MAUI REGIONAL HOSPITALS
TRANSFER AGREEMENT

Dated as of January 14, 2016

By and among

MAUI HEALTH SYSTEMS, A KAISER FOUNDATION HOSPITALS LLC, a Hawaii nonprofit limited liability company ("***MHSKFH***"), KAISER FOUNDATION HOSPITALS, a California nonprofit public benefit corporation ("***KFH***")

and

HAWAII HEALTH SYSTEMS CORPORATION, a public body corporate and politic and instrumentality of the State of Hawaii ("***HHSC***"), the MAUI REGION OF HAWAII HEALTH SYSTEMS CORPORATION ("***MRHS***"), an agency of the State established in Sections 323F-2(b)(3) and 323F-3.5 of the Hawaii Revised Statutes, and the STATE OF HAWAII (the "***State***")

MAUI REGIONAL HOSPITALS TRANSFER AGREEMENT

This Maui Regional Hospitals Transfer Agreement (the "***Agreement***"), is dated as of January 14, 2016 ("***Agreement Date***") and made by and among MAUI HEALTH SYSTEM, A KAISER FOUNDATION HOSPITALS LLC, a Hawaii limited liability company ("***MHSKFH***"), the HAWAII HEALTH SYSTEMS CORPORATION, a public body corporate and politic and instrumentality of the State of Hawaii ("***HHSC***"), the MAUI REGION OF HAWAII HEALTH SYSTEMS CORPORATION ("***MRHS***"), an agency of the State established in Sections 323F-2(b)(3) and 323F-3.5 of the Hawaii Revised Statutes, the STATE OF HAWAII (the "***State***") and KAISER FOUNDATION HOSPITALS, a California nonprofit public benefit corporation, ("**KFH**"). The State, HHSC, and MRHS are collectively referred to herein as the "***Transferors***". The parties to this Agreement are sometimes referred to herein as a "***Party***" or collectively as "***Parties***."

RECITALS

WHEREAS, MHSKFH, a Hawaii nonprofit limited liability company, is a wholly owned subsidiary of KFH.

WHEREAS, KFH, a tax-exempt 501(c)(3) not for profit corporation, is a part of Kaiser Permanente, an integrated health care delivery system with a demonstrated record of providing high quality, efficient, affordable, innovative health care in the County of Maui;

WHEREAS, KFH has a certificate of need to operate one or more licensed hospitals in the State from the State Health Planning and Development Agency ("**SHPDA**") pursuant to part V of chapter 323D, Hawaii Revised Statutes ("**HRS**");

WHEREAS, HHSC owns the real property, fixtures, and structures of the Maui Region Hospitals;

WHEREAS, pursuant to HRS Section (§) 323F-7, the MRHS and its Board of Directors are currently responsible for managing and operating the Maui Region Hospitals to deliver health care services to the people of Maui and Lanai;

WHEREAS, the Legislature enacted Act 103, SLH 2015 (H.B. No. 1075), codified at HRS Chapter 323F, Part IV ("**Act 103**"), to ensure that the people of Maui and Lanai continue to have access to health care services in their communities, by discontinuing MRHS' direct delivery of those services, and leasing or transferring the real property and some or all of the equipment and furnishings of one or more of the Maui Region Hospitals, to one or more private entities to use to manage and operate those hospitals to provide health care services on Maui and Lanai instead;

WHEREAS, pursuant to HRS Section 323F-52(a), MRHS invited private entities to submit statements of interest in acquiring the right and responsibility to use one or more of the Maui Region Hospitals to manage, operate and otherwise provide health care services in one or more of the Maui Region Hospitals;

WHEREAS, KFH submitted a statement of interest and a proposal, a copy of which is attached hereto as **Exhibit A**, and was selected by MRHS' Board of Directors to negotiate with the Governor, the terms of this Agreement and a lease of the Maui Region Hospitals to enable MHSKFH to provide health care services on Maui and Lanai;

WHEREAS, MHSKFH is committed to investing in and using the Maui Region Hospitals to provide quality health care services and improve the delivery of those services to the communities presently served by the Maui Region Hospitals, including making reasonable efforts to expand clinical service lines, upgrade facilities and equipment, implement physician primary care and specialty recruitment and retention initiatives, introduce innovative approaches to fill physician coverage gaps, leverage technology, and endeavor to develop community linkages with community organizations and healthcare providers and suppliers to improve continuity of care and reduce wait times, and promote evidence-based medicine;

WHEREAS, after wide-ranging discussions between the Governor and the Directors of Finance and Human Resources and Development, the Comptroller, the Attorney General, the Executive Officer of the HHSC, and the Chair and Administrator of the MRHS, and their KFH counterparts, and after exploring and considering numerous alternatives for implementing Act 103's objectives, the State and KFH concluded that the terms of this Agreement provided the best means of ensuring continued access to cost-effective health care services for the people of Maui and Lanai;

WHEREAS, the State, having determined to its satisfaction that MHSKFH is capable of providing the people of Maui and Lanai with continued access to quality health care services in a cost-effective manner, is satisfied that it can prudently discontinue the delivery of healthcare services of the Maui Region Hospitals;

WHEREAS, consistent with Act 103, to provide the people of Maui and Lanai with continued access to quality health care services, MHSKFH wishes to deliver those services pursuant to the terms and conditions set forth in this Agreement and to lease the Real Property, and certain of the furnishings and equipment presently used by the Maui Region Hospitals under the Lease.

WHEREAS, by enacting Act 103, and entering into this Agreement with KFH and MHSKFH to implement the Act's provisions, the State has made a clearly articulated and clearly expressed policy decision to modify competition to the extent reasonably necessary to accomplish Act 103's purpose, and fulfill the Act's underlying public policy goal;

NOW, THEREFORE, for and in consideration of the foregoing recitals and premises (which by this reference are hereby made a part of this Agreement), the representations, covenants, and agreements contained herein and for other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged and confessed, the Parties agree as follows:

ARTICLE I.
DEFINITIONS

This Agreement uses the defined terms in this **Article I**.

1.1 **"*Accreditations*"** means all accreditations and certifications held by Transferors for the Hospitals, including credential elements.

1.2 "***Accounts Receivable***" has the meaning in **Section 2.3(c).**

1.3 ***"Admission Agreement"*** means any agreement between a SNF/ICF Resident or such resident's responsible party and Kula or LCH, as applicable, governing services rendered through the SNF/ICF.

1.4 **"*Admission Agreements Assignment*"** means the Assignment and Assumption of Assigned Admission Agreements, in a form and on terms and conditions mutually acceptable to the Parties, which terms and conditions will be set forth in an agreement to be attached hereto prior to the Closing as **Exhibit B.**

1.5 "***Affiliate***" means an entity that, directly or indirectly, controls, is controlled by, or is under common control with, the referenced party. For this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management policies of that Person.

1.6 "***Agency Settlements***" has the meaning in **Section 2.3(l).**

1.7 "***Agreement***" has the meaning given in the preamble.

1.8 "***Agreement Date***" has the meaning given in the preamble.

1.9 "***Annual Operating Subsidy Cap***" has the meaning given in **Section 13.1(a)(ii)**.

1.10 "***Assignment and Assumption Agreement***" means an Assignment and Assumption Agreement in a form and on terms and conditions mutually acceptable to the Parties, which terms and conditions will be set forth in an agreement to be attached hereto prior to Closing as **Exhibit C.**

1.11 "***Assumed Contracts***" has the meaning in **Section 2.2(c)**.

1.12 "***Assumed Liabilities***" has the meaning in **Section 2.4.**

1.13 "***Balance Sheet Date***" has the meaning given in **Section 1.44**.

1.14 "***Benefit Plans***" means plans conferring benefits upon public employees established in collective bargaining contracts entered into under Collective Bargaining in Public Employment, HRS ch. 89, or other statutes including the State Civil Service Law, HRS ch. 76; Public Service Law, HRS ch. 78; Hawaii Employer-Union Health Benefits Trust Fund, HRS ch.

87A; Pension and Retirement Systems, HRS ch. 88; Deferred Compensation Plan, HRS ch. 88E; Deferred Compensation Retirement Plan for Part-Time, Temporary, and Seasonal or Casual Employees, HRS ch. 88F; and Public Officers and Employees Excluded from Collective Bargaining, HRS ch. 89C.

1.15 "***Board***" means the Board of Directors of MHSKFH.

1.16 "***Books and Records***" has the meaning given in **Section 2.2(p).**

1.17 "***Business Day***" means a day other than a Saturday, Sunday, or other day on which commercial banks in Hawaii are authorized or required by Legal Requirements to close.

1.18 "***Capital Lease***" means the agreements listed on **Schedule 1.18,** which shall be agreed upon by MHSKFH and HHSC within forty-five (45) days of the Agreement Date.

1.19 "***Capital Subsidies***" has the meaning given in **Section 13.2**.

1.20 "***CBA***" has the meaning set forth in Section 2.3(k).

1.21 "***Certificate of Need***" means a written statement issued by SHPDA or the certificate of need authority of any other state authorizing a new health facility, change in bed capacity, the installation, replacement or expansion of a covered clinical service, or a covered capital expenditure.

1.22 "***C.F.R.***" means the Code of Federal Regulations.

1.23 "***Closing***" means performance and completion of actions described in Article III.

1.24 "***Closing Date***" has the meaning given in **Section 3.1**.

1.25 "***CMS***" means the Centers for Medicare and Medicaid Services.

1.26 "***COBRA***" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and made effective through the Code (at Code § 4980B), ERISA (at ERISA §601, et seq., codified at 29 U.S.C. §1161, et seq.), the Public Health Service Act (at 42 U.S.C. §300bb-1, et seq.) and any applicable state group health plan continuation law, together with all legislation thereunder.

1.27 "***Code***" means the Internal Revenue Code of 1986, as amended. Sections of the Code are cited as "Code § ___."

1.28 "***Compliance Programs***" means provider and health plan programs of the type described in the compliance guidance published by the OIG for entities in HHSC's or the Hospitals' healthcare industry sector(s).

1.29 "***Confidentiality Agreement***" has the meaning given in **Section 12.9**.

1.30 "***Consideration***" has the meaning given in **Section 2.7**.

1.31 "***Contaminants***" means, with respect to intellectual property systems, any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that permit unauthorized access or the unauthorized disablement or erasure of such software, systems, data or other software.

1.32 ***"Dispute"*** means any dispute, claim or controversy arising under this Agreement.

1.33 "***Domain Name***" means www.mauimemorialmedical.org, as well as such other domain names, websites, and social media addresses belonging or licensed to the Hospitals or utilized exclusively for the Hospitals.

1.34 "***DRG***" means Diagnosis Related Group.

1.35 "***Transfer Completion Date***" has the meaning given it by **Section 3.1**.

1.36 "***Encumbrance***" means any mortgage, deed of trust, pledge, assessment, security interest, lease, sublease, lien (including mechanic's or materialmen's liens and judgment liens), adverse claim, judgment, levy, right of way, easement, covenant, charge or other encumbrance of any kind, or any conditional sale contract, title retention contract, or other contract to give or to refrain from giving any of the foregoing, including any interest of any Governmental Entity.

1.37 ***"Equipment"*** means moveable (clinical or non-clinical) equipment that constitutes Leased Property under the Lease.

1.38 "***Enforceability Exceptions***" means restrictions, limits or delays on the enforceability of this Agreement against a Party under applicable bankruptcy or other laws affecting creditors' rights generally or under general principles of equity.

1.39 "***Excluded Assets***" has the meaning given in **Section 2.3**.

1.40 "***Excluded Liabilities***" has the meaning given in **Section 2.5**.

1.41 ***"Exclusivity Agreement"*** means that certain Exclusivity and Standstill Agreement effective November 1, 2015 by and among KFH, HPMG, Kaiser Foundation Health Plan, HHSC and the State of Hawaii.

1.42 ***"Extended Reporting Program Policy***" has the meaning given in **Section 11.1(b).**

1.43 "***Extraordinary Event***" means an extraordinary event beyond the control of the Parties, including without limitation, an act of God, fire, flood, or other natural disaster, riot, strike, national or international political event or occurrence, including an act of way or terrorism.

1.44 "***Financial Statements***" means the consolidated financial statements of HHSC, true and correct copies of which were provided to MHSKFH prior to the Agreement Date, including (i) the unaudited consolidated balance sheet, dated as of September 30, 2015 (the ***"Balance Sheet Date"***); (ii) unaudited consolidated statement of operations for the twelve (12)

months ended on the Balance Sheet Date; and (iii) audited consolidated financial statements as of and for the years ended June 30, 2012, 2013 and 2014.

1.45 "***Fraction***" has the meaning given in **Section 12.6(a).**

1.46 ***"Funding Differential"*** means that MHSKFH does not receive the full funding support requested by MHSKFH for the successful operations of the Hospitals, as set forth in **Sections 13.1 – 13.4,** in any fiscal year and in accordance with specified timeframes for any reason.

1.47 ***"FY"*** means fiscal year.

1.48 "***GAAP***" means generally accepted accounting principles, methods, and practices as in effect in the United States from time to time.

1.49 "***Governmental Entity***" means any government or any agency, bureau, board, commission, court, department, tribunal, or other instrumentality of any government, whether federal, state, local, or municipal, which has, in each case, jurisdiction over the matter in question, including, the United States Department of Health and Human Services ("***HHS***"), the Office of Inspector General and the Office for Civil Rights, CMS (and its Medicare administrative contractors), the United States Department of Justice, any state attorney general, any state Medicaid Fraud unit, SHPDA, OHCA, and any state department of health, licensing board, or authority, and the Government Programs (including their fiscal intermediaries).

1.50 "***Government Programs***" means, Medicare and Medicaid programs, TRICARE program (formerly known as the Civilian Health and Medical Program of the Uniformed Services or "CHAMPUS"), and any other federal or state health care reimbursement or payment programs.

1.51 "***Government Program Transition Patients***" has the meaning in **Section 12.6.**

1.52 "***Hawaii Trade Secrets Act***" means HRS ch. 482B.

1.53 "***Healthcare Laws***" means healthcare laws applicable to the operation of the Hospitals and includes, but is not limited to: (a) title XVIII of the Social Security Act, 42 U.S.C. § § 1395-1395hhh (the Medicare statute), including the Ethics in Patient Referrals Act, as amended, or ***"Stark Law,"*** 42 U.S.C. § 1395nn; (b) Title XIX of the Social Security Act, 42 U.S.C. § § 1396-1396v (the Medicaid statute); (c) the Federal Healthcare Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (the ***"AKS"***); (d) the False Claims Act, as amended, 31 U.S.C. § § 3729-3733; (e) the Program Fraud Civil Remedies Act, 31 U.S.C. § § 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; (f) the Civil Monetary Penalties Law, 42 U.S.C. § § 1320a-7a and 1320a-7b; (g) the Exclusion Laws, 42 U.S.C. § 1320a-7; (h) HIPAA; (i) the regulations found in Part 46 of Title 45 of the United States Code of Federal Regulations and policy and guidance issued thereunder by The Office for Human Research Protections; (j) the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a and the implementing regulations at Part 493 of Title 42 of the United States Code of Federal Regulations; (k) the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*; (l) the Certificate of Need requirements; (m) the Hawai`i Food, Drug and Cosmetic Act, Chapter 328 of Title 19 of the Hawai`i Revised

Statutes; (n) the Hawai`i Uniform Controlled Substances Act, Chapter 329 of Title 19 of the Hawaii Revised Statutes; (o) Chapter 461 of Title 25 of the Hawaii Revised Statutes governing Pharmacists and Pharmacies, and the related implementing regulations set forth at Chapter 95 of Title 16 of the Hawaii Administrative Rules; (p) state healthcare licensing statutes and regulations; (q) conditions of participation and payment established by Governmental Entities in connection with Governmental Programs; (r) all applicable implementing regulations, rules, policies, procedures, manuals, ordinances and orders; (s) any similar state and local statutes, regulations, rules, policies, procedures, manuals, ordinances and orders that address the subject matter of the foregoing; and (t) Hawaii Revised Statutes § 661.21 *et seq.*, governing actions for false claims to the State.

1.54 "***HHS List***" means the Department of Health and Human Services Office of Inspector General List of Excluded Individuals/Entities.

1.55 ***"HHSC EMR"*** means the existing electronic medical records system (including hardware and software) used at the Hospitals as of the Agreement Date and Closing Date.

1.56 ***"HHSC's Knowledge"*** or words of similar import shall mean the actual knowledge of the chief executive officer together with such knowledge that a prudent individual serving in the same capacity for HHSC as the listed individual would reasonably be expected to know in the course of performing his or her duties for the Hospitals.

1.57 "***HIPAA***" means the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as the same may be amended from time to time, the privacy and security provisions of the HITECH Act provisions of the American Recovery and Reinvestment Act of 2009, and all regulations promulgated from time to time under each of these statutes, including 45 C.F.R. Parts 160, 162, and 164, as all such statutes and regulations may be amended from time-to-time.

1.58 ***"Hired Employees"*** means all Hospital Employees who accept offers of employment extended by MHSKFH or its Affiliates pursuant to this Agreement.

1.59 "***HITECH Act***" means the Health Information Technology for Economic and Clinical Health Act.

1.60 "***HITECH Payments***" means the payments (and rights to receive such payments) under the Medicare EHR Incentive Program and the applicable Medicaid EHR Incentive Program, with respect to demonstrating "meaningful use" of certified electronic health records technology (as these terms are defined under the HITECH Act, pursuant to the requirements of the implementing regulations under the HITECH Act) at the Hospitals.

1.61 ***"Hospital"*** refers to one of the Maui Region Hospitals prior to the Transfer Completion Date and one of the Transferred Facilities on or after the Transfer Completion Date; and "***Hospitals***" refers to the Maui Region Hospitals or the Transferred Facilities, as applicable, collectively.

1.62 "***Hospitals' Cost Reports***" has the meaning given in **Section 12.3.**

1.63 "***Hospital Debt***" has the meaning given in **Section 2.5(i).**

1.64 ***"Hospital Employees"*** means any person employed by HHSC in the service of the Maui Region Hospitals as of the Closing Date.

1.65 ***"Hospital Material Adverse Effect"*** means, with respect to a Hospital, any event, occurrence, development, fact, condition, state of circumstances, change, or effect that:

(a) Is, or is reasonably likely in the future to be, individually or in the aggregate, materially adverse to the business, operations, results of operations, condition, prospects, properties (including intangible properties), rights, obligations, assets or financial condition of such Hospital; *or*

(b) Materially impairs or delays, or is reasonably likely to materially impair or delay, the ability of Transferors to perform their obligations under this Agreement.

None of the following (i) through (x) are to be deemed to constitute, and none of the following (i) through (ix) are to be taken into account in determining whether there has been, a Hospital Material Adverse Effect:

(i) Any material adverse change, event, development, or effect arising from or relating to business or economic conditions, which does not have a disproportionate effect on the Hospital as compared to similar facilities.

(ii) National or international political or social conditions, including the engagement by the United States in hostilities, whether or not under 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.

(iii) Financial, banking, or securities markets (including any disruption thereof and any decline in the price of any security or any market index).

(iv) Changes in GAAP.

(v) Changes in Legal Requirements, which do not have a disproportionate effect on the Hospital as compared to similar facilities.

(vi) Any effect resulting from the taking of any action contemplated by this Agreement, the Lease, or the other agreements contemplated by this Agreement.

(vii) The public announcement of this Agreement or actions required to be taken under this Agreement.

(viii) Actions required to be taken by Transferors under applicable Legal Requirements or contracts.

(ix) Any adverse change in or effect on the business of a Hospital that is cured by Transferors prior to the Closing Date.

(x) Any adverse change in Government Programs or Legal Requirements impacting Government Programs, which do not have a disproportionate effect on the Hospital as compared to similar facilities.

1.66 ***"HPMG"*** means the Hawaii Permanente Medical Group, Inc., a Hawaii professional corporation.

1.67 **"HPMG Maui"** means HPMG or a subsidiary or related entity that may employ or contract with physicians and other medical professionals, possibly including some Hospital Employees for the provision of medical services and other medical, management, and administrative services in connection with MHSKFH's operation of the Hospitals after the Transfer Completion Date.

1.68 "***HRS***" means Hawaii Revised Statutes.

1.69 ***"ICF"*** means intermediate care facility.

1.70 "***Immaterial Contracts***" has the meaning given in **Section 2.2(c)**.

1.71 "***Information Privacy or Security Legal Requirements***" means HIPAA and any other Legal Requirements concerning the privacy or security of Personal Information, including state data breach notification laws, state patient, medical record and health information privacy laws, the Federal Trade Commission Act and state consumer protection laws.

1.72 "***Insurance Policies***" has the meaning given in **Section 4.13**.

1.73 "***Intellectual Property***" means each trademark, trade name, service mark, patent, copyright, Domain Name, Name, software license, or other intellectual property right held or used in the ordinary course of business solely with respect to the operations of the Hospitals (and not used in connection with any other hospitals owned by HHSC) and any current registration or application with respect thereto.

1.74 ***"Inventory"*** means the customary amount of useable inventory of goods and supplies for normal operations of the Maui Region Hospitals, collectively, without disruption or interruption of operations, and which, as of 12:01 a.m. HST on the Transfer Completion Date shall be no less than the aggregate value of usable inventories and supplies set forth on **Schedule 1.74.**

1.75 "***IRS***" means the Internal Revenue Service.

1.76 "***Itemized Statement***" has the meaning given in **Section 12.6(b)**

1.77 "***Kaiser Permanente***" means KFH, HPMG, and their Affiliates.

1.78 "***Kaiser Confidential Information***" means confidential information and trade secrets of Kaiser Permanente, including information and data relating to proprietary software systems, financial information, business techniques and methods, and related data, including the MHSKFH Materials.

1.79 ***"KFH"*** means Kaiser Foundation Hospitals.

1.80 ***"KP EMR"*** means Kaiser Permanente's state-of-the-art Epic-based *HealthConnect* electronic medical records system.

1.81 "***Kula***" means Kula Hospital & Clinic, a 5-bed critical access hospital with 99 SNF beds and 9 ICF-Individuals with Developmental Disabilities ("***IID***") beds located at 100 Keokea Place, Kula, Hawaii 96790.

1.82 ***"LCH"*** means Lanai Community Hospital, a 4-bed critical access hospital with 10 SNF/ICF beds located at 628 7th Street, Lanai City, Hawaii 96763.

1.83 ***"Lease"*** means the Master Lease, in a form and on terms and conditions mutually acceptable to the Parties, which terms and conditions will be set forth in an agreement to be attached hereto prior to the Closing as **Exhibit D**.

1.84 "***Leased Property***" means (a) the Real Property, (b) furnishings and equipment used in connection with MRHS' operation of the Maui Region Hospitals and leased to MHSKFH under the Lease, and (c) certain Nonassignable Contracts and Capital Leases to be identified in the Lease, the rights, privileges, benefits and powers of which will be deemed transferred to MHSKFH under the Lease.

1.85 "***Legal Requirements***" means and refers to any requirement or command of any Governmental Entity having jurisdiction over the relevant Person or subject matter as of the applicable date, including any law, statute, ordinance, bylaw, code, rule, regulation, accreditation requirement, corporate integrity agreement, reimbursement manual, program memorandum, guidelines, policy, restriction, order, judgment, writ, injunction, decree, determination, or award.

1.86 "***Licenses***" means all licenses, registrations, permits, certificates, certificates of authority, certificates of need, certificate of need applications, clearances, and other authorizations, consents, and approvals of any Governmental Entity required for the lawful existing ownership, operation, or development of the Hospitals and the Operational Property or contemplated future operation of the Operational Property and the Hospitals, as applicable.

1.87 "***Losses***" mean damages, claims, costs, losses, liabilities, expenses, or obligations (including reasonable attorney's fees and associated expenses) whether or not involving a third-party claim.

1.88 "***Marks***" has the meaning given in **Section 2.2(n)**

1.89 ***"Maui Region Hospitals"*** collectively refers to MMMC, Kula and LCH, together with all related outpatient and ancillary services and facilities prior to the Transfer Completion Date, and the Transferred Facilities after the Transfer Completion Date. The Parties will

mutually develop a list of such pre-Closing services and facilities within forty-five (45) days of the Agreement Date, which will be depicted on **Schedule 1.89**.

1.90 "***Material Regulatory Change***" means any legal development, imposition of or any amendment of any Legal Requirements, including any change in (or official interpretation of a Legal Requirement) that renders compliance with any of the material obligations under this Agreement unlawful or unenforceable.

1.91 "***Materials***" means systems (including program systems and scheduling systems), manuals (including business, Hospital operations, and policy manuals), computer software, materials and other information.

1.92 "***Medicaid Supplemental Payments***" means all Medicaid payments made to providers in addition to Medicaid base rates, including Medicaid disproportionate share hospital ("***DSH***") payments, payments to providers using the Medicaid upper payment limits ("***UPLs***"), and payments through Section 1115 waivers that reimburse for uncompensated care.

1.93 "***Medical Staff Bylaws***" means, individually, the bylaws, rules and regulations and amendments thereto of the medical staff of each Hospital, and collectively, the Medical Staff Bylaws of the Hospitals.

1.94 "***MHSKFH***" has the meaning given in the preamble.

1.95 "***MHSKFH Cost Reports***" has the meaning given in **Section 12.3(c).**

1.96 "***MHSKFH Materials***" means all Materials, in whatever form provided, licensed or otherwise created by MHSKFH in connection with MHSKFH's management and operations of the Hospitals on and after the Transfer Completion Date.

