

**DEFINITIVE AGREEMENT**  
**BY AND BETWEEN**  
**CARE NEW ENGLAND HEALTH SYSTEM AND**  
**LIFESPAN CORPORATION**

**FEBRUARY 23, 2021**

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## DEFINITIVE AGREEMENT

This **DEFINITIVE AGREEMENT** (the “**Agreement**”) is made and entered into this 23<sup>rd</sup> day of February, 2021 (the “**Execution Date**”), by and between **CARE NEW ENGLAND HEALTH SYSTEM**, a Rhode Island nonprofit corporation (“**CNE**”), and **LIFESPAN CORPORATION**, a Rhode Island nonprofit corporation (“**Lifespan**”) (each a “**Party**” and collectively, the “**Parties**”).

## RECITALS

**WHEREAS**, CNE operates a health care system primarily serving Rhode Island and is the sole member of Butler Hospital, Kent County Memorial Hospital, Women & Infants Corporation (which is the sole corporate member of Women & Infants Hospital of Rhode Island), Southeastern Healthcare System, Inc. (which is the sole corporate member of The Memorial Hospital), VNA of Care New England, Care New England Ambulatory Surgery Center, Integra Community Care Network, LLC, and The Providence Center, Inc. and directly or indirectly controls certain other entities that provide and support health care and health care-related services including those entities listed on Exhibit A (collectively, the “**CNE Affiliates**” and together with CNE, the “**CNE System**”);

**WHEREAS**, Lifespan is the parent entity of a health care system primarily serving Rhode Island and Southeastern Massachusetts, and is the sole member of Rhode Island Hospital, The Miriam Hospital, Emma Pendleton Bradley Hospital, Newport Hospital, Newport Health Care Corporation, and Gateway Healthcare, Inc. and directly or indirectly controls certain other entities that provide and support health care and health care-related services including those entities listed on Exhibit B (collectively, the “**Lifespan Affiliates**” and together with Lifespan, the “**Lifespan System**”);

**WHEREAS**, the Parties are trusted Rhode Island nonprofit health systems that share a common charitable mission, provide exceptional health care, attract some of the nation’s top primary care and specialty-trained doctors, and maintain strong research and academic partnerships with The Warren Alpert Medical School of Brown University (“**Brown**”) and other outstanding Rhode Island educational institutions;

**WHEREAS**, nonprofit health systems like the Parties, that include major teaching hospitals, are facing daunting challenges from a range of industry pressures;

**WHEREAS**, academic health systems nationally have responded to these challenges by pursuing strategies that lead to increased integration, coordination and operational efficiencies among the various components of such systems;

**WHEREAS**, the Parties desire to improve the health and well-being of every segment of Rhode Island’s population by creating a fully-integrated academic health system that brings together all of the resources necessary to provide a coordinated continuum of care, ranging from robust primary care and preventive health to a broad spectrum of inpatient and outpatient services;

**WHEREAS**, the Parties intend to achieve this goal by creating a top-tier, regionally and internationally-renowned, integrated “learning” academic health system that will be known for providing high quality, cost effective “destination” health care; essential basic, clinical and translational research; and outstanding 21<sup>st</sup> century training and education, while meeting the needs of the Rhode Island community;

**WHEREAS**, the Parties desire to establish an academic health system that is sensitive to, and supportive of, the needs of physicians and other care providers so they may thrive professionally and personally;

**WHEREAS**, the Parties believe that the creation of an integrated academic health system would strengthen the financial health of the Parties to ensure that their charitable missions will be met long into the future, while creating a resilient health system capable of responding to potential future financial or public health crises while continuing to provide essential services to all Rhode Islanders;

**WHEREAS**, the development and success of the academic health system will require a strong collaboration with Brown, and the Parties desire to execute a comprehensive and robust affiliation agreement with Brown covering, in part, the relationship to Brown, research, clinical alignment and funds flow;

**WHEREAS**, the Parties further believe that such an academic health system would enable them to foster a culture of technological and biomedical innovation that will stimulate investment and attract health industry entrepreneurs, service providers and manufacturers to the State and enhance Rhode Island's economy for many decades to come;

**WHEREAS**, the Parties intend to establish an academic health system that is even more cost-efficient than the Parties are today, meets the needs of the Rhode Island community and actively engages them in collecting feedback regarding health care needs, is convenient for patients to obtain access at various levels and locations for care, and prioritizes population health;

**WHEREAS**, the Parties desire to expand and enhance their ability to train and employ a diverse and highly qualified health system work force that will serve Rhode Islanders for many generations to come and become a national model for diversity, equity, access and inclusiveness for their employees, medical staff and the patients and communities they serve;

**WHEREAS**, the Parties expect to build on the many clear synergies between them, drawing upon their wide range of complementary services and specialties, to improve quality, generate efficiencies, reduce health costs and deliver value to patients and payers;

**WHEREAS**, the current pandemic has dramatically underscored the need for enhanced coordination and cooperation in delivering care, which can best be achieved by merging the current disparate components of Rhode Island's teaching hospitals into a single integrated nonprofit academic health system;

**WHEREAS**, the Parties have engaged in discussions to explore the possibility of entering into a transaction whereby a new nonprofit, tax-exempt parent organization (the "**System Parent**") will be created for CNE and Lifespan, which will result in the creation of a single integrated nonprofit academic health system that supports their common charitable mission (the "**Unified System**");

**WHEREAS**, the Parties will cause the proposed System Parent to be incorporated as a Rhode Island nonprofit corporation;

**WHEREAS**, the Parties will cause the incorporator of the System Parent to adopt mutually agreed-upon initial organizational resolutions adopting mutually agreed-upon initial bylaws for the System Parent and appointing a mutually agreed-upon initial board of the System Parent (the "**Interim System Parent Board**"), which will take such actions on behalf of the System Parent as are necessary to effectuate the provisions of this Agreement prior to Closing (as such term is defined in Section 9.1);

**WHEREAS**, as a result of these discussions, the Parties entered into a Letter of Intent dated September 15, 2020 (the “**Letter of Intent**”), pursuant to which they set forth their preliminary understandings and agreements regarding the nature and terms of their potential affiliation (the “**Affiliation**”);

**WHEREAS**, upon entering into the Letter of Intent, the Parties each appointed an equal number of their current board members to serve as members of the Pre-Closing Governance and Nominating Committee (as defined in Section 5.1(a)), which is tasked with evaluating and recommending to the Parties certain structural governance matters for the Unified System and to identify, recruit and recommend members for the Board of Directors of the System Parent; and

**WHEREAS**, as contemplated by the Letter of Intent, the Parties now desire to set forth the full and complete terms of their agreement with respect to the Affiliation.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the sufficiency and receipt of which hereby are acknowledged, the Parties agree as follows:

## ARTICLE 1

### CHARITABLE OBJECTIVES

**1.1 Deliberative Process.** The Board of Directors of CNE (the “**CNE Board**”) and the Board of Directors of Lifespan (the “**Lifespan Board**”), in keeping with their fiduciary duty to oversee their respective organizations’ charitable assets, have engaged in a deliberative process to explore ways to more effectively serve their communities. Through this process, CNE and Lifespan have realized that they share a common and unifying mission focused on the delivery of high-quality outcomes, preeminent patient experiences, cost-effective care, and the continued provision of medically necessary services to all persons without regard to their ability to pay. In furtherance of this mission, and their desire to achieve their comparable charitable objectives over the long term, the Parties have a mutual desire to implement the Affiliation, subject to the terms and conditions hereof.

**1.2 Charitable Objectives.** As a means of furthering their common mission, CNE and Lifespan believe that it is in their mutual best interests to enter into this Agreement and, subject to the terms and conditions hereof, establish the Affiliation. In doing so, the Parties have identified the following charitable objectives which they expect will be realized therefrom:

- (a) Improvement in the quality of clinical programs and services;
- (b) Maintenance and expansion of patient access to a broader continuum of services ranging from robust primary care and preventive health to a broad spectrum of inpatient and outpatient services;
- (c) The creation of operational efficiencies designed to improve quality, generate efficiencies, reduce health costs and deliver value to patients and payers;
- (d) The development and maintenance of a new integrated nonprofit academic health system that is essential to fostering clinical excellence and a culture of technological and biomedical

innovation that will stimulate investment and attract health industry entrepreneurs, service providers and manufacturers to the State;

(e) The development and maintenance of an integrated delivery system in which patient care is coordinated across a full continuum of healthcare providers, thereby providing CNE and Lifespan a foundation for responding to potential future financial or public health crises while continuing to provide essential services to all Rhode Islanders;

(f) The establishment of a streamlined, clear and accountable governance structure which will enable CNE and Lifespan to respond nimbly to industry changes and challenges;

(g) The enhancement of physician recruitment, retention and integration initiatives;

(h) The achievement of clinical “employer of choice” status, ensuring that CNE’s and Lifespan’s employees have opportunities to attain their professional goals in a supportive work environment;

(i) The enhancement of CNE’s and Lifespan’s ability to train and employ a diverse and highly-qualified health system work force that will serve as a national model for diversity, equity, access and inclusiveness for their employees, medical staff and the patients and communities they serve;

(j) The enhancement of CNE’s and Lifespan’s ability to achieve their charitable objectives in the most efficient and effective manner possible; and

(k) The responsible stewardship of charitable assets, ensuring that CNE and Lifespan collectively will maintain a strong financial profile to enable them to achieve their charitable objectives long into the future.

## ARTICLE 2

### AFFILIATION IMPLEMENTATION

In order to consummate the Affiliation and to achieve the charitable objectives set forth in ARTICLE 1, the Parties shall take the following actions, subject to the terms and conditions set forth in this Agreement: (a) as promptly as practicable following the Execution Date, the Parties shall cause the System Parent to be incorporated and to file an Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (*i.e.*, Form 1023) with the Internal Revenue Service (the “**IRS**”) as contemplated by Section 3.1(a); (b) effective as of the Closing Date (as defined in Section 9.1), the System Parent shall amend its organizational documents as contemplated by Section 3.2(a); (c) effective as of the Closing Date, Lifespan shall amend its organizational documents as contemplated by Section 3.2(b); (d) effective as of the Closing Date, CNE shall amend its organizational documents as contemplated by Section 3.2(c); (e) effective as of the Closing Date, certain Lifespan Affiliates and CNE Affiliates shall amend their respective organizational documents as contemplated by Section 3.2(d); and (f) effective as of the Closing Date, the individuals identified in accordance with ARTICLE 4 as the System Parent Board Members (as defined in Section 4.1(b)) will be elected to serve as the initial post-Closing board members of the System Parent as contemplated by Section 4.1.



## ARTICLE 3

### ORGANIZATION OF SYSTEM PARENT

#### 3.1 Sole Member.

(a) As promptly as practicable following the Execution Date, the Parties shall cause the System Parent to be incorporated and to file an Application for Recognition Under Section 501(c)(3) of the Internal Revenue Code (*i.e.*, Form 1023) with the IRS.

(b) Effective as of the Closing Date, the System Parent will be the sole corporate member of CNE and Lifespan, and the System Parent will be the ultimate corporate parent of the Unified System.

#### 3.2 Amended Organizational Documents.

(a) **System Parent.** Effective as of the Closing Date, subject to the terms and conditions set forth in this Agreement, the Parties shall cause the System Parent to adopt, and to file with the State of Rhode Island Office of the Secretary of State, Division of Business Services, the amended articles of incorporation attached hereto as Exhibit C (the “**System Parent Articles**”) and to adopt the amended and restated bylaws attached hereto as Exhibit D (the “**System Parent Bylaws**”), in each case with such additional revisions as the Parties may agree upon to reflect the recommendations of the Pre-Closing Governance and Nominating Committee. In the event of any conflict between the System Parent Articles or System Parent Bylaws, on one hand, and this Agreement on the other, the System Parent Articles or System Parent Bylaws, as applicable, will control.

#### (b) **Lifespan.**

(i) Effective as of the Closing Date, subject to the terms and conditions set forth in this Agreement, Lifespan shall amend its articles of incorporation to:

- (1) name the System Parent as Lifespan’s sole corporate member; and
- (2) include such additional revisions as the Parties may agree upon to reflect the recommendations of the Pre-Closing Governance and Nominating Committee.

(ii) Effective as of the Closing Date, subject to the terms and conditions set forth in this Agreement, Lifespan shall amend its bylaws to:

(1) require that Lifespan’s corporate powers will be exercised, its business and affairs conducted, and its property managed by the Lifespan Board, subject to, or otherwise limited by, the System Parent’s Reserved Powers and the System Parent Super-Majority Vote as described in Section 3.3 and Section 4.2, respectively, of this Agreement, or as otherwise provided by the laws of the State of Rhode Island;

(2) include the provision of Section 3.2(b)(i)(1);

(3) require that the Lifespan Board’s composition and membership mirror the composition and membership of the System Parent Board (as defined in Section 4.1(b)); and

(4) include such other provisions as the Parties may agree upon to reflect the recommendations of the Pre-Closing Governance and Nominating Committee.

(c) **CNE.**

(i) Effective as of the Closing Date, subject to the terms and conditions set forth in this Agreement, CNE shall amend its articles of incorporation to:

(1) name the System Parent as CNE's sole corporate member; and

(2) include such additional revisions as the Parties may agree upon to reflect the recommendations of the Pre-Closing Governance and Nominating Committee.

(ii) Effective as of the Closing Date, subject to the terms and conditions set forth in this Agreement, CNE shall amend its bylaws to:

(1) require that CNE's corporate powers be exercised, its business and affairs conducted, and its property managed by the CNE Board, subject to, or otherwise limited by, the System Parent's Reserved Powers and the System Parent Super-Majority Vote, as described in Section 3.3 and Section 4.2, respectively, of this Agreement, or as otherwise provided by the laws of the State of Rhode Island;

(2) include the provision of Section 3.2(c)(i)(1);

(3) require that the CNE Board's composition and membership mirror the composition and membership of the System Parent Board; and

(4) include such other provisions as the Parties may agree upon to reflect the recommendations of the Pre-Closing Governance and Nominating Committee.

(d) **Lifespan and CNE Affiliates.**

(i) Effective as of the Closing Date, subject to the terms and conditions set forth in this Agreement, Lifespan and CNE, as applicable, shall cause Butler Hospital, Kent County Memorial Hospital, Women & Infants Corporation, Women & Infants Hospital of Rhode Island, Southeastern Healthcare System, Inc., The Memorial Hospital, VNA of Care New England, Care New England Ambulatory Surgery Center, Rhode Island Hospital, The Miriam Hospital, Emma Pendleton Bradley Hospital, Newport Hospital, Newport Health Care Corporation and Gateway Healthcare, Inc. (each a "**Hospital Subsidiary**") to amend their respective bylaws to:

(1) require that each Hospital Subsidiary's corporate powers be exercised, its business and affairs conducted, and its property managed by the Hospital Subsidiary's Board, subject to, or otherwise limited by, the System Parent's Reserved Powers and System Parent Super-Majority Vote as described in Section 3.3 and Section 4.2, respectively, of this Agreement, or as otherwise provided by the laws of the State of Rhode Island;

(2) require that the composition and membership of each Hospital Subsidiary's Board mirrors the composition and membership of the System Parent Board; and

(3) include such additional revisions as the Parties may agree upon to reflect the recommendations of the Pre-Closing Governance and Nominating Committee.

