

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
MEDLY HEALTH INC., <i>et al.</i> , ¹)	Case No. 22-11257 (KBO)
)	
Debtors.)	(Jointly Administered)
)	

Related to Docket Nos. 15, 312, 353
Sale Hearing Date: February 7, 2023 at 10:30 a.m. (Eastern Time)

**NOTICE OF FILING OF SUCCESSFUL
BIDDER ASSET PURCHASE AGREEMENT**

PLEASE TAKE NOTICE that on January 18, 2023, the Bankruptcy Court entered the *Order (I) Approving Bidding Procedures and Bid Protections in Connection with the Sale of Substantially All of Debtors’ Assets, (II) Scheduling Bid Deadlines and the Auction, (III) Approving Form and Manner of Notice Thereof, and (IV) Granted Related Relief*, [Docket No. 312] (the “Bidding Procedures Order”)².

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, the Debtors conducted an auction for the sale of their assets (the “Assets”) on February 3, 2023 and February 4, 2023 at 919 N. Market Street, 16th Floor, Wilmington, DE 19801 and by video conference to the live proceedings at this location.

¹ The Debtors, along with the last four (4) digits of each Debtor’s federal tax identification number are: Medly Health Inc. (3391); Care Well Pharmacy, Inc. (9048); Grubbs Care Pharmacy NW Inc. (0490); Marg Pharmacy, Inc. (5838); Medly Atlanta Inc. (7312); Medly Baltimore Inc. (2354); Medly Bedford Ave Pharmacy Inc. (3690); Medly Bristol Inc. (4556); Medly Bronx Inc. (4741); Medly Chicago Inc. (5231); Medly Dallas Inc. (7581); Medly DC Inc. (9403); Medly Enterprise LLC (8898); Medly Grand Central Inc. (1741); Medly Houston Inc. (7443); Medly Jersey City Inc. (5677); Medly Mail Service Pharmacy LLC (9203); Medly Miami Inc. (8101); Medly Orlando Inc. (7581); Medly Pharmacy Inc. (4606); Medly Pharmacy PA Inc. (8494); Medly Pittsburgh Inc. (8381); Medly Queens Inc. (9623); Medly Raleigh Inc. (5140); Medly San Antonio Inc. (9973); Medly Stamford Inc. (4966); Medly Tampa Inc. (5128); Medly UCHC Pharmacy Inc. (6672); Medly Utah Inc. (4648); Pharmaca Integrative Pharmacy, Inc. (0334); Tango340B LLC (4781); West Campbell Pharmacy Inc. (2931); Khora Health Solutions Inc. (2909); and RPH Innovations LLC (3767). The Debtors’ business address is 7088 Winchester Circle, Suite 100, Boulder CO 80301.

² Capitalized terms not defined herein shall have the meanings provided to them in the Bidding Procedures Order or the Bid Procedures.

PLEASE TAKE FURTHER NOTICE that, on February 4, 2023 the Debtors filed the *Notice of Auction Results* [Docket No. 353] which identified Walgreen Co. as the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is the *Asset Purchase Agreement* dated February 5, 2023 between the Debtors and the Successful Bidder (the "Successful Bidder APA").

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Successful Bidder APA at the hearing scheduled in these cases for **February 7, 2023 at 10:30 a.m. (prevailing Eastern Time)** (the "Sale Hearing") before the Honorable Karen B. Owens, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open Court on the date scheduled for the Sale Hearing or on the Court's docket.

Dated: February 6, 2023

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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Counsel for Debtors and Debtors in Possession

EXHIBIT A

ASSET PURCHASE AGREEMENT

by and among

WALGREEN CO.

as Buyer,

and

MEDLY HEALTH INC.

and

EACH OF THE SUBSIDIARIES OF MEDLY HEALTH INC.
SET FORTH ON THE SIGNATURE PAGES HERETO,

collectively, as Seller

Dated as of February 5, 2023

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Exhibits:

- Exhibit A – Pharmaceutical Inventory Instructions
- Exhibit B – Rx Inventory Caps; Pharmacy Records Amounts
- Exhibit C – Form Patient Letter

Schedules:

- Schedule 4.1(e) - Consents and Approvals
- Schedule 4.1(g) - Litigation
- Schedule 4.1(j) - Permits
- Schedule 4.1(l)(i) – Intellectual Property
- Schedule 4.1(l)(ii) - IP Matters
- Schedule 4.1(p) – Data Privacy
- Schedule 4.1(s) – Pharmaceutical Inventory
- Schedule 11.5 - Brokers and Finder’s Fees
- Schedule 12.1(a) - Business Names

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of February 5, 2023 (the “Effective Date”), is entered into by and among Medly Health Inc., a Delaware corporation (“Medly”), each of the Subsidiaries of Medly set forth on the signature pages to this Agreement (collectively, with Medly, “Seller”), and Walgreen Co., an Illinois corporation (“Buyer”). Buyer, on the one hand, and Seller, on the other hand, shall each be referred to herein individually as a “Party” and, collectively, as the “Parties.” Capitalized terms used in this Agreement are defined in Article 12.

RECITALS

A. Seller is engaged in the sale of full-service retail and specialty pharmacy with consumer services such as delivery, prior authorization coordination, copay and refill management (the “Business”), and owns and leases various assets related to the Business. On or about December 9, 2022 (such date, the “Petition Date”) each Seller shall file a voluntary petition for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court” and the cases arising under such petition, collectively, the “Bankruptcy Case”).

B. Buyer desires to purchase the Acquired Assets free and clear of all Liens and as provided in the Sale Order, and Seller desires to sell, convey, assign and transfer to Buyer, the Acquired Assets, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105 and 363 and other applicable provisions of the Bankruptcy Code.

C. In exchange for the transfer to Buyer of the Acquired Assets as set forth herein, Buyer desires to provide certain consideration (as set forth below) to Seller.

D. Certain of the Acquired Assets are assets of Seller, which are to be marketed for sale in accordance with the provisions of the Bid Procedures Order and will be sold to and assumed by Buyer pursuant to the Sale Order pursuant to Sections 105 and 363 of the Bankruptcy Code all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order and in accordance with the applicable provisions of the Bankruptcy Code. The execution and delivery of this Agreement and Seller’s ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of the Sale Order.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS.

Section 1.1 Transfer of Acquired Assets. Upon and subject to the terms and conditions set forth in this Agreement, Seller shall sell to Buyer, and Buyer shall acquire from Seller, all of Seller’s right, title and interest in and to the Acquired Assets free and clear of all Liens to the extent set forth herein and as provided in the Sale Order. For all purposes under this Agreement, the term “Acquired Assets” shall not include any Excluded Assets, and shall include only the following assets of Seller:

- (a) at the Pharmaceutical Inventory Closing:

(i) all Pharmaceutical Inventory for each Store as of the Pharmaceutical Inventory Closing, located at such Store, having an aggregate valuation not to exceed the Rx Inventory Cap amount set forth in Exhibit B for such Store (collectively, for all Stores, such Pharmaceutical Inventory, the “Eligible Inventory”) and all accompanying transaction history, transaction information and transaction statement (the “3T Documentation”), as required pursuant to the Drug Supply Chain Security Act (the “DSCSA”) and controlled substance invoices, DEA 222 forms (blue copies), and annual controlled substance inventory logs dated within the last twenty-four (24) months prior to the Pharmaceutical Inventory Closing (collectively with the 3T Documentation, the “Pharmaceutical Inventory Documentation”);

(ii) to the extent permitted by applicable Law, all Documents as of the Pharmaceutical Inventory Closing that are primarily used in, held for use in or intended to be used in, or that primarily relate to, the Acquired Assets at the Stores, including all Documents related to products of Seller, services, marketing, advertising, promotional material, customer files and documents (including credit information), supplier lists, records, literature and correspondence, whether or not physically located on any Leased Real Property. Notwithstanding anything to the contrary in this Agreement but subject to Section 6.3(a), none of the Acquired Assets shall include any information, documents or materials of any kind that are (A) subject to attorney-client or attorney-client work product or similar privileges (including, for the avoidance of doubt, any of the foregoing that relate to the negotiation of this Agreement or the preparation for the filing of the Bankruptcy Case) (collectively, “Privileged Matter”), or (B) subject to third party privacy rights that preclude the transfer. Buyer acknowledges and agrees that, subject to Section 6.3(a), (xx) any transfer, conveyance, disclosure, or delivery (including on any servers included in the Acquired Assets) of any Privileged Matter is entirely inadvertent and unintentional and shall neither be construed as, nor constitute, a waiver, modification, limitation, or impairment of the privileged or protected nature of such Privileged Matter, and (yy) any Privileged Matter inadvertently held by the Buyer shall, at the request of Seller, be transferred to Seller;

(b) at the Pharmacy Records Closing:

(i) all of Seller’s prescription files and prescription records, data and patient refill history as of the Pharmacy Records Closing in respect of prescriptions filled by Seller at the Stores or otherwise utilized, maintained and/or generated by Seller in the course of operating its Business, including all hard copy prescriptions, patient profiles, signature logs, customer lists, and all electronic data of the foregoing maintained in any format by Seller, for at least two (2) years prior to the Pharmacy Records Closing or such longer period as may be required to comply with any applicable Governmental Authority record retention rules and regulations or shorter period to the extent any Store has been in operation for less than two (2) years, (collectively, the “Pharmacy Records”), including, all Seller Scripts (as applicable). The Acquired Assets shall exclude all prescription files of patients who have opted to have their files transferred to a location other than one of the Stores;

(c) at the first Closing, all Intellectual Property owned by Seller as of such Closing (collectively, the “Acquired Intellectual Property”).

Section 1.2 Excluded Assets. Notwithstanding any provision to the contrary in Section 1.1, the Acquired Assets shall not include any right, title or interest of any Person other than Seller in any property or asset, or Seller’s right, title and interest in, to and under properties and assets not used in connection with the ownership, operation or management of the Business, and shall specifically exclude the following properties, all Contracts, all Leases, and all other assets, interests and rights of Seller (all such items not being acquired by Buyer being referred to in this Agreement as the “Excluded Assets”):

(a) all Leases;

- (b) all of Seller's intercompany obligations and receivables;
- (c) all rights of every nature and description under or arising out of (including rights to refunds or adjustments relating to proceeds and recoveries from): (i) all insurance policies of Seller, (ii) all insurance policies to the extent of coverage of any Liabilities, and (iii) all insurance policies insuring or covering the directors and officers of Seller (the foregoing clauses (i) through (iii) collectively, the "Excluded Insurance Policies");
- (d) any minute books, stock ledgers, corporate seals and stock certificates of Seller, and other similar books and records that Seller is required by Law to retain and all Tax Returns, financial statements and corporate or other entity filings; provided that, following the last Closing, and to the extent permitted by applicable Law, Seller shall make such Documents, to the extent relating to the Acquired Assets, available to Buyer upon Buyer's reasonable request;
- (e) all (i) prepaid premiums in respect of all Excluded Insurance Policies, (ii) retainers, prepayments or on-account cash paid to Seller's professionals and advisors (whether retained in the Bankruptcy Case or otherwise), including any carve-out under any DIP Facility or other debtor in possession financing in the Bankruptcy Case or any cash collateral arrangements, and (iii) other deposits, prepaid charges and expenses paid by Seller, to the extent in connection with or relating to any Excluded Asset;
- (f) all shares of capital stock and other equity interests of any entity that is a part of Seller or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any such entity;
- (g) all Documents exclusively relating to any Excluded Asset;
- (h) all Documents to the extent relating to (i) any Employees; provided that, to the extent permitted by applicable Law, Seller shall make copies of such Documents available to Buyer if reasonably related to addressing or defending any such Employees' claims against Buyer, and (ii) all Documents excluded from the Acquired Assets pursuant to Section 1.1 above;
- (i) any asset that requires the consent of a third party to be transferred, assumed or assigned hereunder as to which, by the Pharmaceutical Inventory Closing or Pharmacy Records Closing, as applicable (and after giving effect to the entry of the Sale Order and any other Order of the Bankruptcy Court eliminating any contractual right of third parties to withhold such consent), such consent to transfer, assumption or assignment has not been obtained, effected or excused;
- (j) all Employee Benefit Plans (the "Excluded Benefit Plans") and all assets of, and Contracts exclusively relating to, or associated with, such Excluded Benefit Plans;
- (k) all Cash;
- (l) all funds advanced to Seller under the DIP Facility (including any fee reserves or escrows funded with the DIP Facility);
- (m) any rights of Seller under this Agreement or any Ancillary Agreement to which Seller is a party, including any rights relating to the Purchase Price or;

(n) all rights of recovery, rights of set-off, rights of indemnity, contribution or recoupment, warranties, guarantees, rights, remedies, counter-claims, cross-claims and defenses related to any Liability;

(o) Intentionally Omitted;

(p) all Contracts;

(q) all Excluded Claims;

(r) the Tango Operating Unit;

(s) the Excluded Inventory, including the Non-Pharmaceutical Inventory;

(t) the Medly Accounts Receivable;

(u) all Avoidance Actions; and

(v) all assets of Seller not included in the Acquired Assets, including goodwill not included in the Acquired Intellectual Property, and any of Seller's retail operations (including retail operations located at the same locations as the Stores), including without limitation, (i) all Accounts Receivable of Seller; (ii) all Permits issued to Seller and all pending applications therefor; (iii) all hard copy or electronic prescriptions, prescription files and records that are not included in the Pharmacy Records (or Seller Scripts), including any Pharmaceutical Inventory Excess; and (iv) all items of machinery, equipment, supplies, furniture, fixtures, Leasehold Improvements, and other tangible personal property and fixed assets owned by Seller or leased pursuant to any Contract (which, for the avoidance of doubt, does not include Pharmaceutical Inventory) (collectively, the "Tangible Assets"). Without limiting the generality of the foregoing, Buyer does not assume any type of successor liability as to trade creditors, unemployment, income, property, sales of other taxes, or otherwise.

Section 1.3 No Assumed Liabilities. Buyer and its Affiliates shall not assume or have any responsibility for any and all Liabilities of Seller and its Affiliates.

Section 1.4 Retention of Liabilities. Notwithstanding anything contained in this Agreement to the contrary, Buyer is not assuming any Liability or obligation of Seller whatever nature, whether presently in existence or arising hereafter. All such Liabilities and obligations shall not be assumed by Buyer and shall be retained by and remain Liabilities and obligations of Seller.

Section 1.5 Intentionally Omitted.

Section 1.6 Non-Assignment of Acquired Assets. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not be deemed an assignment or transfer of any Acquired Asset if (a) an attempted assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any party thereto other than Seller (each such action, a "Necessary Consent"), would constitute a breach thereof (after giving effect to any waiver by the applicable counterparty, or any elimination of such approval, authorization or consent requirement by operation of the Sale Order) or in any way materially adversely affect the rights or obligations of Buyer thereunder and such Necessary Consent is not obtained and (b) the Bankruptcy Court shall not have entered an Order providing that such Necessary Consent is not required because the transfer thereof shall be deemed by the Bankruptcy Court to be (x) effective and (y) not a breach thereof, notwithstanding the failure to obtain such Necessary Consent. In such event, Seller and Buyer will

use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Acquired Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Buyer as Buyer may reasonably request; provided, however, that Seller shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or legal proceedings to obtain any such consent or approval or otherwise incur any material cost or expense in connection therewith. If such Necessary Consent is not obtained, or if such Acquired Asset or an attempted assignment thereof would otherwise be ineffective or would materially adversely affect the rights of Seller thereunder so that Buyer would not in fact receive all such rights, Seller and Buyer will cooperate in a mutually agreeable arrangement, to the extent feasible and in compliance with applicable Law and at no out-of-pocket expense to Seller, under which Buyer would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sublicensing or subleasing to Buyer, or under which Seller would enforce for the benefit of, and at the direction of, Buyer, with Buyer assuming Seller's obligations, any and all rights of Seller thereunder.

ARTICLE 2 PURCHASE PRICE

Section 2.1 Purchase Price; Payments at Closing.

(a) Purchase Price.

(i) Purchase Price. The consideration for the Acquired Assets shall be an amount in cash equal to Nineteen Million Three Hundred Fifty Thousand Dollars (\$19,350,000); provided that the sum of (A) the aggregate Pharmaceutical Inventory Purchase Price for all Stores (the "Aggregate Pharmaceutical Inventory Purchase Price"), plus (B) the aggregate Pharmacy Records Purchase Price for all Stores (the "Aggregate Pharmacy Records Purchase Price") equals Nineteen Million Three Hundred Fifty Thousand Dollars (\$19,350,000) (collectively, the "Purchase Price").

