessary and as necessary for Buyer's full performance of its obligations under this Agreement.

6.2. Buyer's Authority and No Breach.

Buyer has the full corporate power and authority to execute, deliver and perform its obligations under the terms of this Agreement and all documents and agreements reasonably necessary to give effect to the provisions of this Agreement. Buyer has duly authorized, executed and delivered this Agreement and the execution, delivery and consummation of this Agreement and the transactions contemplated hereby shall not result in any material conflict, breach or violation of or default under any articles of incorporation, bylaw, statute, judgment, order, decree, license, law or regulation; nor shall the execution, delivery and consummation of this Agreement and the transactions contemplated hereby result in any material breach or default under any mortgage, agreement, deed of trust, indenture or other instrument to which Buyer is a party or by which it is bound. All corporate action and other authorizations prerequisite to the execution of this Agreement and the consummation of the transactions contemplated by this Agreement have been taken or

obtained by Buyer. Neither the execution of this Agreement nor the consummation of any transactions contemplated herein, violates any material contract, agreement, or other document to which Buyer is a party or to which Buyer is otherwise subject. This Agreement is a valid and binding agreement of Buyer enforceable in accordance with its terms, except insofar as enforcement hereof may be limited by bankruptcy, insolvency or other similar laws.

6.3. Brokers and Investment Advisors.

Buyer has not employed, contracted for the services of or authorized any broker, finder or investment advisor with respect to the negotiations leading up to the execution of this Agreement or the consummation of the transactions contemplated hereby. No fee or other payment is due and owing to any broker, finder or investment advisor in connection with the transactions contemplated hereunder as a result of Buyer's actions.

**ARTICLE 7  
BANKRUPTCY MATTERS**

7.1. Commercially Reasonable Efforts.

Sellers shall use commercially reasonable efforts to obtain entry of the Sale Order as soon as reasonably practicable following the date hereof, and shall serve appropriate notice of all motions and orders related hereto.

7.2. Contracts and Leases.

Sellers has served on all non-debtor counterparties to all of the Contracts and Leases which Buyer proposes to become Assumed Contracts and Leases a notice specifically stating that Sellers are or may be seeking the assumption and assignment of such Contracts and Leases and has notified such non-debtor counterparties of the deadline for objecting to the Cure Amounts, as set forth in the Bid Procedures Order.

7.3. Cure Amounts.

Pursuant to the Bid Procedures Order, Sellers have filed a "Cure Notice" by the time set out therein (including any permitted extensions of time). At any time prior to Closing, should Buyer be dissatisfied with any Cure Amount related to an Contract or Lease, then in its sole discretion, Buyer may determine to exclude such asset from the Assets to be purchased. No proposed assumption, assumption and assignment, or cure shall be binding on Buyer until Buyer has closed the purchase.

7.4. Specified Contracts.

With respect to the Contracts and Leases set forth on Schedule 7.4 (the "**Specified Contracts**"), Sellers covenant and agree that they shall neither seek to assume and assign nor reject any such Contract or Lease without the consent of Buyer for the earlier of (i) ten (10) days from the date on which Buyer directs the Sellers file a notice on the docket of the Bankruptcy Cases indicating their intent to assume or reject such Contract or Lease, (ii) ten (10) days prior to the date of any hearing on a motion to dismiss the Bankruptcy Cases or (iii) the date on which the Court

approves a disclosure statement for any Chapter 11 plan the Sellers may file in the Bankruptcy Cases (the “**Designation Period**”). During the Designation Period, Buyer shall have the right to designate any Specified Contract for (x) assumption and assignment to Buyer, in which case such Contract or Lease shall be deemed an Assumed Contract under this Agreement and Sellers and Buyer shall use reasonable efforts to effectuate such assumption and assignment at Buyer’s expense, or (y) rejection, in which case the Sellers shall reject the Contract or Lease under section 365 of the Bankruptcy Code as quickly as reasonably practical. Until the Buyer designates a Specified Contract for assignment or rejection and the Specified Contract is so assigned or rejected, Buyer shall be responsible for all costs and expenses that are due under such Contract or Lease (the “**Specified Contract Costs**”) and shall pay the Specified Contract Costs directly to the counterparty of the Specified Contracts as and when they become due and payable. Buyer hereby indemnifies and holds harmless the Sellers for all Specified Contract Costs that are due from and after the Closing Date as administrative expense obligations of Sellers pursuant to sections 507 and 503 of the Bankruptcy Code.