(ii) The composition of the boards of directors of all other Lifespan Affiliates and CNE Affiliates will remain unchanged following Closing unless the Parties mutually agree otherwise; provided, however, that effective as of the Closing Date, subject to the terms and conditions set forth in this Agreement, Lifespan and CNE, as applicable, shall cause the governing documents of such affiliates to be amended, as necessary or appropriate, to:

(1) give effect to the System Parent's role as the ultimate corporate parent and recognition that each such affiliate is a component of the Unified System;

(2) require that each affiliate's corporate powers be exercised, its business and affairs conducted, and its property managed by the affiliate's board, subject to, or otherwise limited by, the System Parent's Reserved Powers as described in Section 3.3 of this Agreement, or as otherwise provided by the laws of the State of Rhode Island; and

(3) include such additional revisions as the Parties may agree upon to reflect the recommendations of the Pre-Closing Governance and Nominating Committee.

**3.3 System Parent Reserved Powers.** Following the Closing Date, the System Parent, acting by majority vote of the System Parent Board, will have the following direct or indirect reserved powers (including, at its discretion, the right to exercise but not the obligation to do so), as applicable (the "**System Parent's Reserved Powers**"), with respect to CNE, Lifespan, the CNE Affiliates and the Lifespan Affiliates (collectively, the "**Unified System Affiliates**"), and which will be reflected in the System Parent's, Lifespan's, CNE's and each Hospital Subsidiary's articles of incorporation and bylaws, as applicable:

(a) Authorization and approval of any sale, mortgage or discontinuation of use of all or substantially all real property or assets of any Unified System Affiliate;

(b) Authorization and approval of any merger with or acquisition of any Unified System Affiliate by another entity, or material acquisition by any Unified System Affiliate of another provider or system of providers;

(c) Authorization and approval of any amendments to the Unified System Affiliates' organizational documents including, without limitation, articles of incorporation, articles of organization, bylaws, operating agreements and certificates of incorporation/organization;

(d) Authorization and approval of any assignment for the benefit of creditors, the filing of any petition in voluntary bankruptcy, the filing of any petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state.

(e) Authorization and approval of strategic and operating plans for the Unified System Affiliates;

(f) Authorization and approval of capital and operating budgets for the Unified System Affiliates;

(g) Authorization and approval of non-budgeted expenditures in excess of Five Million Dollars (\$5,000,000);

(h) Authorization and approval of any incurrence, assumption, or guarantee of debt by any Unified System Affiliate in excess of Ten Million Dollars (\$10,000,000) or such other threshold as may be established from time to time by the System Parent Board;

(i) Oversight with respect to the preparation and implementation of, and approval of, all financial statements related to the Unified System, the development of system-wide accounting controls, protocols and financial policies and procedures, and the selection of the Unified System's auditors;

(j) Authorization of the sale, transfer, or other disposition of Unified System clinical assets having an individual or aggregate value of Ten Million Dollars (\$10,000,000) or less;

(k) Authorization and approval of the sale, transfer, or other disposition of Unified System clinical assets having an individual or aggregate value in excess of Ten Million Dollars (\$10,000,000);

(l) Authorization and approval of the closure, sale or other disposition of any hospital program or service line generating net patient service revenue (excluding bad debt and charity care) in excess of Five Million Dollars (\$5,000,000);

(m) Authorization and approval of the allocation of overhead among the Unified System and the transfer of funds among Unified System Affiliates to pay for the same;

(n) Authorization and approval of other transfers of cash and/or other assets between Unified System Affiliates having a value in excess of Ten Million Dollars (\$10,000,000) or such other threshold as may be established from time to time by the System Parent Board;

(o) Authorization and approval of the Unified System Affiliates' individual or aggregate investments having a value in excess of Ten Million Dollars (\$10,000,000) or such other threshold as may be established from time to time by the System Parent Board; and

(p) The formation of any new entities.

## ARTICLE 4

### ORGANIZATION OF SYSTEM PARENT

#### 4.1 System Parent Board

(a) Prior to the Closing Date, the Interim System Parent Board will consist of four (4) directors: the chief executive officer and board chair of each of CNE and Lifespan.

(b) Effective as of the Closing Date, the Board of Directors of the System Parent (the "**System Parent Board**") will be comprised of between fifteen (15) and thirty-three (33) members, including an equal number of individuals selected by CNE and by Lifespan (each a "**System Parent Board Member**" and collectively, the "**System Parent Board Members**"), plus the Co-CEOs (as defined in Section 4.4(a) of this Agreement), who will serve *ex officio* and will have the right to vote.

(i) Each of CNE and Lifespan shall select a mutually agreed upon equal number of between six (6) and fifteen (15) individuals to serve as System Parent Board Members immediately following the Closing (the “**CNE System Parent Board Members**” or the “**Lifespan System Parent Board Members**,” as applicable). The initial CNE System Parent Board Members and the initial Lifespan System Parent Board Members will include (1) a mutually agreed upon equal number of individuals who, as of the Closing Date are, or during the three (3) year period immediately prior to the Closing Date were, members of the CNE Board or the Lifespan Board, as applicable (the “**CNE Legacy Board Members**” or the “**Lifespan Legacy Board Members**,” as applicable); and (2) a mutually agreed upon equal number of individuals selected by CNE and Lifespan, if selected as of the Closing Date, and selected by the CNE Legacy Board Members and the Lifespan Legacy Board Members, if selected after the Closing Date, who, as of the Closing Date, are not, and during the three (3) year period immediately prior to the Closing Date, were not members of the CNE Board and the Lifespan Board, as applicable. The initial System Parent Board Members also may include up to three (3) individuals who are not, and have not been, associated with either CNE or Lifespan, including, for example, individuals employed by or associated with Brown. Consistent with preceding two sentences, the Pre-Closing Governance and Nominating Committee will be responsible for identifying and nominating the individuals to serve as initial System Parent Board Members immediately following the Closing. The slate of individuals nominated by the Pre-Closing Governance and Nominating Committee to serve as initial System Parent Board Members immediately following the Closing shall be approved by the CNE Board and the Lifespan Board and will replace the Interim System Parent Board effective as of the Closing Date.

(ii) Each initial System Parent Board Member will serve an initial two (2) year term (or until his or her sooner death, resignation or removal), and, subject to Section 4.1(f), his or her successors will be nominated by the System Parent Board Governance and Nominating Committee and elected by the System Parent Board in accordance with the System Parent Bylaws in effect from time to time.

(c) The President and Chief Executive Officer of the System Parent will be an *ex officio* member of the System Parent Board, with the right to vote. Until a permanent President and Chief Executive Officer of the System Parent is approved by the System Parent Board, the Co-CEOs each will be an *ex officio* member of the System Parent Board, with the right to vote. Once a permanent President and Chief Executive Officer of the System Parent is approved by the System Parent Board, the Co-CEOs will be removed as *ex officio* members of the System Parent Board and the permanent President and Chief Executive Officer of the System Parent will instead serve as an *ex officio* member of the System Parent Board, with the right to vote. If, at any time during the period of time from the Closing Date until the second (2nd) anniversary of the Closing Date (the “**System Integration Period**”), the System Parent Board selects one of the Co-CEOs to serve as the permanent President and Chief Executive Officer of the System Parent, the number of System Parent Board Members selected by the Party whose Co-CEO is selected as the permanent President and Chief Executive Officer of the System Parent will be decreased by one seat so that the Parties will continue to have equal representation on the System Parent Board for the duration of the System Integration Period.

(d) In the event that the size of the System Parent Board is increased or decreased during the System Integration Period, the number of CNE System Parent Board Members and Lifespan System Parent Board Members each will be proportionately increased or decreased such that CNE and Lifespan each continue to have an equal number of System Parent Board Members.

(e) The initial System Parent Board chair will be chosen by the Lifespan Legacy Board Members. The initial System Parent Board vice-chair will be chosen by the CNE Legacy Board Members.

The initial System Parent Board treasurer and secretary will be elected from the System Parent Board Members. The individuals selected to serve as the System Parent Board chair, vice-chair, treasurer and secretary each shall serve an initial two (2) year term (or until his or her sooner death, resignation or removal), and their successors will be nominated by the System Parent Board Governance and Nominating Committee and elected by the System Parent Board in accordance with the System Parent Bylaws in effect from time to time (but subject to Section 4.1(f) or a System Parent Super-Majority Vote, as applicable).

(f) During the System Integration Period, the CNE Legacy Board Members or the Lifespan Legacy Board Members, as applicable, will have the exclusive right to fill any vacancies in respect of (including due to death, resignation or removal), (i) the System Parent Board Members who they or their legacy organization selected to serve as of the Closing Date or during the System Integration Period (including pursuant to this Section 4.1(f)), (ii) the Co-CEO of such legacy organization and/or (iii) the System Parent Board chair (in the case of the Lifespan Legacy Board Members) or vice-chair (in the case of the CNE Legacy Board Members). Following the System Integration Period until the third (3rd) anniversary of the Closing Date, any vacancy (including due to death, resignation or removal) in the office of the President and Chief Executive Officer (or of a Co-CEO, if applicable) will be filled by the System Parent Board with the affirmative vote of three-quarters (3/4) of the total number of then-current System Parent Board Members who are eligible to vote. Following the third (3rd) anniversary of the Closing Date, any vacancy (including due to death, resignation or removal) in the office of the President and Chief Executive Officer (or of a Co-CEO, if applicable) will be filled by the System Parent Board with the affirmative vote of a majority of the total number of then-current System Parent Board Members who are eligible to vote.

**4.2 System Parent Board Voting.** As of the Closing Date, except as otherwise provided in this Section 4.2 and in Section 4.1(f), all actions of the System Parent Board will be taken by a majority vote at a meeting at which a quorum is present. Notwithstanding anything to the contrary in this Agreement, the System Parent Bylaws shall provide that during the period of time from the Closing Date until the third (3<sup>rd</sup>) anniversary of the Closing Date, the System Parent Board shall not take any of the following actions with respect to CNE, Lifespan, the CNE Affiliates or the Lifespan Affiliates without the affirmative vote of three-quarters (3/4) of the total number of then-current System Parent Board Members that are eligible to vote (a “**System Parent Super-Majority Vote**”):

(a) close, sell or otherwise dispose of any hospital program or service line generating net patient service revenue (excluding bad debt and charity care) in excess of Five Million Dollars (\$5,000,000);

(b) sell, transfer, or otherwise dispose of Unified System clinical assets having an individual or aggregate net book value in excess of Ten Million Dollars (\$10,000,000);

(c) remove, with or without Cause, a System Parent Board Member, the System Parent Board chair or vice-chair, or the System Parent Board treasurer or secretary;

(d) fill vacancies in respect of the System Parent Board treasurer or secretary;

(e) remove, with or without Cause, a Co-CEO;

(f) appoint the President and Chief Executive Officer of the System Parent chosen to replace the Co-CEOs or subsequently remove and replace such President and Chief Executive Officer of the System Parent;

(g) approve any merger with or acquisition of the System Parent by another entity, or material acquisition by the System Parent or any Unified System Affiliate of another provider or system of providers;

(h) change either financial threshold set forth in clause (a) or (b) of this Section 4.2;  
or

(i) approve the adoption of or material change to the branding strategy for the Unified System.

For purposes of this Section 4.2, “Cause” means any of the following: (i) a plea of guilty or nolo contendere, or the indictment or conviction of any felony; (ii) the cancellation, revocation or non-renewal of an individual’s directors and officers liability insurance coverage; (iii) an individual’s having been found to have committed fraud or embezzlement; (iv) an intentional disregard or attempt to circumscribe the System Parent’s Reserved Powers, after such individual has received prior written notice and an opportunity to cure such actions, to the extent such actions are curable; (v) a finding by the System Parent Board of a violation of the individual’s fiduciary duties or duty of confidentiality; or (vi) failure to comply with the System Parent’s code of conduct (or other policy or procedure governing the conduct of directors) in any material respect, after such individual has received prior written notice and an opportunity to cure such actions, to the extent such actions are curable.

#### **4.3 System Parent Board Committees.**

(a) **Standing Committees.** At Closing, the System Parent Bylaws will specify that the System Parent Board, at a minimum, will have the following standing committees: (i) a Governance and Nominating Committee; (ii) a Compensation Committee; (iii) a Finance Committee; (iv) an Investment Committee; (v) an Audit and Compliance Committee; (vi) a System Quality Committee; (vii) a Community Care Committee, (viii) a Behavioral Health Committee, (ix) Academic Affairs Committee, and (x) Strategic and Integration Committee (collectively, the “**Standing Committees**”). Following Closing, the System Parent Board may modify the Standing Committees in accordance with the System Parent Bylaws, the Articles of Organization and applicable law.

(b) **Committee Composition.** At Closing, the System Parent Bylaws will specify that the System Parent Board, based on recommendations from the Governance and Nominating Committee, shall appoint the members of the various the Standing Committees pursuant to the System Parent Bylaws. The Governance and Nominating Committee, the Compensation Committee, the Finance Committee, the Strategic and Integration Committee, the Audit and Compliance Committee, and each committee that has been delegated the authority to bind the System Parent will be comprised of only System Parent Board Members. During the System Integration Period, each Standing Committee or other committee that has been delegated the authority to bind the System Parent will be made up of at least (*i.e.*, not necessarily exclusively) an equal number of CNE System Parent Board Members and Lifespan System Parent Board Members. The System Parent Board chair, in consultation with the System Parent Board vice-chair, shall select the chairs and vice-chairs of the Standing Committees. The Standing Committee chairs must be System Parent Board Members.

#### **4.4 System Parent Management.**

(a) **Interim President and Chief Executive Officers.** The current Presidents and Chief Executive Officers of the Parties shall serve as interim co-Presidents and Chief Executive Officers

(“Co-CEOs”) and each will be an *ex officio* member of the System Parent Board, with the right to vote. Each Co-CEO shall continue to lead his or her respective legacy organization and will share board-delegated responsibility for integrating the programs, services and personnel of the Parties and will be expected to carry out his or her duties in a manner reflecting the best interest of the Unified System.

(b) **Other System Parent Management.** As of the Closing Date, the Co-CEOs mutually shall agree upon the individuals who will serve in the listed senior management positions of System Parent on Exhibit E.

## ARTICLE 5

### PRE-CLOSING GOVERNANCE AND NOMINATING COMMITTEE; PRE-INTEGRATION STEERING COMMITTEE

#### 5.1 **Pre-Closing Governance and Nominating Committee.**

(a) As of the Execution Date, CNE and Lifespan each have designated four (4) individuals, including the chairs of the CNE Board and the Lifespan Board, to serve as members of a pre-Closing working group charged with evaluating and recommending to the Parties certain structural governance matters (including powers and duties, officers, committee structure, terms and term limit, conflict of interest policies and other key governance elements) and to identify, recruit and recommend members for the System Board (the “**Pre-Closing Governance and Nominating Committee**”). The Pre-Closing Governance and Nominating Committee will include the Co-CEOs and the General Counsels of each Party, and may include business and clinical staff of the Parties as they mutually agree is appropriate. The current membership of the Pre-Closing Governance and Nominating Committee is listed on Exhibit F.

(b) The activities of the Pre-Closing Governance and Nominating Committee will be conducted in a manner consistent with the requirements of the Federal and state regulatory agencies that must approve the Affiliation and all other applicable laws.