(ii) Payment of Aggregate Pharmaceutical Inventory Purchase Price. At the Pharmaceutical Inventory Closing, Buyer shall pay, or cause to be paid, to Seller, by wire transfer of immediately available funds to the account or accounts designated by Seller in writing prior to the Pharmaceutical Inventory Closing, the full amount of the Aggregate Pharmaceutical Inventory Purchase Price.

(iii) Payment of Aggregate Pharmacy Records Purchase Price. At the Pharmacy Records Closing, Buyer shall pay, or cause to be paid, to Seller, by wire transfer of immediately available funds to the account or accounts designated by Seller in writing prior to the Pharmacy Records Closing, the full amount of the Aggregate Pharmacy Records Purchase Price.

(b) Good Faith Deposit. Concurrently with the mutual execution of this Agreement, Buyer shall deliver to the Deposit Escrow Agent in immediately available good funds of the United States of America a good faith deposit in amount equal to Two Million Forty Thousand Dollars (\$2,040,000) (the "Deposit"). When received by Seller, the Deposit shall be credited and applied to the portion of the Purchase Price to be paid at the last Closing by Buyer in accordance with the terms of this Agreement, or returned to Buyer or delivered to Seller, as applicable, in accordance with Section 10.2.

(c) Pharmaceutical Inventory Valuation. Exhibit A sets forth, with respect to each Store, the procedure for the Third Party Pharmaceutical Inventory Service to conduct a valuation of such Store's Pharmaceutical Inventory (each an "Inventory Audit"). As of each Store Verification Date, Seller shall deliver to Buyer the Pharmaceutical Inventory Documentation with respect to such Store's Pharmaceutical Inventory in Seller's possession. Buyer shall review the Pharmaceutical Inventory

Documentation to confirm such Pharmaceutical Inventory Documentation is sufficient to comply with applicable Law and notify Seller if, acting in good faith, it identifies any deficiencies. Buyer shall have the right to reject any Pharmaceutical Inventory that lacks sufficient Pharmaceutical Inventory Documentation. Seller and Buyer shall be permitted to each have one or more representatives present to observe each Inventory Audit. The reasonable costs and expenses associated with Seller having a representative at each Inventory Audit or to secure the Pharmaceutical Inventory at a certain Store if the Pharmaceutical Inventory Closing does not occur by February 13, 2023 shall be borne by Buyer up to no more than Five Thousand Dollars (\$5,000). For each Store, an Inventory Audit shall be performed as set forth on Exhibit A, but in no event later than seven (7) days after the applicable Store Verification Date, with respect to Pharmaceutical Inventory in such Store as of the close of business on the day prior to such Store Verification Date (or, in the case of a 24-hour Store, with respect to Pharmaceutical Inventory as of 11:59 p.m. (in such Store's time zone) on the day prior to such Store Verification Date). Each Inventory Audit shall be conducted, and the value ascribed to each item of Pharmaceutical Inventory by the Third Party Pharmaceutical Inventory Service in determining the applicable Store's Pharmaceutical Inventory Amount, shall be determined in accordance with the inventory count and valuation procedures set forth on Exhibit A.

(d) Pharmacy Records Adjustment. Exhibit B sets forth with respect to each Store (i) the portion of the Purchase Price allocated for such Store's Pharmacy Records, which is set forth under the column labeled the "Rx Purchase Price Allocation" (each a "Pharmacy Records Purchase Price Allocation") and (ii) a defined 7-day week daily average Pharmacy Records volume for such Store based on the four (4) week average provided by Seller, which is set forth under the column labeled the "Pharmacy Records Amount" (the "Pharmacy Records Amount"). The Parties agree that the respective Pharmacy Records Amount will decrease in the event there is a reduction in the daily Pharmacy Records Amount at the respective Store, which decrease shall be calculated as follows: (A) on a date within three (3) days following the Store Verification Date, the Parties shall measure the thirty (30) day average daily volume of Pharmacy Records at the respective Store ending the day prior to such Store Verification Date (such count, each a "Pharmacy Records Verification Date Amount"); (B) in the event the Pharmacy Records Verification Date Amount is less than the respective Pharmacy Records Amount by three percent (3%) or more, then the respective Pharmacy Records Amount and the respective Pharmacy Records Purchase Price Allocation shall be reduced proportionately, without regard to the initial three percent (3%) reduction; and (C) in the event the Pharmacy Records Verification Date amount is more than the respective Pharmacy Records Amount by three percent (3%) or more, then the respective Pharmacy Records Amount and the respective Pharmacy Records Purchase Price allocation shall be increase proportionally, without regard to the initial three percent (3%) increase. Solely for the purpose of example, if the decrease between respective Pharmacy Records Amount and respective Pharmacy Records Verification Date Amount is twenty-five percent (25%), then the decrease of the respective Pharmacy Records Amount and the respective Pharmacy Records Purchase Price Allocation would be twenty-two percent (22%). Buyer's calculation of the Pharmacy Records Verification Date Amount shall be conclusive. The Parties further agree that all decreases or increases, as applicable, to a Store's Pharmacy Records Purchase Price Allocation shall be deemed to reduce or increase, as applicable, such Store's Pharmacy Records Purchase Price (such reduction or increase, as applicable to the Pharmacy Records Purchase Price, a "Pharmacy Records Adjustment").

(e) Intentionally Omitted.

(f) Payments made by Seller. At the Pharmaceutical Inventory Closing or Pharmacy Records Closing (each a Closing), as applicable, or as otherwise agreed by Buyer and Seller or as set forth in the Sale Order, and except to the extent that Seller may be able to compromise, discharge or otherwise treat such amounts in the Bankruptcy Case, Seller shall make the following payments from the applicable portion of the Purchase Price: (i) all accrued and unpaid sales Taxes for the portion of the month in which the Closing occurs, through the date of such Closing, shall be paid to the applicable Governmental Authority

at such Closing (or as soon as practicable thereafter); and (ii) any claims that are administrative expenses under Section 503(b) of the Bankruptcy Code.

(g) Intentionally Omitted.

Section 2.2 Purchase Price Adjustment.

(a) Pharmaceutical Inventory Closing Statement. At the Pharmaceutical Inventory Closing, Buyer shall prepare and deliver, or cause to be prepared and delivered, to Seller a statement (the "Pharmaceutical Inventory Closing Statement"), together with reasonably detailed supporting documentation, setting forth in reasonable detail Buyer's calculation of: (i) each Store's Pharmaceutical Inventory Amount (including any Pharmaceutical Inventory Shortfall) (as applicable); and (ii) the resulting calculation of the Aggregate Pharmaceutical Inventory Purchase Price under Section 2.1(a)(i). The Pharmaceutical Inventory Closing Statement will be prepared in a manner consistent with the definition of the term Pharmaceutical Inventory Shortfall (and the definitions of the defined terms contained therein). The Pharmaceutical Inventory Closing Statement will entirely disregard (A) any and all effects on the Acquired Assets as a result of the transactions contemplated by this Agreement or any other transaction entered into by Buyer in connection with the consummation of the transactions contemplated by this Agreement and (B) any of the plans, transactions or changes that Buyer intends to initiate or make or cause to be initiated or made after the Pharmaceutical Inventory Closing with respect to the Acquired Assets, or any facts or circumstances that are unique or particular to Buyer or any of its Affiliates or any of their respective activities, assets or liabilities. The Pharmaceutical Inventory Closing Statement will be based solely on facts and circumstances as they exist as of the date of the Pharmaceutical Inventory Closing and will exclude the effect of any fact, event, change, circumstance, act, development or decision occurring after such date. The Parties agree that each Store's Pharmaceutical Inventory Amount (including any Pharmaceutical Inventory Shortfall) as set forth in the Pharmaceutical Inventory Closing Statement shall be final and binding on the Parties other than in the event of fraud or mistake; provided, however, that in the event Buyer or Seller determines within five (5) days of Buyer's delivery of the Pharmaceutical Inventory Closing Statement that there was fraud or mistake in the calculation of a Store's Pharmaceutical Inventory Shortfall, the discovering party shall provide the other party with prompt written notice and Buyer and Seller shall negotiate in good faith to resolve the dispute (including using reasonable best efforts to resolve such dispute within three (3) days), and within two (2) days of the day the dispute is resolved the applicable Party shall pay any agreed amount of any such difference by wire transfer of immediately available funds to an account specified by the receiving Party.

(b) Pharmacy Records Closing Statement. At the Pharmacy Records Closing, Buyer shall prepare and deliver, or cause to be prepared and delivered, to Seller a statement (the "Pharmacy Records Closing Statement"), together with reasonably detailed supporting documentation, setting forth in reasonable detail Buyer's calculation of: (i) any Pharmacy Records Adjustment (as applicable) for each Store; and (ii) the resulting calculation of the Aggregate Pharmacy Records Purchase Price under Section 2.1(a)(i). The Pharmacy Records Closing Statement will be prepared in a manner consistent with the definitions of the term Pharmacy Records Adjustment (and the definitions of the defined terms contained therein). The Pharmacy Records Closing Statement will entirely disregard (A) any and all effects on the Acquired Assets as a result of the transactions contemplated by this Agreement or any other transaction entered into by Buyer in connection with the consummation of the transactions contemplated by this Agreement and (B) any of the plans, transactions or changes that Buyer intends to initiate or make or cause to be initiated or made after the Pharmacy Records Closing with respect to the Acquired Assets, or any facts or circumstances that are unique or particular to Buyer or any of its Affiliates or any of their respective activities, assets or liabilities. The Pharmacy Records Closing Statement will be based solely on facts and circumstances as they exist as of the date of the Pharmacy Records Closing and will exclude the effect of any fact, event, change, circumstance, act, development or decision occurring after such date.

Notwithstanding the foregoing, the Parties agree that Buyer's calculation of each Store's Pharmacy Records Adjustment shall be conclusive.

(c) Intentionally Omitted.

(d) Intentionally Omitted.

ARTICLE 3 CLOSINGS AND DELIVERIES

Section 3.1 Closings. Subject to the terms and conditions set forth herein, the applicable Closing shall take place remotely by the electronic exchange of documents and signatures, or such other place as may be agreed upon, at 11:00 a.m., Eastern Time, on the first (1st) Business Day following the delivery of the Pharmacy Records Closing Statement or Pharmaceutical Inventory Closing Statement, as applicable, and satisfaction or, to the extent permitted by this Agreement, waiver of each of the conditions set forth in Article 9 (other than those conditions that, by their nature, are to be satisfied at the Closing, but subject to the satisfaction, or waiver to the extent permitted by this Agreement, of such conditions), or such other date as may be agreed to by Seller and Buyer, which date shall not be earlier than the first (1st) Business Day following the entry of the Sale Order by the Bankruptcy Court and no later than the Outside Date. The anticipated Pharmacy Records Closing date is February 13, 2023, and the anticipated Pharmaceutical Inventory Closing date is February 15, 2023.

Section 3.2 Seller's Deliveries.

(a) Seller's Pharmaceutical Inventory Closing Deliveries. At the Pharmaceutical Inventory Closing, Seller shall deliver, or cause to be delivered, to Buyer or a third party designated by Buyer:

(i) all of the Acquired Assets relating to the Pharmaceutical Inventory Closing (including all Eligible Inventory), together with one or more duly executed bills of sale and instruments of conveyance appropriate for the applicable Acquired Assets, each as reasonably requested by Buyer and otherwise in form and substance customary for transactions of this nature and reasonably acceptable to Buyer and Seller; and

(ii) a full and complete copy of Seller's Pharmaceutical Inventory Documentation for each Store's Pharmaceutical Inventory; and

(iii) the certificate required to be delivered pursuant to Section 9.3(c).

(b) Seller's Pharmacy Records Closing Deliveries. At the Pharmacy Records Closing, Seller shall deliver, or cause to be delivered, to Buyer or a third party designated by Buyer:

(i) all of the Acquired Assets relating to the Pharmacy Records Closing (including all Pharmacy Records), together with one or more duly executed bills of sale and instruments of conveyance appropriate for the applicable Acquired Assets, each as reasonably requested by Buyer and otherwise in form and substance customary for transactions of this nature and reasonably acceptable to Buyer and Seller; and

(ii) the certificate required to be delivered pursuant to Section 9.3(c).

(c) In addition to the foregoing, at the first Closing, Seller shall deliver, or cause to be delivered, to Buyer or a third party designated by Buyer:

(i) one or more assignments of (A) the Registered IP, (B) the Internet domain name registrations and applications included in the Acquired Intellectual Property registered in the name of Seller, in a form suitable for filing with all applicable domain name registries, and (C) general assignments of all other Acquired Intellectual Property, each in a form mutually agreed upon by the Parties (each, an “Acquired Intellectual Property Assignment”), duly executed by Seller; and

(ii) one or more affidavits executed by Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code.

Section 3.3 Buyer’s Deliveries.

(a) Buyer’s Pharmaceutical Inventory Closing Deliveries. At the Pharmaceutical Inventory Closing, Buyer shall deliver, or cause to be delivered, to Seller:

(i) subject to Section 2.1(b), Buyer shall pay, or cause to be paid, to Seller an amount in cash equal to the Aggregate Pharmaceutical Inventory Purchase Price, by wire transfer of immediately available funds to the account or accounts designated by Seller in writing prior to the date of the Pharmaceutical Inventory Closing; and

(ii) the certificate required to be delivered pursuant to Section 9.2(c).

(b) Buyer’s Pharmacy Records Closing Deliveries. At the Pharmacy Records Closing, Buyer shall deliver, or cause to be delivered, to Seller:

(i) subject to Section 2.1(b), Buyer shall pay, or cause to be paid, to Seller an amount in cash equal to the Aggregate Pharmacy Records Purchase Price, by wire transfer of immediately available funds to the account or accounts designated by Seller in writing prior to the date of the Pharmacy Records Closing; and

(ii) the certificate required to be delivered pursuant to Section 9.2(c).

(c) In addition to the foregoing, at the first Closing, Buyer shall deliver, or cause to be delivered, to Seller:

(i) one or more Acquired Intellectual Property Assignments, duly executed by Buyer.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of Seller. Each entity comprising Seller (as to themselves and their respective Acquired Assets only) hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Corporate Organization. Each entity comprising Seller is duly formed or incorporated and validly existing and in good standing under the Laws of its respective jurisdiction of organization. Subject to any necessary authority from the Bankruptcy Court, each entity comprising Seller

has the requisite corporate or limited liability company power and authority to conduct the Business as now being conducted and to carry out its obligations under this Agreement.

(b) Authorization and Validity. Each entity comprising Seller has the corporate or limited liability company power and authority necessary to enter into this Agreement and each Ancillary Agreement to which it is a party and, subject to (i) the Bankruptcy Court's entry of the Sale Order, and (ii) the receipt of the consents, waivers and approvals set forth on Schedule 4.1(e). The execution and delivery of this Agreement and each Ancillary Agreement to which Seller is a party has been duly authorized by all necessary corporate or limited liability company action by the boards of directors (or analogous governing body) of Seller, and no other corporate or limited liability company proceedings are necessary for the performance by Seller of its obligations under this Agreement or the Ancillary Agreements to which it is a party or the consummation by Seller of the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Seller and, subject to the Bankruptcy Court's entry of the Sale Order and assuming due authorization, execution and delivery by Buyer, is a valid and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to (a) applicable Laws of general application relating to bankruptcy, insolvency and the relief of debtors and (b) applicable Laws governing specific performance, injunctive relief and other equitable remedies (collectively, the "Enforceability Exceptions").

(c) Governmental Authorization. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby by Seller require no action by or in respect of, or filing with, any Governmental Authority other than consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court.

(d) No Conflict or Violation. Neither the execution and delivery by Seller of this Agreement or any of the Ancillary Agreements to which Seller is a party, nor (subject to (i) the Bankruptcy Court's entry of the Sale Order, and (ii) the receipt of the consents, waivers and approvals set forth on Schedule 4.1(e)) compliance by Seller with any of the provisions hereof or thereof, will (w) conflict with or result in any breach of any provision of the respective organizational and governing documents of Seller, (x) constitute a default under or give rise to any right of termination, cancellation or acceleration of any right or obligation or to a loss of any benefit relating to any Acquired Asset to which Seller is entitled under any provision of any material Contract binding upon Seller, (y) result in the creation or imposition of any Lien on any Acquired Asset of Seller or (z) violate any provision of applicable Law or any Order applicable to Seller or any of its properties or assets, other than, in the case of clauses (x), (y) and (z), as would not reasonably be expected to have a Material Adverse Effect.