## ARTICLE 8 BUYER’S CONDITIONS PRECEDENT TO CLOSING

The obligations of Buyer to consummate the transactions described in this Agreement, with respect to each Asset, are subject to the satisfaction, before the Effective Time, of the following conditions precedent, any of which may be waived in writing by Buyer.

### 8.1. Representations and Warranties to be True and Correct/Pre-Closing Covenants to Be Performed

The representations and warranties of the Sellers set forth in this Agreement and in the schedules delivered pursuant hereto shall be complete, true and correct in all material respects as of the Effective Time and the pre-Closing agreements, covenants and conditions required by this Agreement to be performed and complied with by the Sellers shall have been performed and complied with in all material respects.

### 8.2. No Seller Material Adverse Effect

There shall have been no changes that have had or are reasonably likely to have a Material Adverse Effect on the Sellers.

### 8.3. Action/Proceeding

With the exception of the Excluded Assets, no action or proceeding before a court or any Governmental Entity shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated.

### 8.4. Bankruptcy Court Approval.

The Bid Procedures Order and the Sale Order shall have been entered into by the Bankruptcy Court, in form and substance reasonably satisfactory to Buyer, and such orders shall not have been stayed, modified, reversed, or amended, dissolved, revoked or rescinded and shall have become and be enforceable, in full force and effect, and not subject to any stay or injunction. At

Buyer's option, such orders shall also be final, unappealed, and unappealable (a "Final Order"), but Buyer shall be entitled to close in the event of an appeal of the Sale Order if it is not stayed, unless in Buyer's sole discretion it determines to require a Final Order. Buyer shall be entitled to, and is not waiving, the protection of Section 363(m) of the Bankruptcy Code, the mootness doctrine, and any other similar statute or body of law if the Closing occurs without the Sale Order being a Final Order.

8.5. Supporting Documents

Buyer shall have received the documents set forth below:

8.5.1. The Bills of Sale signed by an authorized representative of the Sellers.

8.5.2. Such additional supporting documents and other information with respect to the transactions contemplated hereunder as Buyer may reasonably request.

8.6. Assumed Contracts and Leases

The Sale Order shall provide for the assumption and assignment of the Assumed Contracts and Leases.

8.7. Pharmacy Licenses.

Buyer shall have received (i) all valid Pharmacy Licenses, in full force and effect, necessary to enable it to operate the Business as of Closing in accordance with Section 10.13 below; and (ii) all other licenses necessary to enable it to operate the Business as of Closing, including but not limited to business licenses, sales tax licenses, and wholesale distributor licenses.

8.8. Conveyance and Assignment.

All necessary documents of conveyance and assignment with respect to the Assets and the Business in a form reasonably acceptable to the parties.

**ARTICLE 9**  
**SELLERS' CONDITIONS PRECEDENT TO CLOSING**

The obligation of Sellers to consummate the transactions described in this Agreement, with respect to each Asset, is subject to the satisfaction, before the Effective Time, of the following conditions precedent, any of which may be waived in writing by Sellers:

9.1. Representations and Warranties to be True and Correct/ Pre-Closing Covenants to Be Performed.

The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as of the Effective Time and the pre-Closing agreements, covenants and conditions required by this Agreement to be performed and complied with by Buyer shall have been performed and complied with in all material respects.

9.2. Supporting Documents

Sellers shall have received the documents set forth below:

9.2.1. The Bill of Sale signed by an authorized representative of the Buyer.

9.2.2. Such additional supporting documents and other information with respect to the operations and affairs of Buyer as Sellers may reasonably request.

9.3. Bankruptcy Court Approval.

The Bid Procedures Order and Sale Approval Order shall have been entered by the Bankruptcy Court and such orders shall not have been stayed, modified, reversed or amended, dissolved, revoked, or amended, and shall have become and be enforceable orders, in full force and effect, and not subject to any stay or injunction.