5.2 **Pre-Integration Committee.** As of the Closing Date, the Co-CEOs shall designate individuals to serve as members of a working group charged with identifying integration tasks and actions to be taken in the two (2) years following the Closing (the “**Pre-Integration Steering Committee**”). The Pre-Integration Steering Committee will be jointly chaired by the Co-CEOs and may include business and clinical staff as selected by the Co-CEOs. The Pre-Integration Steering Committee shall regularly report its progress to the System Parent Board Strategic Planning & Integration Committee.

## ARTICLE 6

### CERTAIN SYSTEM INTEGRATION MATTERS

6.1 **Charitable Assets.** Immediately following the Closing Date, each entity in the Unified System that holds legal title to charitable funds or other assets that are subject to a donor restriction will retain legal title to such funds and assets. Property given, devised, or bequeathed to CNE or the CNE Affiliates, or to Lifespan or the Lifespan Affiliates for specific charitable purposes, including endowments or restricted purpose funds will be used and expended in accordance with the Uniform Prudent Management of Institutional Funds Act and other applicable law. Nothing in this Agreement will restrict the use of pooled investment funds or similar asset management programs, in accordance with applicable law.



**6.2 Philanthropy.** Immediately following the Closing Date, the Parties will continue to maintain their current separate philanthropic fundraising initiatives and platforms. Subsequently the System Parent shall develop a coordinated philanthropy protocol to align more closely all philanthropic efforts.

**6.3 Charity Care.** Following the Closing Date, the Parties shall continue to make charity care available to the communities served by CNE and Lifespan prior to the Closing and consistent with their respective practices and policies in effect as of the Closing until such time as the System Parent Board implements changes to such policies and practices. Following the Closing Date, the Parties shall, at all times, comply with those charitable commitments necessary to maintain the tax-exempt status of the System Parent, CNE, Lifespan, the CNE Affiliates and the Lifespan Affiliates, as applicable.

**6.4 Branding.** The Parties acknowledge the importance and significant investments they have made in their respective names and in the branding of their systems. The Parties shall use commercially reasonable efforts to mutually agree upon a branding strategy and/or conduct a branding assessment strategy for the Unified System before the Closing. The Parties agree that any such branding strategy or branding assessment strategy will (a) maintain the Hospital Subsidiaries' hospital facility names (unless otherwise determined by the System Parent Board), and (b) take into consideration any naming commitments stemming from material charitable donations to the CNE System or the Lifespan System. Notwithstanding the foregoing, a Party shall not be able to rely upon a failure to use such commercially reasonable efforts for purposes of the conditions set forth in Sections 12.1(b) and 12.2(b), as applicable. If the Parties do not mutually agree upon a branding strategy for the Unified System before the Closing, each Party shall continue to operate under its current branding until the System Parent Board approves a branding strategy for the Unified System.

**6.5 Indebtedness.** Both the CNE System and the Lifespan System are the members of obligated groups with respect to certain bond indebtedness and other credit arrangements. The Parties agree that, as part of their respective due diligence process, and in furtherance of the Affiliation, they shall use commercially reasonable efforts to evaluate and determine the most effective and beneficial strategy for the integration and future management of their debt and credit structure, including, as appropriate, the potential combination of their obligated groups; provided, that a Party shall not be able to rely upon a failure to use such commercially reasonable efforts for purposes of the conditions set forth in Sections 12.1(b) and 12.2(b), as applicable. The objectives with respect to such evaluation will include, without limitation, allowing the Parties to minimize costs, allocate risk and optimize the Unified System's credit profile while taking into account the most efficient borrowing structure and future plans of the System Parent, and to enable the sharing of cash and capital across the Unified System and the Unified System Affiliates for the benefit of the Unified System.

**6.6 Academics.** The Parties are each a party to the existing, separate academic medical school affiliation arrangements listed on Exhibit G ("**Existing Academic Arrangements**"). Following the Closing Date, the Parties shall continue to honor any legally-compliant contractual obligations existing as of the Closing Date under the Existing Academic Arrangements. Notwithstanding the foregoing commitment, the Parties agree in furtherance of the Affiliation, they shall use commercially reasonable efforts to negotiate a new system-wide academic affiliation between the System Parent and The Warren Alpert Medical School at Brown University prior to the Closing Date, to be effective as of the Closing Date, but the execution of such new agreement will not be a condition of the Closing and a Party shall not be able to rely upon a failure to use such commercially reasonable efforts for purposes of the conditions set forth in Sections 12.1(b) and 12.2(b), as applicable.

**6.7 Collective Bargaining Agreements.** Following the Closing Date, the Parties shall continue to honor their respective contractual obligations under all existing collective bargaining agreements. Notwithstanding the foregoing, the Parties hereto acknowledge and agree that all provisions contained in this Section 6.7 with respect to the existing collective bargaining agreements are included for the sole benefit of the respective parties hereto and will not create any right in any other person, including, without limitation, any employee, former employee or any collective bargaining unit. Nothing contained in this Agreement is intended to be or will be considered to be an amendment to any collective bargaining agreement.

## ARTICLE 7

### MEDICAL STAFF

Following the Closing Date, the medical staffs of the CNE System and the Lifespan System will remain separate. In furtherance of the Affiliation, the Parties shall evaluate best practices for credentialing and privileging at each of their respective hospitals and, where appropriate and desired, modify existing medical staff organizational materials from and after the Closing Date to reflect the best in contemporary practice and which both creates efficiencies and promotes the coordination of clinical care among the hospitals and other providers within the Unified System.

## ARTICLE 8

### SYSTEM SERVICES

The Parties' have a mutual desire to control costs and reduce potential exposure to liabilities. Prior to the Closing, the Parties shall use commercially reasonable efforts to agree on a budget for the operations of the System Parent, including the initial post-Closing funding of the System Parent. In developing the budget, the Parties shall use commercially reasonable efforts to evaluate the various services provided by or to the CNE System, and by or to Lifespan System, in an effort to determine how best to promote the efficient delivery of necessary services to the System Parent and throughout the Unified System. Unless the Parties agree otherwise, the initial post-Closing cost of funding of the System Parent will be borne equally between the Parties. Nothing contained in this ARTICLE 8 is intended to limit the System Parent Board's ability to adopt or amend the System Parent's budget following the Closing.

## ARTICLE 9

### CLOSING

**9.1 Closing.** Subject to the satisfaction or waiver by the appropriate Party of all the conditions precedent to Closing specified herein, the consummation of the Affiliation contemplated by and described in this Agreement (the "**Closing**") will take place via electronic exchange of closing deliverables on (a) the first day of the month that is at least 10 business days immediately following the satisfaction of the closing conditions set forth in ARTICLE 12 or (b) such other date agreed upon by the Parties following the satisfaction of the closing conditions set forth in ARTICLE 12 (the "**Closing Date**"). The Closing will be effective as of 12:01 a.m., Eastern Time on the Closing Date.

**9.2 Closing Deliverables of Lifespan.** At the Closing, Lifespan shall deliver to CNE the following documents:

(a) **Amended Articles of Incorporation.** Amended and restated articles of incorporation of Lifespan as contemplated in Section 3.2(b)(i);

(b) **Amended Bylaws.** Amended and restated bylaws of Lifespan as contemplated in Section 3.2(b)(ii), and amended and restated bylaws for the Lifespan Hospital Subsidiaries as contemplated in Section 3.2(d);

(c) **President's Certificate of Lifespan.** A President's Certificate of Lifespan, dated as of the Closing Date, attesting to the satisfaction of the conditions precedent set forth in Sections 12.1(a), 12.1(b), 12.1(f), and 12.1(g) of this Agreement;

(d) **Secretaries' Certificates of Lifespan.** A Secretary's Certificate of Lifespan, dated as of the Closing Date, certifying the due adoption and continued effectiveness of attached resolutions of Lifespan and each applicable Lifespan Affiliate approving: (i) the transactions contemplated by this Agreement; (ii) this Agreement; (iii) the amended and restated articles of incorporation of Lifespan as contemplated by this Agreement; and (iv) the amended and restated bylaws of Lifespan and the Lifespan Affiliates as contemplated by this Agreement;

(e) **Certificates of Good Standing.** Certificates of existence and good standing of Lifespan; and

(f) **Consents.** Evidence of the consents or approvals obtained by Lifespan as listed on Exhibit H.

(g) **Other Deliverables.** Such other instruments and documents as may be reasonably requested by CNE to carry out the transactions contemplated by this Agreement and to comply with its terms.

**9.3 Closing Deliverables of CNE.** At the Closing, CNE shall deliver to Lifespan the following documents:

(a) **Amended Articles of Incorporation.** Amended and restated articles of incorporation of CNE as contemplated in Section 3.2(c)(i);

(b) **Amended Bylaws.** Amended and restated bylaws of CNE as contemplated in Section 3.2(c)(ii), and amended and restated bylaws for the CNE Hospital Subsidiaries as contemplated in Section 3.2(d);

(c) **President's Certificate of CNE.** A President's Certificate of CNE, dated as of the Closing Date, attesting to the satisfaction of the conditions precedent set forth in Sections 12.2(a), 12.2(b), 12.2(f), and 12.2(g) of this Agreement;

(d) **Secretaries' Certificates of CNE.** A Secretary's Certificate of CNE, dated as of the Closing Date, certifying the due adoption and continued effectiveness of attached resolutions of CNE and each applicable CNE Affiliate approving: (i) the transactions contemplated by this Agreement; (ii) this Agreement; (iii) the amended and restated articles of incorporation of CNE as contemplated by this Agreement; and (iv) the amended and restated bylaws of CNE and the CNE Affiliates as contemplated by this Agreement;

- (e) **Certificates of Good Standing.** Certificates of existence and good standing of CNE; and
- (f) **Consents.** Evidence of the consents or approvals obtained by CNE as listed on Exhibit I.
- (g) **Other Deliverables.** Such other instruments and documents as may be reasonably requested by Lifespan to carry out the transactions contemplated by this Agreement and to comply with its terms.

## ARTICLE 10

### REPRESENTATIONS AND WARRANTIES

As of the Execution Date and, subject to Section 16.14, as of the Closing Date, each Party hereby represents and warrants, on its behalf, and on behalf of its other System Affiliates (but not on behalf of the other Party or the other Party's System Affiliates), that, except as disclosed in the schedules applicable to Lifespan attached as Exhibit J (the "**Lifespan Disclosure Schedule**") or the schedules applicable to CNE attached as Exhibit K (the "**CNE Disclosure Schedule**," collective with the Lifespan Disclosure Schedules, the "**Disclosure Schedule**"), with all such exceptions noted in the Disclosure Schedule to be numbered to correspond to the applicable Sections of this ARTICLE 10, the representations and warranties contained in this ARTICLE 10 are true and correct. "**System Affiliates**" means either the CNE Affiliates or the Lifespan Affiliates, as applicable. Each exception to any representation or warranty disclosed within the Disclosure Schedule will constitute an exception to all other applicable representations or warranties made in the Agreement and requiring disclosure of such exception by Lifespan or CNE, as applicable, to the extent it is reasonably apparent on the face of such disclosure that it is responsive to such other representation or warranty.

**10.1 Due Organization.** Each Party and each of its System Affiliates is a Rhode Island corporation or limited liability company duly organized or incorporated, validly existing and in good standing under the laws of the State of Rhode Island. Each Party has caused true, complete and correct copies of its and its System Affiliates' articles of incorporation, articles of organization, bylaws and operating agreements (as applicable), as in effect as of the Execution Date, to be delivered to the other Party.

**10.2 Corporate Authorization; No Violation.** Each Party has the full corporate power and authority to enter into, and to perform its obligations under this Agreement. The execution, delivery and performance of this Agreement by each Party has been duly and properly authorized by proper corporate action in accordance with applicable laws and each Party's articles of incorporation and bylaws. This Agreement constitutes the lawful, valid and legally binding obligation of each Party, enforceable against the Party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other laws of general application affecting the enforcement of creditors' rights and by general equitable principles. Except where the following would not have a Significant Effect, the execution, delivery and performance of this Agreement will not: (i) violate or conflict with any provision of, does not constitute a default or breach of any CNE Material Contract or Lifespan Material Contract (as such terms are defined in Section 10.18), as applicable, permit, license, approval or other non-contractual commitment to which either Party or any of such Party's System Affiliates is a party or is subject or by which either Party or any of such Party's System Affiliates is bound, any judgment decree, order, writ or injunction of any court order or requesting authority; (ii) result in the acceleration or mandatory prepayment of any indebtedness of either

Party or any of such Party's System Affiliates; or (iii) result in the creation of any lien, charge, or encumbrance of any kind, the termination or acceleration of any indebtedness or other obligation of either Party or any of such Party's System Affiliates. Except where the following would not have a Significant Effect, or except as set forth on Schedule 10.2, no approval, authorization, registration, consent, order or other action of or filing with any person, including any court, administrative agency or other governmental authority, is required (that has not been obtained) for the execution and delivery by either Party of this Agreement or the consummation by either Party of the transactions contemplated or required hereby. For purposes of this Agreement, a "**Significant Effect**" is defined as any event, change or occurrence that results in, or is reasonably likely to result in, a loss, liability or obligation exceeding Five Million Dollars (\$5,000,000).

**10.3 Financial Statements.** Each Party has delivered to the other Party true and correct copies of its and its System Affiliates' audited consolidated financial statements for the fiscal year ended September 30, 2019 and the unaudited consolidated financial statements for the fiscal year ended September 30, 2020 (the "**Balance Sheet Date**") (all of such audited and unaudited financial statements collectively, the "**Financial Statements**"). The Financial Statements were prepared from and are in accordance with the books and records of each Party and its System Affiliates in all material respects and present fairly and accurately in all material respects the financial position of each Party and its System Affiliates, and the results of their respective operations at the dates and for the periods indicated and have been prepared in conformity with generally accepted accounting principles, applied consistently for the periods specified, except for the unaudited financial statements which lack footnotes and year-end audit adjustments (which adjustments are not reasonably expected to be material). Each Party and its System Affiliates have not made any material changes to their accounting methods or practices since the Balance Sheet Date. To each Party's Knowledge, each Party and its System Affiliates have no material liabilities or obligations, whether contingent or absolute, direct or indirect, or matured or unmatured, which are not shown or provided for in the most recent Financial Statements, except for liabilities that have arisen since the Balance Sheet Date in the ordinary course of business or as contemplated by this Agreement.

**10.4 Interim Change.** From and after the Balance Sheet Date, there has not been: (i) any change in the financial condition, assets, liabilities, properties or results of operations of the business of each Party or its System Affiliates which has had or will have a Material Adverse Effect (as defined in Section 12.1(g)) on the CNE System or the Lifespan System, as applicable; (ii) any damage, destruction or loss, whether or not covered by insurance, which has had or will have, in the aggregate, a Material Adverse Effect on the business of the CNE System or the Lifespan System, as applicable; (iii) any disposition by a Party or its System Affiliates of any property, rights or other assets owned by or employed in the business of the CNE System or the Lifespan System, as applicable, except for dispositions in the usual and ordinary course of the business of the CNE System or the Lifespan System, as applicable, or that did not involve property, rights or other assets with a value exceeding Five Million Dollars (\$5,000,000); (iv) any amendment or termination of any Material Contract (as defined in Section 10.18); or (v) any event or condition of any character which has had or will have a Material Adverse Effect on the business of the CNE System or the Lifespan System, as applicable.