1.97 ***"MHSKFH Material Adverse Effect"*** means a material adverse effect on the ability of MHSKFH to timely consummate the Transactions or otherwise perform its obligations under the Agreement.

1.98 "***Minimum Margin***" has the meaning given in **Section 13.1(a)(ii).**

1.99 "***MMMC***", means Maui Memorial Medical Center, a 214-bed general medical and surgical acute care hospital located at 221 Mahalani Street, Wailuku, Hawaii 96793.

1.100 "***MRHS***" has the meaning given in the recitals.

1.101 **"*MRHS Foundation*"** shall mean the Maui Memorial Medical Center Foundation, Inc. and all other auxiliaries and foundations supporting the Hospitals.

1.102 ***"MRHS' Knowledge"*** or words of similar import shall mean the actual knowledge of MRHS' chief executive officer, together with such knowledge that a prudent individual serving in the same capacity for MRHS as the listed individuals would reasonably be expected to know in the course of performing his or her duties for the Hospitals.

1.103 "***Names***" means the d/b/as, symbols and Domain Name used exclusively at or in connection with the operations of the Hospitals, including the names "Maui Memorial Medical Center", "Kula Hospital & Clinic", "Lanai Community Hospital". Within forty-five (45) days of the Agreement Date, Transferors shall list the Names on **Schedule 1.103** in a form acceptable to MHSKFH.

1.104 "***Nonassignable Contract***" means (1) those contracts the rights of which may not be assigned to MHSKFH by Transferors under this Agreement because the (a) consent of another Person is required and has not been obtained prior to the Closing Date, (b) such contract is not assignable by its terms to MHSKFH, or (c) an attempted assignment and assumption of such contract by MHSKFH would constitute a breach thereof or be unlawful, or (2) those contracts essential to the operations of the Hospitals that are not Assumed Contracts. Within forty-five (45) days of the Agreement Date, Transferors shall list the Nonassignable Contracts on **Schedule 1.104** in a form acceptable to MHSKFH. Within forty-five (45) days prior to the Closing Date, **MHSKFH** may supplement the **Schedule 1.104** list of Nonassignable Contracts as appropriate.

1.105 "***NPDB***" means the National Practitioner Data Bank.

1.106 "***OCR***" means the United States Department of Health and Human Services Office for Civil Rights.

1.107 ***"Offset Arrangement"*** has the meaning in **Section 13.6(d)**.

1.108 "***OHCA***" means the State of Hawaii, Department of Health, Office of Health Care Assurance.

1.109 "***OIG***" means the Office of the Inspector General of the United States Department of Health and Human Services.

1.110 "***Open Records Act***" means Hawaii's Uniform Information Practices Act, HRS ch. 92F.

1.111 **"*Operational Contracts*"** means all commitments, contracts, leases, licenses and other agreements (including agreements for the borrowing of money or the extension of credit), whether written or oral, to which HHSC (as it pertains to the Hospitals), MRHS, or the Hospitals are a party or by which HHSC (as it pertains to the Hospitals), MRHS, any Hospital, or any of the Operational Property are bound, including the Program Agreements and all agreements: (i) under which HHSC or MRHS has any interest as a lessor, lessee, licensor or licensee in and to any portion of the Leased Property; (ii) concerning payment, performance of services or delivery of goods for the Hospitals, regardless of amount, with any referral source, including all physicians and healthcare providers; (iii) with one or more officers of HHSC (as it pertains to the Hospitals), MRHS, or a Hospital; and (iv) that prohibit or restrict competition or the conduct of any lawful business by HHSC (as it pertains to the Hospitals) or MRHS. Notwithstanding the foregoing, "***Operational Contracts***" shall not include those portions (including schedules) of HHSC system-wide contracts that relate solely to HHSC hospitals in regions other than Maui. For the avoidance of doubt, **Schedule 1.104** shall set forth all Nonassignable Contracts, and **Schedule 1.18** shall set forth all Capital Leases, and **Schedule 2.2(c)** shall set forth all Assumed

Contracts other than the Immaterial Contracts, and such schedules together, will contain a complete list of all Operational Contracts.

1.112 "***Operational Property***" means collectively, the Leased Property and the Transferred Interests.

1.113 "***Operating Subsidies***" means support payments from the Legislature for operating costs of Maui Region Hospitals in the form of funds appropriated and allotted by the State pursuant to HRS § 323F-58, as more fully described in **Section 13.1(a)(i).**

1.114 "***Patient Billing Records***" means all records maintained by HHSC or the Hospitals regarding the billing, coding and reimbursement for services performed at the Hospitals, including UB-04s.

1.115 "***Patient Medical Records***" means all patient medical records (*e.g.,* medical charts, notes, orders, diagnosis and treatment of patients, appointment history and other related patient records of the Hospitals) maintained by HHSC in connection with the operation of the Maui Region Hospitals prior to the Transfer Completion Date.

1.116 "***Payable Tax Items***" has the meaning given in **Section 4.18**.

1.117 ***"Partial Termination"*** means MHSKFH's right, upon the terms and conditions set forth in this Agreement, to terminate its obligation to operate or manage one or two of the Hospitals in their current locations.

1.118 "***Partial Termination Date***" has the meaning given in **Section 10.6(a).**

1.119 ***"Pending Projects"***, which are commonly referred to as "***Capital Improvement Projects***" or "***CIP***" projects, means all construction, remodeling, development, or renovation projects related to any Hospital for which funds have been appropriated prior to the Agreement Date or Closing Date, whichever is later. The Pending Projects are listed on **Schedule 1.119**. For purposes of clarification, a project shall be deemed a Pending Project based on unlapsed appropriations made prior to the Agreement Date or Closing Date, whichever is later, regardless of (a) whether the funds have yet been released, (b) the status of architectural plans, (c) the existence of a contract for the project, or (d) the commencement of construction or related activities.

1.120 "***Permitted Encumbrances***" means: (a) any Encumbrance approved in writing by MHSKFH and set forth on **Schedule 1.120** (which **Schedule 1.120** shall be completed by MHSKFH within forty-five (45) days prior to the Closing Date), (b) any Encumbrance of any builder, carrier, warehouseman, mechanic or materialman and any like Encumbrance arising in the ordinary course of business for sums that are not delinquent, (c) any Encumbrance of the lender, lessor or other financing source on assets leased under a Capital Lease included in the Leased Property but only to the extent approved in writing by MHSKFH and set forth on **Schedule 1.120,** (d) any Encumbrance securing obligations that are Assumed Liabilities, (e) any other Encumbrances that do not interfere with the use of the Transferred Interests consistent with the current operations of the Hospitals, (f) the terms, conditions, and restrictions on the possession and use of any Intellectual Property as expressly provided in Assumed Contracts; and

(g) any and all recorded and unrecorded Encumbrances affecting the Leased Property as of the Closing Date that do not interfere with the use of the Leased Property consistent with the current operations of the Hospitals.

1.121 "***Person***" means any individual, company, body corporate, association, partnership, limited liability company, joint venture, trust or Governmental Entity.

1.122 "***Personal Information***" means any information with respect to which there is a reasonable basis to believe that the information can be used to identify an individual, including "individually identifiable health information" as defined in 45 C.F.R. § 160.103, demographic information, and social security numbers and such other personally identifiable information protected by applicable Hawaii law.

1.123 ***"Post-Closing Inventory"*** means the amount of useable inventory of goods and supplies maintained by MHSKFH for the normal operations of the Maui Region Hospitals, collectively, after the Transfer Completion Date, and which shall include the Inventory until such time as the Inventory is depleted or otherwise disposed of.

1.124 "***Post-Closing Property***" has the meaning given in **Section 2.6(c)**.

1.125 ***"Post-Closing Working Capital"*** means the amount of working capital maintained by MHSKFH for the normal operations of the Maui Region Hospitals, collectively, after the Transfer Completion Date, and which shall include the Working Capital.

1.126 ***"Pre-Closing Liabilities"*** has the meaning given in **Section 2.5(a)**.

1.127 "***Prepaid Expenses"*** has the meaning given in **Section 2.2(j)**.

1.128 "***Program Agreements***" means contracts for participation in each Government Program.

1.129 "***Privacy Policies***" has the meaning given in **Section 4.22(b)**.

1.130 "***Private Programs***" means private non-governmental third party health care payment and insurance programs including private insurance programs, health maintenance organizations and preferred provider organizations.

1.131 "***Prohibited Business***" means any acute care, critical access or other hospital, SNF, ICF or other long-term acute care facility, ambulatory surgery center, imaging service, or any other business located in the County of Maui that may compete, directly or indirectly, with the business of the Hospitals, which, specifically does not include (i) Roselani Place, a senior independent and assisted living facility located at 88 S. Papa Ave, Kahului, HI, 96732; or (ii) the ownership of or leasing of premises for the radiation oncology practice and treatment center described in that certain Ground Lease and Space Use Agreement dated July 18, 2005, as amended, between HHSC and Bobby C. Baker, M.D., Inc., which incorporates that certain Letter Agreement between MRHS and Bobby C. Baker, M.D., Inc., dated July 28, 1993.

1.132 ***"Provider Agreements"*** means any contract, agreement, lease, license, purchase order, indenture, note, bond, loan, instrument, commitment or other binding agreement directly with physicians or physician groups pursuant to which Transferors or their Affiliates have obligations with respect to (1) the provision of professional services by such physician or physician groups in consideration for any monetary compensation paid by such entities, or (2) an exclusive right of any physician or physician group, as applicable, to provide professional services.

1.133 "***Real Property***" means the real property, including land, structures, and fixtures, used in connection with the operation of the Hospitals, as more fully defined in the Lease.

1.134 "***Reconciliation***" has the meaning given in **Section 12.6(a)**.

1.135 ***"Resident"*** means any patient receiving Skilled Nursing Services at a Hospital.

1.136 ***"Resident Trust Funds"*** has the meaning given in **Section 2.2(k).**

1.137 **"*Resident Trust Funds Assignment*"** means the Assignment and Assumption Agreement of Resident Trust Funds in a form and on terms and conditions mutually acceptable to the Parties, which terms and conditions will be set forth in an agreement to be attached hereto prior to the Closing as **Exhibit E.**

1.138 "***Retained Operating Income***" has the meaning given in **Section 13.6(d)**.

1.139 ***"Reverted Property"*** means the Transferred Interests subject to the limitations set forth in **Sections 10.5(b), 10.5(c), 10.5(d), and 10.5(e).**

1.140 ***"Safety Hazard"*** means a condition that is a potential source of harm or adverse health effect, including, without limitation, (1) exposure to toxic, highly toxic, or harmful substances or irritants, (2) a condition likely to increase the risk of infection, (3) a condition likely to make surrounding conditions unsafe or risky for patients, or (4) a condition that could increase the likelihood of patient morbidity or mortality or otherwise negatively impact a patient's outcome.

1.141 **"*Schedules*"** means the Schedules provided under this Agreement, which may constitute (a) exceptions to particular representations, covenants and obligations as set forth in this Agreement, or (b) descriptions or lists of assets and liabilities and other items referred to in this Agreement.

1.142 "***Schedule Supplement***" has the meaning given in **Section 6.8**.

1.143 "***SHPDA***" means the State Health Planning and Development Agency.

1.144 "***Siemens EMR Lease***" means that certain lease agreement dated July 21, 2011 by and between Siemens Medical Solutions USA, Inc. and HHSC for the services set forth in Agreement No. FY11-0086, as amended.

1.145 ***"Skilled Nursing Services"*** means skilled nursing services that meet CMS coverage guidelines, including all of the following criteria: services are (i) delivered or supervised by licensed technical or professional medical personnel in order to obtain the specified medical outcome and provide for the safety of the patient, (ii) ordered by a physician, and (iii) necessary for the treatment of sickness or injury.

1.146 ***"SNF"*** means skilled nursing facility.

1.147 "***State***" has the meaning set forth in the preamble.

1.148 "***Straddle Period Payments***" has the meaning given in **Section 12.6(b)**.

1.149 "***Straddle Period Services***" has the meaning given in **Section 12.6**.

1.150 "***Taxes***" means (i) any federal tax or state or local payroll tax or other tax from which HHSC and MRHS are not exempt under HRS § 323F-23.

1.151 "***Term***" has the meaning given in **Section 10.1.**

1.152 "***Terminated Hospital***" has the meaning given in **Section 10.6.**

1.153 "***Terminated Hospital Reverted Property***" has the meaning given in **Section 10.6(b).**

1.154 ***"Termination Date"*** or ***"Transfer Termination Date"*** means the effective date of the termination of this Agreement.

1.155 "***Transactions***" means the transactions contemplated by this Agreement.

1.156 "***Transferred Facility***" has the meaning set forth in HRS § 323F-52 for a "Transferred facility".

1.157 "***Transferred Interests***" has the meaning given in **Section 2.2**.

1.158 "***Transferors***" has the meaning given in the preamble.

1.159 ***"Transition Period"*** or ***"Termination Transition Period"*** means the period between notice of termination and the effective date of the termination.

1.160 "***TSA***" means The Transition Services Agreement in a form and on terms and conditions mutually acceptable to the Parties, which terms and conditions will be set forth in an agreement to be attached hereto prior to the Closing as **Exhibit F.**

1.161 "***U.S.C.***" means United States Code.

1.162 "***Union***" or "***Unions***" means the unions representing the employees working at the Hospitals as of the Closing Date.

1.163 "***Working Capital***" means a customary amount of working capital for normal operations of the Maui Region Hospitals without any disruption or interruption of operations or services, and which (a) will enable the Hospitals to pay their debts and obligations in the ordinary course as they mature, (b) is sufficient capital for the Hospitals to carry on their business in a manner consistent with the business of the Hospitals as of the Agreement Date, and (c) is in the amount reflected on **Schedule 1.163.**

ARTICLE II.
BASIC TRANSACTIONS

2.1 Transfer of Rights and Responsibilities.

(a) **General Transfer.** Consistent with Act 103, MRHS and HHSC shall discontinue and cease to have any right or responsibility to manage, operate, and otherwise provide health care services at the Hospitals on and after midnight Hawaii Standard Time (HST) on the day immediately following the Closing Date, and MHSKFH shall have the sole and only right and responsibility to use the Hospitals' real property, facilities, equipment and furnishings it leases from HHSC or MRHS, as applicable, for those purposes. Under the terms and conditions of this Agreement and other instruments contemplated hereby, and in accordance with Act 103, at midnight HST on the Closing Date, Transferors will transfer and assign to MHSKFH and MHSKFH will assume the right and responsibility to manage, operate and otherwise provide healthcare services through the Hospitals. Pursuant to Act 103, on an after the Transfer Completion Date, the State shall cease to have any responsibility for or control over the management and operation of the Hospitals.

(b) **Leased Property.** On or before the Closing Date, HHSC or MRHS, as applicable, as lessor, will lease to MHSKFH, as lessee, the Leased Property subject to the terms, covenants, conditions and provisions set forth in the Lease.

2.2 Transfer or Assignment of Hospital Assets and Interests. At Closing, Transferors shall transfer or assign to MHSKFH, to the extent legally transferable or assignable and free and clear of any Encumbrances other than the Permitted Encumbrances, all of Transferors' exclusive right to use and operate or right, title, and interest in and to, as applicable, the following tangible and intangible items (collectively, the "***Transferred Interests***"):

(a) Subject to Legal Requirements, the rights and interests of Transferors in the Working Capital;

(b) All of the rights and interests of Transferors in the Inventory (**Schedule 1.74**), which will be left on hand at the Hospitals on the Transfer Completion Date for MHSKFH to utilize or dispose of as appropriate in its discretion;

(c) All of the rights and interests of Transferors in, or under, the agreements, contracts, commitments, leases, and other arrangements listed on **Schedule 2.2(c)**, which **Schedule 2.2(c)** shall be mutually agreed upon by the Parties within forty-five (45) days of the Agreement Date, together with those agreements, contracts, commitments, leases, purchase orders, other arrangements made by Transferors that are not listed on **Schedule 2.2(c)**, which individually involve future payments, performance of services or delivery

of goods or materials, to or by Transferors of any amount or value less than $10,000 on an individual basis and less than $100,000 on an annual basis in the aggregate (*"Immaterial Contracts"* and, together with the contracts listed on **Schedule 2.2(c)**, the *"Assumed Contracts"*); provided that Immaterial Contracts do not include the following types of agreements unless specifically listed on **Schedule 2.2(c)**: contracts, commitments, leases, purchase orders, and other arrangements made by Transferors (i) that are between Transferors and any Affiliate of Transferors, (ii) that are between Transferors and any patient referral source (including any physician or other healthcare provider), (iii) that include covenants of Transferors not to compete, not to solicit personnel, or not to engage in specified business activities, or (iv) that may not be terminated without cause and without penalty on ninety (90) or fewer days' prior written notice. The Assumed Contracts shall include all assignable and related documentation, records, and other materials related to the underlying contracts, commitments, or other arrangements;

(d) To the extent transferable, all Licenses (**Schedule 4.2**), including any renewals thereof, held as of the Transfer Completion Date;

(e) To the extent transferable, all Government Program provider numbers (**Schedule 4.3**), provider agreements, and CMS certification numbers used to bill and collect from Government Programs held on or prior to the Closing Date by the Transferors for the Hospitals;

(f) To the extent transferable, the telephone numbers used with respect to the operation of the Hospitals. Within forty-five (45) days of the Agreement Date, Transferors shall list the transferable telephone numbers on **Schedule 2.2(f)** in a form acceptable to MHSKFH;

(g) All insurance proceeds (including applicable deductibles, co-payments, or self-insured requirements) paid or payable to HHSC or MRHS in connection with damage to the Transferred Interests before the Transfer Completion Date, to the extent not expended for the repair and restoration of the Transferred Interests;

(h) Any HITECH Payments received by Transferors on or after the Closing Date for or related to the Hospitals;

(i) All claims, causes of action, rights of recovery, rights of set off and rights of recoupment related to or associated with the physical condition of any Transferred Interests;

(j) Advance payments, prepayments, prepaid expenses, security deposits, other deposits and the like which exist as of the Closing Date, a preliminary list of which shall be agreed upon by the Parties and listed on **Schedule 2.2(j)** within forty-five (45) days of the Closing Date, subject to the prorations provided in **Section 2.8** of this Agreement, which were made with respect to the operation of the Hospitals (*"Prepaid Expenses"*);

(k) Subject to receipt of any necessary consents (which Transferors, in good faith, will seek to obtain within thirty (30) days prior to Closing), all Resident trust funds and Resident's property at a Hospital that are held by or on behalf of the Transferors as of the Closing Date in trust for such patients receiving Skilled Nursing Services and thereafter required to be held in trust by MHSKFH (collectively the ***"Resident Trust Funds"***);

(l) All goodwill associated with the Hospitals;

(m) To the extent transferable, all Intellectual Property;

(n) All books and records, including financial, medical staff records, equipment records, medical/administrative libraries, documents, catalogs, operating manuals, policies, procedures, and protocols relating to the operations of the Hospitals, with Transferors retaining copies or being furnished copies or originals, if needed, of any of such records as may reasonably be requested after the Transfer Completion Date ("***Books and Records***"); and

(o) To the extent transferable, all other assets, tangible or intangible, rights, privileges, or interests (other than Excluded Assets, and non-transferable asset or interests) owned or held by Transferors and used to manage and operate the Hospitals prior to the Transfer Completion Date.

2.3 Excluded Assets and Interests. Notwithstanding anything to the contrary in **Section 2.2** above, the following assets, properties and rights of Transferors are specifically excluded from the Transferred Interests and shall not be transferred to MHSKFH under this Agreement, and Transferors shall retain all right, title and interest in and to the following assets, properties and rights (the "***Excluded Assets***"):

(a) The Leased Property (including the Capital Leases and certain Nonassignable Contracts), which shall be subject to the terms and conditions of the Lease;

(b) Cash, cash-equivalents and short-term investments (which, for purposes of clarification, does not include the Working Capital);

(c) Except for Inventory and Prepaid Expenses, all current receivables of MRHS with respect to the operation of the Hospitals prior to the Transfer Completion Date, including all accounts, notes, interest and other receivables of MRHS, and all claims, rights, interests and proceeds related thereto, in each case arising from the rendering of services to the Hospitals' patients, billed and unbilled, recorded and unrecorded, for services provided by MRHS during its operations of the Hospitals prior to the Transfer Completion Date (the "***Accounts Receivable***");

(d) Equipment or other rights and obligations of HHSC under the Siemens EMR Lease;

(e) Payor agreements used to bill and collect from Private Programs;

(f) Patient Medical Records; provided, however, that after the Transfer Completion Date, HHSC shall provide MHSKFH with access and the right to inspect and copy at MHSKFH's expense such Patient Medical Records as are reasonably requested by MHSKFH in connection with the provision of services to those patients after the Transfer Completion Date, subject to all Legal Requirements. At HHSC's cost and expense, HHSC shall maintain the Patient Medical Records in a format reasonably accessible to MHSKFH and in accordance with all applicable Legal Requirements;

(g) Patient Billing Records; provided, however, that after the Transfer Completion Date, HHSC shall provide, subject to all Legal Requirements, MHSKFH with access and the right to inspect and copy at MHSKFH's expense such Patient Billing Records as are reasonably requested by MHSKFH in connection with any audit, investigation, or Governmental Entity recoupment action that impacts the operation or financial condition of the Hospitals after the Transfer Completion Date;

(h) All of HHSC and MRHS' corporate record books, minute books and Tax records;

(i) All personnel records; provided, however, that, subject to applicable Legal Requirements or the receipt of any required consents under applicable Legal Requirements, after the Transfer Completion Date, HHSC will, subject to and to the extent permitted by all applicable Legal Requirements, including HRS chapter 92F, provide MHSKFH with access and the right to inspect and copy at MHSKFH's expense such HHSC personnel records;

(j) All employee retirement, health, welfare, and other benefit plans and associated assets;

(k) Agreements between Transferors and any Unions or collective bargaining group or organization ("***CBAs***");

(l) Any receipts (i) relating to the Hospitals' Cost Reports or rights to settlements and retroactive adjustments on the Hospitals' Cost Reports ("***Agency Settlements***") (whether resulting from an appeal by Transferors or otherwise) with respect to time periods prior to the Transfer Completion Date, or (ii) which result from Transferors' pursuit of one or more appeals pertaining to Governmental Programs (including disproportionate share hospital program payments);

(m) Provider Agreements (other than Provider Agreements for Governmental Programs);

(n) Subject to **Section 2.2(g),** the insurance policies (and the rights, claims, causes of action, benefits and rights of any of the Transferors to reimbursement available thereunder) relating to, or otherwise covering any of the assets or employees of the Hospitals prior to or after the Transfer Completion Date; and

(o) Such other assets of Transferors described on **Schedule 2.3(o)**, which shall be completed by MHSKFH not later than forty-five (45) days prior to the Closing Date.

2.4 Assumption of Certain Liabilities. Except to the extent expressly specified in this **Section 2.4**, MHSKFH shall not assume any liability or obligation of the Transferors and the Transferors shall retain sole responsibility for all claims, liabilities and obligations arising from the operation of the Hospitals and the use, rights or obligations under, or ownership of the Operational Property prior to the Transfer Completion Date, whether absolute, contingent, accrued, known or unknown. Notwithstanding the limitations set forth in the immediately preceding sentence of this **Section 2.4** above, upon the terms and subject to the conditions of this Agreement, MHSKFH shall assume, effective as of the Transfer Completion Date, and from and after the Transfer Completion Date, MHSKFH shall pay, perform and discharge when due, only the following liabilities, obligations and commitments of HHSC or MRHS with respect to the operation of the Hospitals (collectively, the "***Assumed Liabilities***"); provided, however, that the Assumed Liabilities shall not include the Excluded Liabilities as defined in **Section 2.5** below, which liabilities will remain liabilities of Transferors.

(a) All of the claims, liabilities and obligations of any kind or nature arising from MHSKFH's management and operation of the Hospitals, use of Transferred Interests, and, subjects to the terms and conditions of the Lease, use of the Leased Property on or after the Transfer Completion Date and attributable to the period on or after the Transfer Completion Date.

(b) Liabilities arising from the Assumed Contracts, but only to the extent that such liabilities and obligations are required to be performed on or after the Transfer Completion Date and arise out of the written terms of such Assumed Contracts, but specifically excluding (i) liabilities and obligations for breaches of such Assumed Contracts, if any, to the extent resulting from a known or unknown act or omission of Transferors prior to the Closing Date, (ii) any liability for breach of any Assumed Contract arising out of the transfer or assignment of such Assumed Contracts by Transferors to MHSKFH.

(c) Permitted Encumbrances; provided that MRHS shall provide MHSKFH a written update of the amounts of the presently known expected Assumed Liabilities relating to Permitted Encumbrances, as applicable, within ten (10) Business Days prior to the Closing.