9.4. Purchase Price

Buyer shall pay the Purchase Price and Cure Amounts as required in Article 4.

## **ARTICLE 10 ADDITIONAL COVENANTS AND AGREEMENTS**

10.1. Preservation of the Business

Subject to any obligations as a debtor or debtor-in-possession under the Bankruptcy Code, or Order of the Bankruptcy Court, from the Effective Date until the Closing Date, Sellers hereby covenant and agree to continue to manage and operate the Business in the usual, regular and ordinary course and to take those steps they have taken in the past and reasonably appropriate additional steps to preserve the Business, to keep available to the Buyer the services of the key Employees and preserve the current relationships of the Sellers with the material customers, payors and suppliers of, and other Persons which have significant business relationships with, the Sellers during the period beginning on the Effective Date and ending on the Closing Date.

10.2. Confidentiality

10.2.1. All nonpublic information provided to, or obtained by, Buyer in connection with the transactions contemplated hereby shall be treated as confidential and not disclosed to any third party (other than Buyer's members, managers, officers, directors, employees or agents or others with a need to know in connection with the transactions contemplated hereunder and operation of the Business following the Closing). Until the Closing, the Buyer shall treat and hold as such all of the Sellers' confidential information, refrain from using any of the Sellers' confidential information except in connection with this Agreement. In the event that the transactions contemplated hereby do not close, Buyer shall deliver promptly to the Sellers' or destroy, at the request and option of Sellers, all tangible embodiments (and all copies) of the Sellers' confidential information which are in its possession. Following the Closing, the limitations on the Buyer's use of the Sellers' confidential information shall be of no force or effect.

10.2.2. The Sellers shall treat and hold as such all of the Buyer's confidential information, and refrain from using any of the Buyer's confidential information except in connection with this Agreement. Following the Closing, the Sellers shall treat and hold as such all such confidential and proprietary information of the Buyer and Business, refrain from using any such confidential and proprietary information of the Buyer and Business except in connection with this Agreement or as set forth below. The Sellers are entitled to retain copies of privileged and non-privileged records, to the extent they deem it appropriate in the defense of any threatened or actual lawsuit, prosecution, civil or criminal investigation. In any such case, the Sellers shall use their best efforts to maintain the confidentiality of any confidential information sold to the Buyer support the Buyer in any reasonable request for a protective order or other appropriate relief.

10.2.3. In the event that a party is requested or required pursuant to written or oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process to disclose any confidential information of the other party, such party shall notify the other party promptly of the request or requirement so that the other party may seek an appropriate protective order or waive compliance with the provisions of this Section 10.2.3. If, in the absence of a protective order or the receipt of a waiver hereunder, a party is, on the advice of counsel, compelled to disclose any of the other party's confidential information to any tribunal or else stand liable for contempt, such party may disclose such confidential information to the tribunal; provided, however, that the disclosing party shall use its reasonable efforts to obtain, at the request of the other party, an order or other assurance that confidential treatment shall be accorded to such portion of the confidential information required to be disclosed as the non-disclosing party shall designate. The foregoing provisions shall not apply to any information which is generally available to the public immediately prior to the time of disclosure unless such information is so available due to the actions of the restricted party.

### 10.3. Press Release

Each of the parties shall use reasonable efforts to consult with each of the other parties on any initial press release, public announcement or publicly disseminated communication concerning this transaction, and prior to any press release, public announcement or publicly disseminated communication concerning this transaction, to discuss the content of any such announcement. Thereafter, between the date of execution of this Agreement and the Closing, the parties agree to use reasonable efforts to consult with each other prior to any press release, public announcement or publicly disseminated communication concerning this transaction, to discuss the content of any such announcement and to refrain from making any such press releases or public announcements without first receiving the other's prior consent, which shall not be unreasonably withheld. A party shall be deemed to have given such consent if such party has not provided written notice of objection to the other party within two (2) days following the delivery of notice to the non-disclosing party of such proposed communication. Unless required by law, no party shall issue a press release pertaining to this transaction until the Closing has occurred. In no event shall a party cause any oral or written communication to be issued relating to this transaction which disparages any other party or its subsidiaries or Affiliates, unless required by law. The provisions of this Section 10.3 shall survive the termination of this Agreement.