(e) Consents and Approvals. Schedule 4.1(e) sets forth a true and complete list of each material consent, waiver, authorization or approval of any Person (other than the Bankruptcy Court's entry of the Sale Order), and each material filing or registration with any Governmental Authority (other than (x) those required to be made to or filed with the Bankruptcy Court, (y) filings provided to any Governmental Authority as a notice under or termination of a Permit of Seller or (z) notices to any Governmental Authority (other than such a notice seeking any consent, waiver, authorization or approval) under applicable Law), that is required in connection with Seller's execution and delivery of this Agreement and each of the Ancillary Agreements to which Seller is a party or the performance by Seller of its obligations hereunder and thereunder.

(f) Title to Acquired Assets. Seller has good title to, or right by license, lease or other agreement to use, the Acquired Assets. Subject to the entry of the Sale Order, at the Pharmaceutical Inventory Closing and Pharmacy Records Closing (as applicable), Seller will have the right to transfer the Acquired Assets to Buyer free and clear of all Liens. To the Knowledge of Seller, all Acquired Assets are

(i) in good order and repair (ordinary wear and tear expected), (ii) have been reasonably maintained and (iii) are suitable in all material respects for the uses for which they are being utilized in the Business. No Person other than Seller holds any rights, title or interest in the Acquired Assets. Seller does not own any fee interest in real property.

(g) Litigation. Except (i) for the Bankruptcy Case and (ii) as set forth on Schedule 4.1(g), there is no action, suit, investigation or proceeding pending as of the Effective Date against, or to the Knowledge of Seller, threatened in writing against or affecting, the Acquired Assets (other than the Bankruptcy Case) before any Governmental Authority that (A) would reasonably be expected to be material to the Acquired Assets, taken as a whole, or materially impair Buyer's rights in and to, or use of, the Acquired Assets, taken as a whole, or (B) challenges the validity or enforceability of this Agreement or the other Ancillary Agreements or that seeks to enjoin or prohibit the consummation of the transactions contemplated hereby or thereby. Seller has not received any notice of complaints filed against Seller under HIPAA or applicable patient privacy and data protection laws and, to Seller's Knowledge, there has been no violation of such laws.

(h) Intentionally Omitted.

(i) Intentionally Omitted.

(j) Permits. Schedule 4.1(j) sets forth a complete and correct list of all Permits currently held by Seller in connection with the Business and their respective dates of issuance and expiration. Seller holds all Permits necessary to operate manage and maintain the Business, and has at all times during the last three (3) years been in substantial compliance with the terms of such Permits. Seller is not presently in material default under any of such Permits or other similar authority. Seller has the following documents on file with it and other records, which are available for Buyer's review: (1) true and complete copies of all such Permits and approvals; and (2) true and complete copies of any and all notices, demands and correspondence that specifically affect and relate to the operation of the Business. Seller has all Permits necessary for the operation of the business, including all such Permits required by or relating to employment and all other Permits, franchises, orders or approvals of any Governmental Authority relating to the delivery of its Services, and all such Permits are in full force and effect. Seller is operating in compliance with all Permits; any applications for renewal necessary to maintain any Permit in effect have been filed; and no Legal Proceeding is pending or, to Seller's Knowledge, threatened in writing to revoke, suspend, limit or adversely modify any Permit.

(k) Intentionally Omitted.

(l) Intellectual Property.

(i) Schedule 4.1(l)(i) sets forth a complete and accurate list, as of the Effective Date, of (A) each item of Registered IP in which Seller has an ownership interest of any nature (whether exclusively, jointly with another Person or otherwise), (B) the jurisdiction in which each such item of Registered IP has been registered or filed and the applicable registration or serial number, (C) any other Person that has an ownership interest in each such item of Registered IP and the nature of such ownership interest, (D) all material Contracts pursuant to which Seller obtains the right to use any Acquired Intellectual Property, and (E) all material Contracts pursuant to which Seller grants to any other Person the right to use any Acquired Intellectual Property.

(ii) Except as set forth on Schedule 4.1(l)(ii), to the Knowledge of Seller, Seller is not infringing, misappropriating or otherwise violating any material Intellectual Property right of any other Person. Except as set forth on Schedule 4.1(l)(ii), since December 1, 2022, Seller has not received

any written notice from any Person alleging infringement, misappropriation or any other violation of any material Intellectual Property rights or challenging the validity, enforceability, use or ownership of any material Acquired Intellectual Property or Seller's interest in any material Acquired Intellectual Property. To the Knowledge of Seller, no Person is infringing, misappropriating or otherwise violating any material Acquired Intellectual Property. Except as set forth on Schedule 4.1(l)(ii), there are no pending or, to the Knowledge of Seller, threatened in writing administrative or judicial proceedings or actions involving any material Acquired Intellectual Property or Seller's use of any material Intellectual Property rights.

(iii) All Acquired Intellectual Property is fully transferable, alienable and licensable by Seller, in each case without restriction and without payment of any kind to any third party, other than payments that are not material in nature. To Seller's Knowledge, no current or former employee, contractor or consultant of Seller has a valid claim of ownership over any Acquired Intellectual Property.

(m) Intentionally Omitted.

(n) Intentionally Omitted.

(o) Intentionally Omitted.

(p) Data Privacy. In connection with its collection, storage, transfer, and/or use of any Personal Information or any loss, theft or unauthorized access thereof, Seller is and, during the last three (3) years, has been in compliance in all material respects with applicable Laws including, HIPAA and Other Privacy Laws. Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated herein will violate any written privacy policy of Seller. Seller has commercially reasonable security measures in place to protect all Personal Information collected by it from and against unauthorized access, use or disclosure in accordance with applicable Law. Except as set forth on Schedule 4.1(p), to the Knowledge of Seller, there has been no unauthorized access, use, or disclosure of Personal Information in the possession or control of Seller or any of its contractors with regard to any Personal Information from or on behalf of Seller. To Seller's Knowledge, Seller is, and during the last three (3) years, has been, in material compliance with (i) the PCI Security Standards Council's Payment Card Industry Data Security Standard (PCI-DSS), (ii) all other applicable security rules and requirements as promulgated by the PCI Security Standards Council and (iii) all Laws relating to data loss, theft, and breach of security notification obligations.

(q) Intentionally Omitted.

(r) Intentionally Omitted.

(s) Pharmaceutical Inventory. Except as set forth in Schedule 4.1(s), the Pharmaceutical Inventory is owned by Seller, and no Pharmaceutical Inventory is held on a consignment basis.

(t) Compliance with Laws; Healthcare Matters.

(i) Seller is, and at all times during the last three (3) years has been, in material compliance with all Healthcare Laws.

(ii) Seller has not received any written notice during the last three (3) years from any Governmental Authority or other Person of any pending or threatened recoupment, claims, or other action related to allegations of non-compliance by Seller with any Healthcare Law.

- (iii) Intentionally Omitted.
- (iv) Intentionally Omitted.
- (v) Intentionally Omitted.
- (vi) Intentionally Omitted.
- (vii) Intentionally Omitted.

(viii) Seller: (A) has not been a party to a Corporate Integrity Agreement with the Office of Inspector General; (B) has no reporting obligations pursuant to any settlement Contract entered into with any Governmental Authority or any other Person; (C) has not made any filings pursuant to the Officer of Inspector General's Provider Self-Disclosure Protocol or the Centers for Medicare and Medicaid Services' Physician Self-Referral Disclosure Protocol; (D) has not been the defendant in any qui tam/FCA litigation; (E) has not been served with or received any search warrant, subpoena, civil investigative demand, or contact letter by or from any federal or state enforcement agency or Governmental Authority related to the delivery of healthcare services; (F) has not entered any settlement Contract or deferred prosecution Contract with any Governmental Authority related to the delivery of healthcare services; (G) has not been convicted, charged, or to Seller's Knowledge, investigated, for (1) criminal offenses relating to the delivery of an item or service under a third-party Payor program, whether private, commercial, or governmental, including any Governmental Authority Payor, (2) criminal offenses under any Laws relating to patient neglect or abuse in connection with the delivery of a healthcare item or service, (3) criminal offenses under any Laws relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in a third-party Payor program operated by or financed in whole or in part by any private or commercial entity or any Governmental Authority, (4) violated any Laws relating to the interference with or obstruction of any investigation into any criminal offense related to the delivery of healthcare services, (5) violated any Laws related to criminal, unprofessional, unethical or fraudulent conduct or (6) any related or similar violation of any Laws or other offenses related to the delivery of healthcare services; and (H) has not been subject to any Order of, or any criminal, civil, or administrative fine or penalty imposed by, any Governmental Authority with respect to any program related to the delivery of healthcare services, including any Governmental Authority Payor.

(ix) Seller has in place plans and policies and procedures that comply in all material respects with HIPAA and Other Privacy Laws as applicable (collectively, "HIPAA Policies and Procedures"), of which Seller has provided accurate and complete copies to Buyer. Seller is, and for the past three (3) years has been, in material compliance with (A) HIPAA and Other Privacy Laws as applicable and (B) the HIPAA Policies and Procedures. During the last three (3) years, no claims have been asserted or threatened in writing against Seller by any Person alleging a violation of any of the foregoing. To its Knowledge, Seller has not had any of its direct or indirect patients', customers', or employees' personally identifiable information fraudulently acquired or otherwise used or disclosed in a manner not permitted by HIPAA and Other Privacy Laws. To Seller's Knowledge, there have not been any incidents of data security breaches, data theft, unauthorized data use, access, or intrusion of data (including personal information, payment card information, confidential information, or other data of any direct or indirect patient, customer, or employee) collected, maintained, or stored by Seller, or any loss, destruction, disclosure, or transfer thereof that resulted in a breach as such term is defined under HIPAA, or any complaints, notices to, or audits, or actions conducted, or claims asserted by any Person regarding the collection, maintenance, storage, use, loss, destruction, compromise, disclosure, or transfer of personal information by any Person in connection with Seller's operations (including any request that Seller make available to the Secretary of

the Department or any other Governmental Authority Seller's internal practices, books, and records relating to the use and disclosure of protected health information).

(u) To Seller's Knowledge, all of the patient records (in all forms and media, including all information contained on Seller's computers) are accurate and complete in all material respects and are prepared and maintained in compliance in all material respects with all applicable Laws.

(v) Intentionally Omitted.

(w) Seller acknowledges that Buyer maintains relationships with several third party payors and that such relationships may change from time to time without notice. Seller further acknowledges that it did not rely on the continuation of Buyer's current relationship with any third party payor when entering into this Agreement.

(x) For each Store, the average daily prescription count of such Store as calculated over a seven (7) day calendar week is at least the Represented Rx/Day amount as set forth on Exhibit B for such Store.

Section 4.2 Representations and Warranties of Buyer. Buyer on behalf of itself represents and warrants to Seller as of the Effective Date as follows:

(a) Corporate Organization. Buyer is a corporation duly formed, validly existing and in good standing under the Laws of the jurisdiction of its formation. Buyer has the requisite power and authority to own its properties and assets and to conduct its business as now conducted and to carry out its obligations under this Agreement and each of the Ancillary Agreements to which Buyer is a party.

(b) Authorization and Validity. Buyer has the requisite power and authority necessary to enter into this Agreement and each of the Ancillary Agreements to which Buyer is a party and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and those Ancillary Agreements to which Buyer is a party have been duly authorized by all necessary action by the board of directors (or analogous governing body), and no other proceedings are necessary for the performance by Buyer of its obligations under this Agreement and each of the Ancillary Agreements to which Buyer is a party, or the consummation by Buyer of the transactions contemplated hereby or thereby. This Agreement and each of the Ancillary Agreements to which Buyer is a party have been duly and validly executed and delivered by it and are valid and binding obligations of Buyer enforceable against it in accordance with their respective terms, subject to the Enforceability Exceptions.

(c) No Conflict or Violation. Neither the execution and delivery by Buyer of this Agreement or any of the Ancillary Agreements to which Buyer is a party, nor the consummation of the transactions contemplated hereby or thereby, nor compliance by Buyer, with any of the provisions hereof or thereof, will (i) conflict with or result in any breach of any provision of the organizational and governing documents of Buyer, (ii) violate any provision of applicable Law or any Order applicable to Buyer or any of its respective properties or assets, or (iii) result in a modification, violation or breach of, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right, including any right of termination, amendment, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contract to which Buyer is a party or by which it is bound or to which any of its respective properties or assets is subject.

(d) Consents and Approvals. The execution, delivery and performance of this Agreement and the Ancillary Agreements to which Buyer is a party do not and will not require the consent or approval of, or filing with, any Governmental Authority or any other Person, other than (i) as may be

required to be obtained by Buyer after the applicable Closing in order to own or operate any of the Acquired Assets; (ii) the entry of the Sale Order by the Bankruptcy Court; or (iii) such consents, approvals and filings, of which the failure to obtain or make would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Ancillary Agreements to which Buyer is a party.

(e) Buyer's Financial Wherewithal. As of the Effective Date, Buyer has, and as of the applicable Closing date, Buyer will have the financial ability to pay and satisfy in full all of Buyer's obligations under this Agreement. Without limiting the foregoing, Buyer hereby expressly acknowledges and confirms that Buyer's obligations under this Agreement are not contingent in any respect upon Buyer's obtaining financing of any type or kind.

Section 4.3 Warranties Exclusive; Schedules.

(a) The representations and warranties contained in ARTICLE 4 are the only representations or warranties given by the Parties and all other express or implied warranties are disclaimed. The Acquired Assets are conveyed and will be accepted by Buyer at the Pharmaceutical Inventory Closing or the Pharmacy Records Closing (as applicable) "AS IS," "WHERE IS" and "WITH ALL FAULTS" and all warranties of merchantability or fitness for a particular purpose are disclaimed. WITHOUT LIMITING THE FOREGOING, SELLER AND SELLER'S AFFILIATES AND THEIR RESPECTIVE RELATED PERSONS HAVE MADE NO REPRESENTATION OR WARRANTY CONCERNING (A) ANY USE TO WHICH THE ACQUIRED ASSETS MAY BE PUT, (B) ANY FUTURE REVENUES, COSTS, EXPENDITURES, CASH FLOW, RESULTS OF OPERATIONS, FINANCIAL CONDITION OR PROSPECTS THAT MAY RESULT FROM THE OWNERSHIP, USE OR SALE OF THE ACQUIRED ASSETS, OR (C) ANY OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO BUYER OR ITS AFFILIATES OR RELATED PERSONS. SELLER AND SELLER'S AFFILIATES AND RELATED PERSONS HAVE MADE NO REPRESENTATIONS OR WARRANTIES IN ANY OTHER AGREEMENT.

(b) The disclosure of any matter or item in any schedule hereto shall not be deemed to constitute an acknowledgement that any such matter is required to be disclosed or is material or that such matter would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 4.4 Survival. The (a) representations and warranties of Seller, and (b) covenants and agreements of Seller and Buyer that by their terms are to be performed before the applicable Closing, in each case contained in this Agreement, any Ancillary Agreement or in any certificate delivered in connection herewith, shall not survive the applicable Closing and shall lapse and cease to be of any further force or effect upon the applicable Closing. The covenants and agreements of Seller and Buyer contained herein that by their terms are to be performed after the applicable Closing shall survive for twelve (12) months following the applicable Closing, and each Party shall be liable to the other after the applicable Closing for any breach thereof; provided, however, and notwithstanding the foregoing, Seller's then unsatisfied covenants and agreements shall lapse and cease to be of any further force or effect upon the closing or other termination of the Bankruptcy Case or conversion of the Bankruptcy Case to Chapter 7 survive the last Closing.

ARTICLE 5
COVENANTS OF THE PARTIES

Section 5.1 Covenants of Seller. Seller covenants as follows:

(a) Commercially Reasonable Efforts. From and after the Effective Date until the earlier to occur of (x) the last Closing and (y) the termination of this Agreement pursuant to Section 10.1 (such period, the “Interim Period”), Seller shall use commercially reasonable efforts to (except as may be disclosed to Buyer and subject to restrictions on Seller arising by reason of their being debtors in bankruptcy) (i) obtain all necessary consents, waivers, authorizations and approvals of all Governmental Authority, and of all other Persons, required to be obtained by Seller in connection with the execution, delivery and performance by it of this Agreement and the Ancillary Agreements to which Seller is a party, (ii) take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective in an expeditious manner the transactions contemplated by this Agreement and the Ancillary Agreements, and (iii) maintain the Acquired Assets substantially in the Ordinary Course.