2.5 Exclusion of Certain Liabilities. Specifically, and without in any way limiting the generality of **Section 2.4** above, each of the Parties hereby acknowledges and agrees that MHSKFH shall not assume, take subject to or be or become liable for, and the Assumed Liabilities shall not include, any claims, liabilities or obligations of any kind or nature, whether absolute, contingent, accrued, known or unknown, of any of the Transferors (or their respective Affiliates, as applicable) other than the Assumed Liabilities (the "***Excluded Liabilities***"), which Excluded Liabilities shall remain liabilities of Transferors under HRS § 323F-56 and include the following:

(a) All of the claims, liabilities and obligations of any kind or nature arising from the operation of the Hospitals, the ownership of the Transferred Interests, and the employment and receipt of personal services from employees and non-employee workers, by the Transferors (or their respective Affiliates, as applicable) prior to the Transfer

Completion Date, whether absolute, contingent, accrued, known or unknown ("***Pre-Closing Liabilities***"), including any settlements, fines, penalties, shortfall payments and interest relating thereto levied by any Governmental Entity, arising from the operation of the Hospitals, the use, operation or ownership of the Operational Property, or the employment and receipt of personal services from employees and non-employee workers prior to the Transfer Completion Date;

(b) any liabilities arising out of or related to any other known and unknown obligations, facts, events, circumstances, acts, errors, omissions, instances and incidents which have occurred on or prior to the Closing Date;

(c) any liabilities arising out of or relating to the Leased Property prior to the Closing Date on and subject to the terms and conditions set forth in the Lease;

(d) any liabilities arising due to or out of a Safety Hazard associated with any Leased Property (regardless of whether such Safety Hazard rises to a violation of any Legal Requirements) existing prior to the Transfer Completion Date, including the failure of any Leased Property prior to the Transfer Completion Date to comply with federal, state, or local fire, building, environmental or life safety codes, regulations or standards relating to safety hazards, which, for purposes of clarification, does not include any post-Closing liability arising solely from a Safety Hazard caused by MHSKFH or that first occurred or arose solely after the Transfer Completion Date, which shall be MHSKFH's responsibility and obligation upon the terms and conditions set forth in the Lease;

(e) liabilities, claims and obligations arising from the ownership of the Excluded Assets by the Transferors (except as otherwise expressly provided in the Lease);

(f) all liabilities, claims, contributions, or other obligations of Transferors (including administrative costs) arising, accruing or existing prior to the Transfer Completion Date or which arise as a result of the consummation of the Transactions (or any change of control) with respect to employees and non-employee workers providing personal services at or for the benefit of the Hospitals, including, without limitation, those liabilities arising from, under, in connection with, or imposed by (i) any CBAs; (ii) Legal Requirements (or alleged violations thereof) governing wages and hours, employment discrimination, occupational safety and health, workers' compensation, the payment and withholding of employment Taxes, and payment for accrued time off; and (iii) the Benefit Plans or their related assets and/or any employee benefit plans, funds or programs, or similar contractual arrangements, ever maintained by and/or contributed to by Transferors or in which any employee, former employee or non-employee worker of Transferors participate or have ever participated, including any liabilities under any change of control, retention, bonus, termination, severance, employment or similar plan or agreement providing for payments to current or former employees, or non-employee workers, of Transferors or otherwise.

(g) all liabilities of HHSC and MRHS in connection with claims of professional malpractice to the extent arising out of or relating to acts, errors, omissions, events or occurrences, known or unknown, prior to the Transfer Completion Date;

(h) all accounts payable of the HHSC and MRHS, resulting from the operation of the Hospitals prior to the Transfer Completion Date, and any liability or obligation of HHSC and MRHS in respect of indebtedness (whether absolute, contingent, fixed or otherwise, whether due or to come due) of any kind, character or description whatsoever other than with respect to such liabilities assumed pursuant to **Section 2.4(b)**;

(i) All of the Hospitals' debt, including, without limitation, obligations associated with the following, General Obligations Bond Series 2012A, General Obligations Bond Series 2012B, United States Department of Agricultural Loan and any and all other loans, bonds and debt issued on or otherwise associated with the Hospitals (the "***Hospital Debt***");

(j) All liabilities of Transferors under Act 262, and any liabilities of the Hospitals that were transferred to HHSC upon its creation in 1996 and as described further in HRS § 323F-56;

(k) All liabilities associated with Capital Leases (except as otherwise expressly provided in the Lease);

(l) All of the claims, liabilities and obligations of any kind or nature arising out of or related to violations of Legal Requirements which are determined to have occurred prior to the Transfer Completion Date; and

(m) any liability, obligation, or commitment (whether civil or criminal in nature) arising under the Government Programs, or any other Private Program, including (i) all liabilities of HHSC relating to the Hospitals' Cost Reports with respect to periods ending prior to the Transfer Completion Date, (ii) all liabilities or claims related to Government Program or other Private Program billing and compliance issues, including any overpayment liability associated with the operation of the Hospitals prior to the Transfer Completion Date, and (iii) costs of defense of such actions.

2.6 MHSKFH's Post-Closing Rights.

(a) **Use of Operational Property.** During the Term, MHSKFH has the right to use the Operational Property in the management and operations of the Hospitals consistent with this Agreement, the Lease and applicable Legal Requirements.

(b) **Control of Transferred Interests and Operations**. Pursuant to HRS §§ 323F-52(c) and 323F-54(b)(2), MHSKFH shall have the exclusive right to control all matters related to the management, operation, and provision of health care services provided at the Hospitals during the Term, and Transferors shall cease to have any responsibility for or control over the management and operation of the Hospitals or the Transferred Interests. Nothing contained herein shall relieve MRHS of its role as the custodial caretaker of the Real Property

pursuant to HRS §§ 323F-54(b)(3) and 323F-3.5, to oversee the performance of the terms and conditions of the Lease by MHSKFH.

(c) **Acquisition of Post-Closing Property**. During the Term, MHSKFH shall have the right to create, lease, purchase, or otherwise acquire such equipment, assets and properties as are reasonably required for the successful operations of the Hospitals (collectively, the "***Post-Closing Property***"). Except as otherwise expressly provided in this Agreement or the Lease, MHSKFH shall also have the right on an as needed basis in the ordinary course of business or to further the successful operations of the Hospitals to, in its sole discretion: (i) use or dispose of any Transferred Interests; and (ii) take out of operation, service, repair, replace, or trade-in any Equipment. Any equipment, assets and properties obtained by MHSKFH to replace any Equipment or associated with any Equipment trade-in shall be deemed Post-Closing Property.

(d) **Post-Closing Operations.** Consistent with the terms of the Agreement, MHSKFH shall have the right on an as needed basis in the ordinary course of business or to further the successful operations of the Hospitals or a Hospital or MHSKFH strategic initiatives to, in its sole discretion, reduce, consolidate, reorganize or otherwise shift services and operations of the Hospitals or a Hospital and may take such other actions as may be reasonably necessary to effectively manage and operate the Hospitals.

(e) **Encumbrances.** MHSKFH shall have the right to place Encumbrances on the Transferred Interests and the Post-Closing Property.

2.7 Consideration for Transfer. The Parties recognize that, in consideration for the Transferors' agreements and obligations hereunder, including the transfer of control over all of the Hospitals and the Transferred Interests, MHSKFH's assumption of the operations and management of the Hospitals under this Agreement will include the commitment and the assumption of significant financial and operational investments by MHSKFH, including, without limitation, transition costs, assumption of the Assumed Liabilities, and the performance of all other agreements and actions required of MHSKFH or its Affiliates under this Agreement (collectively, "***Consideration***").

2.8 Post-Closing Reconciliations.

(a) **Nonassignable Contracts.** Nonassignable contracts will not be assigned by HHSC or MRHS or assumed by MHSKFH pursuant to this Agreement. With respect to any agreement initially designated as an Assumed Contract on **Schedule 2.2(c)**, if any required consent could not be obtained by the Closing Date or if any attempted assignment or assumption of such contract would be ineffective or would impair MHSKFH's rights thereunder so that MHSKFH would not in effect acquire the benefit of all such rights, then the contract will be deemed a Nonassignable Contract for purposes of **Schedule 1.104** and will not be an Assumed Contract under this Agreement. As such, subject to applicable Legal Requirements and the terms of such contract, the contract may become Leased Property under the Lease. In accordance with **Section 12.13**, upon the request of MHSKFH, HHSC and MRHS, as applicable, to the maximum extent permitted by Legal Requirements and the terms of such contract, will take such further actions as may be reasonably required for MHSKFH to obtain the benefits of those certain

Nonassignable Contracts that may be identified as Leased Property under the Lease (including enforcement for the account of MHSKFH of such rights against the other Party to the contract) and will reasonably cooperate, to the maximum extent permitted by Legal Requirements and the terms of such contracts, with MHSKFH in any other reasonable arrangement designed to provide such benefits to MHSKFH. Without limiting the foregoing and notwithstanding anything to the contrary provided above, MHSKFH acknowledges and agrees that there are certain Nonassignable Contracts which require the consent or approval of other parties which, despite HHSC's or MRHS' efforts, may not be obtained to provide such benefits to MHSKFH under the Lease.

(b) **Proration**. The Parties will use all reasonable efforts to determine appropriate prorations as of the Closing Date for each of the items set forth in this **Section 2.8**. Within 90 days after the Closing Date, MHSKFH and Transferors are to prorate as of the Transfer Completion Date any amounts for all (a) Prepaid Expenses (b) the Assumed Contracts, but only to the extent the event giving rise to such obligation occurred before the Transfer Completion Date, or to the extent that any prepayments have been made with respect to the delivery of goods or services for periods ending on or after the Transfer Completion Date, (c) Taxes, if any, on the Transferred Interests, (d) property taxes on the Transferred Interests, and (e) if cut off statements cannot be obtained as of Closing, all utilities servicing the Hospitals, including water, sewer, telephone, electricity, and gas service. The Parties shall cooperate to avoid, to the extent legally possible, the payment of duplicate Taxes, and each Party shall furnish, at the request of the other, proof of payment of any Taxes or other documentation that is a prerequisite to avoid payment of a duplicate Tax. Any such amounts not available within ninety (90) days after the Closing Date are to be prorated similarly as soon as practicable thereafter. Transferors shall promptly pay to MHSKFH, or MHSKFH shall promptly pay to Transferors, as the case may be, after the determination thereof, any unpaid prorated amount attributable to periods before, or following, the Transfer Completion Date.

(c) **Amounts Due Under Assumed Contracts.** The Parties acknowledge for the avoidance of doubt that **Section 2.2(c)** provides that MHSKFH shall be responsible for claims, liabilities and obligations under the Assumed Contracts that arise only on and after the Transfer Completion Date (and not with respect to periods prior thereto). Accordingly, with respect to invoices of vendors, service providers and other third party counterparties to the Assumed Contracts that are delivered after the Transfer Completion Date that relate to periods prior to the Transfer Completion Date, the Parties agree to cooperate to true-up the liabilities under such Assumed Contract invoices (which in the event of liabilities that relate solely to the period prior to the Transfer Completion Date, shall be the responsibility of HHSC or MRHS (as applicable), and with respect to liabilities that relate to the period prior to and after the Transfer Completion Date, shall be apportioned between HHSC or MRHS (as applicable) and MHSKFH on a pro rata basis based on the period to which such invoice is applicable and the number of days the Hospital was operated by HHSC/MRHS and MHSKFH during such period).

(d) **Interest.** HHSC and MRHS shall have set aside sufficient funds to satisfy their obligations to be responsible for pro-rated amounts or other obligations as set forth in this **Section 2.8**. If HHSC and MRHS do not remit to MHSKFH the amounts payable to MHSKFH pursuant to this **Section 2.8** within forty-five (45) calendar days of the date on an invoice for

such claim presented to HHSC or MRHS, then interest as prescribed in HRS § 103-10 will be paid unless delay in payment is permitted under that section.

2.9 Due Diligence. Between the Agreement Date and the Closing Date, each of HHSC, MRHS and MHSKFH shall (a) cooperate in good faith with the other Parties to conduct reasonable due diligence reviews of each other's business and operations; and (b) provide representatives and contractors of any other Party with reasonable access to its personnel, properties, contracts, Books and Records, and all other documents and data to conduct that due diligence review.

2.10 Material Regulatory Change. In the event there is any Material Regulatory Change, MHSKFH may suspend performance of any noncomplying obligations hereunder and the Parties shall negotiate in good faith to comply with, amend or modify this Agreement in a manner that complies with applicable Legal Requirements while preserving the economic and other core terms of this Agreement to the maximum extent possible; provided that, if the Parties, negotiating in good faith, are unable to enter into such amendments or modifications of the affected term or terms of this Agreement necessary to remedy the impact of the Material Regulatory Change in a manner that complies with applicable Legal Requirements and substantially maintains the then-existing economic and other core arrangements set forth herein to the reasonable satisfaction of the Parties, either Party may terminate this Agreement in accordance with **Article X**.

ARTICLE III.
CLOSING

3.1 Closing. Subject to the satisfaction or waiver by the appropriate Party of all conditions precedent to Closing specified in **Articles VIII and IX**, the ***"Closing"*** (whether in person or through the delivery on or prior to the Closing of originally executed documents) shall take place as soon as practicable at the offices of MMMC or at such other location as the Parties mutually designate in writing. The "***Closing Date***" shall mean the date upon which the Closing occurs which, except as the Parties may otherwise mutually agree in writing (and subject to satisfaction or waiver of all conditions precedent set forth in **Articles VIII and IX)** shall be the later of (i) June 30, 2016, or (ii) the end of the calendar month that is at least fifteen (15) business days after the satisfaction or waiver by the appropriate Party of all conditions precedent to Closing specified in **Articles VIII and IX**. The transfer of the Operational Property is to be calculated and made effective as of 12:01 a.m., HST, on the day immediately following the Closing Date (the *"**Transfer Completion Date**"*).

3.2 Actions of MHSKFH at Closing. At Closing, and unless otherwise waived by Transferors in writing, MHSKFH shall deliver or cause to be delivered to Transferors each of the following items:

(a) Copies of resolutions duly adopted by unanimous written consent of MHSKFH authorizing and approving the performance of the Transactions and the signing and delivery of this Agreement and the other documents described in this Agreement, each certified as true, complete, and in full force and effect as of the Closing Date by appropriate officers of MHSKFH.

(b) Certificate of a duly authorized officer of MHSKFH, dated as of the Closing Date, certifying that each covenant and agreement of MHSKFH to be performed before or as of Closing under this Agreement has been performed in all material respects.

(c) Certificate of existence and good standing of MHSKFH issued by the State of Hawaii, Department of Commerce and Consumer Affairs, dated the most recent practical date before the Closing Date.

(d) A Tax Clearance Certificate issued by the State of Hawaii, Department of Taxation, and dated not earlier than thirty (30) days prior to Closing.

(e) A certificate of a duly authorized officer of MHSKFH, dated as of the Closing Date, certifying that the representations of MHSKFH set forth in this Agreement are true and correct in all material respects on the Closing Date.

3.3 Actions of Transferors at Closing. At Closing, or unless otherwise stated in this Agreement or waived by MHSKFH in writing, Transferors shall deliver or cause to be delivered to MHSKFH the following:

(a) Copies of resolutions duly adopted by the board of directors of HHSC, authorizing and approving HHSC's performance of the applicable conditions precedent to Closing and the signing and delivery of this Agreement and the other documents described in this Agreement, certified as true, complete and in full force and effect as of the Closing Date by appropriate officers of HHSC.

(b) Copies of resolutions duly adopted by the board of directors of MRHS, authorizing and approving MRHS' performance of the applicable conditions precedent to Closing and the signing and delivery of this Agreement and the other documents described in this Agreement, certified as true, complete and in full force and effect as of the Closing Date by appropriate officers of MRHS.

(c) Certificate of the appropriate officers of HHSC, dated as of the Closing Date, certifying that each covenant and agreement of HHSC to be performed before or as of Closing under this Agreement has been performed in all material respects.

(d) Certificate of the appropriate officers of MRHS, dated as of the Closing Date, certifying that each covenant and agreement of MRHS to be performed before or as of the Closing under this Agreement has been performed in all material respects.

ARTICLE IV.
REPRESENTATIONS AND COVENANTS OF TRANSFERORS

Except for such exceptions as may be set forth in the Schedules, each Transferor, as applicable, represents to the best of its knowledge to MHSKFH that the statements contained in this **Article IV** are true and correct as of the date of this Agreement or otherwise as of the Closing Date. Transferors have a continuing obligation to update schedules prior to Closing.

4.1 Consents; Absence of Conflicts With Other Agreements. Except as otherwise expressly provided in the Agreement (or Schedules to be provided under the Agreement), to the best of HHSC and MRHS' Knowledge, their signing, delivery, and performance of this Agreement by Transferors (and all other agreements referenced in this Agreement or ancillary to it): (a) does not require any approval or consent of, or filing with, any Governmental Entity; (b) will neither conflict with any Assumed Contract nor result in any material breach or contravention of, nor permit the acceleration of the maturity of the Assumed Liabilities, or the creation of any lien, charge or encumbrance affecting any Transferred Interests; (c) will not violate any Legal Requirements to which Transferors or the Operational Property are subject; and (d) will not violate any judgment of any court or Governmental Entity to which Transferors or the Operational Property is subject.

4.2 Licensure. The Hospitals are licensed consistent with the applicable Legal Requirements of the State of Hawaii. Within forty-five (45) days after the Agreement Date, MRHS shall list the Licenses on **Schedule 4.2** in a form mutually acceptable to MHSKFH and MRHS. MRHS and each Hospital, as applicable, has all Licenses required for the ownership, development, or operation of such Hospital and the Operational Property as presently operated, all of which are now in good standing, in full force and effect. To the best of HHSC and MRHS' Knowledge, neither HHSC, MRHS nor any Hospital has received any written notice or communication from any Governmental Entity regarding any violation of any License (other than any surveys or deficiency reports for which MRHS or the Hospital, as applicable, has submitted a plan of correction that has been approved by the applicable Governmental Entity). MRHS has delivered to MHSKFH copies of all survey reports, deficiency notices, plans of correction, and related correspondence received by MRHS or any Hospital in connection with the Licenses since January 1, 2014. To the best of HHSC and MRHS' Knowledge, no event has occurred, and there is no pending or threatened action, with respect to any License, whether after notice or the passing of time or both, that would serve as grounds for or otherwise authorize the suspension, revocation, or termination of any License or impair the rights of any holder thereof. Prior to Closing, all applications required to be filed by MRHS or the Hospitals, as applicable, for the renewal of the Licenses will be duly filed on a timely basis with the appropriate Governmental Entity, and all other filings required to be made by MRHS or a Hospital, as applicable, with respect to the Licenses will be duly made on a timely basis with the appropriate governmental entities.

4.3 Government Program Participation. Within forty-five (45) days after the Agreement Date, HHSC or MRHS will provide MHSKFH with a list of all provider numbers of HHSC, MRHS and the Hospitals, as applicable, under the Government Programs, which shall be attached hereto as **Schedule 4.3**. To the best of HHSC and MRHS' Knowledge, (a) each Hospital is certified or otherwise qualified for participation in the Government Programs and has current and valid Program Agreements all of which are in full force and effect, (b) each Hospital is in compliance in all material respects with the conditions of participation in the Government Programs and with the terms, conditions and provisions of the Program Agreements, (c) no events or facts exist that would cause any Program Agreement to be suspended, terminated, restricted, withdrawn, subjected to an administrative hold or otherwise not to remain in force or effect after the Closing, (d) all billing practices with respect to the Hospitals under Government Programs have been conducted in compliance in all material respects with all applicable Legal Requirements or billing guidelines of those Government Programs, (e) there is no proceeding,

audit, review, investigation, survey, or other action, pending or threatened, involving any of the Government Programs or any Private Programs, including the Hospital's participation in and the reimbursement received by HHSC, MRHS or the Hospital from the Government Programs or any Private Program, and neither HHSC or MRHS have any reason to believe that any such proceedings, audits, reviews, investigations, surveys, or actions are pending, threatened, or imminent.

4.4 Accreditations. The Hospitals are duly accredited by The Joint Commission and, to MRHS' Knowledge, all Equipment used in the operations of the Hospitals is duly accredited by the appropriate accrediting body. Within forty-five (45) days after the Agreement Date, MRHS will provide MHSKFH with a list of all Accreditations, which shall be attached hereto as **Schedule 4.4**. To the best of MRHS' Knowledge, since the date of their most recent surveys, the Hospitals have not made any changes in policies or operations that would cause such Hospitals to lose those Accreditations for the Hospitals' facilities or Equipment. MRHS has delivered to MHSKFH copies of each Hospital's most recent Accreditation reports and any reports, documents, or correspondence relating thereto. To the best of HHSC and MRHS' Knowledge, there is no pending or threatened proceeding by any accrediting body to revoke, cancel, rescind, suspend, restrict, modify, or non-renew any Hospital's accreditations and certifications, and no such proceedings, surveys, or actions are pending, threatened, or imminent. All those Accreditations are and will be effective, unrestricted, and in good standing as of the date of this Agreement. To the best of HHSC and MRHS' Knowledge, no event has occurred or other fact exists with respect to such Accreditations that allows, or after notice or the lapse of time or both, would allow, revocation or termination of any such Accreditations, or would result in any other impairment in the rights of any holder thereof.

4.5 Cost Reports. To the best of HHSC and MRHS' Knowledge, HHSC, MRHS and the Hospitals timely have filed all of the Hospitals' Cost Reports required for all the fiscal years through and including the fiscal year ended June 30, 2015. Copies of all the Hospitals' Cost Reports filed since July 1, 2011, together with all material correspondence with respect thereto, have been provided to MHSKFH. **Schedule 4.5**, which will be provided by HHSC or MRHS to MHSKFH within forty-five (45) days of the Agreement Date, will indicate which Hospitals' Cost Reports have not been audited and finally settled and include a brief description of any and all notices of program reimbursement, proposed or pending audit adjustments, disallowances, appeals of disallowances, and any and all other unresolved claims or disputes with respect to the Hospitals' Cost Reports. Other than as set forth on **Schedule 4.5**, HHSC and MRHS have not received notice of any material dispute between the Hospital and a Government Program or a Private Program regarding such Hospitals' Cost Reports and, to the best of HHSC and MRHS' Knowledge, there are no pending or threatened material claims by any such programs against the Hospital.

4.6 Regulatory Compliance.

(a) To the best of HHSC's and MRHS' Knowledge, the Transferred Assets and the Hospitals have been and are presently in compliance in all material respects with all applicable Legal Requirements, including Healthcare Laws. Neither HHSC, MRHS, nor any Hospital has received notice from an agency, board, commission, bureau, intermediary, carrier, Medicare administrative contractor, Government Program integrity contractor, recovery audit

contractor, or other instrumentality of any government, whether federal, state or local, Private Program or patient that any of the operations of any Hospital is not in compliance with all applicable Legal Requirements or accreditation requirements. To the best of HHSC's and MRHS' Knowledge, HHSC, MRHS and each Hospital, as applicable, have timely filed (and will prior to Closing timely file) all reports, data and other information required to be filed under the Legal Requirements with respect to the operation of the Hospitals.

(b) To the best of HHSC's and MRHS' Knowledge, except in compliance with the Healthcare Laws, neither HHSC, MRHS, nor any employee of the Hospitals, has, with respect to the Hospitals, directly or indirectly: (i) offered, paid, solicited, or received any remuneration (including any kickback, bribe, or rebate), in cash or in kind, to, or made any financial arrangements or a gratuitous payment of any kind, with any past, present or potential customers, past, present, or potential suppliers, patients, government officials, medical staff members, contractors, Government Program or Private Program payors of MRHS or any other Person in exchange for business or payments from such Persons in violation of Healthcare Laws; (ii) established or maintained any unrecorded fund or asset for any improper purpose or made any misleading, false, or artificial entries on any of its books or records for any reason; or (iii) made any payment for or agreed to make any payment for any goods, services, or property in excess of fair market value except to the extent permitted by applicable Healthcare Laws.

(c) To the best of MRHS' Knowledge, all of and each Hospital's contracts with physicians or other health care providers or entities in which physicians or other health care providers are equity owners involving services, supplies, payments, or any other type of remuneration and all of MRHS' and each Hospital's leases of personal or Real Property with such physicians, health care providers, or entities are in writing, provide for a fair market value compensation in exchange for such services, space, or goods and comply with all applicable Legal Requirements.

(d) To the best of MRHS' Knowledge, except in compliance with the Legal Requirements, neither HHSC, MRHS, nor any Hospital, nor any of their officers or employees are a party to any contract, lease agreement or other arrangement (including any joint venture or consulting agreement) related to MRHS, the Hospitals, or the Operational Property with any physician, immediate family member of a physician, physical or occupational therapist, health care facility, hospital, nursing facility, home health agency or other Person in a position to make or influence referrals to or otherwise generate business for MRHS, the Hospitals or the Operational Property, to provide services, lease space, lease equipment, or engage in any other venture or activity.

4.7 Residents. MRHS will make available to MHSKFH an accurate and complete list of the Residents as of the Closing Date, together with the date of each Resident's admission, the current primary source of payment for such Resident, and the amount of any deposit made by such Resident for future services and currently held by or on behalf of MRHS. To the best of MRHS' Knowledge, (a) none of the Residents have been given any concession or consideration for the rental of any room, (b) no Residents are entitled to any concessions, rebates, or allowances for free occupancy for any period after the Closing Date, (c) all obligations of MRHS under the Admission Agreement concerning Resident services at any Hospital have been

earned out, performed and complied with in all material respects, and (d) all Resident records have been kept at the applicable Hospital in accordance with applicable Legal Requirements.