#### 10.4. Cooperation

Buyer, on the one hand, and the Sellers, on the other, shall negotiate in good faith and shall cooperate with the other, without additional consideration, to carry out the purposes and intent of this Agreement, including, without limitation, the execution and delivery to the appropriate party of all such further assignments, endorsements and other documents as may reasonably be required in order to perfect the sale, transfer and delivery of the Assets to be acquired and sold hereunder and seeking necessary consents and satisfying conditions to Closing which have not been satisfied or waived. Without limiting the foregoing, Sellers shall take, or cause to be taken, all reasonable actions and do, or cause to be done, all things reasonably necessary or proper, consistent with applicable law and the orders of the Bankruptcy Court to consummate the Contemplated Transactions. The parties further agree not to act or omit to act in such a manner and to not commit intentional acts in bad faith that would cause the acting party or the other party to terminate or violate the terms of this Agreement.

#### 10.5. Expenses

Each of the parties hereto shall pay its own expenses and costs (including, without limitation, the fees, disbursements and expenses of its attorneys, accountants, auditors, consultants, and agents), incurred by it in negotiating, preparing, closing and carrying out this Agreement and the transactions contemplated hereby.

#### 10.6. Payment of Certain Taxes

Each Seller shall be solely responsible for and shall pay all payroll taxes and all federal, state and local Income Taxes on the earnings from the operation of the Business through the Effective Time. The parties shall prepare and deliver and if necessary file at or before Closing all transfer tax returns and other filings necessary to vest in the Sellers' full right, title and interest in the Assets.

#### 10.7. Continuing Insurance Coverage for the Sellers

Each Seller shall maintain in full force and effect its policies of insurance until the Closing Date. If any Seller's professional liability insurance is on a "claims made" basis, each such Seller shall purchase on or before the Closing Date an extended reporting endorsement ("tail") for such professional liability insurance policy(ies) with limits consistent with amounts in effect as of the date hereof and shall add Buyer as an additional insured to said policy. Each Seller shall provide a certificate of insurance evidencing such tail policy to Buyer at the Closing.

#### 10.8. Access

Prior to the Closing Date, each Seller shall provide Buyer and its counsel, accountants and other representatives with reasonable access during normal business hours to the premises of the Sellers and all property, both real and personal, contracts, leases, agreements and unprivileged litigation documents relating to the Sellers, as well as the books of account and other records of the Sellers. Buyer shall make reasonable efforts to coordinate with the Sellers for time(s) and place(s) that such materials may be accessed. Each Seller shall remove all of their files related solely to the Excluded Assets prior to the Closing Date at a time agreed upon by Buyer and the Sellers. Following the Closing, Buyer agrees that Sellers may access paper and electronic records related to

the operation of the Business prior to the Closing for any and all proper purposes, including defense of litigation, tax related claims and billing audits.

10.9. Payroll and Benefit Matters

The Sellers shall satisfy all accrued payroll obligations within ordinary course time frames and shall pay all accrued paid-time-off liabilities prior to the Closing Date. In addition, prior to the Closing Date, the Sellers shall provide all appropriate notices to Seller Employees describing rights and options under the 401(k) plan sponsored by the Sellers within any time frames required by law, the plan or by agreement of the parties.

10.10. Employees

Buyer hereby agrees to offer employment to those Employees that are set forth on Schedule 10.10 (“**Transferring Employees**”) and to timely pay any accrued but unpaid payroll obligations owed to the Transferring Employees by the Sellers, up to the amounts set forth in the Sellers’ budget. The Transferring Employees shall be treated as new hires by Buyer and employees at will, subject to Buyer’s employment policies, including without limitation the obligation to take and pass a drug test and to have the unrestricted ability to provide federally reimbursed services. Except as may be set forth in any employment agreement, nothing herein shall obligate Buyer to employ the Transferring Employees for any specific time period. Nothing herein shall be construed to grant any Employee any rights as a third party beneficiary. Neither Sellers nor any Affiliate of Sellers shall employ or offer employment to an Employee who rejects Buyer’s offer of employment.