(b) Access to Properties and Documents; Confidentiality. During the Interim Period and after the last Closing in accordance with this Section 5.1(b), Seller shall afford to Buyer, and to the accountants, counsel and representatives of Buyer, reasonable access during normal business hours to all Documents (other than those comprising Excluded Assets) of Seller relating to the Acquired Assets. During the Interim Period, upon reasonable prior notice, Seller shall also afford Buyer reasonable access, taking into account Seller’s resources and other commitments, during normal business hours, to all Acquired Assets, and to Seller’s executive officers, accountants, counsel, employees and other representatives. The rights of access contained in this Section 5.1(b) are granted subject to, and on, the following terms and conditions: (i) any such investigation shall not include physical testing or sampling and will be conducted in a reasonable manner; (ii) all information provided to Buyer or its agents or representatives by or on behalf of Seller or its agents or representatives (whether pursuant to this Section 5.1(b) or otherwise) will be governed and protected by the confidentiality agreement, dated as of December 21, 2022 by and between Buyer and Seller (collectively, the “Confidentiality Agreement”); and (iii) such rights of access shall not affect or modify the conditions set forth in Article 9 in any way, nor shall Buyer’s obligations hereunder in any way be contingent upon Buyer’s being satisfied with the results of any investigations or the like performed or conducted pursuant to this Section 5.1(b) subject to procedures that are mutually agreed to by Seller and Buyer. Notwithstanding the foregoing, the terms of this Section 5.1(b) shall not apply to the performance of the Inventory Audit or the determination of the Pharmaceutical Inventory Amount as described in Section 2.1(c) and the determination of the Pharmacy Inventory Adjustment as described in Section 2.1(d). Seller shall retain all Documents (to the extent not transferred to Buyer as part of the Acquired Assets) after the last Closing until the earlier of (A) one (1) year, and (B) the closing or other termination of the Bankruptcy Case, and if Seller at any time (including in connection with the closing or other termination of the Bankruptcy Case) determines to dispose of any Documents, Seller shall give Buyer reasonable advance notice of such disposal and allow Buyer to make copies or take possession of such Documents.

(c) Operation of the Business. From the Effective Date until the final day of business for the Stores, which shall occur no later than the close of business on February 9, 2023, Seller shall, except as otherwise required, authorized or restricted pursuant to this Agreement, the Bankruptcy Code or an order of the Bankruptcy Court, or with the prior consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), operate the Business in the Ordinary Course. Seller shall use commercially reasonable efforts to: (i) except as related to or the result of the filing or pendency of the Bankruptcy Cases, preserve intact its business organizations, (ii) maintain the Business and the Acquired Assets in the Ordinary Course (normal wear and tear excepted), (iii) keep available the services of its officers in the Ordinary Course, (iv) except as related to or the result of the filing or pendency of the Bankruptcy Cases, maintain its business relationships with licensors, licensees, suppliers, contractors, distributors, consultants, vendors and others having business relationships with Seller in connection with the operation of the Business in the Ordinary Course (other than payment of pre-petition claims), (v) pay all of its undisputed post-petition

obligations in the Ordinary Course, and (vi) continue to operate the Business and Acquired Assets in all material respects in compliance with all Laws applicable to the Business and Seller.

(d) Restricted Activities. Except (x) as required by applicable Law or by order of the Bankruptcy Court, (y) as otherwise expressly required by this Agreement or (z) with the prior written consent of Buyer, Seller shall not:

(i) (A) increase the level of compensation of any employee or (B) increase the coverage or benefits available under any Employee Benefit Plan;

(ii) subject any of the Acquired Assets to any Lien, except for any Lien secured and granted pursuant to the DIP Facility (or any other debtor in possession financing in the Bankruptcy Case) or arising under applicable Law and any Lien that will be removed by the effect of the Sale Order or otherwise removed by Seller at or prior to the applicable Closing;

(iii) enter into any new Contract or Lease that limits or restricts in any material respect the conduct or operations of the Business, or that limits or restricts the use of the Acquired Intellectual Property or any other Intellectual Property in which Seller has any interest or right;

(iv) Intentionally Omitted;

(v) modify, amend, supplement, transfer, or terminate any material Contract or Lease;

(vi) fail to make, or maintain in full force and effect, any filings necessary to maintain the material Acquired Intellectual Property in full force and effect;

(vii) make any new commitment with respect to capital expenditures that are material in amount;

(viii) (A) increase the rate or terms of compensation payable or to become payable to any of the officers or employees of Seller or (B) increase the rate or terms of any (including entering or adopting any new) Employee Benefit Plan covering any of the officers or employees of Seller;

(ix) other than acquisitions and dispositions of inventory in the Ordinary Course, acquire, dispose of or transfer any material asset or material property;

(x) intentionally encourage any customer of any Store to transfer such customer's prescription away from such Store; and

(xi) issue any gift cards or gift certificates outside the Ordinary Course.

(e) Intentionally Omitted.

(g) Name Change. Within thirty (30) Business Days after the last Closing, and subject to Section 6.2, Seller shall take all steps necessary to effect a change in the legal name of Medly and its Subsidiaries to remove the Business Names from such names and the caption in the Bankruptcy Case.

(h) Intentionally Omitted.

(i) Store Closing Procedures. If requested by Buyer before the last Closing, Seller shall use its commercially reasonable efforts to have the Bankruptcy Court enter an Order as expeditiously

as reasonably practicable, which authorizes one or more Store Closing Sales of Acquired Assets on terms, provisions and conditions that are acceptable to Buyer and Seller and reasonably consistent with such sales approved in other chapter 11 cases and in accordance with applicable Law, with such sales to occur after the last Closing and with the proceeds of such Store Closing Sales to be the property of Buyer and which Order shall provide for commercially reasonable and customary provisions for arrangements of this type between sophisticated parties at arm's length, including with respect to the hours of operation of the Stores, operating under Leases and Laws, indemnification, and otherwise. For the avoidance of all doubt, Buyer acknowledges that obtaining any Order contemplated by this Section 5.1(h) shall not be a condition to Buyer's obligation to consummate the transactions contemplated by this Agreement.

(j) Notifications. Seller shall send all required notifications of the sale of the Acquired Assets hereunder to all applicable Governmental Authority. Seller shall, within ten (10) Business Days following the last Closing, forward to Buyer a copy of each Seller's notice letter to the applicable board of pharmacy and a copy of each Seller's notice letter to the United States Drug Enforcement Agency. The notice letters shall be forwarded to Buyer. Seller shall also surrender the pharmacy license for each pharmacy to the applicable Governmental Authority as soon as allowed by applicable Law after the last Closing; provided that Seller shall use good faith efforts to surrender the pharmacy license for each pharmacy in a timely manner. The terms and provisions of this Section shall survive the last Closing.

(k) Consents, Authorizations. Each Party will use commercially reasonable efforts (but, without any obligation to pay any consideration therefor or incur any material costs or expenses other than its share of any applicable filing fees) to obtain all consents, clearances, authorizations, orders and approvals of, and make all filings and registrations with, any Governmental Authority or any other person or entity required for or in connection with the consummation by it of the transactions contemplated on its part hereby and will cooperate reasonably with the others in assisting them to obtain such consents, clearances, authorizations, orders and approvals and to make such filings and registrations. No Party will intentionally take, or omit to take, any action, which action or omission will have the effect of materially delaying, impairing or impeding the receipt of any required consent, clearance, authorization, order or approval or the making of any required filing or registration. Buyer and Seller shall mutually reasonably cooperate in all communications and strategies relating to any consent, clearance, authorization, the approval or the making of any required filing or registration, and any Governmental Authority inquiries in connection with the transactions contemplated by this Agreement. The Parties shall use commercially reasonable efforts to coordinate with respect to all such activities. This covenant shall survive the last Closing date and will remain in full force and effect.

(l) Further Conveyances and Assumptions. From and after the last Closing, Seller shall take such further actions, and execute, acknowledge and deliver all documents, as may be reasonably necessary or appropriate to sell, transfer, convey, assign and deliver fully to Buyer and its successors or permitted assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be assumed by Buyer under this Agreement, and to otherwise make effective or evidence the transactions contemplated by this Agreement and the Ancillary Agreements. Notwithstanding anything to the contrary herein, Seller shall not at any time be obligated to execute any document or take any action that would (i) in any material respect increase Seller's obligations beyond those set forth in the other provisions of this Agreement, (ii) result in Seller incurring any material cost or expense beyond those set forth in or contemplated by the other provisions of this Agreement, or (iii) involve initiating or joining in any action or proceeding.

(m) Privacy Policy. Seller shall comply with the Medly Health Privacy Policy, effective as of June 1, 2022, and represents and warrants that with respect to information subject to the Privacy Rights of California (the "CCPA") Seller shall not and hereby does not transfer, sell or convey any "personal information" of California residents to Buyer for any Person who has (i) opted out of the sale,

transfer or conveyance of such personal information or (ii) has previously requested that Seller delete such personal information (subject to exceptions under the CCPA or other applicable law).

(n) Maintenance of Pharmacy Records; Audit Rights. From the Effective Date until the Pharmacy Records Closing, Seller will take all steps reasonably necessary to maintain or increase the Pharmacy Records Amount of each Store. As to each Store, Buyer shall have the right, at any time before the Pharmacy Records Closing upon reasonable notice and at Buyer's expense, to audit the Seller's Pharmacy Records to verify the then-current average daily prescription count.

Section 5.2 Covenants of Buyer.

(a) Commercially Reasonable Efforts. Buyer shall use all commercially reasonable efforts to (i) obtain all consents and approvals of all Governmental Authority, and all other Persons, required to be obtained by Buyer, if applicable, to effect the transactions contemplated by this Agreement and the Ancillary Agreements, and (ii) take, or cause to be taken, all action, and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective in an expeditious manner the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) Further Conveyances and Assumptions. From and after the last Closing, Buyer shall take such further actions, and execute, acknowledge and deliver all documents, as may be reasonably necessary or appropriate for Seller to sell, transfer, convey, assign and deliver fully to Buyer and its successors or permitted assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be assumed by Buyer under this Agreement, and to otherwise make effective or evidence the transactions contemplated by this Agreement and the Ancillary Agreements.

(c) Personally Identifiable Information. Buyer shall comply with applicable Law relating to the transfer of personally identifiable information about individuals consistent with the requirements of Section 363(b)(1)(A) of the Bankruptcy Code.

Section 5.3 Wrong Pockets. From and after the last Closing (a) if Seller or any of its Affiliates receives any right, property or asset that is an Acquired Asset, Seller shall promptly transfer, or cause its applicable Affiliate to transfer, such right, property or asset to Buyer, and such asset will be deemed the property of Buyer held in trust by Seller for Buyer until so transferred and (b) if Buyer or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Buyer shall promptly transfer or cause its applicable Affiliate to transfer, such right, property or asset to Seller, and such asset will be deemed the property of Seller held in trust by Buyer for Seller until so transferred.

Section 5.4 Disclosure Schedule Update. Between the Effective Date and the last Closing, Seller shall notify Buyer of, and shall, upon Buyer's prior written approval, promptly supplement or amend a Schedule to this Agreement with respect to, any matter of which Seller's senior management personnel become aware that (a) may arise after the Effective Date and that, if existing or occurring at or prior to the Effective Date, would have been required to be set forth or described in a Schedule to this Agreement or (b) makes it necessary to correct any information (including incomplete or missing information) in a Schedule or in any representation and warranty of Seller that has been rendered inaccurate thereby. Each such notification or supplementation shall be made as promptly as reasonably practicable and shall be subject to Buyer's written approval. No supplement or amendment to a Schedule (including delivery of previously incomplete or missing information) to this Agreement or any delivery of a Schedule after the Effective Date (unless expressly acknowledged and agreed by Buyer in its reasonable discretion, as a cure or modification) shall be deemed to cure any inaccuracy of any representation or warranty made in this Agreement or impair Buyer's rights, if applicable, to terminate this Agreement pursuant to Article 10.

ARTICLE 6
ADDITIONAL AGREEMENTS

Section 6.1 Bankruptcy Matters. Seller shall seek entry of the Sale Order and any other necessary Orders by the Bankruptcy Court to consummate the Closings following the execution of this Agreement. Buyer and Seller understand and agree that the transaction is subject to approval by the Bankruptcy Court. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court of the purposes, among others, of demonstrating that Buyer is a “good faith” purchaser under 363(m) of the Bankruptcy Code. In the event that the Sale Order shall be appealed by any Person (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Order), Seller and Buyer will reasonably cooperate (taking into account the Outside Date provided for herein) in determining and pursuing the response to any such appeal, petition or motion, and Seller (to the extent Seller has adequate funding available therefor) and Buyer shall use their commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition or motion.

Section 6.2 Transition License. From and after the first Closing until thirty (30) Business Days thereafter (such period, the “License Period”), Buyer hereby grants Seller a non-exclusive, royalty-free right and license to use the Acquired Intellectual Property, including the Business Name, in connection with the wind-down and liquidation of Seller’s estate and the conclusion of the Bankruptcy Case, including for purposes of administering a plan of liquidation of the Excluded Assets, reconciling claims and making distributions. Seller agrees that, without limiting the period allowed to Seller for changing its name in the Bankruptcy Case pursuant to Section 5.1(f), it shall (i) as promptly as practicable after the first Closing and in any event prior to the expiration of the License Period, cease to make any use of the Business Names or the Acquired Intellectual Property, including by removing, striking over, covering, blocking or substantially obliterating all Acquired Intellectual Property from any vehicles, displays, signs, promotional materials or other similar materials then owned by Seller and not included in the Acquired Assets, and (ii) immediately after the first Closing, cease to hold itself and its Subsidiaries out as having any affiliation with the Business.

Section 6.3 Further Assurances.

(a) At the request and the sole expense of the requesting Party, either Party shall, at any time after the last Closing, execute and deliver such documents as the other Party or its counsel may reasonably request to effectuate the purposes of this Agreement. Notwithstanding anything to the contrary herein, Seller shall not at any time be obligated to execute any document or take any action that would (i) in any material respect increase Seller’s obligations beyond those set forth in the other provisions of this Agreement, (ii) result in Seller incurring any material cost or expense beyond those set forth in or contemplated by the other provisions of this Agreement, or (iii) involve initiating or joining in any action or proceeding.

(b) From and after the last Closing, Seller hereby authorizes and empowers Buyer and its Affiliates to receive and open all mail and other communications (including electronic communications) received by Buyer or its Affiliates relating to the Acquired Assets or and to deal with the contents of such communications to the extent relating to the Acquired Assets and the period following the last Closing; provided, that any mail or other communications constituting or otherwise pertaining to Excluded Assets or Liabilities or to the period prior to the last Closing shall be promptly forwarded to Seller. From and after the last Closing, Seller shall promptly deliver or cause to be delivered to Buyer any mail or other communication (including electronic communications) received by Seller or any of its Affiliates after the last Closing pertaining to the Acquired Assets (except to the extent such mail or other communications constitutes or otherwise pertains to Excluded Assets or Liabilities or to the period prior to the last Closing),

and if Seller or any of its Affiliates receive from any Person after the last Closing any telephone calls with respect to the operation of the Acquired Assets following the last Closing at any telephone number not transferred to Buyer, Seller shall inform such Person that the telephone number for the Acquired Assets has changed and provide such Person with, and forward such call to, such telephone number for the Acquired Assets as is supplied by Buyer.

Section 6.4 Signage. Unless otherwise prohibited by the applicable Lease or the Bankruptcy Court, Seller shall permit Buyer, at Seller's sole expense, to post a sign, provided by Buyer, at the front entrance to each respective Store for a period of the earlier of (a) ninety (90) days after the last Closing or (b) the assignment or the Seller's proposed rejection date under Bankruptcy Code Section 365 of the applicable Lease by the Bankruptcy Court advising customers that all prescription files have been transferred to a Walgreen drug store or other location designated by Buyer.

Section 6.5 Pharmacy Records; Patient Notification.

(a) The Parties acknowledge that Buyer and Seller are each a "*Covered Entity*" as that term is defined under HIPAA. As related to each Store, to facilitate the transition of care from Seller to Buyer, it is necessary that Buyer have access to electronic patient records prior to the Pharmacy Records Closing.

(b) On the applicable Store Verification Date, Seller will deliver the originals of any Pharmacy Records required by applicable state or federal Law to be maintained onsite in hard copy form to Buyer.

(c) The Parties agree that the Parties will engage Infowerks (the "Data Converter"), at Buyer's expense, to convert the Pharmacy Records to a format specified by Buyer. Seller agrees to provide such access, information and cooperation to the Data Converter as may be required to enable the Data Converter to deliver the Pharmacy Records to Buyer in English at least four (4) days prior to each Store Verification Date (the "Initial Conversion"). In the event that the Pharmacy Records are not or cannot be delivered to the Data Converter in English as of such date, or cannot be converted by Infowerks, Buyer, at Buyer's sole discretion, may delay the Pharmacy Records Closing until the Pharmacy Records are delivered to Buyer. The Parties further agree that in the event that despite having received the Pharmacy Records, the Data Converter is unable to convert such Pharmacy Records at least two (2) days prior to the Pharmacy Records Closing, Buyer, at Buyer's sole discretion, may delay the Pharmacy Records Closing. The Seller shall deliver the Pharmacy Records for the period between the Initial Conversion and the Store Verification Date (the "Final Conversion"), to the Data Converter, so that the Data Converter can deliver the Final Conversion to Buyer as soon as possible.