4.8 Operational Contracts; Assumed Contracts.

(a) To the best of HHSC and MRHS' Knowledge, as of the Agreement Date, HHSC and MRHS have delivered to MHSKFH true and complete copies of all Operational Contracts, including any and all amendments and other modifications thereto. To the best of HHSC's or MRHS' Knowledge, except as otherwise disclosed in the Schedules or the Agreement: (i) all of the Operational Contracts are in full force and effect; (ii) HHSC and MRHS or the Hospitals, as applicable, are and have been in compliance in all material respects with the terms and requirements of each Operational Contract; (iii) each other party that has or had any obligation or liability under any Operational Contract is and has been in compliance with the terms and requirements of such Operational Contract; (iv) neither HHSC, MRHS, nor any of the Hospitals has given or received any unresolved notice or other communication (whether oral or written) regarding any actual, alleged, possible, or potential material violation or breach of, or default under, any Operational Contract; (v) no purchase commitment by HHSC or MRHS or any Hospital that is an Operational Contract is in excess of the ordinary business requirements of the Hospital; and (vi) the signing, delivery and performance of this Agreement by Transferors or any Hospital will not contravene, conflict with, or result in a violation or breach of any provision of, or give any party the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Operational Contract. HHSC and MRHS have disclosed to MHSKFH any Operational Contracts that prohibit or restrict competition, including that certain Ground Lease and Space Use Agreement dated July 18, 2005 between HHSC and Bobby C. Baker, M.D., Inc., which incorporates that certain Letter agreement between MRHS and Bobby C. Baker, M.D., Inc. dated July 28, 1993.

(b) Within thirty (30) days following the completion of **Schedule 2.2(c)**, MRHS and HHSC shall notify MHSKFH in writing if (i) any event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a material violation or breach of, or give any party the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Assumed Contract; (ii) there are any renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any Assumed Contract or a party has made written demand for such renegotiation; (iii) the assignment of any Assumed Contracts to MHSKFH will contravene, conflict with, or result in a violation or breach of any provision of, or give any party the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Assumed Contract; or (iv) any of the Assumed Contracts do not constitute valid and legally binding obligations of Transferors or the Hospitals, as applicable, or of the other parties thereto or are not enforceable in accordance with their terms against Transferors or the Hospital, as applicable, or against the other parties thereto, except as enforceability may be limited, restricted or delayed by applicable bankruptcy or other Legal Requirements affecting creditor's rights and debtor's relief generally or except as enforceability may be subject to general principles of equity.

4.9 Equipment. Within forty-five (45) days of the Agreement Date, MRHS shall provide to MHSKFH a depreciation schedule for the Equipment as of the Balance Sheet Date and take into consideration substantially all the equipment constituting any part of the Operational Property.

4.10 Title to Transferred Interests. Except as set forth on **Schedule 4.10**, which will be provided by MRHS to MHSKFH within forty-five (45) days of the Agreement Date, HHSC or MRHS has good and valid title to and ownership of all personal property, whether tangible or intangible, making up all or any portion of the Transferred Interests, except for personal property leased by HHSC or MRHS, for which HHSC, MRHS or the Hospitals has good and valid leasehold interests. Except as set forth on **Schedule 4.10**, none of the Transferred Interests that constitute personal property owned by HHSC, MRHS or the Hospitals is subject to any Encumbrance, other than Permitted Encumbrances and Assumed Liabilities.

4.11 Leased Property. HHSC owns, fee title to the Real Property (and all appurtenances and rights thereto), and: (i) to the best of HHSC's and MRHS' Knowledge, except as provided in this Agreement and the Lease, (together with the Permitted Encumbrances), no Person has been granted any license, lease, or other right relating to the use or occupancy of the Real Property, or any part thereof; and (ii) at Closing, HHSC shall convey to MHSKFH the right to use the leasehold interests in the Leased Property under the Lease.

4.12 Condition and Sufficiency of Operational Property. The Operational Property constitutes all of the real, personal, tangible and intangible property of every kind and nature whatsoever owned, leased, held or used by HHSC or MRHS in connection with the operation of the Hospitals. **Schedule 4.12,** which will be provided by HHSC and MRHS within forty-five (45) days of the Agreement Date, describes all Life Safety Code and other facility deficiencies related to the Leased Property of which HHSC or MRHS have received written notice. Except as expressly set forth in this Agreement or the Lease and provided in Act 103, Transferors are not making any representations or warranties, express or implied, with respect to the Operational Property, and MHSKFH acknowledges and agrees that the Leased Property is being leased "as is, where is, with all faults" on the terms and conditions in the Lease.

4.13 Insurance. Within forty-five (45) days of the Agreement Date, HHSC or MRHS shall provide MHSKFH a true and complete list of all insurance policies maintained by HHSC or MRHS, as applicable, relating to the ownership or operations of the Hospitals and the Operational Property (collectively, the "***Insurance Policies***") and for each indicates the insurer's name (if applicable), policy number (if applicable), expiration date (if applicable) and amount and type of coverage and limitations, which shall be attached hereto as **Schedule 4.13**. All such policies, or similar replacement policies, are now and will be in full force and effect immediately before the ***Transfer Completion Date***, with no premium arrearages. To the best of HHSC's and MRHS' Knowledge, HHSC and MRHS are not in breach of any obligations with respect to any Insurance Policies. To the best of HHSC's and MRHS' Knowledge, neither HHSC, MRHS nor any Hospital has (a) received any notice or other communication from any such insurance company materially amending any of such Insurance Policies, and no such amendment is threatened or (b) failed to give any required notice or present any claim that is still outstanding under any of such policies concerning the Hospitals or any of the Operational Property. To the best of HHSC's or MRHS' Knowledge, HHSC and MRHS have not received (a) any refusal of

coverage or any notice that a defense shall be afforded with reservation of rights, or (b) any notice of cancellation or any other indication that any Insurance Policy is no longer in full force or effect or shall not be renewed or that the issuer of any Insurance Policy is not willing or able to perform is obligations thereunder.

4.14 Employee Benefit Plans.

(a) Transferors have disclosed to MHSKFH all Benefit Plans. To the best of HHSC's Knowledge, none of HHSC, MRHS, the Hospitals, or, if applicable, any of their Affiliates or predecessors has ever maintained, contributed to, been required to contribute to, or otherwise had any plan, fund or program, or escrow or trust fund, or employment agreement, which provided for the payment of deferred compensation, or perquisites, or health care or health, accident and sickness benefits, or life or disability insurance, or severance or other form(s) of separation payments, other than the Benefit Plans. For purposes only of this **Section 4.14**, the term "***Affiliate***" is any Person or entity that, together with HHSC or with MRHS, would be treated as a single employer with either or both of them, under Code §§ 414(b), (c), (m), or (o) and related regulations (including Income Tax Regulations § 1.414(c)-5, if applicable).

(b) To the best of HHSC's and MRHS' Knowledge, the only pension or other tax-qualified plan or program (within the meaning of Code § 401(a)) to which HHSC or MRHS contributes, or under which either of them has any contribution or similar obligation in respect of Hospital Personnel as of the date of this Agreement, is the Employees' Retirement System of the State of Hawaii ("***ERS***"). To the best of HHSC's and MRHS' Knowledge, the only tax-favored deferred compensation plans (within the meaning of Code § 457(b)) to which HHSC or MRHS contributes, or under which either of them has any contribution or similar obligation in respect of any Hospital Worker as of the date of this Agreement, are (i) the State of Hawaii Deferred Compensation Plan (the "***Island Savings Plan***") and (ii) the PTS Deferred Compensation Savings Plan (the "***PTS Plan***"). To the best of HHSC's and MRHS' Knowledge, neither HHSC nor MRHS makes any contribution, or has any obligation to make contributions, to any Benefit Plan which is subject to the provisions of Code § 403(b).

(c) The only Benefit Plan to which HHSC or MRHS makes any contribution(s) to provide health, accident and sickness benefits, and dental and vision care benefits, to or for the benefit of Hospital Personnel or any of their Dependents is the Hawaii Employer-Union Health Benefits Trust Fund. To the best of HHSC's and MRHS' Knowledge, HHSC, the Hospitals, and their Affiliates have complied in all material respects, are in material compliance with, and will comply in connection with the Contemplated Transactions, the continuation coverage provisions of COBRA with respect to all current and former employees and their beneficiaries. To the best of HHSC's and MRHS' Knowledge, no written or oral agreements have been entered into promising or guaranteeing the continuation of medical, dental, vision, life or disability insurance coverage for any current or former employees of HHSC, the Hospitals, or their Dependents for any period of time beyond termination of employment (except to the extent of coverage required under COBRA).

(d) To the best of HHSC's and MRHS' Knowledge, no event has occurred that could cause any Benefit Plan to become disqualified or fail to comply with the respective requirements of Code §§ 401(a), 403(b), or 457(b), as applicable, or that would cause a

distribution from any such Benefit Plan to be ineligible to be rolled into an individual retirement account or a plan that is appropriately qualified under Code § 401(a), as otherwise provided under Code § 402(c).

(e) Nothing contained in this Agreement (i) is to be treated as an amendment to any particular benefit plan of MHSKFH or Transferors, (ii) obligates MHSKFH or its Affiliates or HPMG Maui to maintain any particular benefit plan or arrangement, (iii) prevents MHSKFH or any of its Affiliates or HPMG Maui from amending or terminating any benefit plan or arrangement, or (iv) gives any third party the right to enforce any of the provisions of this Agreement, or create a continued right of employment for any of the Hired Employees.

4.15 Employee Relations. To the best of HHSC and MRHS' Knowledge, except as set forth on **Schedule 4.15**, which will be provided by HHSC or MRHS to MHSKFH within forty-five (45) days of the Agreement Date, (a) there is no pending or threatened employee strike, work stoppage, or labor dispute concerning employees of HHSC (b) no union representation question exists respecting any employees of HHSC; (c) no demand has been made for recognition by a labor organization by or with respect to any employees of HHSC; and (d) no union organizing activities by or with respect to any employees of HHSC are taking place. Except as set forth on **Schedule 4.15**, there is no unfair practice claim against HHSC before the Hawaii Labor Relations Board, or any strike, dispute, slowdown, or stoppage pending or threatened against or involving the Hospitals and none has occurred. To the best of HHSC and MRHS' Knowledge, except as set forth on **Schedule 4.15**, there are no pending or threatened EEOC claims, wage and hour claims, unemployment compensation claims, workers' compensation claims, or the like.

4.16 Litigation or Proceedings.

(a) Except as listed on **Schedule 4.16**, which will be provided by HHSC and MRHS to MHSKFH within forty-five (45) days of the Agreement Date, there are no claims, actions, suits, proceedings, or investigations pending or, to the best of HHSC and MRHS' Knowledge, threatened against or affecting HHSC, MRHS, the Hospitals, or the Transferred Interests, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality wherever located.

(b) To the best of HHSC and MRHS' Knowledge, HHSC and MRHS, with respect to the operation of the Hospitals, are not subject to any judgment, order, decree or other governmental restriction specifically (as distinct from generically) applicable to them or the Operational Property. There is no action or suit before any Governmental Entity pending (and, to the best of HHSC and MRHS' Knowledge, there is no action, suit, proceeding, inquiry or investigation threatened) against Transferors or the Hospitals which: (a) adversely affects or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement; (b) adversely affects or questions the validity or enforceability of this Agreement; (c) questions the power or authority of Transferors to carry out the Transactions, or to perform their obligations under this Agreement; or (d) would result in any change which would adversely affect the ability of Transferors to perform their obligations hereunder.

(c) MRHS has insurance (including self-insurance) or other resources in amounts sufficient to defend and indemnify itself against all known or pending litigation, arbitration, mediations and other proceedings against HHSC, MRHS or the Hospitals (except for (a) applicable deductibles and self-insurance and (b) any *qui tam* proceedings and claims), and no insurer has issued a "reservation of rights" letter or otherwise qualified its delegation to insure and defend MRHS, HHSC or the Hospitals against Losses arising therefrom except as listed in **Schedule 4.16**. Except as set forth on **Schedule 4.16**, neither HHSC, MRHS nor any of the Hospitals is now, or has been within the preceding six (6) years, a party to any injunction, order, or decree restricting the method of the conduct of the business at or the marketing of the Hospitals or their services.

4.17 Medical Staff Matters. MRHS has delivered to MHSKFH true and complete copies of the Medical Staff Bylaws and a list of the members of the medical staffs of the Hospitals. To the best of MRHS' Knowledge, each member of the medical staff of each Hospital submitted a completed medical staff application to MRHS that was reviewed and approved in accordance with the then current Medical Staff Bylaws and rules and regulations in place and is practicing at such Hospital only within the scope of privileges granted under the Medical Staff Bylaws. MRHS has delivered to MHSKFH a written disclosure containing a brief general description of all adverse actions taken in the twelve (12) months before the date of this Agreement against medical staff members or applicants that could result in claims or actions against MRHS or HHSC. Except as set forth on **Schedule 4.17**, which will be provided by MRHS to MHSKFH within forty-five (45) days of the Agreement Date:

(a) there are no (i) pending or, to the best of MRHS' Knowledge, threatened, adverse actions with respect to any medical staff members of the Hospitals or any applicant thereto, or (ii) pending or, to the best of MRHS' Knowledge, threatened, disputes with applicants, staff members or health professional affiliates and all appeal periods with respect to any medical staff member or applicant against whom an adverse action has been taken have expired.

(b) there are no claims, actions, suits, proceedings, or investigations pending or, to the best of MRHS' Knowledge, threatened against or affecting any member of the medical staff of the Hospitals at law or in equity, or before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality wherever located of which MRHS has been notified by the subject medical staff member through the credentialing process.

4.18 Taxes. Any Taxes, penalties, interest, and any other statutory additions that have become due by HHSC or MRHS, and any assessments received by HHSC or MRHS (collectively ***"Payable Tax Items"***) have been paid or adequately provided for by the reserves shown in the Balance Sheet of HHSC and MRHS as of the Balance Sheet Date.

(a) There are no Tax liens on any of the Transferred Interests. There is no Encumbrance on any of the Transferred Interests due to the failure (or alleged failure) to pay any Tax, nor will any such Encumbrance arise after the Closing.

(b) Neither HHSC, MRHS nor any Hospital has had any liability for any Taxes of any other Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise. HHSC or MRHS have properly classified for Tax purposes all individuals providing services to HHSC or MRHS as either independent contractors or employees, as the case may be. Each of HHSC, MRHS and the Hospitals has withheld or collected and paid over to the appropriate taxing and governmental authorities (or is properly holding for such payment) all Taxes required by applicable Legal Requirements to be withheld or collected with respect to its operations.

(c) Except as set forth on **Schedule 4.18(c)**, which will be provided to MHSKFH by HHSC and MRHS within forty-five (45) days of the Agreement Date, the Operational Property is, and will be through the Closing Date, exempt from all real and personal property Taxes, and there are no municipal assessments, for betterments or otherwise, on, related to or under consideration for the Real Property.

(d) None of the Operational Property is an ownership interest in a joint venture, partnership or other arrangement or contract that could be treated as a partnership for federal income Tax purposes.

4.19 Statutory Funds. To the best of HHSC's and MRHS' Knowledge, none of the Operational Property are subject to any liability to which MHSKFH may become obligated with respect to amounts received by HHSC or MRHS for the purchase or improvement of the Operational Property, the Hospitals, or any part thereof under restricted or conditioned grants or donations, including monies received under the Hill-Burton Act, 42 U.S.C. § § 291 *et. seq.*, the Health Professions Educational Assistance Act, the Nurse Training Act, the National Health Planning and Resources Development Act, or the Community Mental Health Centers Act, as amended, or similar laws or acts relating to health care facilities that remain unpaid or which impose any restrictions on the Hospitals or the Operational Property.

4.20 Compliance Program. MRHS has delivered to MHSKFH copies of all Compliance Programs for or concerning the Hospitals, including all program descriptions, compliance officer and committee minutes and descriptions, ethics and risk area policy materials, training and education materials, auditing and monitoring protocols, reporting mechanisms and disciplinary policies. To the best of HHSC's or MRHS' Knowledge, with respect to the Hospitals, neither HHSC, MRHS, nor any of the Hospitals (a) is a party to a Corporate Integrity Agreement with the OIG; (b) has any reporting obligations under any settlement agreement entered into with any Governmental Entity; (c) has been the subject of any Government Program investigation conducted by any federal or state enforcement agency; (d) has been a defendant in any *qui tam*/False Claims Act litigation (other than by reason of a sealed complaint of which HHSC and MRHS have no knowledge); (e) has been served with or received any search warrant, subpoena, civil investigation demand, contact letter, or telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the Hospitals); or (f) has received any complaints through HHSC's or MRHS' compliance "hotline" from employees, independent contractors, vendors, physicians, or any other Person that could reasonably be considered to indicate that HHSC, MRHS or any Hospital has violated any Legal Requirements.

4.21 Intellectual Property. Within forty-five (45) days of the Agreement Date, HHSC or MRHS shall list the Intellectual Property on **Schedule 4.21** in a form acceptable to MHSKFH. No notice has been received by HHSC, MRHS or the Hospitals that any of their respective rights in or to the Intellectual Property are invalid or unenforceable or that any infringement or misappropriation thereof, in whole or in part, by any third party has occurred. To the best of HHSC's or MRHS' Knowledge, the ownership and use by HHSC, MRHS or the Hospitals of the Intellectual Property, as applicable, in the ordinary and usual course does not cause or involve the infringement, misuse, or misappropriation of any patent, copyright, trade secret, or other proprietary or intellectual property (whether conferred by Legal Requirements or otherwise) of any third party.

4.22 Information Privacy and Security Compliance.

(a) To the best of HHSC's and MRHS' Knowledge, within the past twenty-four (24) months, there has been no loss, unauthorized access or misuse of Personal Information in connection with the operation of the Hospitals not handled in accordance with Legal Requirements, nor have the Hospitals experienced an event that requires the Hospitals under applicable Information Privacy or Security Legal Requirements to provide notice to any Person or Governmental Entity of any loss or misuse of or unauthorized access to Personal Information pursuant to applicable Information Privacy or Security Legal Requirements. To the best of HHSC and MRHS' Knowledge, neither HHSC, MRHS, nor any Hospital is under investigation by any Governmental Entity for a violation of any Information Privacy or Security Legal Requirements, including the receipt of any notices from the OCR, Federal Trade Commission, or Department of Justice relating to any such violations. HHSC and MRHS are not subject to any pending or, to the best of HHSC and MRHS' Knowledge, threatened action nor have they received within the twelve (12) month period prior to the Closing Date any written notice alleging that the operation of the Hospitals has experienced a security breach adversely affecting the Hospitals' protection of Personal Information or violated any person's privacy rights, privacy policy, or applicable Information Privacy or Security Legal Requirements. Copies of any written complaints alleging a violation of any Information Privacy or Security Legal Requirements received by HHSC, MRHS or the Hospitals during the preceding 24-month period have been delivered to MHSKFH or will be delivered to MHSKFH within forty-five (45) days of the Agreement Date.

(b) To best of HHSC's and MRHS' Knowledge, each has complied with applicable Information Privacy or Security Legal Requirements, contractual and fiduciary obligations, their respective terms of use and service contracts, and any privacy policies published by each of them relating to (i) the privacy of users of the Internet websites and mobile applications owned, maintained by Transferors in connection with the operations of the Hospitals, (ii) the collection, storage, use, transfer, sharing, disposal or processing of any Personal Information collected or used by them or maintained by third parties having authorized access to such information (collectively, all of the foregoing, the "***Privacy Policies***"). Copies of all Privacy Policies have been provided by MRHS to MHSKFH.

(c) Within ninety (90) days prior to the Closing Date, all of the Hospitals' workforces (as such term is defined in 45 C.F.R. § 160.103) shall have received training with

respect to compliance with Information Privacy or Security Legal Requirements as required by such laws.

(d) Complete and accurate copies of all business associate agreements pursuant to which HHSC or MRHS is a party in connection with the ownership or operations of the Hospitals have been delivered to MHSKFH.

(e) All information technology systems used in connection with the operation of Hospitals are free of Contaminants. HHSC and MRHS have taken commercially reasonable steps to prevent the introduction of Contaminants into such information technology systems used in connection with the operation of the Hospitals. HHSC and MRHS have taken all reasonable steps to protect the information technology systems used in connection with their operations. To the best of HHSC and MRHS' Knowledge, there have been no unauthorized intrusions or breaches of the security of information technology systems. HHSC and MRHS are not aware of any material errors, bugs or defects with respect to any of the software of HHSC or MRHS or that HHSC and MRHS reasonably believe they cannot fix in the ordinary course of business or which otherwise will adversely affect the use or functionality of such software.

4.23 No Exclusion. To the best of HHSC and MRHS' Knowledge, neither HHSC, MRHS, the Hospitals, nor any of their respective officers, directors, agents, or employees, have been convicted of, charged with, or investigated for, or, to the best of HHSC's and MRHS' Knowledge, have engaged in conduct that would constitute, a Medicare or other Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7(b)(f)) related offense or convicted of, charged with or investigated for, or, to the best of HHSC's and MRHS' Knowledge, engaged in conduct that would constitute a violation of any Legal Requirements related to fraud, theft, embezzlement, breach of fiduciary duty, kickbacks, bribes, other financial misconduct or obstruction of an investigation. To the best of HHSC and MRHS' Knowledge, neither HHSC, MRHS, the Hospitals, nor any officer, director, agent, employee, independent contractor, or medical staff member of HHSC, MRHS or the Hospitals (whether an individual or entity), has been excluded from participating in any Government Program, subject to sanction under 42 U.S.C. § 1320a-7a or § 1320a-8 or been convicted of a crime described at 42 U.S.C. § 1320a-7b, nor, to the best of HHSC's and MRHS' Knowledge, are any such exclusions, sanctions, or charges threatened or pending. If not already performed in calendar year 2015, no later than sixty (60) days after the Agreement Date, HHSC or MRHS, as applicable, will complete checks of all of the Hospitals' medical staff members, employees, and other contractors on the HHS List, the General Service Administration System for Award Management, the Food and Drug Administration debarment list, and the NPDB, and will prohibit any excluded, debarred, or sanctioned persons from providing services for or on behalf of the Hospitals.

4.24 Certificates of Need. Except as set forth on **Schedule 4.24**, which shall be provided by MRHS to MHSKFH within forty-five (45) days of the Agreement Date, neither MRHS nor the Hospitals has any Certificate of Need application or other request pending or open with SHPDA or the certificate of need authority of any other state. MRHS and the Hospitals have properly and timely filed (or will file before the Closing Date) all required applications with respect to any and all material improvements, projects, changes in services, construction and equipment purchases, and other changes for which approval is required under any applicable state Legal Requirements.

4.25 No Outstanding Rights. Except as set forth on **Schedule 4.25,** which shall be provided by MRHS to MHSKFH within forty-five (45) days of the Agreement Date, there are no outstanding rights (including any rights of first refusal or offer or rights of reverter or other preemptive rights), options, or contracts made on HHSC's or MRHS' behalf giving any Person any current or future right to require HHSC or MRHS or, following the Closing Date, MHSKFH, to sell or transfer to such Person or to any third party all or any part of the Operational Property.

4.26 Experimental Procedures. Within forty-five (45) days after the Agreement Date, MRHS shall provide MHSKFH a list of any experimental or research procedures or studies involving patients in the Hospitals or otherwise involving the Hospitals, which shall be attached hereto as **Schedule 4.26**.

ARTICLE V.
REPRESENTATIONS OF MHSKFH

As of the date of this Agreement and, except as otherwise expressly provided, as of the Closing, MHSKFH represents to Transferors the following:

5.1 Organization and Authorization. MHSKFH is a limited liability company duly organized as a nonprofit organization, validly existing and with active status in good standing under the laws of the State of Hawaii, duly authorized to transact business in the State of Hawaii, and has the requisite power and authority to enter into this Agreement and the other documents contemplated by this Agreement and thereby, perform its obligations under the Agreement and thereunder. KFH is a duly organized 501(c)(3) tax exempt nonprofit organization, validly existing and with active status in good standing under the laws of the State of Hawaii, duly authorized to transact business in the State of Hawaii, has a valid Certificate of Need to operate one or more licensed hospitals in the State, and submitted the statement of interest required under HRS § 323F-52 and the proposal attached hereto as **Exhibit A**.

5.2 Corporate Authority; Absence of Conflicts With Other Agreements. MHSKFH's signing, delivery and performance of this Agreement and the other documents contemplated by this Agreement and thereby to which MHSKFH is a party: (a) are within the entity power of MHSKFH, are not in contravention of Legal Requirements or of the terms of any governing instruments of MHSKFH, as appropriate, and have been duly authorized by all appropriate limited liability company actions, as appropriate; (b) will not violate, conflict with, or constitute on the part of MHSKFH a breach or a default under any existing Legal Requirements or any agreement, indenture, mortgage, or lease to which MHSKFH may be subject; and (c) will not violate any order or judgment of any Governmental Entity to which MHSKFH may be subject.

5.3 Binding Obligations. This Agreement and any other agreements or instruments to which MHSKFH will become a party under this Agreement constitute or will constitute the valid and legally binding obligation of MHSKFH and are or will be enforceable against MHSKFH in accordance with the terms of this Agreement, except as enforceability against MHSKFH may be restricted or limited by any or all of the Enforceability Exceptions.

5.4 Disclosure of Operational Contract that Prohibits or Restricts Competition. MHSKFH acknowledges and agrees that the Real Property is subject to the terms and conditions of, among other agreements, that certain Ground Lease and Space Use Agreement dated July 18, 2005, as amended, between HHSC and Bobby C. Baker, M.D., Inc., which incorporates that certain Letter Agreement between MRHS and Bobby C. Baker, M.D., Inc., dated July 28, 1993, which include certain provisions that prohibit or restrict competition.