10.11. Accounts Receivable

Each Seller shall remit to Buyer all proceeds of the Accounts Receivable (including the Unassigned Accounts Receivable) it receives after the Effective Time. Each Seller hereby appoints Buyer as its agent to collect the Unassigned Accounts Receivable. After the Effective Time, the Sellers shall cooperate with Buyer in its collection of the Accounts Receivable (including the Unassigned Accounts Receivable). The Sellers shall maintain the current lockbox accounts in the applicable Seller’s name for so long as Buyer so desires. Each Seller shall direct (a) that all proceeds of the Unassigned Accounts Receivable be directed to such lockbox account; and (b) that such lockbox account be swept to an account designated by, and in the name of, Buyer. Each Seller shall not make any withdrawals from such lockbox account. Buyer shall reimburse the Sellers for any fees charged by the bank for maintaining such lockbox account. At Buyer’s instruction, the Sellers shall cause the lockbox accounts to be transferred to Buyer’s name.

10.12. Further Assurances and Transition Services.

10.12.1. *From time to time after Closing, Sellers shall execute and deliver such other instruments of conveyance and transfer, and take such other actions as Buyer may reasonably request, to more effectively convey and transfer full right, title and interest to, vest in, and place Buyer in legal and actual possession of, any and all of the Assets.*



10.12.2. Promptly after execution of this Agreement, Sellers and Buyer shall develop a detailed transition plan, reflecting, among other things, the agreements regarding Transition Services included in Section 10.12.3 below.

10.12.3. Sellers and Buyer agree that until June 30, 2018 (the “**Transition Services Period**”), Sellers shall provide all services necessary to enable the Buyer to operate the Business in accordance with applicable Law until Buyer obtains all Pharmacy Licenses as set forth in Section 10.13 below (the “**Transition Services**”). Sellers agree to enter into a transition services agreement governing the Transition Services, at the request of the Buyer in its sole and absolute discretion, in form and substance that is acceptable to the Sellers and Buyer, but such services shall only be at out-of-pocket cost to the Buyer.

10.13. Pharmacy Records and Licenses.

10.13.1. Promptly as practicable after the execution of this Agreement, Buyer shall make application to the applicable authorities to transfer the Pharmacy Records, if and as necessary, from Sellers to Buyer. Such application shall be made on a timely basis and Sellers, shall cooperate with Buyer and provide any documents and/or information necessary to assist in effectuating such transfer and execute such consents or other papers as may be reasonably required subject to applicable patient privacy rights and to the extent not otherwise prohibited by applicable Law, assign, transfer, and convey to Buyer all of their right, title, and interest in and to the applicable Pharmacy Records, and Buyer hereby agrees to purchase and accept from Sellers all of the applicable Pharmacy Records as of each applicable Closing.

10.13.2. Buyer shall file all applications necessary, and use its commercially reasonable efforts, to obtain all permits, licenses or approvals (including without limitation, all applicable state permits, United States Drug Enforcement Agency numbers, National Council for Prescription Drug Programs numbers, National Provider Identifier numbers, CDS numbers and Medicare and Medicaid numbers (collectively, the “**Pharmacy Licenses**”)) necessary to operate a pharmacy within ten (10) business days after the entry of the Sale Order. In the event that any Pharmacy License necessary for the Buyer’s operation of any pharmacy is not obtained prior to the applicable Closing, Sellers acknowledge and agree that, beginning on each applicable Closing Date and subject to the immediately following sentence, Buyer shall be entitled to utilize, to the extent permitted by applicable Law, the Pharmacy Licenses of Sellers related to such pharmacy. To effect the foregoing authorization, at or prior to each applicable Closing and only to the extent that Buyer has not obtained the applicable Pharmacy License, Sellers and Buyer shall (i) execute a power of attorney satisfactory to Sellers and Buyer authorizing Buyer to use Seller’s Pharmacy Licenses (as permitted by applicable law) until June 30, 2018; and (ii) execute such documents, if any, as may be required or requested by a Governmental Entity, including any affidavits of sale. As a condition precedent to Sellers’ execution of such power of attorney or any other documents required or requested by a Governmental Entity, Buyer shall also agree that during the period of Buyer’s use of Sellers’ Pharmacy Licenses, Buyer shall own and operate the applicable pharmacy in accordance with applicable law. Buyer’s use of the Pharmacy Licenses with respect to any pharmacy shall automatically terminate upon the issuance to Buyer of all of the Pharmacy Licenses necessary for Buyer to lawfully operate such pharmacy.