(d) Buyer will engage PrintWerks or another distributor selected by Buyer (the "Third Party Distributor") to notify each customer of each Store who has had a prescription filled or refilled at the Store within the two (2) years prior to the Pharmacy Records Closing by mailing each of them a letter in the form attached as Exhibit C. The Parties agree that, promptly after its receipt of the Pharmacy Records, the Data Converter will provide the Pharmacy Records to the Third Party Distributor in order to enable the Third Party Distributor to assemble and distribute these letters no sooner than the Pharmacy Records Closing.

(e) Seller will retain a complete copy of all Pharmacy Records in accordance with applicable record retention laws and regulations. The Seller's point of contact for all inquiries related to the Seller's records ("Custodian of Records") is:

David Janowicz
7088 Winchester Circle, Suite 100
Boulder, CO 80301

Section 6.6 Telephone Numbers and Advertising.

(a) On or before the last Closing, Seller shall, at Buyer's sole expense, arrange for remote call forwarding for all patients, doctors, and fax telephone lines of such Store to a Walgreen drug store or other location designated by Buyer for a period of no less than ninety (90) days following the last Closing. For the period starting on the 91st day following the last Closing and ending on the 180th day following the last Closing, at Buyer's sole expense Seller shall disconnect existing telephone and fax lines and terminate any existing telephone or fax accounts, for each Store. At Buyer's sole expense, Seller shall arrange for call referral for all calls to the number so canceled to a Walgreen drug store or other location designated by Buyer for a period of no less than ninety (90) days.

(b) The Parties agree that following the last Closing, Buyer, at its own expense, shall arrange to have Seller's electronic prescription service forwarded to Seller's pharmacy fax number utilizing the SureScript NCPDP Transition Assist Process. In accordance with Section 6.6(a), the SureScript shall be faxed from Seller's fax machine to Buyer's drug store or other location designated by Buyer. In the event the Seller's electronic prescription service cannot be forwarded to the Seller's pharmacy fax number, then Buyer at Seller's sole expense shall arrange to have Seller's electronic prescription service agreement terminated.

(c) All existing advertising and yellow pages agreements shall be discontinued immediately upon the last Closing. Further, at Buyer's sole expense, Seller shall update all social media pages and websites to indicate that each Store has closed as of the last Closing.

**ARTICLE 7
INTENTIONALLY OMITTED**

**ARTICLE 8
TAXES**

Section 8.1 Taxes Related to Purchase of Assets. All recording and filing fees and all federal, state and local sales, transfer, excise, value-added or other similar Taxes, including all state and local Taxes in connection with the transfer of the Acquired Assets, but excluding all Income Taxes based upon gain realized by Seller as a result of the sale of the Acquired Assets (collectively, "Transaction Taxes"), that may be imposed by reason of the sale, transfer, assignment and delivery of the Acquired Assets, and which are not exempt under Section 1146(a) of the Bankruptcy Code, shall be paid by Seller. Buyer and Seller agree to cooperate to determine the amount of Transaction Taxes payable in connection with the transactions contemplated under this Agreement, and Buyer agrees to assist Seller reasonably in the preparation and filing of any and all required returns for or with respect to such Transaction Taxes with any and all appropriate taxing authorities. Each of Buyer and Seller shall provide the other with any exemption certificate or its equivalent to lawfully mitigate or eliminate Transaction Taxes that are not otherwise exempt under Section 1146(a) of the Bankruptcy Code.

Section 8.2 Cooperation on Tax Matters.

(a) Buyer and Seller agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Acquired Assets as is reasonably necessary for the preparation and filing of any Tax Return, claim for refund or other required or optional

filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer to any Governmental Authority inquiry relating to Tax matters.

(b) Buyer agrees to retain possession, at its own expense, of all accounting, business, financial and Tax records and information relating to the Acquired Assets that Buyer requests and Seller provides: (i) relating to the Acquired Assets that are in existence on the applicable Closing, and transferred to Buyer hereunder, if any, and (ii) coming into existence after the applicable Closing that relate to the Acquired Assets before the applicable Closing for a period of at least six (6) years from the applicable Closing, and will give Seller notice and a reasonable opportunity to retain any such records in the event that Buyer determines to destroy or dispose of them after such period. In addition, from and after the applicable Closing, Buyer agrees that it will provide access to Seller and its attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge) to the books, records, documents and other information relating to the Acquired Assets as Seller may reasonably deem necessary to (x) properly prepare for, file, prove, answer, prosecute and/or defend any such Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer or (y) administer or complete any cases under Chapter 11 of the Bankruptcy Code of Seller. Such access shall include access to any computerized information retrieval systems relating to the Acquired Assets.

(c) Any refund, overpayment or rebate of Pre-Closing Taxes (including any refund, credit, overpayment or rebate relating to any Straddle Period) and any related interest paid or credited with respect thereto by a Taxing Authority (any such amounts, “Pre-Closing Tax Refund”) shall be for the account of Seller, and Buyer or any of its Affiliates shall promptly, and in no case later than ten (10) Business Days after receipt thereof, pay such Pre-Closing Tax Refund over to Seller net of any reasonable out of pocket cost or expense incurred in connection with such Pre-Closing Tax Refund. Buyer shall cooperate with Seller and promptly take all actions (including those reasonably requested by Seller), at Seller’s expense, to obtain any Pre-Closing Tax Refund, including filing of forms or amended Tax Returns.

(d) Buyer shall prepare and file, or cause to be prepared and filed (with Seller’s reasonable cooperation) all Tax Returns with respect to Taxes imposed on the Acquired Assets for any Straddle Period and Post-Closing Tax Period; provided, however, that Buyer shall deliver to Seller for its review and comment all such Tax Returns relating to a Straddle Period at least fifteen (15) Business Days prior to the due date for filing thereof and no such Tax Return shall be filed without Seller’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Seller shall be deemed to have given such consent if it has not delivered a written notice to Buyer at least ten (10) Business Days prior to the due date for filing specifying in reasonable detail any requested changes to the Tax Return. The portion of any such Taxes payable for a Straddle Period treated as Pre-Closing Taxes shall equal (i) in the case of ad valorem or property Taxes, the total amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on the applicable Closing, as applicable, and the denominator of which is the number of days in the entire Straddle Period and (ii) in the case of any other Tax, the amount which would be payable computed on closing of the books basis as if the relevant Tax period ended as of the close of business on the applicable Closing. All Tax Returns with respect to a Straddle Period shall be filed, and any Taxes reflected thereon shall be paid, on or prior to the applicable due dates (taking into account any permitted extension of the time to file in accordance with applicable Law) thereof. Buyer and Seller shall reasonably cooperate in the preparation of any Tax Returns described in this Section 8.2(d). For the avoidance of doubt, Buyer shall only be responsible for Straddle Period Taxes treated as Post-Closing Taxes relating to the Acquired Assets.

Section 8.3 Allocation of Purchase Price. No later than sixty (60) calendar days after the last Closing, Buyer shall deliver a schedule to Seller allocating the Purchase Price among the Acquired Assets (the “Allocation”). Seller and Buyer will cooperate to resolve any disputes regarding the Allocation and to

file with the Internal Revenue Service their respective Forms 8594 as provided for in Section 1060 of the Code on a basis consistent with the Allocation, and the Allocation shall be reflected on any Tax Returns required to be filed as a result of the transactions contemplated by this Agreement.

ARTICLE 9
CONDITIONS PRECEDENT TO PERFORMANCE BY THE PARTIES.

Section 9.1 Conditions Precedent to Performance by Each Party. The respective obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or before the applicable Closing date, of the following conditions:

(a) Bid Procedures and Sale Orders. The Bankruptcy Court shall have entered the Bid Procedures Order and Sale Order and no Order staying, modifying or amending the Sale Order shall be in effect on the applicable Closing.

(b) No Order. There shall not be in effect on the applicable Closing any Order that declares this Agreement invalid or unenforceable in any respect or which prevents or makes illegal the consummation of the transactions contemplated by this Agreement.

Section 9.2 Conditions Precedent to Performance by Seller. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or before the applicable Closing, of the following conditions, any one or more of which may be waived by Seller in its sole discretion:

(a) Representations and Warranties of Buyer. All representations and warranties made by Buyer in Section 4.2 shall be accurate in all material respects on and as of the applicable Closing as if again made by Buyer on and as of such date, except for (i) those representations and warranties that speak solely as of a specific date, and that were true and correct as of such date and (ii) inaccuracies that do not result in a material adverse effect on Buyer's ability to perform its obligations hereunder.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the applicable Closing.

(c) Closing Certificate. Seller shall have received a certificate, dated as of the applicable Closing and executed by an authorized officer of each Buyer, certifying that the conditions set forth in Section 9.2(a) and Section 9.2(b) have been satisfied.

(d) Buyer's Deliveries. Buyer shall have delivered to Seller all of the items set forth in Section 3.3 as of the applicable Closing.

Section 9.3 Conditions Precedent to Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or before the applicable Closing of the following conditions, any one or more of which may be waived by Buyer in its sole discretion:

(a) Representations and Warranties of Seller. All representations and warranties made by Seller in Section 4.1 shall be accurate in all material respects on and as of the applicable Closing as if again made by Seller on and as of such date, except for (i) those representations and warranties that speak solely as of a specific date and that were true and correct as of such date, and (ii) inaccuracies that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Performance of the Obligations of Seller. Seller shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the applicable Closing.

(c) Closing Certificate. Buyer shall have received a certificate, dated as of the applicable Closing and executed by an authorized officer of Seller, certifying that the conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied.

(d) Seller's Deliveries. Seller shall have delivered to Buyer all of the items set forth in Section 3.2 as of the applicable Closing.

(e) Licenses. Buyer shall have received all necessary and material pharmacy licenses and permits from applicable Governmental Authorities to operate the Acquired Assets; provided, however, that no license or permit authorizing pharmacy sales outside the state in which a particular Store is located shall be regarded as a necessary and material license or permit for this purpose, and provided further, that: (i) Buyer shall begin the process to make appropriate filings with resident boards of pharmacy and otherwise applying for any such licenses or permits no later than two (2) Business Days following the Effective Date, and thereafter use all commercially reasonable efforts to pursue obtaining such licenses and permits by not later than the Outside Date; and (ii) Buyer shall diligently and reasonably pursue alternative means of operating the Acquired Assets pending receipt of such licenses and permits (including under powers of attorney), to the extent such alternative means are reasonably available to Buyer.

ARTICLE 10 TERMINATION.

Section 10.1 Termination. This Agreement may be terminated at any time before the last Closing:

(a) by mutual written consent of Seller and Buyer;

(b) by Buyer or Seller, if any court of competent jurisdiction or other competent Governmental Authority over Seller or Buyer has enacted or issued an Order that (i) declares this Agreement invalid or unenforceable in any respect; (ii) restrains, enjoins or prohibits the consummation of the transactions contemplated by this Agreement; or (iii) otherwise prevents or makes illegal the consummation of the transactions contemplated by this Agreement, and such Order has become final and non-appealable; provided however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to a Party if the failure to consummate a Closing because of such action by a Governmental Authority shall be due to the failure of such Party to have fulfilled, in any material respect, its obligations under this Agreement; provided, further, however, that the right to terminate this Agreement under this Section 10.1(b) shall not be available to Seller if such termination is in connection with consummation of an Alternative Transaction, in which case this Agreement shall be terminated under Section 10.1(k);

(c) by Seller or Buyer, if the last Closing does not occur by February 15, 2023 (the "Outside Date"); provided, however, Buyer may extend the Outside Date until February 21, 2023 if both Closings are not completed by February 15, 2023; provided, further, however, that the right to terminate this Agreement pursuant to this Section 10.1(c) shall not be available to any Party that is in breach in any material respect of its covenants, obligations or agreements set forth in this Agreement; provided, further, however, that the right to terminate this Agreement under this Section 10.1(c) shall not be available to Seller if (i) the Data Converter is unable to convert the Pharmacy Records for all Stores at least two (2) days prior to the Pharmacy Records Closing in accordance with Section 6.5(c), or (ii) such termination is in furtherance

of Seller entering into a definitive agreement with respect to an Alternative Transaction, seeking approval of an Alternative Transaction, or consummating an Alternative Transaction, in which case this Agreement shall be terminated under Section 10.1(k);

(d) by Seller, if: (i) Buyer has materially breached or materially failed to perform any of its obligations contained in this Agreement to be complied with by them such that the closing condition set forth in Section 9.2(b) would not be satisfied; or (ii) there exists a material inaccuracy of any representation or warranty of Buyer contained in Section 4.2 such that the closing condition set forth in Section 9.2(a) would not be satisfied and, in the case of each of clauses (i) and (ii) above, such breach or failure to perform has not been waived in writing by Seller or cured by Buyer within ten (10) calendar days after receipt of written notice thereof from Seller or is incapable of being cured by Buyer by the Outside Date; provided however, that the right to terminate this Agreement pursuant to this Section 10.1(d) shall not be available to Seller if Seller is in breach of any of its representations, warranties, covenants or obligations set forth in this Agreement;

(e) by Buyer, if: (i) Seller has materially breached or materially failed to perform any of its obligations contained in this Agreement to be complied with by it such that the closing condition set forth in Section 9.3(b) would not be satisfied; or (ii) there exists a material inaccuracy of any representation or warranty of Seller contained in such that the closing condition set forth in Section 9.3(a) would not be satisfied and, in the case of each of clauses (i) and (ii) above, such breach or failure to perform has not been waived in writing by Buyer or cured by Seller within ten (10) calendar days after receipt of written notice thereof from Buyer or is incapable of being cured by Seller by the Outside Date; provided however, that the right to terminate this Agreement pursuant to this Section 10.1(e) shall not be available to Buyer if Buyer is in breach of any of their representations, warranties, covenants or obligations set forth in this Agreement;

(f) Intentionally Omitted;

(g) by Buyer, by notice to Seller, or by Seller, by notice to Buyer, if the Bankruptcy Court enters an Order dismissing or converting the Bankruptcy Case into a case under Chapter 7 of the Bankruptcy Code, appointing a trustee in the Bankruptcy Case, or appointing an examiner with enlarged power related to the operation of the Business or the Acquired Assets (beyond those set forth in Section 1106(a)(3) or (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code, or the occurrence of any of the foregoing;

(h) by Buyer, if Seller withdraws or seeks authority to withdraw the motion to approve the Bid Procedures Order and the Sale Order or any provisions thereof;

(i) by Buyer, if (i) following entry by the Bankruptcy Court of the Bid Procedures Order, such order is (x) amended, modified or supplemented in a way that is materially adverse to Buyer without Buyer's prior written consent or (y) voided, reversed or vacated or is subject to a stay, or (ii) following entry by the Bankruptcy Court of the Sale Order, the Sale Order is (x) amended, modified or supplemented in a way that is materially adverse to Buyer without Buyer's prior written consent or (y) voided, reversed or vacated or is subject to a stay;

(j) automatically, if Seller consummates an Alternative Transaction with one or more Persons other than Buyer; or

(k) by Seller, if (i) following entry by the Bankruptcy Court of the Bid Procedures Order, such order is (x) amended, modified or supplemented in a way that is materially adverse to Seller without Seller's prior written consent or (y) voided, reversed or vacated or is subject to a stay, (ii) following

entry by the Bankruptcy Court of the Sale Order, the Sale Order is (x) amended, modified or supplemented in a way that is materially adverse to Seller without Seller's prior written consent or (y) voided, reversed or vacated or is subject to a stay.

Section 10.2 Effect of Termination; Remedies.

(a) In the event of termination pursuant to Section 10.1, this Agreement shall become null and void and have no effect (other than Article 10, Article 11 and Article 12, which shall survive termination) only as related to Acquired Assets subject to the applicable Closing that did not occur prior to such termination, with no Liability on the part of Seller or Buyer, or their respective Affiliates or Related Persons, with respect to such Acquired Assets under this Agreement, except for (i) the Liability of a Party for its own expenses pursuant to Section 11.4, and (ii) any Liability provided for in Section 10.2(b) through Section 10.2(c), inclusive.