ARTICLE VI.
PRE-CLOSING ACTIONS BY THE PARTIES

6.1 Access. MRHS will permit the officers and authorized representatives and agents of MHSKFH reasonable access to the medical staff, employees, and other personnel of the Hospitals, and to the Operational Property and the Books and Records of MRHS and HHSC and of the Hospitals relating thereto, including the right to inspect the same and conduct audits and verifications thereof; provided, however, that: (a) none of the foregoing violates patient or other confidentiality requirements or impairs any other privilege or requirement of confidentiality under contract, HIPAA or HRS ch. 92F (as applicable); and (b) MHSKFH first provides reasonable notice of such access and inspection and conducts the same in such a manner as not to interfere unreasonably with the operation of the Hospitals or the conduct of HHSC and MRHS' business.

6.2 Operations. From the Agreement Date until either the Closing Date or earlier termination of this Agreement before the Closing, HHSC and MRHS shall, with respect to the operation of the Hospitals:

(a) operate the Hospitals in the ordinary course of business in accordance with past practices, so as to maintain those properties and business and to preserve the business organization and the goodwill of customers and suppliers thereof;

(b) not make any material change in personnel, operations, real or personal property, finance or accounting policies (unless required to adopt such changes (with respect to finance or accounting policies));

(c) perform all of their material obligations under agreements relating to or affecting the operations of the Hospitals;

(d) keep in full force and effect present Insurance Policies set forth on **Schedule 4.13** or other comparable self-insurance;

(e) use commercially reasonable efforts to maintain and preserve current business organizations, retain present employees at the Hospitals and maintain relationships with physicians, suppliers, customers, Residents, and others having business relationships with the Hospitals;

(f) maintain relationships with physicians, medical staff members, suppliers, patients and others having business relations with the Hospitals, and permit and allow reasonable access by MHSKFH to establish relationships with physicians, medical staff and others having business relations with MRHS;

(g) retain the provider numbers for participation in the Governmental Programs and Private Programs, cooperate with MHSKFH to file the required CMS Form 855As needed to transfer the provider numbers to MHSKFH as of the Transfer Completion Date, and advise MHSKFH promptly of any notices received concerning the Hospitals regarding (i) audits, requests for Patient Medical Records related to or as an indicator of a potential audit, or other contacts or inquiries from representatives of any Governmental Entity relating to billing practices, including Medicare, Medicaid, or OCR, (ii) audits from any payor, or (iii) any settlements, prospective settlements, compromises or other agreements;

(h) continue to maintain and repair, as needed, the Leased Property so that the Hospitals may continue to operate in substantially the same manner as they operate on the Agreement Date, provided that neither HHSC nor MRHS shall be required to undertake any improvement projects with the exception of Pending Projects;

(i) perform all of their obligations under the Assumed Contracts;

(j) comply in all material respects with all Legal Requirements applicable to the conduct of the Hospitals and use of the Operational Property;

(k) pay the debts, Taxes and other obligations of the Hospitals, including the Hospital Debt, when due;

(l) maintain the Books and Records of the Hospitals in accordance with past practice; and

(m) to the extent applicable, correct any requirements for improvement cited by any Governmental Entity, The Joint Commission, or other accrediting agency, in the most recent surveys conducted by each or develop and timely implement evidence of standards compliance that is acceptable to any Governmental Entity, The Joint Commission or other accreditation agency.

6.3 Notice of Change in Operations. From the Agreement Date until either the Closing Date or earlier termination of this Agreement before the Closing, MRHS agrees to give at least fifteen (15) Business Days advance written notice to MHSKFH, if MRHS intends to engage, directly or indirectly, in any transactions that are out of the ordinary course of business, including the following:

(a) increasing compensation payable or to become payable or making any bonus payment to or otherwise enter into one or more bonus agreements with any employee, physician or agent of the Hospitals, except in the ordinary course of business in accordance with MRHS' customary personnel policies;

(b) mortgaging, pledging, selling, leasing or otherwise transferring rights in any of its assets that, individually or in the aggregate, exceed $10,000, other than a sale or lease in the ordinary course of business and consistent with past practices;

(c) acquiring or selling, assigning, leasing, or otherwise transferring or disposing of any Leased Property;

(d) acquiring (whether by purchase or lease) or selling, assigning, leasing, or otherwise transferring or disposing of any personal property, fixtures or equipment valued at more than $10,000, except in the ordinary course of business with comparable replacement thereof;

(e) reducing Inventory, except in the ordinary course of business;

(f) executing a contract or commitment that is not terminable by MRHS without cause or penalty upon twelve months or less prior written notice or that creates an obligation or commitment resulting in projected annual payments exceeding $10,000, or amending or terminating any existing written contract under which it has received or is expected to receive annual revenue exceeding $10,000, or terminating a written contract other than in accordance with its terms;

(g) settling or initiating any litigation relating to or affecting the Hospitals where the amount in controversy exceeds $50,000;

(h) settling any dispute or threatened dispute with a Governmental Entity, Governmental Program, or Private Program regarding the Hospitals in a manner that would adversely affect MHSKFH; or

(i) incurring any indebtedness or making any loans, which individually or in the aggregate exceed $10,000.

After providing advance notice to MHSKFH of any of the foregoing actions and before taking the action, HHSC or MRHS, as applicable, shall enter into meaningful discussions with MHSKFH regarding the action and, as reasonably requested by MHSKFH, MRHS may provide supporting documentation of the intended benefit or expected cost thereof.

6.4 Regulatory Approvals; Consents; Transfer of Provider Numbers. Before Closing, each Party will cooperate in good faith with the other Parties to obtain, as promptly as practicable, all approvals, authorizations, and clearances of Governmental Entities required for MHSKFH to acquire outright or the right to use the Operational Property and all Licenses required to operate the Hospitals as currently operated by HHSC and MRHS. Each Party shall use reasonable efforts to obtain, as promptly as practicable, all approvals, authorizations, and clearances of Governmental Entities required by said Party under Legal Requirements to consummate the Transactions, including approval of the Governor of the State and the State Attorney General. MHSKFH and Transferors also will cooperate concerning all necessary third-party consents and any other conditions to Closing, and with the preparation, review, and approval of the other Closing documents. HHSC, MRHS, and MHSKFH shall cooperate in preparing and contemporaneously filing the CMS forms needed to transfer the Hospitals' provider numbers to MHSKFH. Each Party will bear its own costs and expenses associated with obtaining all approvals, authorizations, and clearances of Governmental Entities (if any) required of such Party (or its Affiliates or other third parties) under Legal Requirements, to consummate the Transactions.

6.5 Additional Financial Information. Within thirty (30) days following the end of each calendar month before Closing, HHSC or MRHS will deliver to MHSKFH true and complete copies of the unaudited balance sheets and the related unaudited statements of revenues and expenses of the Hospitals (if any) that have been prepared by HHSC or MRHS for each month ending after the date of the Financial Statements, which will be prepared in accordance with GAAP and fairly present in all material respects the financial condition and results of operations of the Hospitals as of the dates indicated thereon and for the periods referred to therein. Within sixty (60) days of the Agreement Date, HHSC or MRHS shall advise MHSKFH in writing if there has been any action, event, occurrence, development, transaction, commitment, dispute, change, violation, inaccuracy, or other condition (financial or otherwise) of any character (whether or not in the ordinary course of business) since the Balance Sheet Date that can reasonably be expected to have, individually or in the aggregate, a Hospital Material Adverse Effect, including whether HHSC, MRHS or any Hospital has done or experienced any of the following (a) through (l):

(a) Suffered any material damage, destruction, or loss with respect to or affecting any of the Operational Property.

(b) Sold, transferred, or otherwise disposed of any of the Operational Property having a net book value in excess of $15,000 except in the ordinary course of business.

(c) Granted or incurred any obligation for any increase in the compensation of any employee who is employed at the Hospital (including any increase under any bonus, pension, profit-sharing, retirement, or other plan or commitment), except in the ordinary course of business.

(d) Made any change in any method of accounting or accounting principle, practice, or policy.

(e) Suffered, directly or indirectly, any material change in the operations, financial condition, assets, income, or business of or related to the Hospital.

(f) Suffered, directly or indirectly, any labor dispute, event, or condition of any character that materially and adversely affected or interfered with the operations of the Hospital.

(g) Suffered, directly or indirectly, any changes in the composition of the medical staff of the Hospital, other than normal turnover occurring in the ordinary course of business.

(h) Made any changes in the rates charged by the Hospital for its services, other than those made in the ordinary course of business.

(i) Made any adjustments or write-offs of accounts receivable or reductions in reserves for accounts receivable other than in the ordinary course of business.

(j) Taken any other action neither in the ordinary course of business not provided for in this Agreement.

(k) Paid or agreed to pay any personal damages, fines, penalties, or other amounts with respect to actual or alleged violation of any Legal Requirements.

(l) Encumbered any of the Transferred Interests other than a Permitted Encumbrance.

6.6 Information Technology. MHSKFH shall develop and implement a functional information technology platform to enable it to successfully operate the Hospitals after the Transfer Completion Date, which will comply in all material respects with the applicable provisions of 42 C.F.R. Part 495 and 45 C.F.R. Part 170, or shall negotiate with HHSC to reach a mutually agreeable alternative transition arrangement for MHSKFH to use the HHSC EMR.

6.7 Exclusivity. The Parties continue to be bound by the terms of that certain Exclusivity Agreement until the Closing (or such earlier proper termination of the Exclusivity Agreement).

6.8 Completion of Schedules; Schedules Supplements. The responsible Parties shall complete the Schedules within the time periods set forth in this Agreement ("***Schedule Due Date***"). From time to time up until thirty (30) Business Days before the Closing, Transferors have the right (but not the obligation) to supplement or amend the Schedules with respect to any matter hereafter arising or of which it becomes aware after the Agreement Date or applicable Schedule Due Date (each a "***Schedule Supplement***"), and each such Schedule Supplement is deemed to be incorporated into and to supplement and amend the Schedules as of the Closing Date. Any updates shall be clearly marked as such, any changes to the original Schedules shall be clearly identified, and any changes to the original Schedules shall relate only to items or events occurring after the date of this Agreement or the applicable Schedule Due Date. If a Transferor Schedule or Schedule Supplement reflects, individually or in the aggregate, matters that are or may be material to the business or operations of the Hospitals or the Transferred Interests or otherwise significantly negatively impact the financial terms of the Transactions, then MHSKFH has the option, in its sole discretion, to terminate the Agreement under **Section 10.2**. If MHSKFH elects not to terminate this Agreement as a result of a Schedule Supplement and elects to consummate the Transactions, the Schedule Supplement(s) replace(s), in whole or in part as the case may be, the Schedule(s) previously delivered under this Agreement for all purposes and effects.

6.9 Termination Cost Reports. HHSC shall file all Government Program and Private Program termination cost reports required to be filed as a result of the consummation of Transactions, and, if requested, MHSKFH shall reasonably cooperate with HHSC to facilitate such filings. All such termination cost reports shall be filed by HHSC in accordance with all Legal Requirements. HHSC will be solely responsible, financially and otherwise, for the contents of all such termination cost reports. Without limiting the generality of the foregoing, HHSC will be solely obligated for all cost report deficiencies related to periods prior to the Transfer Completion Date.

6.10 Notification of Loss; Risk of Loss. The risk of loss or damage to the Transferred Interests remains with Transferors until the Transfer Completion Date, and Transferors shall maintain Insurance Policies covering the Transferred Interests and all other Operational Property

through the Transfer Completion Date in accordance with **Schedule 4.13**. If any material part or portion of the Transferred Interests or other Operational Property is damaged, condemned, lost, or destroyed before the Transfer Completion Date, Transferors shall notify MHSKFH as soon as possible of such damage, loss, or destruction.

6.11 Closing Conditions. Before Closing, Transferors shall use reasonable efforts (and, to the extent necessary, shall cause its Affiliates to use reasonable efforts) to cause the conditions specified in **Articles VI, VII and VIII** over which Transferors have reasonable control to be satisfied as soon as reasonably practicable, but in any event before Closing. Before Closing, MHSKFH shall use reasonable efforts to cause the conditions specified in **Articles VI and IX** over which MHSKFH has reasonable control to be satisfied as soon as reasonably practicable, but in any event before Closing.

ARTICLE VII.
APPROPRIATION CONTINGENCY

The Parties recognize that Transferors' obligations under **Section 8.8 of Article VIII, Section 10.5** of **Article X,** and **Sections 13.1 and 13.2 of Article XIII** are contingent obligations that are subject to appropriation by the Hawaii legislature of sufficient funds specifically and expressly appropriated therefor and shall not be due and payable until such funds are available following legislative appropriation. The Parties also recognize that future legislatures may amend Act 103, and that Transferors' obligations under **Article XIII** are contingent on the current provisions of HRS §§ 323F-58 and 323F-59 not being amended for at least the first ten years of the term of the Agreement. Whenever payment obligations under this Agreement are subject to appropriation by the State of Hawaii legislature of sufficient funds and the availability of funds following legislative appropriation, Transferors agree that consistent with all applicable Legal Requirements, they will utilize all available methods and take such actions as may be reasonably required to secure funding to support the operational and capital needs of the Hospitals. If Transferors become aware of circumstances that lead them to conclude that that MHSKFH is unlikely to receive the support set forth in **Sections 13.1** or **13.2** of **Article XIII**, Transferors shall immediately notify MHSKFH of such conclusion, the rationale for such conclusion, and the amounts by which Transferors reasonably expect payments to MHSKFH will fall short of the support set forth in **Sections 13.1** or **13.2** of **Article XIII**. Nothing contained in this **Article VII** shall limit MHSKFH's rights under this Agreement, including its right to terminate or partially terminate this Agreement under **Article X**, its right to reduce services pursuant to **Section 2.6(d)**, or its right to offset payments otherwise due to Transferors under this Agreement or the Lease.

ARTICLE VIII.
CONDITIONS PRECEDENT TO MHSKFH'S OBLIGATIONS

The obligations of MHSKFH under this Agreement are subject to satisfaction, on or before the Closing Date, of all of the conditions precedent set forth in this **Article VIII**, any of which may be waived in writing by MHSKFH.

8.1 Covenants. Transferors shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants and

agreements required by this Agreement to be performed or complied with by them at or prior to the Closing pursuant to the terms hereof.

8.2 Representations. The representations of Transferors contained in this Agreement shall be true and correct in all material respects (i) on and as of the date of this Agreement, to the extent such representations speak only as of an earlier date (in which case they shall be true and correct in all material respects as of such date), or (ii) otherwise as of the Closing Date, except where the failure of such representations to be so true and correct would not, individually or in the aggregate, have a Hospital Material Adverse Effect.

8.3 Actions or Proceedings. No order, ruling, or judgment of any Governmental Entity shall remain in effect that restrains, enjoins, or otherwise prohibits the completion of the Transactions. As of the Closing Date, no action or proceeding before any Governmental Entity shall have been instituted and remain in effect that seeks to restrain or prohibit the Parties from performing under the Agreement, except for the matters set forth on **Schedule 8.3**, which shall be mutually agreed upon by the Parties within forty-five (45) days of the Agreement Date.

8.4 Approvals by Governmental Entities; Licenses. All required approvals, authorizations, licenses, certifications and clearances of Governmental Entities required for the consummation of the Transactions, in each case as set forth on **Schedule 8.4**, shall have been obtained by the applicable Transferor. All declarations or filings with any Governmental Entity legally required for the consummation of the Transactions, in each case as set forth on **Schedule 8.4**, shall have been filed by the applicable Transferor. The Parties shall mutually agree on the content of **Schedule 8.4** (and responsible Party) within forty-five (45) days of the Agreement Date.

8.5 Material Approvals and Consents. MHSKFH shall have received evidence reasonably satisfactory to it that the consents, approvals, or authorizations described set forth on **Schedule 8.5**, which **Schedule 8.5** shall be completed by MHSKFH at least forty-five (45) days prior to the Closing Date, have been obtained by the applicable Transferor.

8.6 Release of Encumbrances. MHSKFH shall have received evidence reasonably satisfactory to it that all Encumbrances filed of record against the Transferred Interests other than the Permitted Encumbrances will be released as of the Transfer Completion Date. At least ten (10) Business Days before Closing, Transferors shall deliver to MHSKFH UCC financing statement searches, together with evidence reasonably satisfactory to MHSKFH of the full release at Closing of all Encumbrances on the Transferred Interests noted thereon (or a binding written agreement in a form reasonably acceptable to MHSKFH to release the same upon payment), except for the Permitted Encumbrances.

8.7 Working Capital. MHSKFH shall have received (i) the Working Capital or (ii) its equivalent in the amount set forth on **Schedule 1.163**, by appropriation from the Legislature, deposited to an account designated by MHSKFH.

8.8 Year 1 Subsidies. MHSKFH shall have received evidence satisfactory to it that sufficient appropriations have been made for MHSKFH's first year's operations of and capital needs for the Maui Region Hospitals.

8.9 Funding for Pending Projects. MHSKFH shall have received evidence reasonably satisfactory to it that (i) all required payments have been made by Transferors prior to the Closing Date that are due and payable to honor and support all of the Pending Projects, (ii) sufficient funds have been appropriated and released to complete all Pending Projects, and (iii) Transferors have taken all necessary actions to facilitate the completion of the Pending Projects after the Transfer Completion Date in accordance with the project completion schedules.

8.10 Inventory. HHSC and MRHS shall have taken all actions necessary to transfer the Inventory to MHSKFH as of the Transfer Completion Date, and the Inventory shall consist of a quality and quantity usable and saleable in the ordinary course of business except for obsolete items and items of below standard quality, all of which have been written off or written down to net realizable value. Within five (5) days prior to the Closing Date, MHSKFH and HHSC or MRHS shall conduct a physical inventory of the Inventory on hand at the Hospitals to confirm that the Inventory has not been depleted below aggregate levels as reflected on **Schedule 1.74.** If the Inventory is less than the Inventory as reflected on **Schedule 1.74,** prior to the Closing Date, the HHSC and MRHS shall have replenished such useable Inventory in a manner acceptable to MHSKFH.

8.11 Medicaid Supplemental Payments. MHSKFH shall have received evidence satisfactory to it that the State is working diligently to secure Medicaid Supplemental Payments or alternative federal financial participation, if any.

8.12 Consultation with Unions. Prior to Closing, in accordance with HRS § 323F-57(a), HHSC shall have met with the Unions to discuss the impact of the Transactions on Union employees and the feasibility of tempering the adverse effect of layoffs by amending the employees' collective bargaining agreements pursuant to HRS § 89-8.5.

8.13 Capital Leases. HHSC must document, to MHSKFH's reasonable satisfaction, that all of the requirements to (i) the use of the property subject to the Capital Leases or (ii) to the prepayment or the defeasance of the HHSC's obligations to make lease payments under the Capital Leases, have been met. HHSC must document, to MHSKFH's reasonable satisfaction, that all steps necessary to preserve the exemption from gross income for federal income tax purposes of interest on, or the interest component of, HHSC debt obligations related to the Maui leased facilities have been taken. HHSC must reaffirm that it will take no action after the Transfer Completion Date which might adversely affect the exemption from gross income for federal income tax purposes of interest on, or the interest component of, HHSC debt obligations related to the Maui leased facilities.

8.14 Transfer/Termination of the Hospitals' Provider Numbers. In accordance with **Section 6.4**, in coordination with MHSKFH, HHSC and MRHS shall have filed the CMS forms/termination notice needed to transfer the Hospitals' provider numbers to MHSKFH, and the Parties shall have received the tie-in notice for the change of ownership as of the Closing Date or the Parties shall have reached a mutually agreeable arrangement under the TSA for MHSKFH to continue to bill under HHSC's provider numbers until the tie-in notice is received.

8.15 Evidence of Private Program Notices. MHSKFH shall have received evidence satisfactory to it that executed notices of the transfer of the Hospitals have been furnished to all Private Programs, in a form reasonably acceptable to MHSKFH.

8.16 Evidence of Extended Reporting Program Policy. MHSKFH shall have received evidence satisfactory to it that HHSC has obtained an Extended Reporting Program Policies in accordance with the terms set forth in **Section 11.1(b)**.

8.17 Medical Staff Bylaws. In order to facilitate the prompt and efficient transition of the Hospitals' medical staff in compliance with applicable Legal Requirements the following shall occur not later than May 1, 2016: Either (i) each of the current medical staff bylaws of the Maui Regions Hospitals shall have been amended by the Medical Staff of the applicable Maui Region Hospital to MHSKFH's satisfaction and approved by the Board of MHSKFH as medical staff bylaws of the new medical staff for the applicable Hospital; or (b) MHSKFH shall appoint an ad hoc committee of physicians and others to make recommendations for new medical staff bylaws for each of the Hospitals and same shall be approved and adopted by the Board of MHSKFH as medical staff bylaws of the new medical staff for the applicable Hospital.

8.18 No Material Adverse Effect. There shall not have been an event, occurrence, development, fact, condition, circumstance, change or effect that constitutes a Hospital Material Adverse Effect.

8.19 Signing and Delivery of Instruments. HHSC or MRHS shall have delivered or caused to be delivered to MHSKFH each of the following instruments and documents required to be executed and delivered by Transferors and such other ancillary agreements or documents as are necessary to consummate the Transactions:

(a) The Lease fully executed by the applicable Transferors, together with such ancillary documents as may be required under the Lease.

(b) A General Assignment, Conveyance, and Bill of Sale in a form mutually agreed upon by the Parties prior to the Closing and attached as **Exhibit G** fully executed by the applicable Transferors, conveying to MHSKFH good and marketable title to all tangible assets that are a part of the Transferred Interests and valid title to all intangible assets that are a part of the Transferred Interests, free and clear of all Encumbrances other than Permitted Encumbrances.

(c) The Assignment and Assumption Agreement fully executed by the applicable Transferors.

(d) The Resident Trust Funds Assignment fully executed by the applicable Transferors.

(e) The Admission Agreement Assignment, fully executed by the applicable Transferors.

(f) The TSA fully executed by the applicable Transferors.

(g) An attestation that, as of the Closing Date, no Capital Lease is in default and that all payments due and payable as of the Closing Date have been made.

8.20 Information Technology. MHSKFH shall have implemented a functional information technology platform which will enable it to successfully operate the Hospitals or the Parties have reached a mutually agreeable alternative transition arrangement for MHSKFH to use the HHSC EMR.

8.21 Effect of Failure to Meet Conditions. If any of the conditions of **Article VIII** have not been satisfied as of the Closing Date, MHSKFH may (a) terminate this Agreement as set forth in **Section 10.2** below; (b) waive any one or more of the conditions, which waiver shall be effected only by MHSKFH's express written notice to Transferors, given on or before the Closing Date; or (c) after consulting with Transferors, extend any agreed upon Closing Date and Transfer Completion Date as reasonably necessary by written notice to Transferors. The Parties may also mutually agree to an appropriate extension of the Closing Date to allow the satisfaction of the applicable condition.

ARTICLE IX.
CONDITIONS PRECEDENT TO TRANSFERORS' OBLIGATIONS

The obligations of Transferors under this Agreement are subject to satisfaction on or before the Closing Date, of all of the conditions precedent set forth in this **Article IX**, any of which may be waived in writing by Transferors:

9.1 Covenants. MHSKFH shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing pursuant to the terms hereof.

9.2 Representations. The representations of MHSKFH contained in this Agreement shall be true and correct in all material respects (i) on and as of the date of this Agreement, to the extent such representations speak only as of an earlier date (in which case they shall be true and correct in all material respects as of such date), or (ii) otherwise as of the Closing Date, and except where the failure of such representations to be so true and correct would not, individually or in the aggregate, have a MHSKFH Material Adverse Effect.

9.3 Actions or Proceedings. No order, ruling, or judgment of any Governmental Entity shall remain in effect that restrains, enjoins, or otherwise prohibits the completion of the Transactions. As of the Closing Date, no action or proceeding before any Governmental Entity shall have been instituted and remain in effect that seeks to restrain or prohibit the Parties from performing under the Agreement, except for the matters set forth on **Schedule 9.3**, which shall be mutually agreed upon by the Parties within forty-five (45) days of the Agreement Date.

9.4 Approvals by Governor. This Agreement and the Lease must have been approved or otherwise consented to, in writing, by the Governor of the State.

9.5 Approvals by Governmental Entities; Licenses. All required approvals, authorizations, licenses, certifications and clearances of Governmental Entities, required to

consummate the Transactions, shall have been obtained. All declarations or filings with any Governmental Entity legally required for the consummation of the Transactions, in each case as set forth on **Schedule 9.5**, shall have been filed. The Parties shall mutually agree on the content of **Schedule 9.5** (and responsible Party) within forty-five (45) days of the Agreement Date.

9.6 Transfer of the Hospitals' Provider Number. In accordance with **Section 6.4**, in coordination with Transferors, MHSKFH shall have filed the required CMS forms to assume the Hospitals' provider numbers.

9.7 Line of Credit. MHSKFH shall have provided evidence reasonably satisfactory to Transferors that it will have available as of the Closing Date a Thirty Million Dollar ($30,000,000) line of credit for the operation of the Maui Region Hospitals.

9.8 Other Instruments and Documents. MHSKFH shall have executed and delivered to Transferors each of the following instruments and documents required to be delivered to Transferors under and such other ancillary agreements or documents as are necessary to consummate the Transactions:

(a) The Lease fully executed by MHSKFH, together with such ancillary documents as may be required under the Lease.

(b) The Assignment and Assumption Agreement fully executed by MHSKFH.

(c) The Resident Trust Funds Assignment fully executed by MHSKFH.

(d) The Admission Agreement Assignment fully executed by MHSKFH.

(e) The TSA fully executed by MHSKFH.