10.13.3. In the event that an application for a Pharmacy License is denied (or Buyer reasonably expects such application to be denied) by a Governmental Entity, then Buyer, in its sole and absolute discretion, may designate any Assets associated with such Pharmacy License as Excluded Assets.

## **ARTICLE 11 RELEASE**

### 11.1. Sellers' Release.

Effective upon the Closing and payment of the Purchase Price, each of Sellers, for itself and all of its predecessors, Affiliates, subsidiaries, heirs, estates, successors and assigns, and for all of their respective officers, directors, trustees, principals, managers, partners, shareholders, members, employees, attorneys, representatives and agents (the "**Seller Releasing Parties**"), hereby jointly and severally release the Buyer Related Parties, from any and all claims, actions, causes of action, suits, liabilities, obligations, demands, grievances, debts, sums of money, agreements, promises, damages, rights to reimbursement, rights to contribution, rights to indemnification, costs, expenses, attorneys' fees, injunctive relief, disgorgement, restitution, and all other rights and remedies of any type, whether known or unknown, whether in law or in equity, and whether based upon any federal, state, or local law, statute, ordinance, or regulation, or upon any contract, common law source, or any other source, but provided they are owned by the Sellers or are derivative in nature, and except for any claims that may arise under this Agreement (the "**Released Claims**").

### 11.2. Sellers' Covenant Not to Sue.

Effective upon Closing and payment of the Purchase Price, each of the Seller Releasing Parties agrees never to bring any claim, action or proceeding against the Buyer Related Parties relating to the Released Claims.

### 11.3. Unknown Facts.

Each of the Sellers fully understands and recognizes that it may hereafter discover facts other than, or different from, what it knows or believes to be true with respect to the Released Claims. Nevertheless, each of the Sellers hereby does and has, and for all times shall be deemed to have, waived and fully, finally and forever released any known or unknown, hidden or open, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claims, without regard to the subsequent discovery or existence of different or additional facts

### 11.4. Release as Defense to Further Action.

This Release may be pleaded as full and complete defense to any action, suit, or other proceeding that may be instituted or prosecuted with respect to any of the Released Claims

## **ARTICLE 12 TERMINATION**

### 12.1. Termination.

This Agreement and the transactions contemplated herein may be terminated at any time prior to the Effective Time by (i) the mutual written agreement of Sellers and Buyer, or (ii) either Sellers or Buyer prior to the Effective Time if the other party fails to satisfy the conditions applicable to such party (under Article 8 or Article 9, as the case may be) and such failure(s), individually or in the aggregate, constitute a Material Adverse Effect

12.2. Effect of Termination.

In the event of such a termination, this Agreement shall be rendered void and of no further force or effect, without any liability on the part of any of the parties hereto or their respective owners, directors, members, managers, officers or employees, except the obligations of each party to preserve the confidentiality of documents, certificates, and information furnished to such party pursuant hereto and for any obligation or liability of any party based on or arising from any breach or default by such party with respect to its representations, warranties, covenants or agreements contained in related agreements, and the Deposit shall be returned to the Buyer in accordance with the Deposit Stipulation.