(b) If this Agreement is terminated solely pursuant to Section 10.1(d), then Seller shall be entitled to retain the Deposit (if any amount remains) as liquidated damages. For avoidance of doubt, if the Deposit was fully applied or credited towards the Purchase Price, no Deposit shall be owed to Seller. The Deposit (or any portion thereof) shall be Seller's sole and exclusive recourse in the event this Agreement is terminated pursuant to Section 10.1(d) only as related to the Acquired Assets subject to the applicable Closing that did not occur prior to such termination.

(c) If this Agreement is terminated pursuant to Section 10.1(h), Section 10.1(b), Section 10.1(c), Section 10.1(e), Section 10.1(g), Section 10.1(h), Section 10.1(i), Section 10.1(j), Section 10.1(h), Section 10.1(h) or Section 10.1(l), then Seller shall pay to Buyer the Deposit (if any amount remains). For avoidance of doubt, if any portion of the Deposit has not been applied or credited to the Purchase Price, Seller shall pay to Buyer the remaining portion of the Deposit. The amounts set forth in this Section 10.2(b) shall be Buyer's sole and exclusive recourse in the event this Agreement is terminated pursuant to any of the above referenced subsections of Section 10.1 only as related to the Acquired Assets subject to the applicable Closing that did not occur prior to such termination.

(d) Notwithstanding anything to the contrary contained herein, this Agreement shall continue to govern for all Acquired Assets that were subject to a Closing prior to termination pursuant to Section 10.1 and Seller's obligations with respect to such Closing shall survive any termination under Section 10.1.

(e) Notwithstanding anything to the contrary herein, the remedies set forth in this Section 10.2 (to the extent that this Agreement is terminated in accordance with Section 10.1), and the right to enforce covenants as set forth in ARTICLE 6 (if the Closing shall have occurred) only as related to the Acquired Assets subject to the applicable that did not occur prior to such termination shall be the exclusive remedies of the Parties for breaches of this Agreement or any of its provisions as related to the Acquired Assets subject to the applicable that did not occur prior to such termination, and are in derogation of all other rights and remedies available to the Parties at law, in equity or otherwise. The Parties acknowledge and agree that (i) Seller's entitlement to the Deposit (if any amount remains) will constitute liquidated damages (and not a penalty) and, if Seller receives such amount, then notwithstanding anything to the contrary contained herein, such amounts shall be the sole and exclusive remedy available to Seller and any other Person against Buyer, their Subsidiaries, and any of their respective Affiliates, in connection with the Acquired Assets subject to the applicable Closing that did not occur prior to such termination (including as a result of the failure to consummate the Closing or for a breach or failure to perform hereunder or otherwise), and none of Buyer, its respective Subsidiaries or any of their respective Affiliates shall have any further Liability relating to the Acquired Assets subject to the applicable Closing that did not occur prior to such termination and (ii) Buyer's entitlement to the Deposit (if any amount remains) will constitute

liquidated damages (and not a penalty) and, if Buyer receives such amount, then notwithstanding anything to the contrary contained herein, such Deposit (or any portion thereof) shall be the sole and exclusive remedy available to Buyer and any other Person against Seller, its Subsidiaries, and any of their respective Affiliates in connection with the Acquired Assets subject to the applicable Closing that did not occur prior to such termination (including as a result of the failure to consummate the applicable Closing or for a breach or failure to perform hereunder or otherwise) and none of Seller, its Subsidiaries or any of their respective Affiliates shall have any further Liability relating to the Acquired Assets subject to the applicable Closing that did not occur prior to such termination. Each Party acknowledges that the agreements contained in this Section 10.2 are an integral part of the transactions contemplated by this Agreement and that without these agreements such Party would not have entered into this Agreement.

ARTICLE 11 MISCELLANEOUS.

Section 11.1 Successors and Assigns. Prior to the last Closing, neither Buyer, on the one hand, nor Seller, on the other hand, shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other, and any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that Buyer shall have the right, exercisable in its sole discretion, to (a) assign this Agreement, in whole or in part, to any Affiliate of Buyer or any Affiliate of any equity holder of Buyer (a “Permitted Assignee”), and (b) designate one or more Permitted Assignees to purchase, take assignment of, or otherwise dispose of one or more Acquired Assets, any of the executory Contracts or unexpired Leases, and any other Contracts or Leases, subject in each case to such Permitted Assignee providing adequate assurance of future performance of the applicable executory Contract, unexpired Lease, Contract or Lease to the satisfaction of the Bankruptcy Court and otherwise perform the obligations of this Agreement. Following the last Closing, either Party may assign any of its rights hereunder. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the Parties. Notwithstanding anything to the contrary in this Section 11.1, no assignment of this Agreement or any interest herein shall be deemed to release, modify, limit or otherwise affect the assigning party’s obligations hereunder.

Section 11.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware (without giving effect to the principles of conflicts of Laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court, the Parties irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Seller is no longer subject to the jurisdiction of the Bankruptcy Court, the Parties irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, the State of Delaware’s Court of Chancery (or, if subject matter jurisdiction in that court is not available, in any appropriate state or federal courts in New Castle County in the State of Delaware).

Section 11.3 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER

VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 11.3.

Section 11.4 Expenses. Except as expressly otherwise provided herein, each of the Parties shall pay its own expenses in connection with this Agreement and the transactions contemplated by this Agreement, including any legal and accounting fees, whether or not the transactions contemplated by this Agreement are consummated.

Section 11.5 Broker's and Finder's Fees. Each of the Parties represents and warrants that it has dealt with no broker or finder in connection with any of the transactions contemplated by this Agreement other than as set forth on Schedule 11.5, whose fees and expenses shall, as between the Parties, be the responsibility of the Party indicated on Schedule 11.5, and, to such Party's Knowledge, no other broker or other Person is entitled to any commission or broker's or finder's fee in connection with any of the transactions contemplated by this Agreement or the Ancillary Agreements.

Section 11.6 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated by this Agreement in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended.

Section 11.7 Notices.

(a) All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of service, if served personally on the Party to whom notice is to be given; (ii) when transmitted via electronic mail to the applicable electronic mail address set forth below if confirmation of receipt is obtained promptly after completion of transmission; (iii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service; or (iv) on the fifth (5th) day after mailing, if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the Party as follows:

If to Seller:

Medly Health Inc.
7088 Winchester Circle, Suite 100
Boulder, CO 80301
Attention: David Janowicz
Email: Davod.Janowicz@medly.com

With a copy to (which copy alone shall not constitute notice):

Pachulski Stang Ziehl & Jones LLP
919 N. Market Street, Suite 1700
Wilmington, DE 19801
Attention: Laura Davis Jones
Email: ljones@pszjlaw.com

If to Buyer:

Walgreen Co.
104 Wilmot Road, MS #1446
Deerfield, IL 60015
Attention: Law Department
Email: kristine.ida@walgreens.com

(b) Any Party may change its address for the purpose of this Section 11.7 by giving the other Party written notice of its new address in the manner set forth above.

Section 11.8 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the Parties, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

Section 11.9 Time of Essence. Time is of the essence in the performance of each and every term of this Agreement.

Section 11.10 Intentionally Omitted.

Section 11.11 Public Announcements. Promptly after the execution and delivery of this Agreement, the Parties shall make a joint press release in form and substance reasonably satisfactory to both of them regarding the transactions contemplated herein. Thereafter, no Party shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written consent of another Party (such consent not to be unreasonably withheld, conditioned or delayed) unless a press release or public announcement is required by Law or Order of the Bankruptcy Court. If any such announcement or other disclosure is required by Law or Order of the Bankruptcy Court, the disclosing Party agrees to give the nondisclosing Party prior notice of, and an opportunity to comment on, the proposed disclosure. Notwithstanding anything to the contrary in this Section 11.11, Seller (a) shall be entitled to file this Agreement with the Bankruptcy Court and otherwise publicly announce the transactions contemplated herein in connection with the motion to approve the Bid Procedures Order and the Sale Order and other pleadings filed by Seller in the Bankruptcy Case and notices delivered to third parties as required herein or in furtherance of such transactions and (b) may disclose this Agreement to (i) its equityholders and lenders to the extent required by the provisions of any of Seller's bylaws, credit agreements and other pre-existing contractual obligations, and (ii) Seller's officers, directors, advisors, accountants, attorneys, consultants and other professionals of Seller.

Section 11.12 Entire Agreement. This Agreement (including the Ancillary Agreements referenced herein), the Sale Order and the Confidentiality Agreement contain the entire understanding between the Parties with respect to the transactions contemplated by this Agreement and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All schedules and exhibits to this Agreement and any documents and instruments delivered pursuant to any provision of this Agreement are expressly made a part of this Agreement as fully as though completely set forth in this Agreement.

Section 11.13 Parties in Interest. Nothing in this Agreement is intended to or shall confer any rights or remedies under or by reason of this Agreement on any Persons other than Seller and Buyer and their respective successors and permitted assigns. Nothing in this Agreement is intended to or shall relieve or discharge the obligations or Liability of any third Persons to Seller or Buyer. This Agreement is not

intended to nor shall give any third Persons any right of subrogation or action over or against Seller or Buyer.

Section 11.14 Bulk Sales Laws. Buyer waives compliance by Seller and Seller waives compliance by Buyer, with the provisions of the “bulk sales”, “bulk transfer” or similar laws of any state other than any Laws which would exempt any of the transactions contemplated by this Agreement from any Tax Liability which would be imposed but for such compliance.

Section 11.15 Construction. The article and section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. The Parties have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumptions or burdens of proof shall arise favoring any Party by virtue of the authorship of any of the provisions of this Agreement. Each defined term used in this Agreement has a comparable meaning when used in its plural or singular form. As used in this Agreement, the word “including” and its derivatives means “without limitation” and its derivatives, the word “or” is not exclusive and the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole.

Section 11.16 Counterparts and Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. Executed signature pages to this Agreement may be delivered by electronic mail and such electronic copies will be deemed as sufficient as if actual signature pages had been delivered.

Section 11.17 No Successor Liability. The Parties intend that upon the last Closing, Buyer shall not and shall not be deemed to: (a) be a successor (or other such similarly situated party), or otherwise be deemed a successor, to Seller, including, a “successor employer” for the purposes of the Code, ERISA, or other applicable Law; (b) have Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Acquired Assets other than as expressly set forth in this Agreement, including successor or vicarious liabilities of any kind or character, including any theory of antitrust, environmental, successor, or transferee liability, labor law, de facto merger, or substantial continuity (including under securities laws of any Governmental Authority); (c) have, de facto or otherwise, merged with or into Seller; (d) be an alter ego or a mere continuation or substantial continuation of Seller (and there is no continuity of enterprise between Buyer and Seller), including, within the meaning of any foreign, federal, state or local revenue, pension, ERISA, COBRA, Tax, labor, employment, environmental, or other Law, rule or regulation (including filing requirements under any such Laws, rules or regulations), or under any products liability law or doctrine with respect to Seller’s Liability under such Law, rule or regulation or doctrine; or (e) be holding itself out to the public as a continuation of Seller or its estate (the foregoing clauses (a) through (e), collectively, “Successor Liabilities”).

Section 11.18 Risk of Loss. The risk of loss or damage to each of the Acquired Assets shall be upon Seller until the applicable Closing, at which time such risk shall shift to Buyer.

ARTICLE 12 DEFINITIONS.

Section 12.1 Certain Terms Defined. As used in this Agreement, the following terms have the following meanings:

“Accounts Receivable” means any and all accounts receivable, credit card receivables, notes receivable and other amounts receivable owed to Seller (whether current or non-current), together with all security or collateral therefor and any interest or unpaid financing charges accrued thereon, including all

Actions pertaining to the collection of amounts payable, or that may become payable, to Seller with respect to products sold or services performed as related to the Business.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such particular Person. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling,” “controlled by” and under “common control with”) means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Alternative Transaction” means any transaction or series of transactions, whether a going concern sale, liquidation or otherwise, whether with one or more than one non-Debtor counterparty, that involves one or more direct or indirect sales, leases or other transfers of all or any portion of the Business or the Acquired Assets outside the Ordinary Course by Seller to a transferee or transferees other than Buyer or any other transaction, including a plan of liquidation or plan of reorganization, that transfers or vests ownership of, economic rights to, or benefits in all or any portion of the Acquired Assets to any Person other than Buyer.

“Ancillary Agreements” means, collectively, the Acquired Intellectual Property Assignments and other certificates, affidavits and releases delivered pursuant to ARTICLE 3.

“Avoidance Actions” means any and all claims and remedies of Seller under Sections 510 and 542 through 553 of the Bankruptcy Code or under similar state law, including fraudulent conveyance claims, and all other causes of action of a trustee and debtor-in-possession under the Bankruptcy Code related to the Acquired Assets.

“Auction” has the meaning set forth in the Bid Procedures Order.

“Bid Procedures” means the bidding procedures in form and substance acceptable to the Seller in its sole discretion for the solicitation and submission of bids for a sale of all or substantially all of its assets approved by the Bankruptcy Court as an exhibit to the Bid Procedures Order.

“Business Day” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in Wilmington, Delaware are authorized by Law or other Governmental Authority action to close.

“Business Name” means “Pharmaca” or “Medly” either alone or in combination with other words, graphics or designs, including all rights in said term as a trade name, trade mark, corporate name, service mark and domain name, including those set forth on Schedule 12.1(a), and any confusingly similar variation, derivative or transaction thereof.

“CARES Act” means the Coronavirus Aid, Relief and Economic Security Act, Pub. L. No. 116-136, including any administrative or other guidance published with respect thereto by any Governmental Authority.

“Cash” means all cash and cash equivalents held by Seller, including all petty cash, register cash, restricted cash, undeposited checks, cash in transit and marketable securities, in each case as related to the Business (and including (a) the Purchase Price, and (b) any fee reserves or escrows established by Seller).

“Claims” encompasses the definition in Section 101(5) of the Bankruptcy Code and under this Agreement also includes any and all liabilities, rights, credits, defenses, allowances, rebates, choses in action, rights of recovery, set-off, causes of action, civil or criminal, any contributions received from or

owed to charitable or other organizations, assertions of legal or moral responsibility, in each case known or unknown, pending or threatened, at law or in equity, direct or derivative, liquidated or unliquidated, matured or unmatured, disputed or undisputed, choate or inchoate, judgments, demands, rights of first refusal or offer, recoupment, rights of recovery, reimbursement, contribution, indemnity, exoneration, rights under products liability, alter ego, environmental, intellectual property (including any infringement thereof), tort, contract and any other legal or equitable basis of liability, charges of any kind or nature, debts arising in any way in connection with any agreements, acts or failures to act, and all pending, threatened, asserted or unasserted actions against Seller or any of its Affiliates, or any of their respective current or former officers, employees, agents or independent contractors, any of their assets or properties, the Business, or any of their operations or activities arising out of or relating to any matter, occurrence, action, omission or circumstance, and includes any Claims against Buyer under doctrines of successor liability or any other ground or theory.

“Closing” means each of the Pharmaceutical Inventory Closing and Pharmacy Records Closing.

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

“Contract” means any contract, indenture, note, bond, lease, license, premium finance arrangement, purchase order, sales order or other agreement to which Seller is a Party; provided that Contracts do not include any Lease or any employment or similar Contracts.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions thereof.

“Department” means the United States Department of Health and Human Services.

“Deposit Escrow Agent” means such escrow agent upon which Buyer and Seller mutually agree. Until such time as a Deposit Escrow Agent is mutually designated, Pachulski Stang Ziehl & Jones LLP (“PSZJ”) shall hold the Deposit in its Client Trust Account (where it will not bear interest) and deliver it to the Deposit Escrow Agent following receipt of joint written instructions from Buyer and Seller instructing PSZJ to do so (including, without limitation, instructions as to the manner of transfer).

“DIP Facility” means the facility under that certain Debtor-in-Possession Credit Agreement, dated December 9, 2022, by and between Seller and TriplePoint Venture Growth BDC Corp., TriplePoint Capital LLC and TriplePoint Private Venture Credit Inc. as amended, supplemented, or otherwise modified from time to time and as approved by the DIP Order.

“DIP Order” means an interim or final Order of the Bankruptcy Court approving the DIP Facility.

“Distribution Center” means a distribution center operated by Seller.

“Documents” means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, surveys, customer lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

“Employee Benefit Plans” means (a) all “employee benefit plans,” as defined in Section 3(3) of ERISA, (b) all employment, consulting or other individual compensation agreements, and (c) all bonus or other incentive, equity or equity-based compensation, deferred compensation, severance pay, sick leave, vacation pay, salary continuation, retirement, disability, hospitalization, medical, life insurance, scholarship

programs or other plans, contracts, policies or arrangements that provide for compensation or employee benefits, in each case maintained or contributed to by Seller or as to which Seller has any material obligation or Liability, contingent or otherwise.