9.9 Proof of Insurance. MHSKFH shall have provided evidence reasonably satisfactory to HHSC that MHSKFH has procured or otherwise secured, at its sole cost and expense, the types and minimum amounts of insurance coverage required under the Lease.

9.10 Information Technology. MHSKFH shall have implemented a functional information technology platform which will enable it to successfully operate the Hospitals or the Parties have reached a mutually agreeable alternative transition arrangement for MHSKFH to use the HHSC EMR.

9.11 Effect of Failure to Meet Conditions. If any of the conditions of **Article IX** have not been satisfied as of the Closing Date to Transferors reasonable satisfaction, Transferors may (a) terminate this Agreement by written notice to MHSKFH as set forth in **Section 10.2** below; (b) waive any one or more of the conditions, which waiver shall be effected only by Transferors express written notice to MHSKFH, given on or before the Closing Date; or (c) after consulting with MHSKFH, extend any agreed upon Closing Date and Transfer Completion Date as reasonably necessary by written notice to MHSKFH. The Parties may also mutually agree to an appropriate extension of the Closing Date to allow the satisfaction of the applicable condition.

ARTICLE X.
TERM AND TERMINATION

10.1 Term. The term of the Agreement shall be for a period of thirty (30) years ("***Initial Term***") beginning on the Transfer Completion Date unless sooner terminated as provided in this **Article X**. After the end of the Initial Term, the Agreement may be renewed by MHSKFH for two successive ten (10) year renewal terms (each a "***Renewal Term***,") upon at least three hundred and sixty-five (365) days advance written notice to the State prior to the end of the Initial Term or the Renewal Term, if applicable, provided that MHSKFH is not in material default of the of the Agreement beyond the applicable cure period. The Initial Term, together with any Renewal Terms, shall constitute the "***Term***" of this Agreement.

10.2 Pre-Closing Termination of the Agreement and Effect.

(a) This Agreement may be terminated before Closing in the following circumstances: (i) upon mutual written consent; (ii) by MHSKFH, if (without any material breach by MHSKFH of any of its obligations under this Agreement) compliance with any condition set forth in **Article VIII** becomes impossible, and such failure of compliance is not waived by MHSKFH; (iii) by Transferors, if (without any breach by Transferors of any of their obligations under this Agreement) compliance with any condition set forth in **Article IX** becomes impossible, and such failure of compliance is not waived by Transferors; or (iv) by MHSKFH prior to Closing upon the discovery during the due diligence process or otherwise of any change, development, circumstance, occurrence, event, fact or effect that, in MHSKFH's reasonable opinion, has had, or would reasonably be expected to (A) have a significant adverse impact on the operations, assets or financial condition of a Hospital or on MHSKFH (including, without limitation, if the operating margin is reasonably likely to be lower than the Minimum Margin) or (B) materially delay or impair the ability of MHSKFH to perform its obligations under the Agreement. In addition, this Agreement may be terminated by any Party upon two (2) days prior written notice provided that such notice is given on or before January 31, 2016. A Party shall give notice of its intent to terminate this Agreement under this **Section 10.2** to the other Parties by April 22, 2016, provided that the Parties recognize that notice would be delivered at a later date in the following circumstances: (1) in the event of a subsequent notice of a material change in operations under **Section 6.3** that would have a significant adverse impact on the operations, assets or financial condition of a Hospital or on MHSKFH; (2) Transferors have not completed the Schedules in accordance with the timeframes set forth in this Agreement or March 22, 2016, whichever is later; (3) in the event of a subsequent delivery of a Schedule Supplement under **Section 6.8** that discloses a circumstance that would have a significant adverse impact on the operations, assets or financial condition of a Hospital or on MHSKFH; (4) Transferors have not cooperated with MHSKFH to complete due diligence before April 22, 2016 in accordance with the standards set forth in **Section 2.9;** or (5) compliance with a Closing condition becomes impossible after April 22, 2016.

(b) In the event of any termination of this Agreement before the Closing Date under this **Section 10.2**, this Agreement will thereupon become void and of no effect, no Party will have any liability to any other Party arising out of such termination, and no Party will have any further rights or obligations under this Agreement, except for the obligations of the Parties contained in (i) this **Section 10.2**, (ii) **Section 12.9** (Confidentiality), **Section 12.10** (Costs of

Contemplated Transaction), **Section 14.1** (Expenses to Enforce Agreement), **Section 14.2** (Notice), **Section 14.5** (Governing Law), and **Section 14.14** (Entire Agreement), and any related definitional provisions set forth in this Agreement.

10.3 Post-Closing Termination of the Agreement.

(a) **Termination Upon Termination of the Lease.** This Agreement will automatically terminate upon the effective date of any termination or expiration of the Lease.

(b) **Termination Upon Judicial Determination that Agreement is Not Valid.** This Agreement may be terminated at any time by either Party if any Party or a third party obtains a nonappealable judgment from a court of competent jurisdiction denying the validity or enforceability of this Agreement.

(c) **Additional Grounds for Termination by MHSKFH**. MHSKFH may, in its discretion, terminate the Agreement in its entirety upon at least three hundred and sixty-five (365) days prior written notice to Transferors for good cause, including the following:

(i) Upon a material breach of this Agreement by Transferors (other than a Funding Differential addressed in **Section 10.3(c)(ii)**), MHSKFH shall have the right to terminate this Agreement as set forth in this section if MHSKFH has first served upon Transferors written notice describing in detail the claimed breach or default, and if the breach or default is not cured within ninety (90) calendar days after MHSKFH gives written notice of the breach specifying the nature of the alleged breach; provided however, that if such breach is not reasonably curable within such ninety (90) day period, and Transferors are diligently attempting to cure such breach, then Transferors shall have an additional ninety (90) days to continue to pursue such cure before the Agreement may be terminated as set forth in this section. Upon such a cure being effected within the applicable period set forth in this **Section 10.3(c)**, MHSKFH's rights to terminate shall cease and the Agreement will continue in full force and effect.

(ii) Upon a Funding Differential that is not cured within ninety (90) calendar days, provided that the Parties shall first meet and confer and negotiate in good faith to determine whether a process exists to remedy such Funding Differential in a reasonable timeframe and on such other terms as are acceptable to MHSKFH;

(iii) The occurrence of any Extraordinary Event has a significant adverse impact on the operations, assets or financial condition of a Hospital or on MHSKFH, including, without limitation, if the actual audited operating margin is lower than the required Minimum Margin;

(iv) Any change in general business, economic or market conditions that results in a significant adverse impact on the operations, assets or financial condition of a Hospital or MHSKFH, including, without limitation, if the actual audited operating margin is lower than the required Minimum Margin;

(v) Any violation of the Healthcare Laws by Transferors prior to the Transfer Completion Date has had, or would reasonably be expected to have a significant

adverse impact on the operations, assets or financial condition of a Hospital or MHSKFH, including, without limitation, if the actual audited operating margin is lower than the required Minimum Margin;

(vi) The occurrence of any other event or circumstance beyond the control of MHSKFH that changes the underlying financial assumptions, models, or internal or published projections or predictions regarding the operations of the Hospitals in a manner to result in a significant adverse impact on the operations, assets or financial condition of a Hospital or MHSKFH, including, without limitation, if the actual audited operating margin is lower than the required Minimum Margin;

(vii) The intentional or grossly negligent disclosure of confidential MHSKFH Materials by Transferors in violation of **Sections 12.9** of this Agreement that diminishes or destroys the value to MHSKFH or Kaiser Permanente of the disclosed MHSKFH Materials.

(viii) The failure of Transferors to satisfy all of their insurance obligations set forth in **Section 11.1,** which results in the inability of MHSKFH to safely and effectively offer services at one or more Hospitals;

(iv) The breach by Transferors of their obligations under **Section 12.15(a)** of this Agreement; or

(ix) The failure of the Parties to amend or modify the affected term or terms of this Agreement to remedy the impact of the Material Regulatory Change in a manner that complies with applicable Legal Requirements and substantially maintains the then-existing economic and other core arrangements set forth herein to the reasonable satisfaction of MHSKFH.

(d) **Partial Termination.** In lieu of terminating this entire Agreement, in the event of a termination event under **Section 10.3(c)(i), (c)(ii), (c)(iii),** or **(c)(v)**, MHSKFH, after consultation with Transferors, may, upon at least three hundred and sixty-five (365) days written notice, proceed with a Partial Termination of the Agreement.

(e) **Termination by Transferors**. Transferors may, in their sole discretion, terminate the Agreement upon at least three hundred and sixty-five (365) days written notice to MHSKFH for good cause, including the following:

(i) If MHSKFH files a voluntary petition in bankruptcy, or is adjudicated as bankrupt or insolvent, or files any petition or other pleading seeking any reorganization, composition, readjustment, liquidation or similar relief for itself under any present or future law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of it or of all or any substantial part of its assets or of the Hospitals, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;

(ii) MHSKFH fails to maintain any material License that is necessary for the management and operations of the Hospitals provided that such failure is not attributable to a Funding Differential;

(iii) The abandonment or discontinuation of operation by MHSKFH of all three of the Hospitals, except in the event of a Funding Differential or as otherwise authorized under this Agreement, which continues for a period of thirty (30) days or more;

(iv) In the event that MHSKFH is suspended, excluded, debarred, sanctioned, restricted or limited from participation in any Governmental Program; or

(v) Upon a material breach of this Agreement by MHSKFH, Transferors shall have the right to terminate this Agreement as set forth in this section if Transferors have first served upon MHSKFH written notice describing in detail the claimed breach or default, and if the breach or default is not cured within ninety (90) calendar days after Transferors gives written notice of the breach specifying the nature of the alleged breach; provided however, that if such breach is not reasonably curable within such ninety (90) day period, and MHSKFH are diligently attempting to cure such breach, then MHSKFH shall have an additional ninety (90) days to continue to pursue such cure before the Agreement may be terminated as set forth in this section. Upon such a cure being effected within the applicable period set forth in this **Section 10.3(e)**, Transferors' rights to terminate shall cease and the Agreement will continue in full force and effect.

10.4 Conduct of Parties During Transition Period. During the Transition Period:

(a) The Parties shall continue to abide by the terms and obligations set forth in the Agreement, and shall take such actions as are necessary to wind up their activities under this Agreement in an orderly manner.

(b) Transferors shall develop a plan for the orderly transfer of Patient Medical Records from MHSKFH to Transferors as of the Termination Date; and

(c) Except in the event of a termination by Transferors under **Section 10.3(e)(iv) or Section 10.3(e)(i)-(iii),** any costs associated with transferring information from the KP EMR or other Kaiser Permanente information technology systems to Transferors' system(s) shall be at the sole expense of Transferors. Each Party shall bear any other costs incurred by such Party associated with preparing for the transfer of all management and operations of the Hospitals back to Transferors, provided that MHSKFH shall not be required to pay any fees or penalties required to sell, transfer, or assign any rights, title or interest in any Reverted Property to Transferors under **Section 10.5**.

10.5 Effect of Termination. It is the Parties' intent that the winding down of this Agreement be completed in a substantially similar manner and with the same spirit that the Parties completed their respective obligations and satisfied their respective conditions precedent for Closing. If this Agreement is terminated after the Closing, then the following obligations apply as part of the winding down of the Agreement:

(a) As of the Termination Date, MHSKFH shall transfer, and the State (or its designee) shall assume and take over all operations of the Hospitals, with all Parties exercising commercially reasonable efforts to minimize the disruption of operations and services to Hospital patients.

(b) Subject to **Sections 10.5(c), 10.5(d) and 10.5(e),** MHSKFH shall sell, transfer or assign, as appropriate, to the appropriate Transferor (or its designee), and the appropriate Transferor (or its designee) shall purchase, receive, or assume, as appropriate:

(i) all rights, title and interest in and to the Reverted Property (excluding the Working Capital, Inventory, and HITECH Payments);

(ii) all rights title and interest to the Post-Closing Working Capital up to and including (but not exceeding) the amount of the Working Capital transferred to MHSKFH as of the Transfer Completion Date;

(iii) all rights, title and interest to the Post-Closing Inventory valued and an amount up to and including (but not exceeding) the amount of Inventory transferred to MHSKFH as of the Transfer Completion Date; and

(iv) all rights, title and interest in and to the Post-Closing Property.

(c) MHSKFH shall not be obligated to transfer (i) any Post-Closing Inventory valued in excess of the Inventory transferred to MHSKFH as of the Transfer Completion Date; or (ii) any Post-Closing Working Capital in excess of the Working Capital transferred to MHSKFH as of the Transfer Completion Date. Additionally, if the Agreement is terminated by MHSKFH under **Section 10.3(c)(ii)**, the Post-Closing Inventory and Post-Closing Working Capital as of the Termination Date shall be reduced to offset any uncorrected Funding Differential for the year in which notice of termination is given. MHSKFH shall then transfer and assign to Transferors the remaining Post-Closing Inventory and Post-Closing Working Capital net the funds required to cover MHSKFH's losses.

(d) To the extent allowed by the Legal Requirements, Transferors (or their designee) shall assume in writing all the then-current liabilities of MHSKFH and all other liabilities of MHSKFH incurred in connection with the performance of the Agreement. In the event Transferors (and any designee) cannot legally assume any liability of MHSKFH, MHSKFH shall cause such liability to be discharged, and may utilize Reverted Property (including Post-Closing Inventory and Post-Closing Working Capital) or Post-Closing Property to obtain sufficient funds to discharge any such liability. MHSKFH shall then transfer and assign to Transferors (or their designee) the remaining operating assets net the funds required to satisfy the liability.

(e) Except as otherwise set forth herein or otherwise mutually agreed upon by the Parties, subject to **Article VII**, on or before the Termination Date, Transferors shall pay to MHSKFH the net book value (*i.e.,* value of the property or asset net of depreciation) of (i) any Post-Closing Property acquired by MHSKFH and (ii) any Reverted Property acquired by MHSKFH at MHSKFH's cost and expense (excluding the

Working Capital, Inventory, and HITECH Payments); provided that any payments due under this **Section 10.5(e)** will be prorated/offset to the extent such Post-Closing Property or Reverted Property was paid for through Capital Subsidies or directly through Operating Subsidies.

(f) If (i) the Agreement (A) expired at the end of the Initial Term or any Renewal Term, or (B) is terminated by MHSKFH under **Section 10.3(c)(iii), (c)(iv), (c)(vi) or (c)(ix)** and (ii) all liabilities of MHSKFH are discharged as of the Termination Date, including any amounts payable under the line of credit described in **Section 13.6**, then any capital asset net book value remaining after the discharge of all liabilities shall be split between the Transferors and KFH.

(g) Notwithstanding the foregoing, after the Transfer Termination Date or expiration of the Agreement (unless the Parties enter into mutually agreeable transition arrangements), the Transferors and Hospitals shall have no rights to (and shall cease using or participating under) (i) any Kaiser Permanente proprietary information or processes, (ii) any Kaiser Permanente company-wide contractual arrangements, (iii) KP EMR or other information technology provided by KFH or MHSKFH under the Agreement, (iv) any MHSKFH Materials, (iv) any property that is not Reverted Property, and (v) any Post-Closing Property not acquired by Transferor under **Sections 10.5(b) and 10.5(c)**.

(h) For twelve (12) months following the Termination Date or such other period as Transferors and MHSKFH shall mutually agree, upon request, HHSC will be granted reasonable access to the underlying records contained in the MHSKFH EMR.

10.6 Effect of Partial Termination. If MHSKFH exercises its rights to terminate its obligations to operate or manage one or two of the Hospitals (each a "***Terminated Hospital***"), then the following obligations apply as part of the winding down of the Agreement with respect to a Terminated Hospital:

(a) As of the effective date of the termination under **Section 10.3(d)** ("***Partial Termination Date***"), Transferors (or their designee) shall assume and take over all operations of the Terminated Hospital. Prior to the Partial Termination Date, the Parties shall collaborate in good faith to develop an orderly transition plan, including the negotiation in good faith of any transition services or other transition arrangements to be performed by one or more of the Parties. Any disputes relating to the transition plan shall be resolved in accordance with **Section 14.7.**

(b) Subject to **Sections 10.6(e) and 10.6(f)**, MHSKFH shall transfer and assign all rights, title and interest in and to the Transferred Interests used exclusively in connection with the operation of the Terminated Hospital to the appropriate Transferor (or its designee) (collectively, the "***Terminated Hospital Reverted Property***");

(c) Subject to **Sections 10.6(e) and 10.6(f)**, MHSKFH shall sell, transfer and assign all rights, title and interest in and to any Post-Closing Property used exclusively in connection with the operation of the Terminated Hospital to the appropriate Transferor

(or its designee) and the appropriate Transferor (or its designee) shall acquire and assume any such rights, title and interest in and to the Post-Closing Property.

(d) Subject to **Section 10.6(e)**, MHSKFH shall assign and return to Transferors (or its designee) certain operating assets and existing operations held by MHSKFH or any of its Affiliates for the exclusive benefit of the Terminated Hospital.

(e) To the extent allowed by the Legal Requirements, Transferors (or their designee) shall assume in writing all the then-current liabilities of MHSKFH pertaining to the operation of the Terminated Hospital and all other liabilities of MHSKFH incurred by MHSKFH in connection with the Post-Closing Property of the Terminated Hospital or the Terminated Hospital Reverted Property. In the event Transferors (or their designee) cannot legally assume any of the foregoing liabilities of MHSKFH, MHSKFH shall cause such liability to be discharged, and may sell, transfer or assign Terminated Hospital Transferred Interests or Post-Closing Property to obtain sufficient funds to discharge any such liabilities. MHSKFH shall then transfer and assign to Transferors (or their designee) the remaining operating assets of the Terminated Hospital net of the funds required to satisfy said liabilities.

(f) On or before the Partial Termination Date, unless the Parties mutually agree otherwise, Transferors (or their designee) shall pay to MHSKFH the net book value (i.e., value of the property or asset net of depreciation) of (i) any Terminated Hospital Post-Closing Property and (ii) any Terminated Hospital Reverted Property acquired by MHSKFH; provided that any payments due under this **Section 10.6(f)** will be prorated/offset to the extent such Terminated Hospital Post-Closing Property or Terminated Hospital Reverted Property was paid for through Capital Subsidies.

(g) Notwithstanding the foregoing, after the Partial Termination Date (unless the Parties enter into mutually agreeable transition arrangements), the Terminated Hospital shall have no rights to (and shall cease using or participating under) (i) any Kaiser Permanente propriety information or processes, (ii) any Kaiser Permanente company-wide contractual arrangements, (iii) KP EMR or other information technology provided by KFH or MHSKFH under the Agreement, (iv) any MHSKFH Materials, (iv) any property that is not Terminated Hospital Reverted Property, and (v) any Terminated Hospital Post-Closing Property not acquired by Transferor under **Section 10.6(b)**.

ARTICLE XI.
INSURANCE

11.1 Insurance Held by Transferors.

(a) Each Transferor shall maintain the Transferor Insurance Policies specified in **Schedule 4.13** in accordance with the types of coverage and limitations set forth on **Schedule 4.13** during the Term of the Agreement. Prior to the Closing, Transferors shall add MHSKFH as an additional insured to the Insurance Policies specified in **Schedule 4.13**, as well as those set forth in Section 11.1(b) below.

(b) Transferors shall obtain, for MMMC, Kula and LCH, insurance covering continuing professional, errors and omissions, and director and officer claims asserted from incidents occurring prior to the Transfer Completion Date, in amounts of not less than $2,000,000 per claim, and $4,000,000 in the aggregate for each such policy. This coverage shall not apply to claims asserted from incidents occurring on or after the Transfer Completion Date. This requirement may be satisfied in whole or in part by a program of self-insurance. If requested by KFH or MHSKFH, Transferors shall name KFH or MHSKFH as an additional insured effective on the Transfer Completion Date, but only with respect to professional and general liability claims arising in the course and scope of MMMC, Kula and LCH operations prior to the Transfer Completion Date ("***Extended Reporting Program Policy or Policies***").

(c) Any Insurance Policies or Extended Reporting Program Policies required under this **Section 11.1** may be carried under blanket policies or self-insurance covering other properties or activities of Transferors, and the terms of such policies shall be acceptable to MHSKFH to satisfy such insurance requirements hereunder.

11.2 Insurance Held by MHSKFH. During the Term of this Agreement, MHSKFH shall maintain such insurance policies as required by the Lease relating to the Leased Property, in accordance with the types of coverage and limitations set forth in the Lease. The procedures for redemption under such insurance policies shall be set forth in the Lease. Any insurance required under the Lease may be carried under blanket policies or self-insurance, and the terms of such policies shall be acceptable to Transferors to satisfy such insurance requirements thereunder.

ARTICLE XII.
FURTHER COVENANTS

12.1 Certain Employee Matters.

(a) ***Unions; Collective Bargaining Agreement.*** MHSKFH will not take assignment of, or be legally or otherwise bound to, the terms and conditions of any CBA or other commitments made between Transferors (or its Affiliates) and Unions, whether in connection with the Transactions or otherwise.

(b) ***Employment Offers; Transition***. Prior to the Closing Date, the Parties will collaborate regarding the timing and content of offers of employment to be extended to Hospital Employees as contemplated by HRS § 323F-57. The terms of employment for Hired Employees will be established by MHSKFH (and its Affiliates and HPMG Maui, as applicable). In accordance with HRS § 323F-57, MHSKFH will take reasonable steps necessary to provide for a smooth transition of employees from State employment to private employment by MHSKFH (or, as applicable, its Affiliates or HPMG Maui) at the Hospitals.

12.2 Medical Staff. In establishing new medical staff organizations for the Maui Region Hospitals under the operation of MHSKFH, every effort will be made to avoid disruption to the current medical staffs of the Maui Region Hospitals and to the operation of the Hospitals. Accordingly, wherever possible, physicians in good standing on the medical staff of one or more of the Hospitals will become members of the medical staff of the Hospital(s) through an expedited process as a result of the Closing of the Transactions; provided, however, that (1)

based on due diligence, certain physicians may not be eligible for expedited credentialing, and (2) pendency of the Closing and consummation of the Transaction will not limit the ability of the Board or medical executive committees of the Hospitals to grant, withhold, or suspend medical staff appointments or clinical privileges in accordance with the terms and provisions of the medical staff bylaws of the Hospitals, as amended or adopted in accordance with **Section 8.17.**

12.3 Submission of Cost Reports.

(a) HHSC shall timely prepare and file all cost reports and all other required reports relating to all Government Programs and other Private Programs for cost reporting years through June 30, 2016 (***"Hospitals' Cost Reports"***). MHSKFH shall prepare and file all cost reports and other required reports relating to all Government Programs and other Private Programs for all periods after the 2016 cost reporting year. MHSKFH shall forward to HHSC any and all correspondence relating to the Accounts Receivable, the Hospitals' Cost Reports or rights to Agency Settlements within five (5) Business Days of receipt by MHSKFH. MHSKFH shall not reply to any such correspondence without HHSC's written approval. HHSC shall retain the right to control the appeal of any Medicare or Medicaid determinations relating to any of the Hospitals' Cost Reports including appeals pertaining to disproportionate share hospital program payments. HHSC shall retain, for the applicable statute of limitations period, the originals of the Hospitals' Cost Reports, correspondence, work papers and other documents relating to the Hospitals' Cost Reports. HHSC and MRHS have provided to MHSKFH true, complete and correct copies of Hospitals' Cost Reports for the years ended June 30, 2013, June 30, 2014 and June 30, 2015 and HHSC shall furnish copies of the Hospitals' Cost Reports, as well as correspondence, work papers and other documents related to the Hospitals' Cost Reports to MHSKFH upon reasonable request, at the sole cost and expense of MHSKFH. After the Closing Date, HHSC will reasonably cooperate with MHSKFH, at the sole cost and expense of MHSKFH, to the extent that MHSKFH has questions about, or otherwise needs pertinent information relating to, the Hospitals' Cost Reports.

(b) HHSC has the right to retain any amounts received related to the Hospitals' Cost Reports. If MHSKFH receives any amounts related to the Hospitals' Cost Reports or any appeal thereof, then MHSKFH shall transfer any such funds to HHSC and MRHS within ten (10) Business Days following receipt of those funds. If HHSC receives any amounts related to the MHSKFH Cost Reports, then HHSC shall transfer any such funds to MHSKFH within ten (10) Business Days following receipt of those funds.

(c) Upon reasonable notice and during normal business office hours, the Parties will cooperate with one another in regard to the preparation and filing of the Hospitals' Cost Reports and any cost reports filed by MHSKFH for the Hospital during the year during which the Closing occurs (***"MHSKFH Cost Reports"***). Upon reasonable notice and during normal business office hours, HHSC and MHSKFH will cooperate with one another in connection with any cost report disputes and/or other claim adjudication matters relative to Government Program reimbursement. Such cooperation shall include, upon the provision of reasonable notice and at the cost of the requesting Party, obtaining files, data and statistics regarding the Hospitals necessary to filing or amending the Hospitals' Cost Reports or the MHSKFH Cost Reports.