**10.5 Legal Proceedings.** Except as disclosed on Schedule 10.5, neither Party nor its System Affiliates is a party to, or, to such Party's Knowledge, has been threatened with any action, suit, proceeding, complaint, charge, hearing, investigation or arbitration or other method of settling disputes or disagreements, which has a potential liability of Five Million Dollars (\$5,000,000) or more, or which seeks to impose any restrictions on such Party's ongoing operations, or which adversely and materially affects such Party's ability to perform hereunder. Each Party and each of its System Affiliates has not received any notice of any investigation (excluding medical record subpoenas in the normal course of business),

actual or threatened, by any federal, state or local governmental or regulatory agency, including investigations involving its business practices and policies, which will, or is reasonably likely to, result in a loss or liability of One Million Dollars (\$1,000,000) or more.

**10.6 Licenses, Permits and Approvals.** Each Party and each of its System Affiliates holds all governmental licenses, permits, certificates, accreditations (including, but not limited to, accreditation from the Joint Commission), consents and approvals that are material to its business and operations (the “**Licenses and Permits**”). Each License and Permit is current and valid. Neither Party nor its System Affiliates have received notice from any governmental authority or accrediting body in respect to any pending revocation, termination, suspension or limitation of any License or Permit, nor has any such action been proposed or, to the Knowledge of the Party, threatened.

**10.7 Compliance with Law.**

(a) Each Party and each of its System Affiliates is in compliance in all material respects with all laws, regulations, ordinances, decrees and orders applicable to each of them, including all health care regulatory laws and employment laws, that, if violated, would, or is reasonably likely to, result in a loss or liability of One Million Dollars (\$1,000,000) or more. Neither the Party nor its System Affiliates has, and to the Knowledge of each Party no employee of the Party or its System Affiliates has, committed a violation of federal or state laws regulating health care fraud, including but not limited to the federal Anti-Kickback Law, 42 U.S.C. § 1320a-7b, the Stark I and II Laws, 42 U.S.C. § 1395nn, as amended, and the False Claims Act, 31 U.S.C. § 3729, et seq.

(b) Each Party maintains compliance programs, a code of conduct, and policies and procedures applicable to the Lifespan System and the CNE System, as applicable, and the business of each Party and the System Affiliates are compliant, in all material respects, with the Federal Sentencing Guidelines and Department of Health and Human Services OIG Compliance Program Guidance and that are commercially reasonable and appropriate for similarly-situated businesses operating in the sectors of the health care industry in which the Parties currently operate (collectively, “**Compliance Program**”). Each Party and the System Affiliates are and have been in material compliance with such Compliance Program and have designated compliance officers and committees, ethics and risk area policies, training and education policies, policies and procedures regarding patient rights and responsibilities, provision of care, treatment and services policies, environmental safety policies, billing and claims submission policies and disciplinary policies to the extent required by applicable laws, Licenses and Permits and Payment Program Regulations (as defined in Section 10.14). Each Party and the System Affiliates promptly and duly review any reports of alleged compliance violations, conduct internal audits and take corrective action as appropriate, including repayment of any overpayments.

(c) Except as disclosed on Schedule 10.7(c), neither Party nor any of its System Affiliates: (i) are a party to a Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services; (ii) have reporting obligations pursuant to any settlement agreement entered into with any governmental entity; (iii) are the subject of any unresolved government payer program investigation conducted by any federal or state enforcement agency, auditors or contracting entities or any private payor that has an estimated liability of Three Million Dollars (\$3,000,000) or more; (iv) have been a defendant in any *qui tam*/False Claims Act litigation during the past six (6) years; (v) have been served with or received any search warrant, subpoena, civil investigative 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 health care businesses conducted by such Party or its System

Affiliates) during the past three (3) years; or (vi) have received any complaints from employees, independent contractors, vendors, physicians, or any other person that assert that such Party or its System Affiliates has violated any law or regulation, in each case with respect to clause (v) or (vi) that is either outstanding or unresolved and has an estimated liability of One Million Dollars (\$1,000,000) or more.

(d) Neither Party nor its System Affiliates have been and, to the Knowledge of each Party, no employee, agent, or independent contractor of the Party or its System Affiliates has been: (i) excluded from participating in any Federal Health Care Program (as defined in 42 U.S.C. § 1320a 7b(f)); (ii) subject to sanction or been indicted or convicted of a crime, or pled nolo contendere or to sufficient facts, in connection with any allegation of violation of any Federal Health Care Program requirement or corresponding law; (iii) debarred or suspended from any federal or state procurement or non-procurement program by any government agency; or (iv) designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

(e) Each Party and each of its System Affiliates are in compliance in all material respects with the administrative simplification provisions required under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the electronic data interchange regulations, the health care privacy regulations, the information security regulations, and the breach notification regulations as of the applicable effective dates for such requirements that, if violated, would, or is reasonably likely to, result in a loss or liability of One Million Dollars (\$1,000,000) or more on such Party. Each Party and each of its System Affiliates has, and for the six (6) years preceding the Closing Date has maintained, privacy and security policies, procedures and safeguards that comply with then-applicable requirements of HIPAA and other applicable laws governing the privacy and security of personal health information that, if violated, would, or is reasonably likely to, result in a loss or liability of One Million Dollars (\$1,000,000) or more on such Party. Each Party and each of its System Affiliates has a written and signed business associate agreement with each person who is a “business associate” (as defined in 45 C.F.R. § 160.103) of such Party or System Affiliate. Neither the Party nor any System Affiliates has received written or, to the Party’s Knowledge, other notice of, and there is no litigation, proceeding (at law or in equity) or, to the Party’s Knowledge, inquiry or investigation pending or, to the Party’s Knowledge, threatened with respect to, any alleged “breach of unsecured Protected Health Information” as defined in 45 C.F.R. § 164.402 (a “Breach”) or any other violation of HIPAA or other applicable laws governing the privacy and security of personal health information by the Party, its System Affiliates or its “workforce” (as defined under HIPAA) that would, or is reasonably likely to, result in a loss or liability of One Million Dollars (\$1,000,000) or more. No Breach or other violation of HIPAA by the Party, its System Affiliates or its “workforce” or successful “security incident” (as defined in 45 C.F.R. § 164.304) has occurred with respect to “protected health information” (as defined in 45 C.F.R. § 160.103) in the possession or under the control of the Party, its System Affiliates or their business associates other than events that would, or are reasonably likely to, result in a loss or liability of One Million Dollars (\$1,000,000) or more. All Breaches experienced by each Party, if any, for which a report was previously required to be made have been reported to the U.S. Office of Civil Rights and the impacted individuals in accordance with law.

**10.8 Environmental and Medical Waste Matters.** Each Party and each of its respective System Affiliates is in material compliance with all applicable Environmental Laws and Medical Waste Laws. Each Party and each of its respective System Affiliates has obtained and is in compliance with, in all material respects, all material Environmental Permits, all such Environmental Permits are valid and in good standing and there is no action pending or, to the Knowledge of the Party, threatened to revoke, cancel, terminate, modify or otherwise limit any such Environmental Permit. Except as set forth on Schedule 10.8, neither Party nor any of its System Affiliates has received, been subject to or, to the Knowledge of the Party, threatened with any written action, claim, order, complaint, citation, suit, demand, report, potentially

responsible party letter, general or special notice letter or Comprehensive Environmental Response, Compensation and Liability Act Section 104(e) information request or similar state information request with respect to any Environmental Law or Medical Waste Law and has not received written notice of any actual or alleged liability under any Environmental Law or Medical Waste or any actual or alleged liability for personal injury, property damage or investigatory or cleanup obligations under Environmental Laws or relating to Hazardous Substances, in each case that is either outstanding or unresolved. Neither Party nor any of its System Affiliates has treated, stored, disposed of, arranged for the disposal of, Released, exposed any employee or other individual to any Hazardous Substances or owned or operated any property or facility, in each case in a manner that would reasonably be expected to give rise to any material liability under any applicable Environmental Law. To the Knowledge of each Party, there have been no Releases of Hazardous Substances at, on or under the Real Property (as defined below) in concentrations or quantities that would reasonably be expected to give rise to any material liability under any applicable Environmental Law. Schedule 10.8 sets forth a list of all underground storage tanks located on the Real Property and a list of all Environmental Permits issued to each Party or a System Affiliate of such Party. Each Party has made available to the other Party true and correct copies of all material environmental reports, studies, surveys and assessments applicable to the Real Property or the business of the Party or its System Affiliates that are in the possession, custody or control of the Party or any System Affiliate and that have been prepared in the most recent five (5) years. “**Environmental Laws**” as used herein means any and all federal, state and local laws (including common laws), statutes, decrees, orders and ordinances, and all rules and regulations promulgated thereunder, pertaining or relating to pollution, protection of the environment, worker health and safety (from exposure to or management of Hazardous Substances), natural resources or the identification, reporting, generation, manufacture, processing, distribution, use, treatment, storage, disposal, emission, discharge, Release, transport or other handling of any Hazardous Substances. “**Environmental Permits**” as used herein means all permits, licenses, consents or other authorizations of any federal, state or local governmental authority or regulatory agency required pursuant to applicable Environmental Laws or Medical Waste Laws. “**Hazardous Substances**” as used herein mean any toxic or hazardous substance, material or waste, any petroleum or petroleum products, radioactive materials, asbestos, mold, polychlorinated biphenyls, per- or polyfluoralkyl substances, Medical Waste, radon gas and any chemicals, materials, wastes or substances exposure to which is prohibited, limited, or regulated by any federal, state or local governmental or regulatory agency under any Environmental Law and any other contaminant, pollutant or constituent thereof, the presence of which requires investigation, control or remediation under any Environmental Law. “**Medical Waste**” as used herein means (a) pathological waste, (b) blood, (c) wastes from surgery or autopsy, (d) dialysis waste, including contaminated disposable equipment and supplies, (e) cultures and stocks of infectious agents and associated biological agents, (f) contaminated animals, (g) isolation wastes, (h) contaminated equipment, (i) laboratory waste, and (j) various other biological waste and discarded materials contaminated with or exposed to blood, excretion, or secretions from human beings or animals. “Medical Waste” also includes any substance, pollutant, material, or contaminant listed or regulated under the Medical Waste Tracking Act of 1988, 42 U.S.C. §§6992, et seq. or any analogous state law. “**Medical Waste Laws**” as used herein means the following, including regulations promulgated and orders issued thereunder: the Medical Waste Tracking Act of 1988, 42 U.S.C. §§6992 et seq.; the U.S. Public Vessel Medical Waste Anti-Dumping Act of 1988, 33 USCA §§2501 et seq.; the Marine Protection, Research, and Sanctuaries Act of 1972, 33 USCA §§1401 et seq.; the United States Department of Health and Human Services, National Institute for Occupational Self-Safety and Health Infectious Waste Disposal Guidelines, Publication No. 88-119 et seq. and any other federal, state, regional, county, municipal, or other local laws, regulations, and ordinances insofar as they regulate Medical Waste, or impose requirements relating to Medical Waste. “**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping, disposing, or other release of any Hazardous Substance.



## 10.9 Title to Properties and Assets.

(a) The Party or its System Affiliates is the sole and exclusive owner of all right, title and interest in and has good and marketable fee simple title to the real property owned by the CNE System or Lifespan System, as applicable, a true and correct list of which is set forth on Schedule 10.9(a) (collectively, the “**Owned Real Property**”). Such Party or the listed System Affiliate has good, defensible and marketable title to all Owned Real Property, free and clear of all liens, mortgages, security interests, options, pledges, charges, covenants, conditions, restrictions and other encumbrances and claims of any kind or character whatsoever except for such restrictions and easements customarily granted or suffered to exist by owners of commercial real property which, individually or in the aggregate, would not be likely to materially detract from the value or interfere with the use of the properties for the purposes for which they are currently used. There are no outstanding options, rights of first refusal or rights of first offer to purchase any of the Owned Real Property or any portion thereof or interest therein.

(b) With respect to leases of real property as to which the Party or its System Affiliates is the tenant, whether written or oral, including all amendments, terminations and modifications thereof, a true and correct list of each of the leased properties relating thereto is set forth on Schedule 10.9(b) (each a “**Lease**” and collectively, the “**Leases**”), except as would not have a Significant Effect:

(i) The Party or its System Affiliate, as applicable, has valid and enforceable leasehold interests to the leasehold estate in the leased real property, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors’ rights and general principles of equity;

(ii) Each of the Leases has been duly authorized and executed by the applicable Party or its System Affiliate, and to the Knowledge of each Party, the other parties thereto;

(iii) To the Knowledge of each Party, all rents and other amounts payable by the Party or its System Affiliate, as applicable, pursuant to each of the Leases are based upon the fair rental value of the leased premises;

(iv) Such Party or its System Affiliates, and to their Knowledge, no counterparty is in default under any of the Leases, nor, to each Party’s Knowledge, has any event occurred which, with notice or the passage of time, or both, would give rise to such a default by any party;

(v) There are no pending renegotiations, or outstanding rights to negotiate any amount to be paid or payable to the landlord under any of the Leases, and, to the Knowledge of each Party, no landlord intends not to renew any of the Leases on substantially similar terms; and

(vi) Neither the Party nor its System Affiliate, have assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in any leasehold or subleasehold under any of the Leases.

(c) The parcels of land leased or licensed to the Party or the System Affiliates under the Leases (the “**Leased Real Property**”) and the Owned Real Property (collectively, the “**Real Property**”) comprises all of the real property used in connection with the business of the Party and the System Affiliates.

(d) The Real Property has been maintained in good condition in all material respects, ordinary wear and tear excepted.

(e) None of the Party's or the System Affiliates' possession and quiet enjoyment of the Real Property has been materially disturbed, and there is no injunction, decree, order, writ or judgment outstanding, or any claim, litigation, administrative action or similar proceeding, pending or to the Knowledge of the Party, threatened, relating to the ownership, lease, use or occupancy of the Real Property or any portion thereof or the operation of the business of the Party or the System Affiliates as currently conducted thereon.

(f) To the Knowledge of the Party, none of the Real Property or any portion thereof nor interest therein is affected by or the subject of any pending, contemplated or threatened condemnation, expropriation or other proceeding in eminent domain.

(g) None of the Party's or System Affiliates' use or occupancy of the Real Property or any portion thereof or the operation of the business of the Party and the System Affiliates as currently conducted thereon is dependent on a "permitted non-conforming use" or "permitted non-conforming structure" or similar variance, exemption or approval from any governmental entity.

(h) Except where the following would not have a Significant Effect, each Party and each System Affiliate has good, defensible and marketable title to all non-real property assets of every kind, character and description, tangible and intangible, used in the operation of such Party and the System Affiliates, free and clear of all liens, mortgages, security interests, options, pledges, charges, covenants, conditions, restrictions and other encumbrances and claims of any kind or character whatsoever.

**10.10 Affiliates and Subsidiaries.** Except as disclosed on Schedule 10.10, neither the Party nor any of its respective System Affiliates is a shareholder, partner, or member of any corporation, partnership or other entity that is not itself a System Affiliate. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that will require the Party, a System Affiliate, or a third party to issue, sell, or otherwise cause to become outstanding any of the shares or membership interests in the Party or any System Affiliate. Except as set forth on Schedule 10.10, there are no outstanding or authorized stock or unit appreciation, phantom stock, profit participation, or similar rights with respect to any for-profit System Affiliates. Except as set forth on Schedule 10.10, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of the shares or membership interests of a Party or a System Affiliate.