“Employee Liabilities” means all Liabilities of Seller to or with respect to all Employees whenever arising and Liabilities of the type specified in Section 1114 of the Bankruptcy Code owing to retired employees of Seller.

“Employees” means all individuals, as of the Effective Date, who are employed by Seller (including Employees who are absent due to vacation, family leave, short-term disability or other approved leave of absence) in connection with the ownership, operation and management of the Business.

“Encumbrances” means any claims, community or other marital property interests, conditions, equitable interests, rights of way, encroachments, servitudes, rights of first refusal or similar restrictions, including any restriction on use, voting right (in the case of any security or equity interest), transfer right, right to receipt of income or exercise of any other attribute of ownership.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control (within the meaning of Section 4001(b) of ERISA) with Seller.

“Excluded Claims” means all Claims and Avoidance Claims held by Seller, including with respect to the Retained Litigation;

“Excluded Inventory” means the inventory further described on Exhibit A. In addition, and for the avoidance of doubt, Excluded Inventory includes (i) all Non-Pharmaceutical Inventory, (ii) all Pharmaceutical Inventory located at a Distribution Center and (iii) all inventory located at the Stores in excess of the Pharmaceutical Inventory Amount for such Stores.

“Governmental Authority” means any federal, municipal, state, provincial, local or foreign governmental, administrative or regulatory authority, department, agency, commission or body (including any court or similar tribunal).

“Healthcare Laws” means any and all Laws relating to the regulation of the health care industry or to payment for any items or services rendered, provided, or furnished by Seller, including Medicare, Medicaid, TRICARE and such other similar federal, state or local reimbursement or government payor programs applicable to Seller; 42 U.S.C. § 1320a-7b and the regulations promulgated thereunder (the Anti-Kickback Law); 42 U.S.C. § 1395nn and the regulations promulgated thereunder (the Stark Law); 42 U.S.C. § 1320a-7a and the regulations promulgated thereunder (the Civil Monetary Penalty Provisions); 31 U.S.C. § 3729 et seq. (the False Claims Act); state anti-kickback, physician self-referral, fee splitting and corporate practice laws; federal and state Laws governing the use, handling, control, storage, transportation, disposal, and maintenance of controlled substances, pharmaceuticals, or drugs; HIPAA and Other Privacy Laws; the Controlled Substances Act and applicable requirements of the federal Drug Enforcement Administration; 10 U.S.C. § 1071 et seq., the CARES Act, the Accelerated Advance Payment Program terms and conditions and guidance promulgated by the Centers for Medicare & Medicaid Services, and any guidance or regulations promulgated in connection therewith, Families First Coronavirus Response Act (H.R. 6201), and any guidance or regulations promulgated in connection therewith, and any regulations thereunder; and state and federal licensing and certification Laws and subregulatory guidance and federal and state Laws governing the provision or furnishing of pharmacy services or other healthcare services provided by Seller, and with respect to all of the foregoing,

“Healthcare Laws” shall include any and all statutes, rules, regulations, position statements, declaratory statements, advisory opinions, bulletins, notifications, coverage determinations, and other guidance relating to any of the foregoing.

“Healthcare Professionals” means all personnel who provide clinical or pharmaceutical services on behalf of or to Seller or the Business.

“HIPAA and Other Privacy Laws” means, collectively (a) the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, the privacy standards adopted by the Department as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (the Privacy Rule), the security standards adopted by the Department as they may be amended from time to time, 45 C.F.R. parts 160, 162, and 164, subpart C (the Security Rule), and the Privacy provisions (Subtitle D) of the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of Pub. L. 111-5, as codified at 42 U.S.C. Sections 1320d through d-9, and its implementing regulations (the HITECH Act) and (b) any other Laws concerning the privacy or security of personal information, including the Gramm-Leach-Bliley Act, state health information privacy and security Laws, state data breach notification Laws and state consumer protection Laws.

“Income Tax” means any Tax based on, imposed on or measured by income, gross receipts or profits, including any interest, penalty or other addition with respect thereto.

“Intellectual Property” means (a) all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos, Internet domain names and corporate names and general intangibles of a like nature, including the Business Name, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof and (b) all Software owned by Seller.

“Interest” means any interest within the meaning of Section 363(f) of the Bankruptcy Code, including any interest of a Governmental Authority, and all other interests, pledges, security interests, rights of setoff, restrictions or limitations on use, indentures, instruments, successor liabilities, conditions, rights of first refusal, options to purchase, obligations to allow participation, agreements or rights, rights asserted in litigation matters, competing rights of possession, obligations to lend, matters filed of record that relate to, evidence or secure an obligation of Seller (and all created expenses and charges) of any type under, among other things, any document, instrument, agreement, affidavit, matter filed of record, cause, or state or federal Law, whether known or unknown, liquidated or unliquidated, matured or unmatured, legal or equitable, and all liens, rights of offset, replacement liens, adequate protection liens, charges, obligations, or claims granted, allowed or directed in any Order.

“Knowledge of Seller” or “Seller’s Knowledge” means the actual current knowledge of Richard Willis, Shantel McMeekin, Raymond McCall, and David Janowicz.

“Law” means any federal, state, provincial, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, requirement, determination, decision or opinion of any Governmental Authority.

“Leased Real Property” means all leasehold or subleasehold estates and other rights of Seller to possess, use or occupy (or to grant others the right to possess, use or occupy) any land, buildings, structures, improvements, fixtures or other interest in real property, in each of the foregoing cases, to the extent possessed, used or occupied in connection with the Business.

“Leasehold Improvements” means all buildings, structures, improvements and fixtures that are owned by Seller and located on any Leased Real Property, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the Lease for such Leased Real Property.

“Leases” means all leases, ground leases, subleases, licenses and other agreements, including all amendments, extensions, renewals, and other agreements with respect thereto, pursuant to which Seller has the right to possess, use, lease or occupy (or to grant others the right to possess, use or occupy) any Leased Real Property.

“Liability” means any liability, debt, obligation, deficiency, interest, Tax, penalty, fine, claim, demand, judgment, cause of action or other losses (including loss of benefit or relief), cost or expense of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute, fixed or contingent, accrued or unaccrued, liquidated or unliquidated, recorded or unrecorded, due or to become due or otherwise, and regardless of when asserted.

“Lien” means any lien (statutory or otherwise), Claim, Encumbrance, Interest, Liability, deed of trust, right of first offer, easement, servitude, transfer restriction under any shareholder or similar agreement, mortgage, pledge, lien, charge, security interest, easement, security agreement or other encumbrance or restriction on the use or transfer of any property, hypothecation, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing and (ii) any assignment or deposit arrangement in the nature of a security device.), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

“Material Adverse Effect” means (i) any change, effect, event, occurrence, state of facts or development that, individually or in the aggregate, has had, or would reasonably be expected to have, a material adverse effect on the Acquired Assets or the financial condition of the Business, taken as a whole; provided, however, that a “Material Adverse Effect” shall not include any “Material Adverse Effect” that is cured prior to the earlier of the last Closing and the date this Agreement is terminated in accordance with Section 10.1 or any change, effect, event, occurrence, state of facts or development in or attributable to: (a) general economic or business conditions; (b) the United States or foreign economies, or financial, banking or securities markets in general, or other general business, banking, financial or economic conditions (including (i) any disruption in any of the foregoing markets, (ii) debt defaults or other restructuring events of any country with respect to which bondholders take a discount to the debt of any country or any increases in the interest rates for any country’s debt, (iii) any change in the currency exchange rates, (iv) any decline or rise in the price of any security, commodity, contract or index, (v) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transactions contemplated by this Agreement); (c) acts of God or national or international political or social conditions (including any Protest Event and any Protest Measure), including the engagement and/or escalation by the U.S. in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the U.S. or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the U.S.; (d) changes in applicable Laws or the interpretation thereof; or (e) any change in GAAP or other accounting requirements or principles.

“Medly Accounts Receivable” means all Accounts Receivable of the Medly Operating Unit.

“Medly Operating Unit” means all Medly Health Inc. operations except those operations specifically relating to the 22 retail stores/pharmacies currently or formerly known as Pharmaca, the operations related to the websites Pharmaca.com and PharmacaRX.com, the offices and operations headquartered at 7088 Winchester Circle, Suite 100, Boulder, CO 8030, and all the operations of the distribution facility located at 7088 Winchester Cir, Boulder CO.

“Medly Inventory” means all Pharmaceutical Inventory of the Medly Operating Unit.

“Non-Pharmaceutical Inventory” means any items in the Seller’s stock of over-the counter inventory.

“Order” means any order, writ, injunction, decree, stipulation, judgment, award, determination, direction or demand of a Governmental Authority.

“Ordinary Course” means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency) during the four (4) month period immediately preceding the date of this Agreement.

“Payment Programs” means Medicare, Medicaid, workers’ compensation programs, and all other third party reimbursement and payment programs, including those offered or administered by private insurance companies, health maintenance organizations, preferred provider organizations, alternative delivery systems, managed care systems, health benefits plans or health insurance plans.

“Permit” means any material permit, license, authorization, registration or certificate obtained from any Governmental Authority.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

“Personal Information” means any personally identifiable information from any individuals, including any customers, prospective customers, employees or other third parties, including protected health information as defined under HIPAA.

“Pharmaceutical Inventory” means the means all items in the Seller’s stock of prescription pharmaceutical inventory, including any prescription pharmaceutical inventory in the Medly Inventory, specifically identified as inventory to be included in the Acquired Assets on Exhibit A and accompanied by Pharmaceutical Inventory Documentation.

“Pharmaceutical Inventory Amount” means, with respect to each Store, the aggregate value of the Pharmaceutical Inventory located at the Store on the Store Verification Date as determined by the Third Party Pharmaceutical Inventory Service using the methods, standards and procedures set forth in Exhibit A.

“Pharmaceutical Inventory Closing” means the date Buyer delivers the Pharmaceutical Inventory Closing Statement setting forth the Aggregate Pharmaceutical Inventory Purchase Price.

“Pharmaceutical Inventory Excess” means, with respect to each Store, the amount by which the Pharmaceutical Inventory Amount is more than the Rx Inventory Cap amount set forth in Exhibit B for such Store; provided that, in no event shall Buyer be required to purchase such excess.

“Pharmaceutical Inventory Purchase Price” means, with respect to each Store, (i) the Rx Inventory Cap amount set forth in Exhibit B for such Store, *minus*, (ii) the Pharmaceutical Inventory Shortfall for such Store.

“Pharmaceutical Inventory Shortfall” means, with respect to each Store, the amount by which the Pharmaceutical Inventory Amount is less than the Rx Inventory Cap amount set forth in Exhibit B for such store.

“Pharmacy Records Closing” means the date Buyer delivers the Pharmacy Records Closing Statement setting forth the Aggregate Pharmacy Records Purchase Price.

“Pharmacy Records Purchase Price” means, with respect to each Store, the Pharmacy Records Purchase Price Allocation for such Store, *plus* or *minus* the Pharmacy Records Adjustment for such Store.

“Post-Closing Tax Period” means any taxable period beginning after the applicable Closing date for the applicable Acquired Assets.

“Post-Closing Taxes” means any Taxes, other than Transaction Taxes, imposed on the Acquired Assets in respect of a taxable period (or portion thereof) beginning after the applicable Closing date for the applicable Acquired Assets.

“Pre-Closing Taxes” means any Taxes paid, payable, or that become payable, in connection with Seller or any of its Affiliates or relating to the applicable Acquired Assets for each Closing in respect of a taxable period (or portion thereof) ending as of the applicable Closing date.

“Protest Event” means any protests, riots, demonstrations or public disorders or any escalation or worsening of protests, riots, demonstrations or public disorders (including any such event related to any U.S. election (including any disputes concerning the results of any such election) or the orderly transition of power).

“Protest Measures” means any measures taken in response to any Protest Event, including any temporary closures of any properties and including compliance with any curfew, closure, hut down, directive, order, policy, guidance or recommendation by any Governmental Authority or any disaster plan of Seller or any change in applicable Laws related to, arising from or as a result of any Protest Event.

“Registered IP” means all Acquired Intellectual Property that is registered, filed or issued under the authority of, with or by any Governmental Authority, including all registered copyrights, registered mask works and registered trademarks and all applications for any of the foregoing.

“Related Person” means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, investment bankers or representatives of any such Person.

“Retained Litigation” means all litigation and Claims arising out of or related to events prior to the last Closing.

“Sale Order” means an Order of the Bankruptcy Court (a) approving this Agreement and the terms and conditions hereof, (b) approving and authorizing Seller to consummate the transactions contemplated hereby and (c) otherwise as is acceptable to Buyer and Seller in their respective reasonable discretion.

“Seller Scripts” means all Pharmacy Records relating to the pharmacy businesses operated at the locations identified on Exhibit B.

“Software” means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, (d) screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, and (e) all Documents related to any of the foregoing.

“Store” means each pharmacy business operated at the locations identified on Exhibit B.

“Store Closing Sales” means, to the extent permitted under applicable Law, any Store closings and “going out of business”, “store closing” or similar theme sales conducted at any Stores or other facilities of Seller, pursuant to which Buyer or its designated agents may sell all or any portion of the Pharmaceutical Inventory, Tangible Assets or other assets of Buyer.

“Store Verification Date” means, with respect to each Store, shall be February 10, 2023 or such other date mutually agreed to by the Parties.

“Straddle Period” means any taxable period beginning prior to, and ending after, the applicable Closing date for the applicable Acquired Assets.

“Subsidiary(ies)” means, when used with respect to any specified Person, any other Person (a) of which the specified Person or any Subsidiary thereof is a general partner, (b) of which the specified Person or a Subsidiary thereof own at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions for such other Person of which owns the specified person or a Subsidiary thereof, or (c) that is directly or indirectly controlled by the specified Person or any Subsidiary thereof.

“Tango Operating Unit” means Seller’s ‘340(b) business,’ including the businesses obtained in Seller’s Khora Health Solutions, Inc. and RPH Innovations, LLC acquisitions.

“Tax Return” means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

“Taxes” means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Governmental Authority, which taxes shall include all Income Taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise (whether or not deferred), franchise, gross receipts, occupation, real and personal property, stamp, transfer, worker’s compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under Section 59A of the Code) and other obligations of the same or a similar nature, whether arising before, on or after the applicable Closing date for the applicable Acquired Assets; and “Tax” means any one of them.

“Third Party Pharmaceutical Inventory Service” means RGIS Inventory Specialists or another mutually acceptable inventory valuation firm.

Section 12.2 All Terms Cross-Referenced. Each of the following terms is defined in the Section set forth opposite such term:

Term

Section

Acquired Assets Section 1.1

Acquired Intellectual Property Section 1.1(c)

Acquired Intellectual Property Assignment..... Section 3.2(c)(i)

Aggregate Pharmaceutical Inventory Purchase Price Section 2.1(a)(i)

Aggregate Pharmacy Records Purchase Price Section 2.1(a)(i)

Agreement..... Preamble

Allocation..... Section 8.3

Bankruptcy Case Recitals

Bankruptcy Code Recitals

Bankruptcy Court..... Recitals

Business Recitals

Buyer..... Preamble

CCPA..... Section 5.1(l)

Commercial Third-Party Payors Section 4.1(t)(iv)

Confidentiality Agreement..... Section 5.1(b)

Custodian of Records..... Section 6.5(e)

Data Converter Section 6.5(c)

Deposit..... Section 2.1(b)

DSCSA..... Section 1.1(a)(i)

Effective Date Preamble

Eligible Inventory Section 1.1(a)(i)

Excluded Assets..... Section 1.2

Excluded Benefit Plans..... Section 1.2(j)

Excluded Insurance Policies Section 1.2(c)

Final Conversion..... Section 6.5(c)

Government Programs Section 4.1(t)(iv)

HIPAA Policies and Procedures Section 4.1(t)(ix)

Initial Conversion..... Section 6.5(c)

Interim Period Section 5.1(a)

Inventory Audit Section 2.1(c)

Medly..... Preamble

Necessary Consent..... Section 1.5(a)

Outside Date..... Section 10.1(c)

Parties..... Preamble

Petition Date..... Recitals

Pharmaceutical Inventory Closing Statement..... Section 2.2(b)

Pharmaceutical Inventory Documentation Section 1.1(a)(i)

Pharmacy Records Section 1.1(a)(iii)(iii)

Pharmacy Records Adjustment..... Section 2.1(d)

Pharmacy Records Amount Section 2.1(d)

Pharmacy Records Closing Statement..... Section 2.2.(b)

Pharmacy Records Purchase Price Allocation..... Section 2.1(d)

Pharmacy Records Verification Date Amount..... Section 2.1(d)

Pre-Closing Tax Refund Section 8.2(c)

Purchase Price..... Section 2.1(a)(i)

Seller Preamble

Tangible Assets..... Section 1.1(a)(i)

Third Party Distributor..... Section 6.5(d)

Transaction Taxes Section 8.1

3T Documentation Section 1.1(a)(i)

[Signatures are on the following pages.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the Effective Date.