12.4 HITECH Payments.

(a) MRHS represents and warrants that it has the necessary documentation, information and reports required pursuant to any attestations or other filings that it has submitted for those Eligible Hospitals and Eligible Professionals (as defined by the HITECH Act's implementing regulations) set forth on **Schedule 12.4** (which **Schedule 12.4** shall be provided by MRHS to MHSKFH within forty-five (45) days of the Agreement Date) prior to the Closing Date to obtain "meaningful use payments," including HIPAA security risk assessments and documentation of compliance with Core Meaningful Use Measures as such terms are referenced in 42 C.F.R. Part 495. MRHS further represents that, to the best of its knowledge, the Hospitals have not failed any "meaningful use" audits, including pre-payment or post-payment audits and that no HITECH Payments have been recouped by CMS at any time prior to the Closing Date. After the Closing Date, MHSKFH will cooperate with Transferors in all reasonable respects in providing documents or data that Transferors reasonably believes is necessary or appropriate to file with respect to receiving HITECH Payments for federal fiscal years ending prior to the Closing Date or to substantiate Transferors' claim for HITECH Payments for such periods, including: (i) making available to Transferors all information and records necessary for the preparation of attestations or other filings with the exception of the HIPAA security risk assessments which MRHS was required to obtain prior to filing the attestation, (ii) providing the reasonable services of MHSKFH's employees as reasonably required to assist Transferors in preparing such reports, (iii) coordinating with Transferors as reasonably required in regards to applicable Medicare and Medicaid conferences or meetings, (iv) providing to appropriate parties, as determined to be reasonably necessary by Transferors, a letter acknowledging that HHSC or MRHS has retained all rights to the HITECH Payments for federal fiscal years ending prior to the Closing Date, that MHSKFH agrees that HHSC or MRHS has the right to pursue such HITECH Payments on MHSKFH's behalf or, as MHSKFH's representative, and that HHSC or MRHS has the right to submit all attestations with respect to such HITECH Payments for such periods, either on HHSC's or MRHS' behalf or, to the extent required by the Legal Requirements, as MHSKFH's representative. MHSKFH shall forward to HHSC or MRHS any and all correspondence relating to HITECH Payments for federal fiscal years ending prior to the Closing Date within ten (10) Business Days after receipt by MHSKFH. In the event that there is any State or Federal audit related to any attestation or other filing contemplated by this **Section 12.4(a)**, MHSKFH shall reasonably cooperate with HHSC with respect to any such audit.

(b) After the Closing Date, HHSC will cooperate with MHSKFH in all reasonable respects in providing pre-Closing documents or data that MHSKFH reasonably believes are necessary or appropriate to file with respect to HITECH Payments for the federal fiscal year during which the Closing occurs and any subsequent year, including (i) making available to MHSKFH all information and records necessary for the preparation of HITECH attestations or other filings, (ii) providing the services of Transferors' employees as required to assist MHSKFH in preparing such reports, (iii) coordinating with MHSKFH in regards to applicable Medicare and Medicaid conferences or meetings, (iv) providing to appropriate parties, as determined to be reasonably necessary by MHSKFH, a letter acknowledging that, as between HHSC, MRHS and MHSKFH, MHSKFH holds all rights to the HITECH Payments for the federal fiscal year during which the Closing occurs, that HHSC and MRHS agree that MHSKFH has the right to pursue such HITECH Payments, either on MHSKFH's behalf or, to the extent required by Law, as Transferors' representative, and that MHSKFH has the right to submit all

attestations with respect to such HITECH Payments for any such period, either on MHSKFH's behalf or, to the extent required by Law, as HHSC's representative. HHSC shall forward to MHSKFH any and all correspondence relating to HITECH Payments for the federal fiscal year during which the Closing occurs (or thereafter) within ten (10) Business Days after receipt by HHSC or MRHS. In the event that there is any state or federal audit related to any attestation or other filing contemplated by this **Section 12.4(b)**, HHSC shall reasonably cooperate with MHSKFH with respect to any such audit.

(c) With respect to HITECH Payments for the federal fiscal year during which the Closing occurs, the Parties agree that, provided that MHSKFH develops and implements a functional information technology platform in compliance with 42 C.F.R. Part 495 and 45 C.F.R. Part 170, such HITECH Payments (including all rights to pursue such payments and/or appeal any decisions regarding such payments) are included in the Transferred Interests and shall become the property of MHSKFH at the Closing.

(d) If MHSKFH or any of its Affiliates receives any HITECH Payments relating solely to federal fiscal years ending prior to the Closing, MHSKFH will pay HHSC an amount equal to such HITECH Payments received by MHSKFH or its Affiliates. If HHSC or MRHS receive any HITECH Payments relating solely to the federal fiscal year during which the Closing occurs (or thereafter), HHSC will pay MHSKFH, subject to MHSKFH's satisfaction of its obligations under **Section 6.6**, an amount equal to such HITECH Payments received by HHSC or MRHS. The applicable party will make all payments that it is required to make under this **Section 12.4(d)** promptly upon of receipt of the applicable payments.

(e) To the extent that MHSKFH is required to refund or repay any portion of the HITECH Payments, including any amounts related to refunds, penalties or interest, that the Hospitals receive with respect to federal fiscal years ending prior to the Closing, HHSC will pay MHSKFH one hundred percent (100%) of any amounts that MHSKFH is required to refund or repay within ten (10) Business Days after MHSKFH refunds or remits such amount to Medicare or Medicaid, as applicable.

(f) Subject to HHSC's (i) Post-Closing compliance with (i) **Sections 12.4(a) and 12.4(b)** and (ii) pre-Closing compliance with applicable requirements for the Hospitals to receive HITECH Payments, MHSKFH is responsible for the refund or repayment any portion of the HITECH Payments, including any amounts related to refunds, penalties or interest, that the Hospitals receive with respect to the federal fiscal year during which the Closing occurs.

12.5 Misdirected Payments. Except as set forth in **Section 12.6**, if any Party receives any amount from patients, any Government Program or Private Program, group purchasing organizations, or suppliers that, under the terms of this Agreement, belongs to another Party, then the Party receiving that amount shall remit within thirty (30) Business Days that full amount to the other Party.

12.6 Straddle Period Services. As of the Transfer Completion Date, MHSKFH intends to take assignment of HHSC's Medicare provider numbers with respect to the Hospitals. To compensate HHSC for services rendered and medicine, drugs, and supplies provided before the Transfer Completion Date at the Hospitals (the "***Straddle Period Services***") with respect to

patients whose medical care is paid for, in whole or in part, under any Government Program that pays on a DRG, case rate or other similar arrangement, and who are admitted to the Hospitals prior to the Transfer Completion Date but who are not discharged until on or after the Transfer Completion Date ("***Government Program Transition Patients***"), the Parties shall take the following action:

(a) As soon as practicable after the Closing Date, HHSC shall deliver to MHSKFH a statement itemizing the inpatient hospital Straddle Period Services provided by HHSC with respect to the operation of the Hospitals prior to the Transfer Completion Date to Government Program Transition Patients. For the Straddle Period Services, MHSKFH shall pay to HHSC an amount equal to the DRG and outlier payments, the case rate payment or other similar payment received by MHSKFH on behalf of a Government Program Transition Patient, multiplied by a fraction (the "***Fraction***"), the numerator of which shall be the total charges for the Straddle Period Services provided to such Government Program Transition Patient by HHSC and the denominator of which shall be the sum of the total charges for the services, medicine, drugs and supplies provided to such Government Program Transition Patient by HHSC plus the total charges for the services, medicine, drugs and supplies provided to such Government Program Transition Patient by MHSKFH on and after the Transfer Completion Date. The Parties shall reconcile the payments within ninety (90) calendar days after both the tentative and final Hospitals' Cost Report settlements and any other payor settlements affecting the Government Program Transition Patients (the "***Reconciliation***").

(b) Subject to **Section 12.6(d)** and receipt of the itemized statement required pursuant to **Section 12.6(a)** (the "***Itemized Statement***"), payments made pursuant to **Section 12.6(a)** shall be made to HHSC monthly, on the later of the third (3rd) day after receipt of the Itemized Statement or the twenty-fifth (25th) day of each month, for payments received by MHSKFH ("***Straddle Period Payments***") during the previous month, accompanied by copies of remittances and other supporting documentation as is reasonably requested by HHSC. Any other payments required to be made by HHSC to MHSKFH, or by MHSKFH to HHSC, as the case may be, as a result of (i) the Reconciliation, (ii) a notice of program reimbursement with respect to the operations of the Hospitals or (iii) other notice from a governmental agency or Third Party Payor with respect to Straddle Period Services shall be made within thirty (30) calendar days after the Reconciliation or the receipt of any such notice, as applicable. In the event that MHSKFH and HHSC are unable to agree on the amount to be paid to HHSC or MHSKFH, as the case may be, under this **Section 12.6**, then such amount shall be determined by an independent third party at their joint expense.

(c) The Parties acknowledge that all charges for outpatient and other cost-based services shall be made (i) by HHSC for all periods prior to the Transfer Completion Date and (ii) by MHSKFH for all periods on and after the Transfer Completion Date.

(d) MHSKFH (and its respective successors-in-interest, assigns and Affiliates) shall have the right to offset amounts payable to HHSC under this **Section 12.6** against, and the right to contest its obligation to transfer, assign and convey to HHSC because of,

outstanding claims, liabilities or obligations asserted by MHSKFH against HHSC including, without limitation, those made pursuant to the post-Closing adjustments of **Section 2.8**.

12.7 Taxes.

(a) HHSC is solely responsible for payment of Taxes for the Hospitals attributable to periods ending on or before the Transfer Completion Date. MHSKFH is solely responsible for payment of federal, state, and local taxes for the Hospitals attributable to periods ending after the Transfer Completion Date.

(b) After the Closing, HHSC and MHSKFH shall cooperate fully with each other and shall make available to each other, as reasonably requested, all information, records or documents relating to Tax liabilities or potential Tax liabilities attributable to the Hospitals for all periods on or before the Closing, and shall preserve all such information, records, and documents at least until the expiration of any applicable statute of limitations or extensions thereof. HHSC and MHSKFH also shall make available to each other as reasonably required personnel responsible for preparing or maintaining information, records, and documents in connection with Tax matters.

(c) If MHSKFH or HHSC receive written notice from an appropriate taxing authority of any pending or threatened examination, claim, settlement, proposed adjustment, or related matter concerning the Taxes of HHSC that could affect HHSC or any Affiliate of HHSC, or if HHSC or any Affiliate of HHSC receives written notice from an appropriate taxing authority of any such matters that could affect MHSKFH, HHSC, any of their respective subsidiaries or Affiliates, then the Party receiving notice shall notify in writing the potentially affected Party within ten (10) Business Days after receiving that notice.

12.8 MHSKFH Materials. MHSKFH retains all ownership and other rights in all MHSKFH Materials, whether created based on the Books and Records of Transferors or otherwise, provided that any Books and Records used in connection with the management and operations of the Hospitals prior to the Transfer Completion Date or any data or manuals that related solely at the time of conception or reduction to management and operations of the Hospitals by Transferors before the Closing Date, shall not be deemed MHSKFH Materials. Upon the termination or expiration of this Agreement: (i) MHSKFH shall retain all rights to and ownership in the MHSKFH Materials, and (ii) Transferors shall retain all rights to and ownership of any other Materials. This **Section 12.8** shall survive any termination or expiration of this Agreement.

12.9 Confidentiality. Notwithstanding the Parties' signing of this Agreement, the Parties continue to be subject to the confidentiality provisions set forth in that certain Confidentiality Agreement dated July 8, 2015, as amended, and that certain Clean Team Confidentiality Agreement dated July 8, 2015, as amended. Together these agreements shall be referred to as the ***"Confidentiality Agreement"***.

(a) **MHSKFH Materials**. Transferors acknowledge and agree that MHSKFH and Kaiser Permanente have invested a significant amount of their resources in developing and

maintaining the MHSKFH Materials and that the value to MHSKFH and Kaiser Permanente of any non-public MHSKFH Materials may be diminished or destroyed if Transferors publicly disclose or make publicly available such non-public MHSKFH Materials, or any portion thereof. Transferors acknowledges that MHSKFH Materials is valuable property of MHSKFH and agrees that Transferors shall not disclose (directly or indirectly, in whole or in part) the non-public MHSKFH Materials to any third party except (a) with the prior written consent of MHSKFH or (b) without providing MHSKFH the reasonable opportunity to object to such disclosure and take actions necessary to protect such MHSKFH Materials, provided that nothing contained herein shall impede Transferors' ability to comply with a valid order of a court of competent jurisdiction over the matter. Likewise, Transferors will endeavor to safeguard from public disclosure, or provide MHSKFH a reasonable opportunity to safeguard from public disclosure, any Kaiser Permanente or MHSKFH information that rises to the level of a "trade secret" as defined under the Hawaii Trade Secrets Act.

(b) **Public Records Requests.** The Parties recognize that the financial and other records created by, for or otherwise belonging to MHSKFH or its Affiliates, including non-public MHSKFH Materials and Kaiser Permanente trade secrets or other proprietary information, are to remain in the possession, custody and control of MHSKFH. The Parties recognize that MHSKFH considers the records of MHSKFH to be proprietary of MHSKFH and, to the extent any such records or documents (or reports based on such documents) are made available for review by Transferors under this Agreement, such records shall be clearly marked by MHSKFH as confidential/proprietary information to indicate that such records or documents are not public records. To the extent a public records request is received by Transferors pursuant to the Hawaii's Public Agency Meetings and Records law set forth at HRS ch. 92F (also known as the Hawaii Information Practices Act), seeking records containing Kaiser Permanente trade secrets, Kaiser Permanente proprietary information, MHSKFH Materials, or documents marked confidential and/or proprietary under this Agreement, Transferors will use their best efforts to give advance notice to MHSKFH so that MHSKFH may object to the production and take appropriate steps to protect the disclosure of such records.

(c) **Return of Kaiser Permanente Confidential Information**. Upon receipt of a request from MHSKFH to do so, Transferors shall immediately discontinue the use of and shall promptly return and/or restore to MHSKFH all originals and copies in Transferors' possession (including derivative materials) of Kaiser Permanente trade secrets, Kaiser Permanente proprietary information, MHSKFH Materials, and Kaiser Permanente Confidential Information (as defined in the Confidentiality Agreements).

(d) **Return of Transferors Confidential Information**. Upon receipt of a request from Transferors to do so, MHSKFH shall immediately discontinue the use of and shall promptly return and/or restore to Transferors all originals and copies in the MHSKFH's possession (including derivative materials) of HHSC Confidential Information (as defined in the Confidentiality Agreements) except for such HHSC Confidential Information that constitutes Transferred Interests transferred under this Agreement (which shall be returned, upon request, at the expiration or earlier termination of this Agreement).

(e) **Survival**. This **Section 12.9** shall survive any termination or expiration of this Agreement.

12.10 Costs of Contemplated Transactions. Whether or not the Transactions are consummated, and except as otherwise expressly provided in this Agreement, each Party shall bear its own fees, expenses and disbursements, and those of its Affiliates, agents, representatives, accountants, counsel, and investment bankers, incurred in connection with the subject matter of this Agreement.

12.11 Preservation of Books and Records. Until the later to occur of: (a) the final adjudication of any dispute or investigation arising out of the business, operations or affairs of the Hospitals before the Closing Date, or (b) sixty (60) days following the running of applicable statutes of limitations, MHSKFH will maintain all Books and Records of the Hospitals constituting a part of the Transferred Interests that relate to the use, operations or maintenance of the Hospitals before the Closing Date, and Transferors or their assignee will maintain under their normal record retention policies all such Books and Records not constituting a part of the Transferred Interests, in each case to the extent reasonably necessary in connection with any Tax, Medicare or Medicaid or other liability or matter for any period ending before the Closing Date.

12.12 Electronic Medical Records. MHSKFH intends to install KP EMR at the Hospitals. The KP EMR is a proprietary MHSKFH Material. Community physicians practicing at the Hospitals will be provided training and read-only or read and write access, as appropriate, to the KP EMR, for them effectively and efficiently to treat their patients. For twelve (12) months following the Closing Date or such other period as HHSC and MHSKFH shall mutually agree, upon request, MHSKFH will be granted reasonable access to the underlying records contained in the HHSC EMR. The HHSC EMR is not a Transferred Asset or Assumed Liability. Except as may be set forth in the TSA, HHSC is responsible for any costs associated with providing access to the HHSC EMR to MHSKFH, including fees and expenses imposed by third-party licensors of software programs.

12.13 Further Assurances; Cooperation. After the Closing, each Party shall sign and deliver to the other Parties any and all other assignments, consents, approvals, conveyances, documents, and instruments reasonably necessary for the purpose of more effectively assigning, transferring, and conveying the Transferred Interests to MHSKFH in accordance with the terms of this Agreement. The Parties will use their respective commercially reasonable efforts to pursue and perform all acts, applications, authorizations, and consents necessary or appropriate to the fulfillment of the provisions of this Agreement and will cooperate with each other and execute any and all documents reasonably incident thereto. In addition, following the Closing Date, each Party will, upon reasonable notice, during normal business hours, at the expense of the requesting Party, only to the extent reasonably necessary to facilitate the Transactions, audits, compliance with Legal Requirements and the prosecution or defense of third-party claims, and only to the extent that it does not unreasonably interfere with its business operations: (a) afford to the representatives of the other, including its counsel and accountants, reasonable access to such records and information as may be available relating to the Transferred Interests and the Hospitals for periods before and subsequent to the Transfer Completion Date, and full and complete access to its officers and employees; and (b) reasonably cooperate with, and use all reasonable efforts to cause its officers and employees to reasonably cooperate with the other and with appropriate Governmental Entities and third parties, in furnishing information, evidence, testimony and other reasonable assistance.

12.14 Use of Controlled Substance Permits. To the extent permitted by applicable law, MHSKFH has the right, for a period not to exceed 120 days following the Closing Date, to operate under the Licenses of HHSC relating to controlled substances and the operations of pharmacies and laboratories, until MHSKFH is able to obtain such Licenses for itself. HHSC is not obligated to renew any such License that expires during such period. In furtherance thereof, HHSC shall sign and deliver to MHSKFH at or before the Closing, a limited power of attorney substantially in the form of **Exhibit H** attached hereto prior to the Closing. MHSKFH promptly shall apply for such Licenses in its own name as soon as reasonably possible after the date of this Agreement and diligently shall pursue those applications. MHSKFH will indemnify and hold HHSC and its directors, officers, and employees harmless from and against any and all Losses incurred by HHSC and its directors, officers, and employees resulting from or arising out of the use of such Licenses by MHSKFH.

12.15 Restrictive Covenants.

(a) During the Term of the Agreement, Transferors shall not, and shall cause their Affiliates not to, directly or indirectly, in any capacity: (i) develop, construct, or own any Prohibited Business, or (ii) manage or operate any Prohibited Business. Notwithstanding the foregoing, in the event of a Partial Termination, Transferors may operate the Terminated Hospital(s). Additionally, in the event Transferors are required by CMS or another federal Governmental Entity to offer SNF, ICF, other long-term acute care facility services, or other facility services in the County of Maui that may compete, directly or indirectly, with the business of the Hospitals, the Parties shall negotiate in good faith an amendment to this Agreement that complies with applicable Legal Requirements while preserving the core terms of this Agreement to the maximum extent possible.

(b) Upon the expiration or earlier termination of this Agreement, for a period of three (3) years after the effective date of such termination, neither MHSKFH nor KFH will build an inpatient hospital in Maui or Lanai.

(c) The Parties recognize that the covenants in this **Section 12.15**, and the territorial, time, and other limitations concerning those covenants, are reasonable and properly required for the adequate protection of the interests of the Parties, and the Parties agree that such limitations are reasonable with respect to its activities, business and public purpose.

(d) The unenforceability (or the modification to conform with such Legal Requirements or public policies) of any provisions of this **Section 12.15** does not render unenforceable or impair the remainder of this Agreement. Accordingly, if any term or provision of this **Section 12.15** is determined to be illegal, invalid, or unenforceable, either in whole or in part, this Agreement is to be deemed automatically amended to delete or modify, as necessary, the offending provisions and to alter the balance of this Agreement in order to render the same valid and enforceable to the fullest extent permissible as aforesaid.

ARTICLE XIII.
POST-CLOSING TERMS.

13.1 Operating Support.

(a) ***Process.***

(i) Under HRS § 323F-58, during the Term of the Agreement, Transferors acknowledge and agree that MHSKFH may require and accordingly request support payments for its operating costs (as defined by HRS § 37-62) associated with managing and operating the Hospitals (*"**Operating Subsidies**"*).

(ii) The Parties recognize that, in fulfillment of its commitments under this Agreement, MHSKFH's financial model anticipates a minimum operation margin of two percent (2%) (*"**Minimum Margin**"*). Accordingly, MHSKFH's annual requests to the State for operating support will be based upon the amounts needed to cover any operating losses of the Hospitals, plus the Minimum Margin; provided, however, that the amount of Operating Subsidies requested in any year cannot exceed any caps imposed by HRS § 323F-58 (the *"**Annual Operating Subsidy Cap**"*). To achieve the Minimum Margin, the amount of Operating Subsidies requested by MHSKFH is expected to include, without limitation, amounts required to offset any applicable post-Closing DRG payment reductions under CMS' Hospital Value Based Purchasing Program, CMS' Hospital-Acquired Condition Reduction Program, or CMS' Readmissions Reduction Program arising from the Transferors' operation of the Hospitals and participation in such programs prior to the Transfer Completion Date.

(iii) MHSKFH acknowledges that unless HRS § 323F-58 is amended, MHSKFH must make each request for an Operating Subsidy in accordance with HRS § 323F-58 and subject to **Article VII**, and that any appropriation made in response to the request is subject to the allotment system generally applicable to all appropriations made by the legislature of the State of Hawaii.

(iv) The Parties acknowledge that as required by HRS § 323F-58, the Director of Finance will receive and review each request for an Operating Subsidy MHSKFH submits, and include some or all of the amount requested in the executive budget of the department of health. The State further agrees that consistent with all applicable Legal Requirements, it will utilize all available methods and take such actions as may be reasonably required to obtain MHSKFH's requested Operating Subsidies for the Hospitals.

(b) ***Qualifications.*** MHSKFH acknowledges that for MHSKFH to qualify to request Operating Subsidies, MHSKFH shall meet the requirements set forth in HRS § 323F-58.

(c) ***Quarterly Payments.*** Subject to Legal Requirements, MHSKFH is to receive Operating Subsidies appropriated by the Legislature in accordance with the allotment provisions of HRS chapter 37.

13.2 Capital Support. The Parties recognize that MHSKFH's financial model anticipates support payments for capital expenditures (as defined by HRS § 37-62) for the Hospitals under HRS § 323F-59 (*"Capital Subsidies"*) in an amount of not less than Six Million Dollars ($6,000,000) annually during the first ten (10) years of the Initial Term.

(a) **Process.** MHSKFH acknowledges that unless HRS § 323F-59 is amended, MHSKFH must make each request for an Operating Subsidy in accordance with HRS § 323F-59 and subject to **Article VII**. Any appropriation made in response to a request is subject to the allotment system generally applicable to all appropriations made by the legislature of the State of Hawaii. MHSKFH is to receive the requested Capital Subsidies annually, in advance of the commencement of the applicable fiscal year. The State acknowledges that as required by HRS § 323F-59, the Director of Finance will receive and review each request for a Capital Subsidy MHSKFH submits, and include some or all of the amount requested in the executive budget of the department of health. The State further agrees that consistent with all applicable Legal Requirements, it will utilize all available methods to take such actions as may be reasonably required to secure Capital Subsidies for the Hospitals at levels requested by MHSKFH.

(b) ***Qualifications***. MHSKFH acknowledges that for MHSKFH to qualify to request Capital Subsidies, MHSKFH shall meet the requirements set forth in HRS § 323F-59.

13.3 Pending Projects. The State shall take all such actions as may be appropriate and necessary to complete the Pending Projects after the Transfer Completion Date, including the timely payment of all invoices due under contracts or other agreements concerning or relating to the Pending Projects.

13.4 Medicaid Supplemental Payments. The Parties recognize that MHSKFH's financial model for the Hospitals is dependent on receiving annual Medicaid Supplemental Payments or alternative funding involving federal financial participation (*"FFP"*). Transferors shall take such actions as may be reasonably necessary to secure Medicaid Supplemental Payments or alternative FFP funding for the Hospitals at levels reasonably consistent with the FY 2016 Medicaid Supplemental Payments, which may include, as appropriate, (i) seeking appropriate Governmental Approvals to amend the Hawaii Medicaid State Plan, (ii) seeking to develop new payments through Section 1115 waivers or demonstration authority or otherwise, and (iii) subject to appropriation contingencies, continuing to finance the non-federal share of Medicaid Supplemental Payments or alternative FFP funding through intergovernmental transfers (a/k/a IGTs), certified public expenditures (a/k/a CPEs) or other methods permitted under applicable Governmental Regulations. MHSKFH shall cooperate with Transferors, as reasonably requested, to secure Medicaid Supplemental Payments or alternative FFP funding for the Hospitals at levels reasonably consistent with the FY 2016 Medicaid Supplemental Payments.

13.5 MHSKFH's Governance Commitment. In accordance with Act 103, KFH and MHSKFH are committed to continuing the history of community involvement in the governance of the Hospitals. In furtherance thereof, MHSKFH will be governed by a nine (9) member Board with powers consistent with a community hospital board and in accordance with the MHSKFH operating agreement. The Board will be appointed by KFH and comprised of (i) three (3) Maui

residents selected from a list of nominees proposed by the MRHS board of directors, (ii) five (5) members selected by KFH, and (iii) one (1) independent physician selected from a list of nominees proposed by the medical executive committee of MMMC. Five Board members will be residents of Maui County. The Board will have certain powers as delineated in the MHSKFH operating agreement, a copy of which will be provided to Transferors within forty-five (45) days of the Agreement Date, including, without limitation, the following: (i) oversight over community benefit and indigent and charity care policies, (ii) the right to recommend strategic plans, (iii) the right to recommend capital and operating budgets and seek capital and operating support under Act 103 and this Agreement (subject to approval of KFH and legislative appropriations), (iv) decisions concerning medical staff matters, including decisions regarding medical staff privileges, and actions required for licensure, accreditation, or participation in Governmental Programs, (v) the establishment of an ongoing quality improvement program, and (vi) the right to recommend additions of assets to the Leased Property, improvements to the Leased Property, and the replacement or disposal of obsolete or worn assets.