**10.11 Taxes.** Each Party and each of its respective System Affiliates has filed all federal, state and local tax returns required to be filed by it (all of which are true and correct in all material respects) and has duly paid or made provision for the payment of all taxes (including any interest or penalties and amounts due state unemployment authorities) that are due and payable to the appropriate tax authorities. Each Party and each of its respective System Affiliates has withheld proper and accurate amounts from its employees' compensation in material compliance with all withholding and similar provisions of the Code, including employee withholding and social security taxes, and all other applicable laws. No deficiencies for any of such taxes have been asserted or, to the Knowledge of the Party and each of its respective System Affiliates, threatened against such Party or any of its respective System Affiliates, and no audit on any such returns is currently under way, or to the Knowledge of each Party, is threatened. There are no outstanding agreements by a Party or any of its respective System Affiliates for the extension of time for the assessment of any such taxes. Neither Party, nor any of its respective System Affiliates has taken any action in respect of any federal, state or local taxes (including, without limitation, any withholdings required to be made in respect of employees) that is likely to have a material adverse impact upon it subsequent to Closing. There are no tax liens on any of the assets of the Party or any of its respective System Affiliates.

**10.12 Tax Exempt Status.** Each Party and each of its respective System Affiliates (with the exception of those entities listed on Schedule 10.12) is an exempt organization under Section 501(c)(3) of the Code, and is not a “private foundation” within the meaning of Section 509(a) of the Code. The IRS has not taken, or to the Knowledge of the Party, proposed to take, any action to revoke the tax-exempt status of the Party or any of its respective System Affiliate, and has not announced, or to the Knowledge of the Party, proposed to announce, that the Party or any of its respective System Affiliate is a “private foundation” within the meaning of Section 509(a) of the Code. Each Party has no Knowledge of any change in their respective organization or operations that will result in a loss of the Party’s or any of its respective System Affiliates’ status as an organization described in Section 501(c)(3) of the Code or that will cause the Party or any of its respective System Affiliate to be treated as a “private foundation” within the meaning of Section 509(a) of the Code.

**10.13 Insurance.** Each Party and its System Affiliates maintain insurance policies and programs sufficient to insure them against risks, losses and liabilities that similarly-situated health care companies within the health care industry customarily insure against (the “**Insurance**”). Each Party’s Insurance is in full force and effect. Except as set forth on Schedule 10.13, there is no pending or asserted claim against any Insurance that would, or would reasonably be likely to, have a Significant Effect, as to which any insurer has denied liability or issued a reservation of rights. No notice of cancellation or nonrenewal with respect to, or material increase of premiums for, any Insurance has been received by a Party or a System Affiliate within twenty-four (24) months immediately preceding the Closing Date, and each Party does not have Knowledge of a claim that will give rise to a notice of cancellation or nonrenewal or a material increase in premiums for any Insurance.

**10.14 Medicare, Medicaid and Other Reimbursement.** With respect to all of the private, commercial and governmental payment and procurement programs with which a Party or its System Affiliates are participating providers (including, without limitation, Medicare and Medicaid) (the “**Payment Programs**”):

(a) Neither the Party nor any of its System Affiliates are engaged in termination proceedings as to its respective participation in any of the Payment Programs, nor have the Party or its System Affiliates received notice that its current participation in any of the Payment Programs is subject to any contest, termination or suspension as a result of alleged violations or any noncompliance with participation requirements;

(b) During the past two (2) years, neither the Party nor any of its System Affiliates have taken or committed to any action, entered into any agreement, contract or undertaking, or taken or omitted to take any other action of any nature whatsoever that was or is in violation of any applicable with all applicable Payment Program conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements (collectively, “**Payment Program Regulations**”), that individually had, or is reasonably likely to have, an estimated liability exceeding Three Million Dollars (\$3,000,000);

(c) All billing and collection practices of the Party and its System Affiliates and, to the Knowledge of each Party, of any billing and/or collection agent acting on behalf of any of the Party or its System Affiliates, for the last two (2) years, have been in compliance with all Payment Program Regulations, except for noncompliance that individually did not have, or is not reasonably likely to have, an estimated liability exceeding Three Million Dollars (\$3,000,000);

(d) All cost reports and cost statements submitted by the Party and its System Affiliates to any of the Payment Programs are true, accurate and complete in all material respects and have been prepared and submitted in accordance with cost and accounting principles consistently applied that comply with all applicable Payment Program conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements (collectively, “**Payment Program Regulations**”), including, without limitation, Payment Program interpretations and guidance, except to the extent that such non-compliance with such Payment Program Regulations is not reasonably likely to have an estimated liability exceeding Three Million Dollars (\$3,000,000);

(e) To the Knowledge of each Party, neither the Party nor any of its System Affiliates have taken any of the following actions: (i) submitted to any of the Payment Programs any false, fraudulent or abusive claim for payment, (ii) billed any of the Payment Programs for any service not rendered or not rendered as claimed, or (iii) received and retained any payment or reimbursement from any of the Payment Programs in excess of the proper amount allowed by applicable law and applicable contracts or agreements with the Payment Programs, in each case, except to the extent that such action is not reasonably likely to have an estimated liability exceeding Three Million Dollars (\$3,000,000);

(f) Except where the following would not reasonably likely have an estimated liability exceeding Three Million Dollars (\$3,000,000), there is no audit, investigation, adverse action, or civil, administrative, or criminal proceeding pending or, to the Knowledge of each Party, threatened relating to participation in any of the Payment Programs by the Party or its System Affiliates; and, to the Knowledge of each Party, there is no reasonable basis for any such adverse action by the Payment Program against the Party or its System Affiliates; and

(g) None of the Payment Programs has requested nor, to the Knowledge of each Party, has threatened any recoupment, refund, or set off from the Party or its System Affiliates, or imposed any fine, penalty or other sanction on the Party or its System Affiliates, which, in any such case, is reasonably likely to have an estimated liability exceeding Three Million Dollars (\$3,000,000) to such Party.

**10.15 Medical Staff.** With respect to each Party’s hospitals’ medical staffs, except where the following would not have a Significant Effect: (a) there are no pending adverse actions with respect to any medical staff members of each Party’s hospitals or any applicant thereto for which a medical staff member or applicant has requested an appellate review under each Party’s hospitals’ medical staff bylaws that has not been scheduled or has been scheduled but has not been completed; (b) there are no pending or, to the Knowledge of each Party, threatened disputes with applicants, staff members, or health professional affiliates, and each Party knows of no basis therefor; and (c) all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired. Notwithstanding the foregoing provisions of this Section 10.15, each Party shall not be required to disclose any information pursuant to this Section 10.15 where such disclosure is prohibited by state law or where such disclosure would, in each Party’s reasonable discretion, potentially jeopardize any applicable privilege that would protect the disclosure of such information to third parties.

#### **10.16 Employees, Employee Benefit Plans and Labor Relations.**

(a) Schedule 10.16(a) sets forth an accurate, correct and complete list of all “employee welfare benefit plans” (as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)), “employee pension benefit plans” (as defined in Section 3(2) of ERISA), and all other employee benefit plans, programs and arrangements, whether funded or unfunded, qualified or nonqualified, that are maintained, contributed to or required to be contributed to by each Party and its

respective System Affiliates for the benefit of any of its officers, employees or other persons (collectively, the “**Benefit Plans**”). Each Party has delivered or made available to the other Party accurate, correct and complete copies of the following, as applicable (i) the most recent coverage and nondiscrimination tests performed under the Code, and (ii) any and all notices or correspondence related to any unresolved audit or investigation of a Benefit Plan that were given by the IRS, the Pension Benefit Guaranty Corporation, the Department of Labor or any other governmental authority to each Party or any of its respective System Affiliates. Neither Party nor any System Affiliate is a sponsor or contributor to any employee benefit plan of any joint venture affiliate.

(b) Neither Party nor any of its System Affiliates maintains, contributes to, has an obligation to contribute to or has any liability under (or with respect to) any “defined benefit plan” (as defined in Section 3(35) of ERISA), or any “multiemployer plan” (as defined in Section 3(37) of ERISA). No assets of a Party or any of its respective System Affiliates is subject to any filed lien (nor, to the Knowledge of such Party, any lien arising by operation of statute), under ERISA or the Code regarding, relating to or resulting from the operation of a Benefit Plan.

(c) All contributions to, premiums relating to, and payments from, the Benefit Plans required to be made in accordance with the terms of the Benefit Plans and applicable Law have been timely made and recorded appropriately under accounting principles. No Benefit Plan is subject to the funding rules of Section 302 of ERISA or Section 412 of the Code.

(d) All Benefit Plans (and all related trust agreements or annuity contracts or any funding instruments) comply currently, and have complied in the past, both as to form and operation, and have been administered and maintained in material compliance with its terms and all applicable Laws (including ERISA, where applicable, and with the Code), and where applicable is tax-qualified under Section 401(a) of the Code, and all other applicable laws, rules and regulations. The Benefit Plans that are pension benefit plans have received determination letters from the IRS to the effect that such Benefit Plans are qualified and exempt from Federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and no such determination letter has been revoked, nor has revocation been, to the Knowledge of each Party, threatened.

(e) All reports, returns and similar documents with respect to the Benefit Plans required to be filed with any government agency or distributed to any Benefit Plan participant have been duly and timely filed or distributed. There are no pending, or to the Knowledge of such Party, threatened investigations by any governmental agency, termination proceedings or other claims (except claims for benefits payable in the normal operation of the Benefit Plans), suits or proceedings against or involving any Benefit Plan or asserting any rights or claims to benefits under any Benefit Plan that could give rise to any material liability, nor to the Knowledge of the Party are there any facts that could reasonably give rise to any material liability in the event of any such investigation, claim, suit or proceeding. Except as set forth on Schedule 10.16(e), no Benefit Plan has within the two (2) years prior to the date hereof been the subject of an examination or audit by a governmental authority or the subject of an application or filing under an amnesty, voluntary compliance, or similar program sponsored by a governmental authority.

(f) Each Benefit Plan that is subject to the health care continuation requirements of Part 6 of Subtitle I of ERISA or Section 4980B of the Code (“**COBRA**”) or the Patient Protection and Affordable Care Act of 2010, as amended, has been administered in material compliance with such requirements. No Benefit Plan provides medical benefits to any current or future retired or terminated employee (or any dependent thereof) of Lifespan or CNE, as applicable, or as Lifespan Affiliate, or CNE Affiliate, as applicable, other than as required pursuant to COBRA.

(g) Each Party has no Knowledge that any “prohibited transaction” (as defined in Section 4975 of the Code or Section 406 of ERISA) has occurred that involves the assets of any Benefit Plan and that could subject such Party or its System Affiliates, or any of their respective employees, or a trustee, administrator or other fiduciary of any trusts created under any Benefit Plan to the tax or penalty on prohibited transactions imposed by Section 4975 of the Code or the sanctions imposed under Title I of ERISA, nor of any facts giving rise to a prohibited transaction with respect to the assets of a Benefit Plan. Except as set forth on Schedule 10.16(g), no Benefit Plan has been terminated.

(h) Neither Party nor any of its respective System Affiliates has Knowledge of any liability with respect to any Benefit Plan solely by reason of being treated as a single employer under Section 414 of the Code with any trade, business or entity other than such Party or the System Affiliates.

(i) Each Benefit Plan that is a nonqualified deferred compensation plan (as defined in Code Section 409A(d)(1)) has been operated in material compliance with Code Section 409A and the underlying IRS guidance and Department of Treasury Regulations.

(j) Except as set forth on Schedule 10.16(j), neither Party nor any of its respective System Affiliates is a party to any labor contract, collective bargaining agreement, letter of understanding or any other arrangement, formal or informal, with any labor union or organization that obligates such Party or its respective System Affiliates to compensate its employees at prevailing rates or union scale, nor are any of such Party’s or any System Affiliate’s employees represented by any labor union or organization. There is no pending or, to the Knowledge of such Party, threatened labor dispute, work stoppage, unfair labor practice complaint, strike, administrative or court proceeding or order related to any of the foregoing, between a Party or a System Affiliate and any of their present or former employees (or a union), and each Party has no Knowledge of a reasonable basis therefor, in each case that has an estimated liability of One Million Dollars (\$1,000,000) or more. There is no pending, or the Knowledge of such Party, a threatened suit, action, investigation or claim between a Party or a System Affiliate and any of their present or former employees (or a union), and each Party has no Knowledge of a reasonable basis therefor, in each case that has an estimated liability of One Million Dollars (\$1,000,000) or more. To each Party’s Knowledge, there has not been any labor union organizing activity with respect to any union pertaining to a Party or a System Affiliate or elsewhere with respect to employees of such Party or its System Affiliates within the last two (2) years.

#### **10.17 Defined Benefit Pension Plans.**

(a) Neither Party nor any of its System Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material liability under Title I or Title IV of ERISA; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation as required under Section 4007 of ERISA; (iii) withdrawn from any defined benefit plan; or (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA.

(b) No amendment not previously provided to the other Party has been made, or is reasonably expected to be made, to any Benefit Plan that has required or could require the provision of security under Section 401(a)(29) of the Code.

(c) No accumulated funding deficiency, whether or not waived, exists with respect to any Benefit Plan; no event has occurred or circumstance exists that reasonably may result in an accumulated funding deficiency as of the last day of the current plan year of any such Benefit Plan.

(d) The actuarial report for any pension plan pursuant to which a Party, or any ERISA Affiliate participated, fairly presents in all material respects the financial condition and the results of operations of each such pension plan in accordance with generally accepted accounting principles. “**ERISA Affiliate**” means, with respect to each Party, any other entity that, together with such Party, would be treated as a single employer under Section 414 of the Code.

(e) Since the last valuation date for each pension plan pursuant to which each Party or any ERISA Affiliate participated, no event has occurred or circumstance exists that would increase the amount of benefits under any such pension plan or that would cause the excess of pension plan assets over benefit liabilities (as defined in ERISA § 4001) to decrease, or the amount by which benefit liabilities exceed assets to increase, other than the normal market fluctuation of the investments from time to time.

(f) No reportable event (as defined in ERISA § 4043 and in regulations issued thereunder) has occurred with respect to any Benefit Plan.

(g) To the Knowledge of each Party, there is no fact or circumstance that may give rise to any liability of such Party or any ERISA Affiliate to the PBGC under Title IV of ERISA.