**ARTICLE 13  
MISCELLANEOUS**

13.1. Notices.

All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed delivered (a) on the date of personal delivery or transmission by confirmed telegram, confirmed facsimile transmission or e-mail, (b) on the third (3<sup>rd</sup>) business day following the date of deposit in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, (c) on the first (1<sup>st</sup>) business day following the date of delivery to a nationally-recognized overnight courier service, in each case addressed as follows, or to such other address, person or entity as either party shall designate by notice to the other in accordance herewith:

If to the Sellers, addressed to:

With a copy:

Elizabeth Green  
BakerHostetler LLP  
200 S Orange Ave suite 2300  
Orlando, Florida 32801  
Telephone: 407-649-4036

Jorian Rose  
BakerHostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111-0100  
Telephone: 212.589.4681

If to Buyer, addressed to:

Alison Wistner

1635 Creek Side Lane  
Park City, Utah 84098  
Telephone: (801) 541-2001

With a copy to:

Michael Klein  
Cooley LLP  
1114 Avenue of the Americas  
New York, New York 10036  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275

13.2. Survival.

Other than the requirements of further assurances and other actions specifically identified to be taken post-closing, the covenants, representations, and warranties set out in this Agreement shall expire upon the Closing Date. The parties expressly agree and acknowledge that Buyer is relying upon each of the representations and warranties of the Sellers made in this Agreement and that Buyer would not be willing to enter into this Agreement if any limitations were placed on such reliance.

13.3. Reserved.

13.4. Waiver.

The failure of any party to insist, in any one or more instances, on performance of any of the terms and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term, covenant or condition, but the obligations of the parties with respect thereto shall continue in full force and effect.

13.5. Third Parties.

None of the provisions of this Agreement shall confer rights or benefits as third party beneficiaries or otherwise upon any party that is not expressly a party to this Agreement, and the provisions of this Agreement shall not be enforceable by any such third party.

13.6. Severability.

If any part of this Agreement should be determined to be invalid, unenforceable, or contrary to law, that part shall be amended, if possible, to conform to law, and if amendment is not possible, that part shall be deleted and other parts of this Agreement shall remain fully effective, but only if, and to the extent, such modification or deletion would not materially and adversely frustrate the parties' essential objectives as expressed in this Agreement.

13.7. Amendment.

This Agreement may be amended, supplemented, altered or modified at any time only by a written instrument duly executed by Sellers and Buyer.

13.8. Counterparts.

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties to this Agreement may deliver their executed counterparts by facsimile or other electronic means, provided that original signatures are delivered by U.S. Mail promptly thereafter.

13.9. Headings.

The headings contained in this Agreement have been inserted for the convenience of reference only and shall in no way restrict or modify any of the terms or provisions hereof.

13.10. Entire Agreement.

This Agreement (including the schedules and exhibits hereto, and all other agreements and documents executed in connection herewith) constitutes the entire agreement among the parties hereto with respect to the subject hereof.

13.11. Successors and Assigns.

All terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto, whether so expressed or not.

13.12. Governing Law.

The parties specifically agree that this Agreement shall in all respects be interpreted, read construed and governed by the internal laws of the State of Utah, exclusive of its conflicts of law rule, except to the extent that the laws of such state are superseded by the Bankruptcy Code. The prevailing party in any dispute regarding this Agreement shall be entitled to recover all attorney's fees of pursuing or defending an action under this Agreement.

13.13. Waiver of Jury Trial.

**EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

13.14. Specific Performance.

The parties acknowledge and agree that the other parties and their respective estates, as applicable, would be damaged irreparably in the event the parties do not perform their respective obligations under this Agreement in accordance with its specific terms or otherwise breach this Agreement, so that, in addition to any other remedy that the parties may have under law or equity, each party shall be entitled, without the requirement of posting a bond or other security, to

injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

13.15. Assignment.

No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party; provided, that Buyer may assign any or all of its rights or interests, or delegate any or all of its obligations, in this Agreement to one or more of Buyer's Affiliates or designees; and further provided, that Sellers' performance may be rendered by a successor in bankruptcy, including a liquidating trust.

13.16. Joint and Several Obligations.

The obligations of each of the Sellers under this Agreement are joint and several.

[Remainder of page reserved intentionally]

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

**BUYER:**

**UPWELL HOLDING, INC. A DELAWARE CORPORATION**

By: 

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

Its: \_\_\_\_\_

**SELLERS:**

**ALLIANCE MEDICAL HOLDINGS LLC, A  
DELAWARE LIMITED LIABILITY COMPANY,  
AND ITS AFFILIATES**

By: 

Printed Name: RONALD L. GLASS

Its: Chapter II Trustee