13.6 MHSKFH's Investment, Financial and Strategic Commitments.

(a) **Information Technology.** MHSKFH commits to implement the KP EMR and other IT for the benefit of the Hospitals.

(b) **Capital Investments**. The Parties recognize that MHSKFH's financial model anticipates support payments from MHSKFH for capital expenditures for the Hospitals in an amount of Five Million Dollars ($5,000,000) annually during the first ten (10) years of the Initial Term. During the first ten (10) years of the Initial Term, MHSKFH will use its operating margin to fund such capital investments in excess of the Capital Subsidies and other operating needs of the Hospitals as determined by the Board. Any capital expenditures incurred by MHSKFH may be funded through cash of MHSKFH, cash flow of the Hospitals, long term debt, loans from KFH, or such other means as MHSKFH shall determine in its sole discretion. Any capital expenditures MHSKFH makes with its own funds shall be made at the sole discretion of MHSKFH. MHSKFH shall not be required to make any capital expenditures in the event of an uncorrected Funding Differential. Nothing contained in this Agreement shall obligate MHSKFH to undertake any capital projects that require a substantial, significant or full replacement, reconstruction or rebuilding of a Hospital, including without limitation, the construction of additional buildings or facilities or the additional of towers or floors to existing buildings or facilities.

(c) **Line of Credit.** During the Term of this Agreement, MHSKFH will obtain and maintain a line of credit in the amount of Thirty Million Dollars ($30,000,000), to provide additional working capital to MHSKFH. The interest shall be reasonable and customary based on either the cost of an independent third party line of credit or at Kaiser Permanente's average enterprise-wide monthly annualized cost of debt.

(d) **Offset Arrangement.** During the second (2^{nd}) through fifth (5^{th}) years of the Initial Term of the Agreement, provided there is no uncorrected Funding Differential for any prior year(s) and MHSKFH attains the Minimum Margin, MHSKFH will reimburse the State to offset the Operating Subsidies for those years as follows: MHSKFH will retain operating income equivalent to 2% of its total operative revenues ("***Retained Operating Income***") and operating

income in excess of the Retained Operating Income shall be eligible for repayment to the State in accordance with the methodology to be set forth on **Schedule 13.6**, which **Schedule 13.6** will be provided to Transferors by MHSKFH within forty-five (45) days of the Agreement Date (***"Offset Arrangement"***). The Offset Arrangement shall terminate after the conclusion of the fifth (5^{th}) year of the Initial Term.

(e) **Reinvestment in Maui.** During the Term, after the fifth (5^{th}) year of the Initial Term of the Agreement, provided MHSKFH attains the Minimum Margin, excess operating revenue will be reinvested in the Maui Region Hospitals.

(f) **Strategic Commitment.** MHSKFH is committed to operating the Hospitals as community hospitals, caring for all patients regardless of insurance. During the term of this Agreement, KFH and MHSKFH agree to pursue the strategic commitments described in HRS § 323F-60. MHSKFH is committed to investing in and using the Maui Region Hospitals to provide quality health care services and improve the delivery of those services to the communities presently served by the Maui Region Hospitals, including reasonable efforts to expand clinical service lines, upgrade facilities and equipment, implement physician primary care and specialty recruitment and retention initiatives, introduce innovative approaches to fill physician coverage gaps, leverage technology, endeavor to develop community linkages with community organizations and healthcare providers and suppliers to improve continuity of care and reduce wait times, and promote evidence-based medicine.

(g) **Lease Rent.** Throughout the term of the Lease, MHSKFH shall pay to HHSC annual rent in an amount and at such times and pursuant to such other terms and conditions as set forth in the Lease.

13.7 MRHS Foundation. The Parties recognize and agree that the Hospitals derive significant financial benefits from the fundraising and other efforts of the MRHS Foundation to support the Hospitals. Transferors shall use their best efforts to ensure that the MRHS Foundation continues its levels of support for the Hospitals commensurate with the levels of support provided to the Hospitals prior to the Transfer Completion Date.

ARTICLE XIV.
GENERAL MATTERS

14.1 Expenses to Enforce Agreement. Except as otherwise expressly provided in this Agreement, each Party shall bear their own legal fees and expenses incurred in connection with any action brought by a Party to enforce, defend, or interpret any provision of this Agreement.

14.2 Notice. Any notice, demand or communication required, permitted or desired to be given under this Agreement shall be in writing and will be deemed effectively delivered when personally delivered; when actually received by recognized overnight courier; or five days after being deposited in the United States mail, with postage prepaid thereon, by certified or registered mail, return receipt requested, addressed as follows:

if to HHSC:

Hawaii Health Systems Corporation
3674 Kilauea Avenue
Honolulu, Hawaii 96816

Attention: Linda Rosen, M.D., M.P.H., Chief Executive Officer

with a copy to:
Anne E. Lopez, General Counsel

if to the State:

Hawaii Department of Budget and Finance
250 S. Hotel Street #305
Honolulu, Hawaii 96813

Attention: Director

with a copy to:
Hawaii Attorney General
425 Queen Street
Honolulu, Hawaii 96813

if to the MRHS:

Maui Region of Hawaii Health Systems Corporation
221 Mahalani Street
Wailuku, Hawaii 96793

Attention: Wesley Lo, Chief Executive Officer

if to MHSKFH:

Maui Health System, a Kaiser Foundation Hospitals, LLC
3288 Moanalua Road
Honolulu, Hawaii 96819

Attention: Mary Ann Barnes, President/CEO and Chairman of the Board

with a copy to:
Kaiser Foundation Hospitals/Health Plan
711 Kapiolani Blvd.
Honolulu, Hawaii 96813

Attention: Frank P. Richardson , Vice President & Regional Counsel

if to KFH:

Kaiser Foundation Hospitals/Health Plan
3288 Moanalua Road
Honolulu, Hawaii 96819

Attention: Mary Ann Barnes, President, Hawaii Region

with a copy to:
Kaiser Foundation Hospitals/Health Plan
711 Kapiolani Blvd.
Honolulu, Hawaii 96813

Attention: Frank P. Richardson , Vice President & Regional Counsel

or to such other address, or to the attention of such other Person, as any Party may designate by notice delivered in like manner.

14.3 Transaction Costs. Each Party shall bear its own costs concerning the negotiation and administration of the Agreement.

14.4 Schedules and Other Instruments. Each Schedule and Exhibit provided under this Agreement, and each Schedule or other written disclosure required by this Agreement, is incorporated by reference into this Agreement. Each is to be considered a part of this Agreement, as if set forth in this Agreement in full. If there is any inconsistency between the statements in this Agreement and those in those Schedules (other than an exception expressly set forth in those Schedules with respect to a specifically identified representation), then the statements in this Agreement control. The statements in the Schedules refer only to the provisions in the Section of this Agreement to which they expressly relate and not to any other provision in this Agreement.

14.5 Governing Law. This Agreement is to be governed by and construed in accordance with the internal laws of the State of Hawaii applicable to agreements made and to be performed entirely within the State of Hawaii, without regard to its conflicts of law principles that would obtain a different result. To the full extent permitted by applicable Legal Requirements, the Parties hereby waive any and all right to a trial by jury on the issue to enforce any term or condition of this Agreement.

14.6 Mandatory Venue. Any action or proceeding seeking to enforce any provision, or based on any right arising out of, or to interpret any provision of, this Agreement is to be brought against any of the Parties in the state or federal courts located within the State of Hawaii. Each Party consents to the exclusive jurisdiction of those courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

14.7 Dispute Resolution.

(a) In the event of any Dispute arising out of this Agreement, the obligations of the Parties hereto or the matters contemplated herein, the Parties shall negotiate in good faith to seek to resolve such Dispute in a reasonable manner. Until such Dispute has been resolved, the negotiations of the Parties with respect to such dispute shall be escalated to a senior executive of KFH and the Attorney General for the State of Hawaii, who shall meet in person to discuss the matter, which meeting shall take place within thirty (30) days of the initial notice of a Dispute unless otherwise agreed by the Parties. In the event that such Dispute is not resolved within ninety (90) days following such a meeting (or such other period as the Parties may mutually agree), the Parties agree that the Dispute shall be subject to the provisions of paragraph (b).

(b) If a resolution cannot be reached under paragraph (a), the Parties may proceed to mediation, and, if the dispute is not resolved through mediation, the Parties may seek judicial assistance or remedies in a federal or state court in the State of Hawaii.

14.8 No Personal Liability for Non-Parties. In entering into this Agreement, the Parties understand, agree, and acknowledge that no director, trustee, officer, manager, member, employee, shareholder, attorney, accountant, advisor, or agent of any Party is personally liable or responsible to any other Party or its Affiliates, directors, trustees, officers, managers, members, employees, shareholders, attorneys, accountants, advisors, or agents for the performance of any obligation under this Agreement of any Party or the truth, completeness, or accuracy of any representation or warranty contained in, or statement made in, this Agreement or any document prepared under this Agreement, and that all obligations under this Agreement are those of the named Parties only (but nothing contained in this Agreement limits the liability of any person for his or her fraudulent acts).

14.9 Benefit. This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors and permitted assigns. This Agreement is not intended to benefit any Person other than MHSKFH, Transferors, and their respective Affiliates.

14.10 Waivers and Consents. Any waiver of any provision of this Agreement and any consent given under this Agreement shall be in writing signed by the Party sought to be bound. The waiver by any Party of a breach or violation of any provision of Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. No delay or failure on the part of any Party in exercising or enforcing any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

14.11 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, then that invalidity, illegality, or unenforceability will in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which will be and remain in full force and effect, and enforceable in accordance with its terms.

14.12 Inferences. This Agreement is the result of negotiations between sophisticated parties of equal bargaining power represented by counsel. No inference in favor of or against any Party is to be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of any such Party.

14.13 Amendment. This Agreement may be amended, and the terms of this Agreement may be modified, only by a writing signed by each Party. Any matter referred to in this Agreement as mutually agreed to or designated by the Parties shall be evidenced by such a writing.

14.14 Entire Agreement. This Agreement, including the background recitals, Exhibits, and Schedules, along with any other agreement incorporated in this Agreement by reference including the agreements and documents contemplated by **Article III** and **Article VIII**, supersede all previous agreements and constitute the entire agreement of whatsoever kind or nature existing among the Parties. No Party has any right to any benefits other than those specified in this Agreement. The Parties specifically acknowledge that in entering into and signing this Agreement, the Parties rely solely upon the representations, and agreements contained in this Agreement and therein and no others. All prior representations or agreements, whether written or oral, not expressly referenced in this Agreement are superseded.

14.15 Assignment. Except as provided herein, no Party may assign or delegate all or any part of its rights or obligations under this Agreement without the prior written consent of the other Party.

14.16 Accounting Date. The transactions contemplated hereby shall be effective for accounting, payment and business purposes as of the Transfer Completion Date.

14.17 Tax and Medicare Advice and Reliance. Except as expressly provided in this Agreement, none of the Parties (nor any of the Parties' respective counsel, accountants or other representatives) has made or is making any representations to any other party (or to any other party's counsel, accountants or other representatives) concerning the consequences of the transactions contemplated hereby under applicable Tax laws or under the laws governing the Medicare program. Each Party has relied solely upon the Tax and Medicare advice of its own employees or of representatives engaged by such party and not on any such advice provided by any other Party.

14.18 Process to Secure Payments from HHSC or MRHS. Whenever MHSKFH receives an invoice from a third party that is required to be paid in whole or in part by HHSC or MRHS, as applicable, under the Agreement, or whenever MHSKFH believes HHSC or MRHS, as applicable, is required to pay MHSKFH a sum of money under this Agreement, MHSKFH shall present either (a) the invoice from a third party to HHSC or MRHS, as applicable, within ten (10) business days of MHSKFH's receipt of the invoice; or (b) MHSKFH's invoice to HHSC or MRHS, as applicable, for payment of the sum of money, and, with (a) or (b), a citation to the provision in this Agreement pursuant to which the invoice or request for payment is made. If HHSC or MRHS does not remit the amount due in MHSKFH's invoice to MHSKFH within forty-five (45) calendar days of the date on the invoice, then interest will be paid pursuant to HRS § 103-10, unless delay in payment is permitted under that section.

14.19 Interpretation. In this Agreement, unless the context otherwise requires: (a) references to "**Articles**" and "**Sections**" are to the Articles or Sections of this Agreement and references to "**Schedules**" and "**Exhibits**" are to the Schedules and Exhibits annexed to this Agreement; (b) references to any Party include references to its respective successors and permitted assigns; (c) references to judgment include any order, writ, injunction, decree, determination, or award of any court or tribunal; (d) references to a Person or entity include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust, or Governmental Entity; (e) any of the terms defined in this Agreement may, unless the context requires otherwise, be used in the singular or the plural depending on the reference; (f) the masculine pronoun includes the feminine and the neuter, and *vice versa*, as appropriate in the context; (g) with respect to any matter or thing, the terms "**including**" or "**include**" mean including but not limited to such matter or thing; (h) "**shall**," "**is to**," "**are to**," and "**agrees**" have mandatory force, and mean "is required to" or "is obligated to"; (i) "**shall not**," "is not to," "are not to," and mean "is required not to" or "is obligated not to"; (j) "**may**" is permissive or discretionary, and means "has a discretionary right to"; (k) "**any**" means "one or more"; (l) references to "**funds**," "**cash**," "**money**," and like references to currency refer to United States dollars; (m) references to "**days**" refer to calendar days unless expressly stated to be Business Days; (n) common nouns, pronouns, and other words are to be construed as referring to the gender and number indicated by the circumstances; and (o) "**or**" is deemed to be inclusive (*i.e.*, "A or B" means A, B, or A and B) and not exclusive (*i.e.*, "A or B" means A or B, but not A and B), thereby avoiding the use of "and/or" to show the intended inclusiveness. The divisions of this Agreement into articles, sections, and subsections and the use of captions and headings in connection therewith are solely for convenience and have no legal effect in construing the provisions of this Agreement. Where specific language is used to clarify or illustrate by example a general statement contained in this Agreement, the specific language is not deemed to modify, limit, or restrict the construction of the general statement being clarified or illustrated. References to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated, or replaced by the Parties from time to time. Unless the context requires otherwise, references to any Legal Requirement are references to that Legal Requirement as of the Closing Date, and also refer to all rules and regulations promulgated thereunder. References to time are references to Hawaii Standard Time (as in effect on the applicable day) unless otherwise specified in this Agreement. The terms "**date hereof**," "**date of this Agreement**," and similar terms mean the date set forth in the preamble of this Agreement.

14.20 Survival of Covenants. The covenants of the Parties contained in this Agreement survive the Closing, indefinitely, and continue to be fully effective and enforceable following the Closing, unless otherwise expressly provided in this Agreement.

14.21 Counterparts; Electronic Signatures. This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or Portable Document Format (PDF) constitutes effective signing and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile and PDF are deemed to be their original signatures for any purposes whatsoever.

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IN WITNESS WHEREOF, the Parties are signing this Agreement as of the date and year in the preamble.

HHSC:

HAWAII HEALTH SYSTEMS CORPORATION

Name: Linda Rosen, MD
Title: Chief Executive Officer

MRHS:

MAUI REGION OF HAWAII HEALTH SYSTEMS CORPORATION

Name: Avery B. Chumbley
Title: Chairperson

STATE:

STATE OF HAWAII

Name: David Y. Ige
Title: Governor

MHSKFH:

MAUI HEALTH SYSTEMS, A KAISER FOUNDATION HOSPITALS LLC

Name: Mary Ann Barnes
Title: Chairman & Chief Executive Officer

KFH:

KAISER FOUNDATION HOSPITALS

Name: Mary Ann Barnes
Title: Regional President

LIST OF EXHIBITS

Exhibit A: KFH Proposal

Exhibit B: Assignment and Assumption of Assigned Admission Agreements

Exhibit C: Assignment and Assumption Agreement

Exhibit D: Lease

Exhibit E: Assignment and Assumption Agreement of Resident Trust Funds

Exhibit F: Transition Services Agreement

Exhibit G: General Assignment, Conveyance, and Bill of Sale

Exhibit H: Controlled Substances Limited Power of Attorney

LIST OF SCHEDULES

Schedule 1.18:	Capital Lease
Schedule 1.74:	Inventory
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Schedule 1.103:	Names
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Schedule 4.17:	Medical Staff Matters
Schedule 4.18(c):	Property Taxes
Schedule 4.21:	Intellectual Property
Schedule 4.24:	Certificates of Need
Schedule 4.25:	No Outstanding Rights
Schedule 4.26:	Experimental Procedures
Schedule 8.3:	Actions or Proceedings

LIST OF SCHEDULES

Schedule 8.4: Governmental Entity Approvals

Schedule 8.5: Material Approvals and Consents

Schedule 9.3: Actions or Proceedings

Schedule 9.5: Governmental Entity Approvals

Schedule 12.4: HITECH Payments

Schedule 13.6: Offset Arrangement

Exhibit A

KFH PROPOSAL

Schedule 1.119

PENDING PROJECTS

Program ID	Project Title	Act	Year	Item Number	Originral Appropriation	M O F	Amount Lapsed	Amount Expended	Amount Encumbered &/or Unexpended	Percent of Total Project Completion	Estimated Completion Date
Projects Not Completed Funds Encumbered[1]											
HTH 212	MMMC, Phase II	162	2009	E-7	15,001,000	C		11,706,702	3,294,298	85%	09/30/16
HTH 212	Maui Memorial Medical Cener, Fire Sprinklers, Sm	164	2011	E-6	680,000	C		651,851	28,149	95%	09/30/16
HTH 212	Maui Memorial Medical Center, AC Upgrade	164	2011	E-6	800,000	C		720,566	79,434	99%	03/31/16
HTH 212	Maui Memorial Medical Center, Plumbing Imp	164	2011	E-6	1,100,000	C		448,357	651,643	40%	09/30/16
HTH 212	Maui Memorial Medical Center, Dietary Equip Upgr	164	2011	E-6	1,000,000	C		158,745	841,255	20%	06/30/16
HTH 212	Kula Hospital, Elevator Upgrades	164	2011	E-6	1,465,193	C		555,161	910,032	45%	06/30/16
HTH 212	Lanai,ER Expansion, Fire Supperession,	164	2011	E-5	1,340,000	C		661,777	678,223	45%	06/30/16
HTH 212	Kula Hospital, Elevator Upgrades	106	2012	E-5	571,159	C		-	571,159	0%	06/30/16
HTH 212	Maui Memorial Medical Cener, Fire Sprinklers, Sm	106	2012	E-6	1,000,000	C		282,269	717,731	30%	06/30/16
HTH 212	Maui Memorial Medical Center, Facility Expan	106	2012	E-6	1,800,000	C		1,216,037	583,963	70%	09/30/16
HTH 212	Maui Memorial Medical Center, Plumbing Imp	106	2012	E-6	900,000	C		166,930	733,070	20%	09/30/16
HTH 212	Maui, UST Removal and AST Installation	106	2012	E-8.01	220,000	C		30,636	189,364	30%	06/30/16
HTH 212	Maui, Elevator Upgrades	106	2012	E-8.01	3,500,000	C		1,338,732	2,161,268	40%	12/31/16
HTH 212	Maui, Facility Expansion and Renovation and Equip	106	2012	E-8.01	3,300,000	C		2,835,466	464,534	90%	03/31/16
HTH 212	Lanai, New Photovoltaic System	106	2012	E-8.01	700,000	C		16,308	683,692	10%	09/30/16
HTH 212	Maui, Utility Efficient Lights	106	2012	E-8.01	733,328	C		80,495	652,833	10%	06/30/16
HTH 212	Maui, Energy Efficient Audit	106	2012	E-8.01	200,000	C		110,146	89,854	55%	03/31/16
	TOTAL								**13,330,504**		

[Schedule 1.119 continued next page]

Program ID	Project Title	Act	Year	Item Number	Original Appropriation	M O F	Amount Lapsed	Amount Expended	Amount Encumbered &/or Unexpended	Percent of Total Project Completion	Estimated Completion Date
Projects Not Completed Funds To Be Encumbered by June 30, 2016[2]											
HTH 212	Kula Hospital Cesspool Closures & Install New Systems	134	2013	E-7	500,000	C		4,950	495,050	1%	06/30/16
HTH 212	Kula Hospital, Asbestos and Lead Removal	134	2013	E-7	300,000	C		261,975	38,025	90%	06/30/16
HTH 212	Maui Memorial Medical Center, Laboratory, Pharmacy, Oncology and Imaging Expansion	134	2013	E-7	6,000,000	C		777,902	5,222,098	15%	06/30/17
HTH 212	Maui Memorial Medical Center, AC Upgrades	134	2013	E-7	800,000	C		499,632	300,368	63%	03/31/16
HTH 212	Lanai Community Hospital, Reroofing	134	2013	E-7	280,000	C		3,752	276,248	1%	06/30/16
HTH 212	Lanai Community Hospital, Install 125 kw generator (from MMMC)	134	2013	E-7	50,000	C		2,979	47,021	6%	09/30/16
HTH 212	Kula Hospital, Repairs to Facility	134	2013	E-7	500,000	C		213,847	286,153	43%	06/30/16
HTH 212	Maui Memorial Medical Center, Repairs to facility	134	2013	E-7	1,000,000	C		931,650	68,350	98%	02/28/16
HTH 212	Lanai Community Hospital, Repairs to facility	134	2013	E-7	200,000	C		104,184	95,816	50%	06/30/16
HTH 212	MMMC - Mechanical and Electrical Improvements, including plumbing, piping, pumps, steam lines and traps	122	2014	E-7	850,000	C		51,980	798,020	6%	09/30/16
HTH 212	Maui Memorial Medical Center, Repairs to facility	122	2014	E-7	1,905,125	C		1,075,762.15	829,363	56%	06/30/16
HTH 212	Kula Hospital, Repairs to Facility	122	2014	E-7	2,650,000	C		43,546	2,606,454	2%	09/30/16
HTH 212	Kula Hospital Cesspool Closures & Install New Sy	122	2014	E-7	500,000	C		4,950	495,050	1%	06/30/16
HTH 212	Lanai Community Hospital, Repairs to facility	122	2014	E-7	500,000	C		32,175	467,825	6%	09/30/16
HTH 212	Maui Memorial Medical Center, AC Upgrades	122	2014	E-7	1,970,000	C		189,672.60	1,780,327	10%	09/30/16
HTH 212	Maui Memorial Medical Center Replace Nurse Call	122	2014	E-7	1,500,000	C		980	1,499,020	1%	12/31/16
HTH 212	Lanai Community Hospital Elevator	122	2014	E-7	1,300,000	C		3,960	1,296,040	1%	12/31/16
HTH 212	Maui Memorial Medical Center Replace Chillers (2	119	2015	E-1	2,000,000	C			2,000,000		released 11/2015
HTH 212	Maui Memorial Medical Center Repairs to Facility	119	2015	E-1	1,000,000	C			1,000,000		released 11/2015
	TOTAL								**19,601,228**		

[Schedule 1.119 continued next page]

Program ID	Project Title	Act	Year	Item Number	Original Appropriation	M O F	Amount Lapsed	Amount Expended	Amount Encumbered &/or Unexpended	Percent of Total Project Completion	Estimated Completion Date
Project Funds Not Released[3]											
HTH 212	Maui Memorial Medical Center, Parking	122	2014	E-7.01	3,100,000	C			3,100,000		not released
HTH 212	Maui Memorial Medical Center, Parking	122	2014	E-7.01	31,500,000	E			31,500,000		revenue bond
HTH 212	Maui Memorial Medical Center Clinical Equipment	119	2015	E-1	400,000	C			400,000		release pending
HTH 212	Maui Memorial Medical Center Plumbing and Fire	119	2015	E-1	2,592,000	C			2,592,000		release pending
	TOTAL								**37,592,000**		

1 - This category represents projects where monies have been appropriated in the State's budget, released by the Governor, and for which there are contracts or Purchase Orders executed and funds have been encumbered to complete the work.. Essentially these are "work in progress" projects. The "Amount Encumbered &/or Unexpended" means amounts available to complete the various projects.

2 - This represents projects where funds have been appropriated in the Budget, released by the Governor but are not yet completed. Projects are in the construction, design or procurement phases. Not all of the funds have been encumbered at this time, however, funds will be encumbered by June 30, 2016.

3 - This represents monies that have been appropriated in the State's budget, but have not yet been released by the Governor. With respect to the appropriations for Clinical Equipment ($400,000) and the Plumbing and Fire Safety Upgrades ($2,592,000), the release documents were submitted and are currently being reviewed by the Governor's office for release and HHSC/MRHS anticipate this release. As it relates to the Parking Structure monies, the $31.5 million appropriation is a "Revenue Bond" and is an authorization to borrow money and not funds that are available for release by the Governor. The $3.1 million appropriation for Parking is for design and construction and available for release. However, HHSC/MRHS are not expecting the release of this money now since there is not a viable source of construction funds available and necessary to complete the Parking Structure.

Schedule 1.74

INVENTORY

Seven Million Eight Hundred Thousand Dollars ($7,800,000)

Schedule 1.163

WORKING CAPITAL

Ten Million Dollars ($10,000,000)