**10.18 Material Contracts.** Neither Party nor its System Affiliates is in breach of or default under any term or provision of any Material Contract to which it is a party or by which it is bound, nor, to the Knowledge of such Party, is any other party thereto in breach or default thereunder, where such breach will, or is reasonably expected to, have a Significant Effect. Except as set forth on Schedule 10.18, none of the transactions contemplated by this Agreement creates in any party to any such Material Contract the right to revise the terms of, to terminate, to accelerate any obligation, or otherwise to declare that such Material Contract has been breached, except as would not have a Significant Effect. Each Party has delivered or made available to the other Party (or to the other Party’s agents) either true and complete copies of all Material Contracts or a list of such Material Contracts, and all such Material Contracts are in full force and effect and are valid and enforceable obligations of such Party, or a System Affiliate, and to the Knowledge of each Party, each counterparty thereto, except as enforceability maybe limited by bankruptcy, insolvency, or other laws of general application affecting the enforcement of creditors’ rights and by general equitable principles, or except as would not have a Significant Effect. The term “**Material Contracts**,” means any of the following agreements to which a Party or its System Affiliates is a party or by which any of their respective properties is bound and which, as of the Execution Date, remains executory in whole or in part:

- (a) each partnership, joint venture or limited liability company;
- (b) each indemnification agreement or other agreement with a director, officer or senior manager of a Party or its System Affiliates;
- (c) each agreement to which a Party or any of its System Affiliates is a party in respect of a merger, acquisition, consolidation or recapitalization during the past five (5) years that involved consideration of Three Million Dollars (\$3,000,000) or more;
- (d) each agreement involving any pending transaction that involves consideration in excess of Five Million Dollars (\$5,000,000);
- (e) each master trust indenture;

- (f) each agreement containing any negative pledge or covenant or transfer restriction on the assets of a Party or its System Affiliates entered into within the past year or which are still in effect;
- (g) each Lease under which the annual rent exceeds Five Hundred Thousand Dollars (\$500,000) per year;
- (h) each real property lease or sublease under which a Party or its System Affiliates is a lessor or landlord and under which the annual rent exceeds Five Hundred Thousand Dollars (\$500,000) per year;
- (i) each electronic medical records agreement with Epic, Cerner or Avatar;
- (j) each material agreement that contains a covenant not to compete or an exclusivity or similar obligation binding upon a Party or its System Affiliates;
- (k) each material agreement that contains any change of ownership, change of control, and/or assignment provisions which might be triggered by the Affiliation;
- (l) each contract containing an obligation to provide funds to or make an investment in any other third-party (in the form of loan, capital or otherwise) in excess of Five Hundred Thousand Dollars (\$500,000);
- (m) each agreement containing a right of first refusal or purchase option in favor of a third-party affecting any asset of a Party or its System Affiliates, or any put or similar obligation requiring a Party or any System Affiliate to purchase assets of a third-party, in each case involving consideration in excess of Five Hundred Thousand Dollars (\$500,000);
- (n) each management, consulting or advisory agreement involving annual consideration in excess of Five Million Dollars (\$5,000,000) per year;
- (o) each marketing or advertising agreement involving annual consideration in excess of Five Million Dollars (\$5,000,000) per year;
- (p) each Existing Academic Arrangement;
- (q) each supply, group purchasing organization or vendor agreement that contains a minimum purchase requirement in excess of Five Million Dollars (\$5,000,000) per year;
- (r) each settlement agreement imposing continuing obligations or covenants of a Party or its System Affiliates;
- (s) each agreement, whether in the ordinary course of business or not, which involve future payments, performance of services or delivery of goods or material, to or by a Party or its System Affiliates of any amount or value in excess of Five Million Dollars (\$5,000,000) per year;
- (t) each agreement for the acquisition, lease or provision of services, supplies, equipment, inventory, fixtures, or other property involving more than Five Million Dollars (\$5,000,000) per year;



- (u) each collective bargaining agreement with any labor unions, labor organizations, or other employee representatives or groups of employees;
- (v) each employment agreement with executive employees of a Party or its System Affiliates; and
- (w) each severance agreement or agreement involving retention or change-in-control payments.

**10.19 Hill-Burton and Other Liens.** Neither Party nor its System Affiliates, or any of their predecessors have received any loans, grants or loan guarantees pursuant to the Hill-Burton Act program, the Health Professions Educational Assistance Act, the Nurse Training Act, the National Health Planning and Resources Development Act, and the Community Mental Health Centers Act, as amended, or similar laws or acts relating to health care facilities. The transactions contemplated hereby will not result in any obligation on the Party or its System Affiliates to repay any of such loans, grants or loan guarantees, nor subject the Party or its System Affiliates to any lien, restriction or obligation, including any requirement to provide uncompensated care.

**10.20 Intellectual Property; Computer Software.** No proceedings are pending or, to the Knowledge of each Party, threatened that challenge the validity of the ownership by a Party, the System Affiliates or their respective trademarks, service marks, trade names, patents, copyrights, inventions, processes and applications therefor (whether registered or common law) currently owned or used by such Party or its System Affiliates (the “**Intellectual Property**”). Each Party and each of its System Affiliates has not licensed anyone to use such Intellectual Property and each Party has no Knowledge of the use or the infringement of any such Intellectual Property by any other person. Each Party and each of the System Affiliates own (or possess adequate and enforceable licenses or other rights to use) all Intellectual Property and all computer software programs and similar systems used in the conduct of its business.

**10.21 Experimental Procedures.** During the past two (2) years, neither Party nor their System Affiliates has performed or permitted the performance of any experimental or research procedures or studies involving patients of such Party or its System Affiliates not authorized and conducted in accordance with the procedures of the institutional review board of the CNE System or Lifespan System, as applicable.

**10.22 CARES Act Matters.**

(a) Each Party or its System Affiliates has received Provider Relief Funds in the amounts and on the dates set forth on Schedule 10.22(a). Each such Party or System Affiliate has timely submitted the requisite certifications to the U.S. Department of Health and Human Services (“**HHS**”) to retain and utilize the Provider Relief Funds (the “**Certification Statements**”). All information contained in the Certification Statements and otherwise furnished to HHS or its contractor, in connection with the application for any such Provider Relief Funds are true, correct and complete in all material respects. Each Party or the System Affiliate, as applicable, that has received Provider Relief Funds has complied in all material respects with all terms and conditions issued by HHS that are applicable to the Provider Relief Funds and all provisions of Division B - Emergency Appropriations for Coronavirus Health Response and Agency Operations of the CARES Act.

(b) Each Party or the System Affiliate, as applicable, has utilized (or anticipate being able to utilize in the future) the Provider Relief Funds in compliance in all material respects with applicable law, including the terms and conditions issued by HHS that are applicable to Provider Relief Funds (as

clarified in the HHS Reporting Policy published on October 22, 2020 and subsequent guidance) the Coronavirus Aid, Relief and Economic Security Act of 2020, as amended (the “**CARES Act**”), and Division B of the CARES Act.

(c) Each Party or the System Affiliate, as applicable, has received Accelerated and Advance Payment Program Funds (“**AAPP Funds**”) in the amounts and on the dates set forth on Schedule 10.22(c). Each Party or the System Affiliate, as applicable, has timely submitted the required documentation to receive and utilize the AAPP Funds. All information contained in such documents and all statements and certifications made in connection therewith are true, correct and complete in all material respects. Each Party or the System Affiliate, as applicable, has utilized the AAPP Funds in compliance with applicable law, including the CARES Act.

(d) Neither Party nor any System Affiliates has applied for or received any “Targeted” Allocation Funds (as such terms are defined by HHS).

(e) Neither Party nor any System Affiliates has applied for or received any customized waiver of any applicable law from any governmental authority pursuant to the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020 with respect to COVID-19, and has operated in conformance in all material respects with any applicable blanket state or federal waivers issued by any governmental authority pursuant to the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020 with respect to COVID-19.

(f) Neither Party nor any System Affiliates has applied for, or received any funds, pursuant to the Paycheck Protection Program and Health Enhancement Act, H.R. 266, 116th Congress (2020), and the programs, rules and regulations promulgated thereunder.

**10.23 Indebtedness.** Schedule 10.23 sets forth all outstanding Indebtedness issued for the benefit of each Party and/or such Party’s System Affiliates, with an initial principal amount greater than One Million Dollars (\$1,000,000). Each Party and its System Affiliates have not taken any action, nor omitted to take any action, which would cause the interest on any of such Party’s or its System Affiliates’ tax-exempt bond Indebtedness to be includible in the gross income of the owners thereof for federal income tax purposes. For purposes of this Section 10.23, “**Indebtedness**” means, without duplication, any of the following liabilities of each Party or its System Affiliates: (a) indebtedness for borrowed money (including any principal, premium, accrued and unpaid interest, related expenses, prepayment penalties, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and all other amounts payable in connection therewith), (b) all liabilities evidenced by bonds, debentures, notes, or other similar instruments or debt securities, (c) the outstanding amount of any commitment by which such person assures a creditor against loss (including contingent reimbursement obligations with respect to bankers acceptances, fidelity bonds, surety bonds, performance bonds and letters of creditor), in each case, to the extent drawn, (d) all liabilities to pay the deferred purchase price of property or services (including deferred rent) other than those trade payables incurred in the ordinary course of business and deferred payments in respect of equipment installment sales, (e) all liabilities arising from cash/book overdrafts, (f) all liabilities under any lease required under GAAP to be recorded as a capital lease, (g) all liabilities of a Party or its System Affiliates under conditional sale or other title retention agreements, other than deferred payments in respect of equipment installment sales, (h) all liabilities of a Party or its System Affiliates arising out of interest rate and currency swap arrangements and any other arrangements designed to provide protection against fluctuations in interest or currency rates, to the extent payable if terminated, (i) any deferred purchase price liabilities related to past acquisitions (including the maximum amount of any earn-outs), and (j) all

indebtedness of others guaranteed or secured by any lien or security interest on the assets of a Party or its System Affiliates.

**10.24 Brokerage.** There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the Affiliation based on any arrangement or agreement made by or on behalf of either Party or the System Affiliates.

**10.25 Completeness of CNE and Lifespan Responses.** To their respective Knowledge, each Party has responded in all material respects to the other Party's requests for information and documentation as part of the other Party's due diligence review of the responding Party's business, operations, assets and liabilities. Each Party has not knowingly omitted any material information relating to the businesses, operations, assets or liabilities of it or the CNE Affiliates or Lifespan Affiliates, as applicable, in its responses to the other Party's requests. To their respective Knowledge, neither Party nor the CNE Affiliates or Lifespan Affiliates, as applicable, has received any material information which would render untrue or misleading any information previously disclosed to the other Party during such other Party's due diligence review.

**10.26 Knowledge.** "Knowledge" as used in this ARTICLE 10, means (i) with respect to CNE, the actual knowledge, after due inquiry, of its President and Chief Executive Officer, Chief Financial Officer, and General Counsel of a particular fact, circumstance or condition, and (ii) with respect to Lifespan, the actual knowledge, after due inquiry, of its President and Chief Executive Officer, Chief Financial Officer, and Senior Vice President and General Counsel of a particular fact, circumstance or condition.

## ARTICLE 11

### PRE-CLOSING COVENANTS

**11.1 Pre-Closing Covenants of Lifespan.** Lifespan hereby agrees to keep, perform and fully discharge, and to cause the Lifespan Affiliates to keep, perform and fully discharge, the following covenants and agreements from the Execution Date until the Closing Date or the earlier termination of this Agreement:

(a) **Interim Conduct of Business.** Lifespan shall: (i) exercise commercially reasonable efforts to preserve, protect and maintain the business, properties and assets of Lifespan and each Lifespan Affiliate; (ii) operate the business of Lifespan and cause the businesses of each Lifespan Affiliate to be operated consistent with prior practices and in the ordinary course of business; (iii) exercise commercially reasonable efforts to preserve the goodwill of all individuals having business or other relations with Lifespan or a Lifespan Affiliate, including physicians, employees, patients, customers and suppliers; (iv) obtain all documents called for by this Agreement and required to facilitate the consummation of the transactions contemplated by this Agreement; (v) provide CNE promptly with interim financial statements for itself and each Lifespan Affiliate, as and when they are available; and (vi) not, without providing to CNE prior written notification, (A) make any changes, or permit any changes to be made, in the governing documents of Lifespan or the Lifespan Affiliates, except for changes expressly authorized by this Agreement or required by law, (B) make any amendments to an existing, or enter into any new, severance, retention or similar agreement with a member of Lifespan's or a Lifespan Affiliate's senior management, or (C) enter into any transaction involving consideration in excess of Five Million Dollars (\$5,000,000), except for transactions expressly listed on Exhibit L or otherwise authorized by this Agreement. Notwithstanding the foregoing, Lifespan may take any action required by law, any action expressly contemplated by this Agreement or any actions that, in the reasonable judgment of Lifespan, are

reasonably required to respond to the COVID-19 pandemic or other public health emergencies, including without limitation, actions taken to comply with quarantine measures, shelter-in-place or stay-at-home orders, shut down orders, or actions taken in response to the recommendations of the U.S. Centers for Disease Control or other public health authorities, implementation of workforce furloughs or reductions, or similar actions. Lifespan shall, with reasonable promptness, disclose all such actions to CNE.

(b) **Preserve Accuracy of Representations and Warranties.** Lifespan shall not take any action that would render any representation or warranty contained in ARTICLE 10 materially inaccurate or untrue as of the Closing Date. Lifespan shall promptly notify CNE in writing of any lawsuits, claims, administrative actions or other proceedings asserted or commenced against Lifespan or any Lifespan Affiliate or any of their respective officers, trustees or members involving in any material way the businesses, properties or assets of Lifespan or a Lifespan Affiliate. Lifespan shall promptly notify CNE in writing of any facts or circumstances, whenever arising, that comes to its attention and that causes, or through the passage of time may cause, any of the representations and warranties contained in ARTICLE 10 to be untrue or misleading at any time from the Execution Date until the Closing Date; provided, however, that except as permitted by Section 16.14, any such notification will not be deemed to have cured any prior inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the applicable termination rights contained in this Agreement or for determining whether the conditions to Closing have been satisfied.

(b) **Access to Information.** Lifespan shall give to CNE and/or to its representatives reasonable access, during normal business hours, to all properties, books, records and contracts pertaining to the businesses, properties and assets of Lifespan and each Lifespan Affiliate, as may be reasonably requested with reasonable written prior notice, subject to any information that is subject to a legal privilege.

(c) **Maintenance of Books and Accounting Practices.** Lifespan shall: (i) maintain the books of account and records of Lifespan and cause the books and records of account of each Lifespan Affiliate to be maintained in the usual, regular and ordinary manner in accordance with generally accepted accounting principles consistently applied and on a basis consistent with prior years, and (ii) make no material changes in its accounting methods or practices or cause any Lifespan Affiliate to make any material change in its accounting methods or practices, in each case except for changes required by generally accepted accounting principles or applicable law.

(d) **Compliance with Laws; Regulatory Consents.** Lifespan shall: (i) comply in all material respects with all applicable statutes, laws, ordinances and regulations; (ii) keep, hold and maintain all certificates, accreditations, licenses and other permits necessary for the conduct and operation of the business of Lifespan and each Lifespan Affiliate; and (iii) reasonably cooperate with CNE to obtain all consents, approvals, exemptions and authorizations of third parties, whether governmental or private, make all filings, and give all notices which may be necessary or desirable on the part of Lifespan and each Lifespan Affiliate under all applicable laws and under all contracts, agreements and commitments to which Lifespan or any Lifespan Affiliate is a party or is bound in order to consummate the transactions contemplated or required by this Agreement. Lifespan shall reasonably advocate for and support the completion of the transactions before all regulatory agencies and in public statements.

(e) **No Merger or Consolidation.** Neither Lifespan nor any Lifespan Affiliate shall merge or consolidate with, or acquire (except in the ordinary course or involving consideration of Five Million Dollars (\$5,000,000) or less) any of the assets of, any other corporation, business or person, except for transactions expressly listed on Exhibit L.

(f) **Third Party Authorizations.** Lifespan shall use commercially reasonable efforts to obtain expeditiously all consents, approvals and authorizations of third parties necessary for the valid execution, delivery and performance of this Agreement by them.

(g) **Performance of Undertakings.** Lifespan shall perform faithfully at all times any and all covenants, undertakings, stipulations and provisions applicable to it contained in this Agreement and in any and every document executed, authenticated and delivered hereunder. Lifespan shall use commercially reasonable efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with the obligations hereunder or which will materially hinder or materially delay the consummation of the transactions contemplated or required hereby.