BUYER:

WALGREEN CO.



By: _____

Name: Aaron Friedman

Title: VP and Head of WBA M&A

MEDLY:

MEDLY HEALTH INC.

By: 

Name: Richard S. Willis

Title: Chief Executive Officer

SUBSIDIARIES OF MEDLY:

Care Well Pharmacy, Inc.; Grubbs Care Pharmacy NW Inc.; Marg Pharmacy, Inc.; Medly Atlanta Inc.; Medly Baltimore Inc.; Medly Bedford Ave Pharmacy Inc.; Medly Bristol Inc.; Medly Bronx Inc.; Medly Chicago Inc.; Medly Dallas Inc.; Medly DC Inc.; Medly Enterprise LLC; Medly Grand Central Inc.; Medly Houston Inc.; Medly Jersey City Inc.; Medly Mail Service Pharmacy LLC; Medly Miami Inc.; Medly Orlando Inc.; Medly Pharmacy Inc.; Medly Pharmacy PA Inc.; Medly Pittsburgh Inc.; Medly Queens Inc.; Medly Raleigh Inc.; Medly San Antonio Inc.; Medly Stamford Inc.; Medly Tampa Inc.; Medly UCHC Pharmacy Inc.; Medly Utah Inc.; Pharmaca Integrative Pharmacy, Inc.; Tango340B LLC; West Campbell Pharmacy Inc.; Khora Health Solutions Inc.; and RPH Innovations, LLC

By: 

Name: Richard S. Willis

Title: Chief Executive Officer

EXHIBIT A

PHARMACEUTICAL INVENTORY INSTRUCTIONS

Attached.

PHARMACEUTICAL INVENTORY INSTRUCTIONS

In connection with the Asset Purchase Agreement (the "Agreement") between WALGREEN CO. ("Buyer") and MEDLY HEALTH INC. ("Medly") and each of the subsidiaries of Medly set forth on the signature pages to the Agreement (collectively, with Medly, "Seller") dated January 31, 2023, this Exhibit A sets forth the agreed upon methods, standards and procedures for counting and determining the value of the Pharmaceutical Inventory to be purchased by Buyer.

I. GENERAL INSTRUCTIONS

A. At least one qualified representative of both Buyer and Seller must be present throughout the inventory taking.

B. The cost of taking inventory will be paid by Buyer, subject to partial reimbursement by Seller pursuant to the terms of the Agreement. Such costs shall be the regular charge by the Third Party Pharmaceutical Inventory Service. The Third Party Pharmaceutical Inventory Service shall invoice Buyer.

C. No pre-counting of Pharmaceutical Inventory will be permitted.

D. Buyer's pharmacy supervisor will prepare two copies (or one original and one photocopy) of the "Physical Inventory Valuation Report" in the form shown on page 3 of this Exhibit and must be signed by representatives of both Buyer and Seller at the conclusion of the inventory. After the Physical Inventory Valuation has been signed by the respective parties, the Seller and Buyer will retain a copy of the same.

E. Buyer will reconcile the Pharmaceutical Inventory Documentation against the Pharmaceutical Inventory to insure accurate Pharmaceutical Inventory Documentation is being transferred to Buyer.

F. Seller will provide accurate and complete temperature logs from all refrigerators that store Shingrix product. The temperatures logs need to be for two (2) years prior to the applicable Store Verification Date or the date Shingrix was first received, whichever comes first ("Shingrix Timeline").

II. CUT-OFF PROCEDURE

A. All merchandise received up to, but not including, the day of the inventory shall be included in the inventory. Seller shall be responsible for the payment of all invoices for merchandise received up to and including the day of inventory.

B. Seller shall not accept or permit the transfer of merchandise from any other store or from any warehouse of Seller as of the Store Verification Date.

III. PHARMACEUTICAL INVENTORY

A. Valuation - In calculating the aggregate value of the Pharmaceutical Inventory and determining the Pharmaceutical Inventory Amount (as defined in the Agreement), the Third Party Pharmaceutical Inventory Service shall value the Pharmaceutical Inventory based on Seller's acquisition

cost net of any discounts, rebates and other incentives, as marked on pharmaceutical bottles Medi-Span's Average Wholesale Price ("AWP") that is within fourteen (14) days prior to the Pharmaceutical Inventory Closing AWP minus 25% for brand name Pharmaceutical Inventory, and AWP minus 93% for generic Pharmaceutical Inventory.

B. Excluded Inventory – The Third Party Pharmaceutical Inventory Service shall not ascribe any value to Excluded Inventory. As used herein, "Excluded Inventory" includes all items of inventory that fit within one or more of the following categories: (i) all inventory that is not salable in the ordinary course of business or that does not conform to inventory standards that are contained in the applicable inventory regulatory laws; (ii) all over-the-counter inventory (other than insulin, syringes and needles) and all over-the-counter inventory located behind the pharmacy counter, such as pseudoephedrine products; (iii) all private label inventory; (iv) sample inventory; (v) inventory out of date within one-hundred twenty (120) days from the Inventory Date, as shown by manufacturer's labeled expiration date (or already expired); (vi) prescription products, including but not limited to syringes and compounding chemicals/ingredients, which have a manufactured date of over 3 years old; (vii) vials, bottles and similar products; (viii) diagnostic testing products (including machines, test strips and similar products); (ix) inventory that has been damaged or broken, is shopworn or faded (including faded labels), or that has visible deterioration; (x) inventory that has been repackaged or is not in its original packaging, including any product removed from automation devices; (xi) any product that does not contain a product identifier (2D barcode identifying serialization) or manufactured prior to November 2017 (grandfathered product by Federal Food, Drug, and Cosmetic Act Section 582) (xii) any compounding inventory (xiii) obsolete inventory not currently being supplied by distributors to retail stores; (xiv) any items subject to a mandatory or voluntary recall; (xv) all vaccinations, (excluding Shingrix vaccine, provided temperature logs are completed and in the correct temperature range within the Shingrix Timeline); (xvi) inventory that is reasonably determined by Buyer to constitute hazardous material; (xvii) all pharmaceuticals that require freezer storage, including but not limited to Zostavax prescriptions; (xviii) all inventory shipped directly to the Pharmacy from the manufacturer; (xix) all inventory not in compliance with Seller's Pharmaceutical Inventory Documentation; (xx) inventory originating from wholesalers not listed on Exhibit A; (xxi) all limited distribution drugs; (xxii) all risk evaluation and medication strategy drugs, such as Isotretinoin, REMS and TIRF; (xxiii) AUVI-Q products; and (xxiv) any other items that the Parties mutually agree in writing (electronic mail shall be acceptable) to exclude. Seller agrees to remove, at Seller's sole cost and expense, all items of Excluded Inventory from the Store no earlier than three (3) business days prior to the Pharmaceutical Inventory Closing, and no later than the start of the inventory count.

C. Inventory Preparation - Open containers will be counted in tenths. The Seller must mark the open container with an "X" mark, and "faced in the front" of the similar type drugs. Items to be excluded from the sale will be pulled and accumulated at a pre-designated location for disposition at Seller's expense.

D. Matters Related To Prescriptions - Prior to each Store Verification Date, Seller shall use reasonable efforts to fill and deliver to pharmacy customers any partial-fill Prescriptions with a remaining quantity balance ("IOU Prescriptions"). For any IOU Prescriptions remaining on the Store Verification Date, Seller shall credit the Prescription to the customer or to the third-party payor, as appropriate, on the Store Verification Date. Buyer assumes no liability for IOU Prescriptions. In addition, prior to the Pharmaceutical Inventory Closing, Seller shall reverse and return to stock any filled Prescriptions that have not been picked up, providing all necessary notice to any third-party payors, and shall provide Buyer with a list of such Prescriptions so that Buyer is prepared to fill such Prescriptions on or after the Pharmaceutical Inventory Closing.

Physical Inventory Valuation Report

DATE OF INVENTORY _____

TIME STARTED _____

TIME COMPLETED _____

STORE LOCATION _____

SECTION TO BE COMPLETED BY BUYER'S REPRESENTATIVE

	<u>AWP/Ret \$</u>	<u>x Cost Factor</u>	<u>COST \$</u>
<u>Brand RX</u> [Brand = AWP minus 25%]	\$ _____	x 75%	\$ _____
<u>Generic RX</u> [Generic = AWP minus 93%]	\$ _____	x 7%	\$ _____
<u>Miscellaneous</u>	\$ _____	@ COST	\$ _____
TOTAL INVENTORY	\$ _____		\$ _____

IF THE TOTAL EXCEEDS \$ _____ – DO NOT SIGN – CALL ANDREW HOWARD (224) 226-0651 FOR DIRECTION ON HOW TO PROCEED.

UPON COMPLETION, BOTH THE SELLER'S REPRESENTATIVE AND BUYER'S REPRESENTATIVE MUST SIGN WITH A THIRD PARTY WITNESS. IMMEDIATELY THEREAFTER, FAX BOTH THIS SHEET AND THE THIRD PARTY PHARMACEUTICAL INVENTORY SERVICE FINAL COUNT SHEET TO 847-368-6325. PLEASE INCLUDE A COVERPAGE SHOWING THE NAME OF EACH PERSON WHO SIGNED THE DOCUMENT AND THEIR TITLE, AS WELL AS THE STORE NUMBER AND ADDRESS OF THE LOCATION INVENTORIED. PLEASE CONTACT ANDREW HOWARD (224) 226-0651 WITH ANY QUESTIONS.

The above and foregoing is accepted by both Buyer and Seller as the final total dollar value of the pharmaceutical merchandise located at the captioned store, subject to the terms and conditions of the Asset Purchase Agreement, including, but not limited to, Section 2.2(a) thereto.

SELLER:

BUYER:

By: _____
Authorized Representative

By: _____ Authorized Representative

EXHIBIT B

RX INVENTORY CAPS; PHARMACY RECORDS AMOUNTS

Attached.

Medly ID #	Medly Store #	Banner	Address	City	State	Nearest WAG Store #	Represented Rx/Day (4 Week)	Rx Purchase Price Allocation	Rx Inventory Cap
221445	1001	Medly Pharmacy 1001	31 Debevoise St	Brooklyn	NY	1918	70	\$ 5,000	\$ -
25036	1002	Medly Pharmacy 1002	40 W Main St	Somerville	NJ	7347	17	\$ 5,000	\$ -
219912	1003	Medly Pharmacy 1003	1222 Walnut St	Philadelphia	PA	1256	6	\$ 5,000	\$ -
109683	9001	Grubbs NW Specialty Pharmacy	1517 17th St, NW	Washington	D.C.	19076	0	\$ 5,000	\$ -
57254	2101	Pharmaca Integrative Pharmacy	2700 Broadway	Boulder	CO	12883	97	\$ 519,077	\$ 514,745
45852	2103	Pharmaca Integrative Pharmacy	13 NW 23rd Pl	Portland	OR	4495	129	\$ 611,969	\$ 316,554
18923	2104	Pharmaca Integrative Pharmacy	230 E Blithedale Ave	Mill Valley	CA	4559	85	\$ 274,816	\$ 294,004
29941	2105	Pharmaca Integrative Pharmacy	1744 Solano Ave	Berkeley	CA	2314	86	\$ 185,445	\$ 246,316
69275	2106	Pharmaca Integrative Pharmacy	4130 E Madison St	Seattle	WA	6890	220	\$ 679,453	\$ 312,777
67788	2109	Pharmaca Integrative Pharmacy	303 W Napa St	Sonoma	CA	11822	138	\$ 25,000	\$ 233,678
77144	2110	Pharmaca Integrative Pharmacy	15150 W Sunset Blvd	Pacific Palisades	CA	5526	249	\$ 245,873	\$ 642,161
61675	2111	Pharmaca Integrative Pharmacy	530 W Cordova Rd	Santa Fe	NM	2900	183	\$ 941,410	\$ 990,881
65075	2112	Pharmaca Integrative Pharmacy	7514 Redwood Blvd	Novato	CA	13584	72	\$ 25,000	\$ 205,630
55578	2114	Pharmaca Integrative Pharmacy	645 S Broadway	Boulder	CO	19103	57	\$ 269,468	\$ 632,284
63010	2116	Pharmaca Integrative Pharmacy	1815 N 45th St	Seattle	WA	13087	68	\$ 316,107	\$ 293,759
63581	2117	Pharmaca Integrative Pharmacy	54 N Santa Cruz Ave	Los Gatos	CA	7326	49	\$ 286,926	\$ 167,913
81614	2118	Pharmaca Integrative Pharmacy	7650 Girard Ave	La Jolla	CA	12143	60	\$ 25,000	\$ 212,235
54049	2119	Pharmaca Integrative Pharmacy	4020 Bel Aire Plaza	Napa	CA	11822	113	\$ 673,492	\$ 136,011
86952	2120	Pharmaca Integrative Pharmacy	5729 Colledge Ave	Oakland	CA	1625	122	\$ 657,132	\$ 240,544
84935	2121	Pharmaca Integrative Pharmacy	570 Mumras Ave	Monterey	CA	7081	53	\$ 335,498	\$ 283,865
70584	2122	Pharmaca Integrative Pharmacy	12025 San Vicente Blvd	Los Angeles	CA	5526	166	\$ 216,852	\$ 669,531
24939	2125	Pharmaca Integrative Pharmacy	15840 Redmond Way	Redmond	WA	4156	123	\$ 331,182	\$ 3,775,413
107166	2126	Pharmaca Integrative Pharmacy	871 Santa Cruz Ave	Menlo Park	CA	7087	89	\$ 528,076	\$ 381,953
119117	2127	Pharmaca Integrative Pharmacy	6985 El Camino Real, Unit 103,	Carlsbad	CA	11653	89	\$ 92,771	\$ 358,762
143940	2128	Pharmaca Integrative Pharmacy	5910 S University Blvd	Greenwood Village	CO	10455	100	\$ 115,952	\$ 262,073
75041	2137	Pharmaca Integrative Pharmacy	734 Montana Ave	Santa Monica	CA	5526	144	\$ 406,455	\$ 395,958

*Note: The Pharmacy Records Amount for each Store as set forth above reflects a 7-day week daily average.

EXHIBIT C

FORM PATIENT LETTER

Attached.

Dear [Variable Name]:

We have decided to close our pharmacy's doors, but we wanted to assure you that your pharmacy records and health care needs are in good hands. To ensure your continued care, we've chosen to entrust your pharmacy records to Walgreens. Walgreens has been serving pharmacy patients for over 110 years, and we feel they can provide you with excellent service for years to come.

We chose Walgreens over other pharmacies because of their dedication to patient care and continued personal attention to your health conditions, potential drug interactions, and medication allergies. We also think you'll benefit from the many convenient services Walgreens offers, such as:

Unparalleled Access to Your Medications - With more than 9,000 pharmacies across the nation, Walgreens makes it convenient for you to pick up your medications, particularly when you are traveling.

Introducing myWalgreens™ A one-of-a-kind personalized experience that makes saving, shopping and your well-being easier. Designed for the one and only you. Enjoy exclusive membership benefits including earning unlimited 1% Walgreens Cash rewards storewide on eligible purchases, even at the pharmacy.* Join for free or learn more at myWalgreens.com.

Convenient Immunizations** - Available daily, including flu, shingles, pneumonia and meningitis. Walk in anytime.

For your convenience, we've included the address of the nearest Walgreens location below. Your prescriptions will be available at this location, but you can have them filled at any Walgreens Pharmacy. Locate the Walgreens location most convenient to you by visiting [Walgreens.com/Findastore](https://www.walgreens.com/Findastore), or by calling 1-800-WALGREENS (1-800-925-4733).

Walgreens

[Street Address]

[City], [State] [Zip]

Phone: (XXX) XXX-XXXX

Fax: (XXX) XXX-XXXX

Pharmacy Hours

Mon - Fri: X am – X pm

Sat: X am – X pm

Sun: X am – X pm



We'll certainly miss seeing you, but trust you'll be pleased with the service, professionalism and convenience offered by Walgreens. In an effort to ensure your care is continued, Walgreens may call you. If you prefer not to be contacted, please call 1-866-312-8654.

Sincerely,

[Owners Name]

[Pharmacy Name]