(h) **Exclusivity.** Unless this Agreement has been validly terminated pursuant to ARTICLE 13 hereof, in light of the significant dedication of time and resources required by the Parties to evaluate and consummate the Affiliation, Lifespan agrees that Lifespan, the Lifespan Affiliates and their respective agents, servants, and employees shall not, without the prior written consent of CNE, directly or indirectly, through any representative or otherwise, (i) solicit, initiate or encourage the initiation by others of discussions or negotiations with third parties, respond to solicitations by third parties, or continue any existing discussion or negotiations with third parties (other than with CNE) relating to any potential future arrangement substantially similar to the Affiliation described herein that would conflict with or preclude Lifespan's ability to participate in the Affiliation consistent with the terms and conditions of this Agreement (an "**Alternative Lifespan Arrangement**"), or (ii) participate in any discussions or negotiations regarding an Alternative Lifespan Arrangement, or otherwise cooperate in any way with, assist, participate in, or facilitate any efforts to or attempt by any person or entity (other than with CNE) to create an Alternative Lifespan Arrangement or enter into any agreement or commitment relating to an Alternative Lifespan Arrangement (whether or not binding). Furthermore, Lifespan shall promptly notify CNE in writing if Lifespan, the Lifespan Affiliates or their respective agents, servants or employees receive after the date hereof any indication of interest or offer in respect of any Alternative Lifespan Arrangement, communicate to CNE in reasonable detail the terms of any such indication of interest or offer, and provide CNE with copies of all written communications relating to any such indication of interest or offer. For purposes of this Section 11.1(h), an Alternative Lifespan Arrangement does not include discussions and negotiations that Lifespan is or may be engaged in on various matters related to its ordinary and customary course of business or strategic plan which may include ongoing discussions with other providers and health care organizations, provided that if such discussions or negotiations are considered by Lifespan to be materially related to the Affiliation described herein, Lifespan shall inform CNE of such discussions or negotiations.

(i) **Insurance.** Lifespan shall maintain policies of fire and casualty, professional liability and other forms of insurance or self-insurance in such amounts, with such deductibles and against such risks and losses as are reasonable for its business, assets and properties, and in any event with coverages and limits no less than in effect immediately before the Execution Date.

**11.2 Pre-Closing Covenants of CNE.** CNE hereby agrees to keep, perform and fully discharge, and to cause the CNE Affiliates to keep, perform and fully discharge, the following covenants and agreements from the Execution Date until the Closing Date or the earlier termination of this Agreement:

(a) **Interim Conduct of Business.** CNE shall: (i) exercise commercially reasonable efforts to preserve, protect and maintain the business, properties and assets of CNE and each CNE Affiliate; (ii) operate the business of CNE and cause the businesses of each CNE Affiliate to be operated consistent with prior practices and in the ordinary course of business; (iii) exercise commercially reasonable efforts to preserve the goodwill of all individuals having business or other relations with CNE or a CNE Affiliate,

including physicians, employees, patients, customers and suppliers; (iv) obtain all documents called for by this Agreement and required to facilitate the consummation of the transactions contemplated by this Agreement; (v) provide Lifespan promptly with interim financial statements for itself and each CNE Affiliate, as and when they are available; and (vi) not, without providing to Lifespan prior written notification, (A) make any changes, or permit any changes to be made, in the governing documents of CNE or the CNE Affiliates, except for changes expressly authorized by this Agreement or required by law, (B) make any amendments to an existing, or enter into any new, severance, retention or similar agreement with a member of CNE's or a CNE Affiliate's senior management, or (C) enter into any transaction involving consideration in excess of Five Million Dollars (\$5,000,000), except for transactions expressly listed on Exhibit L or otherwise authorized by this Agreement. Notwithstanding the foregoing, CNE may take any action required by law, any action expressly contemplated by this Agreement or any actions that, in the reasonable judgment of CNE, are reasonably required to respond to the COVID-19 pandemic or other public health emergencies, including without limitation, actions taken to comply with quarantine measures, shelter-in-place or stay-at-home orders, shut down orders, or actions taken in response to the recommendations of the U.S. Centers for Disease Control or other public health authorities, implementation of workforce furloughs or reductions, or similar actions. CNE shall, with reasonable promptness, disclose all such actions to Lifespan.

(b) **Preserve Accuracy of Representations and Warranties.** CNE shall not take any action that would render any representation or warranty contained in ARTICLE 10 materially inaccurate or untrue as of the Closing Date. CNE shall promptly notify Lifespan in writing of any lawsuits, claims, administrative actions or other proceedings asserted or commenced against CNE or any CNE Affiliate or any of their respective officers, trustees or members involving in any material way the businesses, properties or assets of CNE or a CNE Affiliate. CNE shall promptly notify Lifespan in writing of any facts or circumstances, whenever arising, that comes to its attention and that causes, or through the passage of time may cause, any of the representations and warranties contained in ARTICLE 10 to be untrue or misleading at any time from the Execution Date until the Closing Date; provided, however, that except as permitted by Section 16.14, any such notification will not be deemed to have cured any prior inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the applicable termination rights contained in this Agreement or for determining whether the conditions to Closing have been satisfied.

(b) **Access to Information.** CNE shall give to Lifespan and/or to its representatives reasonable access, during normal business hours, to all properties, books, records and contracts pertaining to the businesses, properties and assets of CNE and each CNE Affiliate, as may be reasonably requested with reasonable written prior notice, subject to any information that is subject to a legal privilege.

(c) **Maintenance of Books and Accounting Practices.** CNE shall: (i) maintain the books of account and records of CNE and cause the books and records of account of each CNE Affiliate to be maintained in the usual, regular and ordinary manner in accordance with generally accepted accounting principles consistently applied and on a basis consistent with prior years, and (ii) make no material changes in its accounting methods or practices or cause any CNE Affiliate to make any material change in its accounting methods or practices, in each case except for changes required by generally accepted accounting principles or applicable law.

(d) **Compliance with Laws; Regulatory Consents.** CNE shall: (i) comply in all material respects with all applicable statutes, laws, ordinances and regulations; (ii) keep, hold and maintain all certificates, accreditations, licenses and other permits necessary for the conduct and operation of the business of CNE and each CNE Affiliate; and (iii) reasonably cooperate with Lifespan to obtain all

consents, approvals, exemptions and authorizations of third parties, whether governmental or private, make all filings, and give all notices which may be necessary or desirable on the part of CNE and each CNE Affiliate under all applicable laws and under all contracts, agreements and commitments to which CNE or any CNE Affiliate is a party or is bound in order to consummate the transactions contemplated or required by this Agreement. CNE shall reasonably advocate for and support the completion of the transactions before all regulatory agencies and in public statements.

(e) **No Merger or Consolidation.** Neither CNE nor any CNE Affiliate shall merge or consolidate with, or acquire (except in the ordinary course or involving consideration of Five Million Dollars (\$5,000,000) or less) any of the assets of, any other corporation, business or person, except for transactions expressly listed on Exhibit L.

(f) **Third Party Authorizations.** CNE shall use commercially reasonable efforts to obtain expeditiously all consents, approvals and authorizations of third parties necessary for the valid execution, delivery and performance of this Agreement by them.

(g) **Performance of Undertakings.** CNE shall perform faithfully at all times any and all covenants, undertakings, stipulations and provisions applicable to it contained in this Agreement and in any and every document executed, authenticated and delivered hereunder. CNE shall use commercially reasonable efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with the obligations hereunder or which will materially hinder or materially delay the consummation of the transactions contemplated or required hereby.

(h) **Exclusivity.** Unless this Agreement has been validly terminated pursuant to ARTICLE 13 hereof, in light of the significant dedication of time and resources required by the Parties to evaluate and consummate the Affiliation, CNE agrees that CNE, the CNE Affiliates and their respective agents, servants, and employees shall not, without the prior written consent of CNE, directly or indirectly, through any representative or otherwise, (i) solicit, initiate or encourage the initiation by others of discussions or negotiations with third parties, respond to solicitations by third parties, or continue any existing discussion or negotiations with third parties (other than with Lifespan) relating to any potential future arrangement substantially similar to the Affiliation described herein that would conflict with or preclude CNE's ability to participate in the Affiliation consistent with the terms and conditions of this Agreement (an "**Alternative CNE Arrangement**"), or (ii) participate in any discussions or negotiations regarding an Alternative CNE Arrangement, or otherwise cooperate in any way with, assist, participate in, or facilitate any efforts to or attempt by any person or entity (other than with Lifespan) to create an Alternative CNE Arrangement or enter into any agreement or commitment relating to an Alternative CNE Arrangement (whether or not binding). Furthermore, CNE shall promptly notify Lifespan in writing if CNE, the CNE Affiliates or their respective agents, servants or employees receive after the date hereof any indication of interest or offer in respect of any Alternative CNE Arrangement, communicate to Lifespan in reasonable detail the terms of any such indication of interest or offer, and provide Lifespan with copies of all written communications relating to any such indication of interest or offer. For purposes of this Section 11.2(h), an Alternative CNE Arrangement does not include discussions and negotiations that CNE is or may be engaged in on various matters related to its ordinary and customary course of business or strategic plan which may include ongoing discussions with other providers and health care organizations, provided that if such discussions or negotiations are considered by CNE to be materially related to the Affiliation described herein, CNE shall inform Lifespan of such discussions or negotiations.

(i) **Insurance.** CNE shall maintain policies of fire and casualty, professional liability and other forms of insurance or self-insurance in such amounts, with such deductibles and against such

risks and losses as are reasonable for its business, assets and properties and in any event with coverages and limits no less than in effect immediately before the Execution Date.

**11.3 Cooperation Regarding Third-Party Authorizations.** Following submission of the items set forth on Exhibit M, the Parties agree to use commercially reasonable efforts to (a) comply as promptly as reasonably practicable with any request from any applicable governmental authority reviewing the Affiliation for additional information, documents or other material; (b) reasonably cooperate with each other in connection with responding to all such requests and with resolving any investigation or other inquiry regarding the Affiliation being conducted by any such governmental authorities, including during the waiting period under the Hart–Scott–Rodino Antitrust Improvements Act (“**HSR Act**”) and notice periods required by law or imposed by any governmental authority; and (c) avoid the entry of, or effect the dismissal of any suit or other proceeding that would otherwise have the effect of preventing or materially delaying the consummation of the Affiliation. Each Party shall promptly inform the other Party of the substance of any oral communication that such Party has with any governmental authority reviewing this Affiliation and shall provide copies of any written communications by such Party with any governmental authority reviewing the Affiliation.

## ARTICLE 12

### CONDITIONS PRECEDENT

**12.1 Conditions Precedent to the Obligations of CNE.** The obligations of CNE to consummate the transactions contemplated by this Agreement are, at the option of CNE, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Accuracy of Representations and Warranties.** Except for changes or developments expressly permitted or contemplated by Section 16.14 by the express terms of this Agreement, the representations and warranties of Lifespan contained in ARTICLE 10 that are qualified as to materiality, Significant Effect or other monetary threshold (excluding monetary thresholds used to define the term Material Contracts) shall be true and accurate as if made on and as of the Closing Date, and those not so qualified shall be true and accurate in all material respects as if made on and as of the Closing Date.

(b) **Performance of Covenants.** Lifespan shall have performed all of the obligations and complied with all of the covenants and agreements applicable to it required to be performed or complied with by it on or prior to the Closing Date, in each case in all material respects.

(c) **Delivery of Closing Deliverables.** Lifespan shall have delivered to CNE all of the Closing deliverables set forth in Section 9.2.

(d) **No Pending Action.** No action or proceeding before any court or governmental body will be pending or threatened in writing wherein an unfavorable judgment, decree or order would reasonably be expected to prevent the carrying out of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded.

(e) **Regulatory Approvals; Expiration of Waiting Periods.** All material consents, authorizations, orders and approvals of (or filings or registrations with) the governmental entity listed on Exhibit M shall have been obtained, filed or delivered.



(f) **Insolvency.** None of Lifespan or the Lifespan Affiliates shall: (i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated as bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against Lifespan or any Lifespan Affiliate.

(g) **No Material Adverse Effect.** The Lifespan System shall not have experienced a Material Adverse Effect since the Execution Date. For purposes of this Agreement, a “**Material Adverse Effect**” shall be defined as a reduction of net assets exceeding Forty-Four Million Dollars (\$44,000,000).

(h) **System Parent.** The System Parent shall have received confirmation of its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the “**Code**”) and its status as a supporting organization under Section 509(a)(3) of the Code.

**12.2 Conditions Precedent to the Obligations of Lifespan.** The obligations of Lifespan to consummate the transactions contemplated by this Agreement are, at the option of Lifespan, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Accuracy of Representations and Warranties** Except for changes or developments expressly permitted or contemplated by Section 16.14 by the express terms of this Agreement, the representations and warranties of CNE contained in ARTICLE 10 that are qualified as to materiality, Significant Effect or other monetary threshold (excluding monetary thresholds used to define the term Material Contracts) shall be true and accurate as if made on and as of the Closing Date, and those not so qualified shall be true and accurate in all material respects as if made on and as of the Closing Date.

(b) **Performance of Covenants.** CNE shall have performed all of the obligations and complied with all of the covenants, agreements and conditions applicable to it required to be performed or complied with by it on or prior to the Closing Date, in each case in all material respects.

(c) **Delivery of Closing Deliverables.** CNE shall have delivered to Lifespan all of the Closing deliverables set forth in Section 9.3.

(d) **No Pending Action.** No action or proceeding before any court or governmental body will be pending or threatened in writing wherein an unfavorable judgment, decree or order would reasonably be expected to prevent the carrying out of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded.

(e) **Regulatory Approvals; Expiration of Waiting Periods.** All material consents, authorizations, orders and approvals of (or filings or registrations with) the governmental entity listed on Exhibit M shall have been obtained, filed or delivered.

(f) **Insolvency.** None of CNE or the CNE Affiliates shall: (i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated as bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against CNE or any CNE Affiliate.

(g) **No Material Adverse Effect.** The CNE System shall not have experienced a Material Adverse Effect since the Execution Date.

(h) **System Parent.** The System Parent shall have received confirmation of its tax-exempt status under Section 501(c)(3) of the Code and its status as a supporting organization under Section 509(a)(3) of the Code.

## ARTICLE 13

### TERMINATION

**13.1 Termination.** This Agreement may be terminated before the Closing Date for any of the following reasons:

- (a) Upon the written consent of the Parties;
- (b) By CNE in the event that any of the conditions precedent to the performance of the obligations of CNE specified in Section 12.1 of this Agreement, are not fulfilled and cannot reasonably be expected to be fulfilled on or prior to the twentieth (20<sup>th</sup>) month-anniversary of the Execution Date or such later date as may be agreed by the Parties in writing (the “**Outside Date**”) for any reason other than refusal of CNE to perform, and CNE has not already waived such conditions precedent;
- (c) By Lifespan in the event that any of the conditions precedent to the performance of the obligations of Lifespan specified in Section 12.2 of this Agreement, are not fulfilled and cannot reasonably be expected to be fulfilled on or prior to the Outside Date for any reason other than refusal of Lifespan to perform, and Lifespan has not already waived such conditions precedent;
- (d) If either Party should be in breach of a material obligation or covenant and has failed to cure such default within thirty (30) days of receiving from the other Party a notice of breach setting forth in reasonable detail the nature of the breach, then the non-breaching Party may terminate this Agreement on written notice to the breaching Party, such notice to be effective on date set forth therein, provided that such date is at least thirty (30) days after the delivery of the notice of breach; or
- (e) If the Closing does not occur on or prior to the Outside Date.

**13.2 Approval by Board of Directors.** Any termination pursuant to Section 13.1 must first be approved by the board of directors of the Party seeking termination.

## ARTICLE 14

### DISPUTE RESOLUTION

**14.1 Initiation of Dispute Resolution Procedures.** CNE and Lifespan acknowledge that, notwithstanding their efforts, disputes may arise between them with respect to the interpretation of a material provision of this Agreement, or with respect to whether a Party has performed in accordance with its obligations hereunder (or otherwise has breached this Agreement as a result any such failure to so perform) (each, a “**Dispute**”). The Parties agree that, except as set forth in Section 16.19, for purposes of this Agreement, the Dispute resolution process set forth in this ARTICLE 14 is the sole and exclusive process for the resolution of any Dispute. In the event of a Dispute, a Party desiring to initiate dispute

resolution with respect to any such Dispute (the “**Initiating Party**”) shall deliver to the other Party (the “**Responding Party**”) written notice of its claims with respect to the Dispute that sets forth in reasonable detail the basis for its position with respect to such Dispute, including any and all documents supporting its position (a “**Dispute Notice**”).

**14.2 Informal Negotiations.** Within seven (7) calendar days after the Responding Party’s receipt of the Dispute Notice, the President and Chief Executive Officer of the Responding Party, or his or her designee, and the President and Chief Executive Officer of the Initiating Party, or his or her designee, shall meet and attempt in good faith to resolve any and all Disputes set forth in the Dispute Notice. In the event the Parties are unable to successfully resolve any such Dispute through this informal negotiation after a period of at least fourteen (14) calendar days following the initiation of such negotiation, then the Parties shall submit the remaining unresolved Disputes to binding arbitration. Any Dispute that is resolved pursuant to a resolution reached by the Parties pursuant to this Section 14.2 will not become subject to the procedures set forth in Section 14.3.

**14.3 Arbitration.**

(a) If any Dispute is not resolved to the mutual satisfaction of the Parties through the informal negotiation process set forth in Section 14.2, the Parties shall, upon the delivery by a Party of a written request for arbitration, be settled by binding arbitration pursuant to the standard procedures of the JAMS Comprehensive Arbitration Rules (the “**JAMS Rules**”). The controversy, claim or dispute will be settled before a single arbitrator. Such arbitrator shall be an attorney with experience in mergers and acquisitions in the health care industry, selected in accordance with the JAMS Rules. In the event the Parties cannot agree on the appointment of the single arbitrator within thirty (30) days of the written request for arbitration, JAMS shall appoint the single arbitrator in accordance with the procedures set forth in the JAMS Rules, in which case JAMS shall consider, but shall not be required, to select an arbitrator having the qualifications referenced above.

(b) The arbitration will be administered by JAMS and conducted under the JAMS Rules. The arbitration will be held in Providence, Rhode Island, or such other site as the Parties may mutually agree, and will be subject to the law of the State of Rhode Island. The Parties agree that to the maximum extent practicable, the arbitration proceeding will last no longer than one-hundred and eighty (180) days from the filing of the controversy with JAMS. The decision and award of the arbitrator or panel of arbitrators, as the case may be, will be final and binding, and the award rendered may be entered in any court having jurisdiction thereof. The arbitrator or panel of arbitrators, as the case may be, will enforce the terms of this Agreement and will have no authority to award punitive damages, non-compensatory damages or any damages other than direct damages, and will in no event have authority to award direct damages exceeding a maximum aggregate amount of Ten Million Dollars (\$10,000,000). The arbitrator or panel of arbitrators, as the case may be, shall award costs associated with the arbitration to the prevailing Party, but each Party shall bear the expense of its own attorneys’ fees.

(c) The existence of the arbitration, the arbitration proceedings, and the outcome of such arbitration will be treated confidentially by the Parties.

(d) Notwithstanding the obligations to meet and confer, mediate and arbitrate set forth herein, any Party may seek to obtain provisional, injunctive or equitable remedies, including, without limitation, temporary restraining orders, preliminary injunctions, permanent injunctions or specific performance (in accordance with Section 16.19), from a court of competent jurisdiction only with respect to a breach of Sections 9.1, 11.1, 11.2, 11.3, 16.5 or 16.17 of this Agreement.

## ARTICLE 15

### CHARACTER OF THE AFFILIATION

#### 15.1 Character of the Affiliation.

- (a) The Closing of the Affiliation does not involve, and is not intended to result in:
  - (i) the exchange of cash or similar financial consideration;
  - (ii) the merger or consolidation of any existing entities;
  - (iii) the sale, purchase or lease of part or all of any hospital;
  - (iv) the assignment, sale, sublease or transfer of any contractual interest by any Unified System Affiliate;
  - (v) the sale, conveyance, assignment, license, lease or disposition of all or a substantial part of any or all of the Unified System Affiliates' assets;
  - (vi) a transfer of control of the operation, or right to operate, all or a substantial part of the Unified System Affiliates' assets, business or operations; or
  - (vii) a change in the direct corporate member of any CNE Affiliate or Lifespan Affiliate.

(b) As of the Closing, the CNE Affiliates and the Lifespan Affiliates shall continue their respective current business operations at the locations and on the premises in which they conduct such business operations immediately prior to the Closing: (i) with the same immediate corporate structure; (ii) without the disposition of their respective assets, other than in the normal course of business; (iii) while maintaining and not adversely affecting (A) their respective state or federal 501(c)(3) tax-exempt status, as applicable, and (B) all of their respective licenses, including, without limitation, licenses issued by the Rhode Island Department of Health; and (iv) without prejudice to any applicable landlord.

(c) The Unified System Affiliates are separate and distinct employers, and nothing in this Agreement nor in consummating the Affiliation shall alter or affect their status as separate and distinct employers, nor shall it alter or affect relationships with bargaining units within their operations and labor relations within their organizations. The Unified System Affiliates each shall: (i) retain control of labor relations within their organizations, and (ii) cooperate with one another to maintain the qualified status of their respective benefit plans. Nothing herein is intended to or shall be interpreted to extend automatically or by operation of law, the representation rights of any labor organization representing employees of such bargaining unit (or any collective bargaining agreement covering such bargaining unit).

(d) Nothing contained in this Agreement shall be deemed to be an assumption or assignment by any Party hereto of any other Parties' or its affiliates' liabilities, obligations, debts, known or unknown, whether absolute, contingent, accrued or otherwise, including without limitation any and all (a) obligations, commitments or liabilities of or claims arising out of or in connection with the Affiliation contemplated hereunder; (b) liabilities for federal, state or local taxes arising from the business or operations of any Party or its affiliates; (c) liabilities or negligence claims relating to the provision of medical services

or nursing care; (d) liabilities for any default in the performance of or breach of any contract, agreement, lease, commitment or obligation; (e) liabilities for Medicare or third-party payor reimbursement program recaptures or offsets for cost reporting periods prior to the Closing Date; (f) liability for FICA, workers' compensation or other employment related taxes; (g) obligations, commitments or liabilities relating to the establishment, adoption, administration or funding of participation in, contribution to, or maintenance or termination, whether on, prior or subsequent to the Closing Date, of any employee benefit plan, program, or arrangement (whether or not described in or subject to, ERISA); (h) funding obligations relating to insurance or self-insurance programs; and (i) any other liability or obligation accruing prior to the Closing Date.

## ARTICLE 16

### GENERAL PROVISIONS

**16.1 Amendment.** Except as otherwise provided in this Agreement, no amendment of any provision of this Agreement will be effective unless the same is in writing and signed by the Parties, and then such amendment will be effective only in the specific instance and for the specific purpose for which given.

**16.2 Notices.** All notices, requests, demands and other communications hereunder must be in writing and must be delivered personally or sent by overnight courier, as follows:

If to CNE:

Care New England Health System  
45 Willard Avenue  
Providence, RI 02905  
Attn: President and Chief Executive Officer  
and General Counsel

If to Lifespan:

Lifespan Corporation  
593 Eddy Street  
Providence, RI 02903  
Attn: Senior Vice President and General  
Counsel

With a copy to:

McDermott, Will & Emery LLP  
444 West Lake Street  
Chicago, Illinois 60606  
Attn: John Callahan, Esq.

With a copy to:

Locke Lord LLP  
111 Huntington Avenue  
Boston, Massachusetts 02199  
Attn: David Szabo, Esq.

A Party may change its address for receiving notice by written notice given to the others named above. All notices will be effective when received, if by personal delivery, or the next business day, if by overnight courier.

**16.3 Expenses.** Except as otherwise provided in this Section 16.3, whether or not the Affiliation is consummated, the Parties agree as follows: (a) CNE shall pay the fees, expenses, and disbursements of the CNE System and its agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto; and (b) Lifespan shall pay the fees, expenses, and disbursements of the Lifespan System and its agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto. Notwithstanding anything to the contrary herein: (i) CNE and Lifespan shall pay the fees and expenses of all outside legal counsel and advisors jointly retained by the Parties incurred in connection with the subject matter hereof,

in accordance with the terms of the joint engagement; (ii) the Parties shall share equally the filing fees associated with the Premerger Notification and Report Form as required by the HSR Act; and (iii) the Parties shall share equally all filing fees, costs and expenses assessed to either Party in relation to the consents, authorizations, orders and approvals of (or filings or registrations with or notices to) the governmental entities listed on Exhibit M, including any expert and consultant fees assessed upon either Party by the Rhode Island Department of Health Center for Health Systems Policy and Regulations.

**16.4 Counterparts.** This Agreement may be executed simultaneously in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Agreement. The Parties may deliver executed signature pages to this Agreement by facsimile or e-mail transmission. No Party may raise (a) the use of a facsimile or email transmission to deliver a signature or (b) the fact that any signature, agreement or instrument was signed and subsequently transmitted or communicated through the use of a facsimile or email transmission as a defense to the formation or enforceability of a contract, and each Party forever waives any such defense.

**16.5 Confidentiality.** The Parties previously entered into that certain Nondisclosure and Common Interest Agreement, dated June 10, 2020 (the “**Confidentiality Agreement**”). The Confidentiality Agreement remains in full force and effect in accordance with its terms. The Parties agree the terms of this Agreement will be treated as “Confidential Information” under the Confidentiality Agreement.

**16.6 Entire Transaction.** This Agreement and the Confidentiality Agreement contain the entire understanding of the Parties with respect to the transactions contemplated hereby and supersedes all other agreements and understandings of the Parties on the subject matter hereof including, without limitation, that certain Letter of Intent dated September 15, 2020 by and between the Parties.

**16.7 Applicable Law.** This Agreement is governed by and construed in accordance with the internal laws of the State of Rhode Island, without regard to conflicts of laws principles.

**16.8 Headings.** Headings of Articles and Sections in this Agreement and the table of contents hereof are solely for convenience or reference, do not constitute a part hereof and will not affect the meaning, construction or effect hereof.

**16.9 Articles and Sections.** All references to “Articles,” “Sections,” “Exhibits” and “Schedules” in this Agreement are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specifically provided.

**16.10 Gender.** Unless the context otherwise indicates, words importing the singular will include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and will be deemed to mean and include all other genders.

**16.11 Further Assurances.** After the Affiliation, each Party shall take such further actions and execute and deliver such additional documents and instruments as may be reasonably requested by the other Party in order to perfect and complete the transactions specifically contemplated herein.

**16.12 Waiver of Terms.** Any of the terms or conditions of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but only by a written notice signed by the Party waiving such terms or conditions. The waiver of any term or condition will not be construed as a waiver of any

other term or condition of this Agreement and will be effective only in the specific instance and for the specific purpose for which given.

**16.13 Partial Invalidity.** In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

**16.14 Exhibits and Schedules.** Any Party may set forth any disclosures required by a Schedule in a separate writing delivered to the other Parties that specifically makes reference to the applicable Section of this Agreement and the required schedule thereto. The Exhibits and Schedules shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. During the period from the Execution Date to the date that is ten (10) business days before the Closing Date, Lifespan, on the one hand, and CNE, on the other hand, may qualify any of its representations and warranties herein pursuant to a new Disclosure Schedule or amend any one or more of the Disclosure Schedules they delivered at the Execution Date by delivering one or more amended Disclosure Schedules (each, an “**Amended Disclosure Schedule**”) to the other Party; provided however, that all such qualifications or amendments since the Execution Date may not, in the aggregate, disclose a previously undisclosed or incremental loss or liability in excess of Twenty Five Million Dollars (\$25,000,000) without the prior written approval of the other Party.

**16.15 Non-Assignment.** No Party may assign its rights in this Agreement or delegate its duties under this Agreement to a third party without first obtaining the prior written consent of the other Parties.

**16.16 No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

**16.17 Public Statement.** Neither Party will make any public announcement or official public statement or communication regarding concerning this Agreement and its execution, including any press release, without the prior written approval of the other Party. The Parties agree to coordinate the timing and messaging of communications concerning this Agreement to their respective employee and medical staff communities and leadership.

**16.18 Waiver of Trial by Jury.** EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN CONNECTION WITH ANY MATTER RELATING TO THIS AGREEMENT.

**16.19 Equitable Relief.** The Parties acknowledge that a breach or threatened breach of Sections 9.1, 11.1, 11.2, 11.3, 16.5 or 16.17 this Agreement by a Party would cause the non-breaching Parties to suffer immediate and irreparable harm that could not be fully remedied with the payment of monetary damages. As such, in addition to any other remedies available, a non-breaching Party shall be entitled to specific performance, preliminary and permanent injunctive relief, and other available equitable remedies to restrain a breach or threatened breach of this Agreement by another Party, either pending or following a trial on the merits, and without the need to post bond or other security.

**16.20 Survival.** Section 5.2, ARTICLE 6, ARTICLE 7 and ARTICLE 8 (to the extent applicable following the Closing) and ARTICLE 14 and ARTICLE 16 shall survive the Closing and the consummation of the Affiliation, but all other provisions hereof shall be extinguished upon the Closing and the

consummation of the Affiliation and shall not survive such Closing and consummation. Without limiting the generality of the foregoing, the representations and warranties set forth in ARTICLE 10 shall be extinguished upon the Closing and consummation of the Affiliation and shall not survive such Closing and consummation.

*[The remainder of this page is intentionally left blank]*



**IN WITNESS WHEREOF**, the Parties have executed or caused this Agreement to be executed on the day and year first above written.

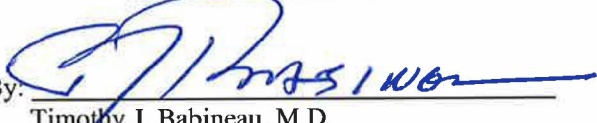
**CARE NEW ENGLAND HEALTH SYSTEM**

By:   
Charles R. Reppucci  
Chair of the Board of Directors

By:   
James E. Fanale, M.D.  
President and Chief Executive Officer

**LIFESPAN CORPORATION**

By:   
Lawrence Aubin, Sr.  
Chair of the Board of Directors

By:   
Timothy J. Babineau, M.D.  
President and Chief Executive Officer

*[Signature page to Definitive Agreement]*